

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA NO. 432/2001

<sup>13th</sup>  
This day of June, 2003.

HON'BLE MR. JASBIR S. DHALIWAL, MEMBER (J)  
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Shri Dhondiram Dadu Mane  
s/o Dadu Yashwant Mane  
Retired (Compulsorily) as Mailman  
Air Mail Sorting Office, Mumbai  
R/o J.B.D' Souza Chawl, New Agri-pada  
Western Express Highway  
at P.O. Santacruz (East)  
Mumbai.

.....Applicant.

(By Advocate: Shri S.P. Kulkarni)

Versus

1. Union of India through  
Senior Superintendent of Railway  
Mail Service, Air Port Sorting Division  
APSO Building, at P.O. Mumbai.

2. Director of Postal Services (B.D)  
Mumbai, office of Chief Postmaster  
General, Maharashtra Circle, Old  
GPO Bldg., 2nd floor, near CST Cen. Rly  
Fort, at P.O. Mumbai.

3. Member (Personnel) Postal Services  
Board, Department of Posts  
Ministry of Communications  
Govt. of India, Dak Sanchar Bhawan  
20, Ashoka Road, at P.O. New Delhi.  
...Respondents.

(By Advocate: ~~Smt.~~ H.P. Shah)

O R D E R

Shri S.K. Malhotra, Member (A):

The present OA has been filed by the applicant who has been working as Mail Peon (Group D) in Postal Department in Railway Mail Service praying for quashing and setting aside the punishment order dated 29.4.97 (Annexure C); appellate order dated 31.3.98 (Annexure B) and revisional order dated 24.5.2000 (Annexure A). The applicant was earlier given the punishment vide order dated 29.4.97 by which his pay in the scale of Rs. 750-940 was reduced from Rs. 940/- to Rs. 750/- for a period of 5 years. Later, the appellate authority enhanced the punishment

A

vide order dated 31.3.98 (Annexure B) and imposed the penalty of compulsory retirement with immediate effect.

2. The facts of the case, in brief, are that the applicant was working as a Mail Peon in the Respondent Deptt. and was drawing a pay of Rs. 940/- in the scale of Rs. 750-940. On 16.4.91 after attending his duty, he was drafted for Over Time duty in the next shift. He resumed his Over Time duty on 23.15 hours. At this point, there was some exchange of words between Shri A.N. Mistry, Jamadar on night duty. Shri Mistry sought clarification from the applicant for late attendance and did not allow him to perform Over time duty which resulted in exchange of words between both of them. It is alleged that the applicant assaulted Shri Mistry and pushed him, as a result of which he fell down. Based on the complaint made by the Head Sorter and written complaint made by Shri Mistry, an enquiry was conducted against the applicant. The Enquiry Officer gave his report in which the charge of assaulting the Jamadar was proved. The disciplinary authority concurred with the findings of Enquiry Officer and imposed a punishment of reduction in pay from Rs. 940/- to Rs. 750/- for a period of 5 years vide order dated 29.4.97 (Annexure C). Applicant preferred an appeal on 14.6.97. However, the appellate authority did not dispose of his appeal but instead issued a show cause notice on 11/17.9.97 calling upon the applicant as to why the punishment should not be enhanced. The applicant sent his reply to the notice on 18.10.97 giving full facts and prayed that he may be absolved of the charges. The appellate authority, however, passed an order on 31.3.98 imposing the penalty of compulsory retirement on the applicant. The applicant preferred a revision petition on 12.8.98 which was rejected on 24.5.2000. Hence the present OA.

3. Applicant has also stated that, during the course of enquiry, the complaint stated to have been sent by the Head Sorter was not produced and consequently Shri Mistry could not be cross examined

Q

by him. This has caused a prejudice to him and was in violation of the principles of natural justice. Secondly, the applicant has undergone the punishment of reduction in pay from Rs. 940/- to Rs. 750/- w.e.f. 29.4.97 to 31.3.98 when he was awarded the punishment of compulsory retirement. Thus, he has been given two punishments for the same offence which amounts to double jeopardy which is against the well settled principle of law.

4. Respondents have filed a written statement in which they have stated that the allegation of manhandling Shri Mistry has been proved in the enquiry report. The applicant is also stated to have admitted in his statement dated 7.5.93 that he had jokingly slapped Shri Mistry due to which he fell down. It has further been stated that the enquiry in the above case was initiated on the basis of the daily report of the Head Sorting Assistant in which he had mentioned the misbehaviour of the applicant and his manhandling of Shri Mistry. It was, therefore, not considered necessary to supply him the written complaint of Shri Mistry. The applicant has been given an opportunity to explain his position and the order of punishment of reduction in the pay and later enhancement of the punishment to compulsory retirement have been issued after due consideration taking into account the facts and circumstances of the case.

5. We have heard learned counsel for both the parties and have also examined the pleadings.

6. While arguing the case, the learned counsel for the applicant stated that the charge that he had slapped Shri Mistry has not been proved in the enquiry. There had been no witness to substantiate the charge. This fact is borne out by the report submitted by the Enquiry Officer. The refusal of furnishing copy of the complaint to the applicant has prejudiced his case to the extent that he could not cross examine the complainant. He also stated that even if it is conceded that the applicant had mishandled Shri Mistry due to verbal exchange between them, the

Q

punishment of compulsory retirement imposed on the applicant is very severe considering the fact that the applicant is about 47 years of age and has still more than 13 years to superannuate. His wife and children cannot be made to suffer for an act which was done in the heat of moment. Besides the above, it is very unfair that for the same charge, the applicant has been given double punishment, first, by reducing his pay from Rs. 940/- to Rs. 750/- and thereafter compulsorily retiring him. Infact, the applicant was getting reduced salary @ Rs. 750/- p.m. for about 11 months from 29.4.97 to 31.3.98 when he was compulsorily retired. Such punishment amounts to double jeopardy and as such is against the well settled principle of law. On the other hand, learned counsel for the respondents stated that the leniency for such a misconduct can be justified only in such cases where an element of human error is involved and not in a case of deliberate and intentional violation of conduct rules. The applicant has conceded that he slapped and pushed Shri Mistry as a result of spontaneous wrath in view of the later refusing the applicant to get any pecuniary advantage through OTA. Such a misconduct cannot be taken lightly and as such the applicant deserves a deterrent punishment and he has been rightly compulsorily retired by the appellate authority.

7. We have given our careful consideration to the case and gave also appreciated the circumstances in which such an incidence has taken place.

8. There is no doubt that the applicant has manhandled his superior Shri Mistry. Infact the applicant in para 5 of his revision petition dated 12.8.98 (Annexure E) has admitted that in the heat of the moment when Shri Mistry refused to grant him over-time allowance for attending duty beyond 23.15 hours, he lost his temper and he had slapped Shri Mistry for which he has also tendered his apology. One must appreciate the circumstances in which such an incident had happened. The applicant had worked

C

for 8 hours and thereafter he was asked to perform work in the next shift. He went for taking tea etc. for 10-15 minutes but on his return his superior Shri Mistry reprimanded him for coming late (which allegation has proved to be false) and then refused to allow him over time allowance for extra duty. There was heated exchange of words between both of them during which the applicant slapped/pushed Shri Mistry. We cannot ignore the fact that both are low paid employees and occurrence of such incidences between colleagues cannot be ruled out considering the environment in which they work.

9. Normally, the Courts/Tribunals while exercising the powers of judicial review cannot substitute their own conclusion for penalty and impose some other punishment. If, however, the punishment imposed by the disciplinary authority/appellate authority is shockingly disproportionate, the courts can direct them to reconsider the penalty imposed or to shorten the litigation it may itself, exceptionally and in rare case, impose appropriate punishment with cogent reasons in support thereof. In this connection, we rely upon the judgement of Hon'ble Supreme Court in the case of Kailash Nath Gupta Vs. Enquiry Officer (R.K.Rai), Allahabad Bank & Ors. reported in 2003(3) SLR (SC) 1.

10. In the present case, the only charge against the applicant is that he slapped/pushed his senior colleague due to which he fell down. The provocation of such an action on the part of the applicant was that he was reprimanded for coming late which was not a fact and secondly he was refused over time allowance for doing extra duty in the shift. It may be pertinent to mention that incidence occurred at about midnight when the applicant was already tired after performing his duty for 8 hours and it is not un-natural for anybody to lose his temper even on a slightest provocation. There is no allegation against the applicant that he had misbehaved like this earlier on any occasion. The disciplinary authority after considering the facts and

4

circumstances of the case had rightly proposed the punishment of reduction in the salary from Rs. 940/- to Rs. 750/- for a period of 5 years. However, the appellate authority enhanced the punishment to compulsory retirement for this misconduct. We agree that there should be proper discipline in all organisations and such misconduct should not be ignored but at the same time the quantum of punishment awarded should not be dis-proportionate to the gravity of charge. In this case, we feel that the appellate authority has been very harsh in enhancing the penalty to compulsory retirement based on this solitary misconduct on the part of the applicant.

11. Besides the above, the applicant had already undergone a punishment of reduction in salary from Rs. 940/- to Rs. 750/- for a period of 11 months before the penalty of compulsory retirement was imposed on him on 31.3.98. The imposition of penalty of compulsory retirement also means that the applicant would have got retiral and pensionary benefits based on the reduced salary of Rs. 750/- instead of Rs. 940/- which he was actually drawing before April, 1997. This would cause him substantial recurring financial loss throughout his life, which in our opinion, is a very severe punishment. Besides the above, it is totally unjustified and against the settled principle of law to impose two punishments on the applicant - i.e. one of reduction in salary and the other of compulsory retirement. Considering the facts and circumstances of the case, we feel that it would meet the ends of justice, if the applicant should have been imposed only the penalty of reduction in salary as was decided by the disciplinary authority. The penalty of compulsory retirement in this case appears to be disproportionate to the gravity of the charge and is shocking to the conscience of the court.

11. In view of the above and based on the judgement of the Hon'ble Supreme Court in the case of Kailash Nath Gupta (supra), the order dated 31.3.98 (Annexure B) of compulsory retirement is

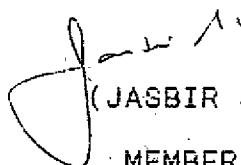
4

quashed and set aside. Respondents are directed to reinstate the applicant in service. The respondents will be at liberty to treat the intervening period from the date of compulsory retirement of the applicant to the date of his reinstatement as per rules. The retiral and other benefits including pension actually released to the applicant will be recovered from him or adjusted against the salary payable / to be paid to him. The above direction will be complied with within six months from the date of receipt of the copy of this order.

No order as to costs.

  
(S.K. MALHOTRA)

MEMBER (A)

  
(JASBIR S. DHALIWAL)

MEMBER (J)

Dated: June 13 2003.

'MS'