

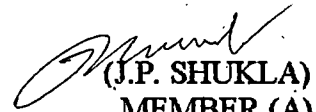
02.05.2008

OA No. 580/2005

**Mr. Ganesh Meena, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.**

Heard learned counsel for the parties.


ORDER RESERVED


**(J.P. SHUKLA)
MEMBER (A)**

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265-2008

order pronounced today
in the open court by the
afore said Bench


26/5/08
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 26th day of May, 2008

ORIGINATION APPLICATION NO. 580/2005

CORAM:

HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

B.C. Sihra son of Shri Gopilal, aged about 42 years. By Caste Meena, resident of Plot No. 80, Saini Colony 'I', Kartarpura, Jaipur. Presently posted as Superintendent in the Office of Commissioner Appeals (I), Central Excise, Jaipur.

.....APPLICANT

(By Advocate: Mr. Ganesh Meena)

VERSUS

1. Union of India through Secretary, Government of India, Ministry of Finance, New Delhi.
2. The Chief Commissioner, Central Excise (Jaipur Zone), Janpath, Jaipur.
3. The Commissioner, Central Excise, Commissionerate, Jaipur-I, Janpath, Jaipur.
4. The Additional Commissioner (P & V), Central Excise, Commissionerate, Jaipur-I, Janpath, Jaipur.

.....RESPONDENTS

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

Applicant has filed this OA u/s 19 of the Administrative Tribunal's Act, 1985, thereby praying for the following relief:-



- (i) By an appropriate order or direction kindly declare the impugned order dated 23.03.2000 (Annexure A/3), order dated 31.03.2003 (Annexure A/2) and order dated 11.01.2005 (Annexure A/1) as illegal, arbitrary, perverse and unconstitutional and same be quashed and set aside with all consequential benefits.
- (ii) By an appropriate order or direction the applicant be exonerated from the charge leveled against him in the charge sheet (Annexure A/4) and respondents be directed to pay arrears within a stipulated short period.
- (iii) That any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in favour of the applicant may kindly be passed.
- (iv) That the application be kindly allowed with costs."

2. Briefly stated, facts of the case are that the applicant while working as Inspector in the Technical Branch, Central Excise Division, Jaipur (Urban), was served with the Charge sheet by the Deputy Commissioner (P&V) along with the statement of articles of charges framed against him and the statement of imputation of mis-conduct or misbehaviour in support of the articles of charge framed against him. The charge leveled against the applicant is that on 27.05.1996 at around 5.15 PM, he entered the room of Shri B.L. Soni, Superintendent (Preventive), Central Excise Division (Urban), Jaipur and threatened him in the presence of other officers. Later on at around 6.20 PM on the same day, he again entered the room of Shri B.L. Soni and hit him on the left ear with his shoe. The copy of the charge sheet alongwith the statement of articles of charge framed and the statement of imputation of mis-conduct or

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misbehaviour in support of the articles of charges framed against the applicant is enclosed as Annexure A/4.

3 Applicant has also submitted that on 27.05.1996, the complainant, Shri B.L. Soni, along with other officials were on tour from 14.50 hours to 22.00 hours, which is evident from the Log Book of the Vehicle, which has been tried to be tempered with by over writing. The copy of the Log Book dated 27.05.1996 is enclosed as Annexure A/5.

4. That the applicant vide letter dated 03.04.1997 requested to provide the copies of number of documents so as to enable him to submit his reply but the same were not supplied to him and he submitted his reply to the charge sheet on 03.03.1998 without going through the requested documents and denied the charges and requested for regular enquiry as per law and procedure.

5. That the statements of witnesses were recorded by the Disciplinary Authority including the statements of complainant Shri B.L. Soni and the Rajendra Soni, which do not corroborate the



incident. The copies of statements of S/Shri B.L. Soni and Rajendra Sharma are enclosed as Annexure A/6 and A/7 respectively.

6. That the applicant vide his letter dated 20.09.1999 (Annexure A/8) made a complaint of bias against the Inquiry Officer and the manner of recording the statements of witnesses but of not result.

7. The Inquiry Officer submitted his inquiry report dated 10.02.2000 to the Disciplinary Authority holding the charges as proved. A notice along with the inquiry report was sent to the applicant proposing for imposition of penalty on him under Rule 11 of the CCS (CCA) Rules, 1965 and directed him to submit his written statement. The applicant alleged that the copy of the inquiry report was not legible and vide his letter dated 29.02.2000, he demanded to provide the legible copy of the same but the same was not made available to him.

8. The Disciplinary Authority without providing the appropriate opportunity to the applicant and without considering the complete material in true spirit passed the penalty order dated 23.03.2000

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(Annexure A/3) thereby imposing the penalty of withholding of three increments without cumulative effect.

9. The applicant preferred an appeal 06.07.2000 (Annexure A/9) to the Appellate Authority under CCS (CCA) Rules, 1965 but the same was dismissed vide order dated 31.03.2001 (Annexure A/2). The applicant then preferred Revision Petition dated 24.04.2003 (Annexure A/10) but that too was also dismissed vide order dated 11.01.2005 (Annexure A/1).

10 The applicant has alleged that the impugned order dated 23.03.2000 (Annexure A/3), order dated 31.03.2003 (Annexure A/2) and order dated 11.01.2005 (Annexure A/1) are latently & patently illegal, arbitrary and contrary to law as well as contrary to the facts apparent on record. The findings recorded by the Inquiry Officer as well as by the Disciplinary authority are perverse. The applicant further alleged that the entry in the Log Book clearly shows that the complainant Shri B.L. Soni was on tour on 27.05.1996 and thus the allegation against the applicant are false & fabricated. The applicant has also alleged that the Inquiry Officer was biased against him as he has stated in the Inquiry report that

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the applicant "should be punished". The inquiry Officer's duty is only to make inquiry and to give his findings whether the charges are proved or not. In the grounds, the applicant has also stated that that the Inquiry Officer proved the charge of slapping Shri B.L. Soni but the Disciplinary authority did not found the said charge proved which clearly shows that the complainant Shri B.L. Soni had leveled false allegations against the applicant. The applicant was not supplied the documents to defend his case which is clearly violation of the principles of natural justice.

11. The applicant further alleges that the punishment was too harsh in the facts & circumstances of the case. He also submitted that he has no enmity with the complainant and, therefore, there arises no occasion for him to commit the alleged incident. The applicant has also alleged that the respondents did not produce the XT-1 diary which contains the details of every moment of an official and if it would have been produced, it would be clear whether the complainant was present in the office or not on 27.05.1996.

12. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, they admitted the

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submissions made by the applicant in his OA to the extant of issuance of charge sheet dated 11.03.1997 for the incident of 27.05.1996. They also admitted that the complainant went out of the office on 27.05.1996 from 19.45 to 20.00 hours but not from 14.50 hours to 22.00 hours, as alleged by the applicant. They also submitted that it appears that the Log-Book has been tempered later on from the evidence of Shri Rajendra Sharma. It is also submitted that the incident of threatening by the applicant has been proved from the testimony of the eye-witnesses. They have also submitted that the applicant was provided all the documents relied upon along with the charge sheet and also those demanded by him separately except X.T.-1 diaries. However, not supplying of XT diary would not have made any material difference as the witnesses have tendered their statement before the Assistant Commissioner immediately after the incident on 27.05.1996 even before the XT-1 diary could have been written. The respondents submitted in their reply that Shri Rajendra Sharma categorically admitted the incident of threatening Shri B.L. Soni by the applicant. The Disciplinary Authority did not find the allegations true as alleged by the applicant vide his letter dated 20.09.1999. The respondents have also denied that the applicant was not supplied the legible copy of the inquiry report. He was given full opportunity to defend

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his case but he did not avail the same and only after that the Disciplinary Authority after due consideration of all the material available on record passed the penalty order of withholding of three increments without cumulative effect. The respondents submitted that both the Appellate as well Revisionary Authorities after considering all the material available on record and after being satisfied that the due procedure has been followed and the applicant has been given all reasonable opportunity to defend his case have passed the orders and thus, the orders of Appellate as well as Revisionary Authority are reasoned orders. The applicant has also not placed any material on record to prove the bias of the Inquiry Officer. So far as the finding of the Inquiry Officer is concerned, that the charges against the delinquent stand proved and he should be punished under the appropriate rules is in routine manner. This in no manner proves that the Inquiry Officer was biased against the applicant.

13. The respondents have also submitted that the charge of slapping was not proved due to lack of evidence but the charge of threatening Shri B.L. Soni has been proved against the applicant beyond any doubt. Thus the Disciplinary as well as Appellate and

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Revisionary Authority have rightly passed the penalty order. The penalty imposed upon him for threatening the superior officer commensurate with the gravity of offence and hence is proper and thus requires no interference of this Hon'ble Tribunal.

14. I have heard the learned counsel for the parties and have perused the documents placed on record.

15. Learned Counsel for the applicant reiterated all what he has stated in the Original Application. He argued that the applicant was not having any enmity with the complainant, Shri B.L. Soni, and therefore, there is no reason why he would threaten him and moreover, Shri Soni along with other officials were on tour from 14.50 hours to 22.00 hours on 27.05.1996 which is evident from the Log Book of the vehicle. Thus the incident of threatening and slapping Shri Soni had in fact not happened. The applicant was also not supplied necessary documents to defend his case. The Disciplinary Authority, Appellate Authority and Revisionary Authority have not applied their mind while issuing the orders. The penalty imposed on the applicant is too harsh.

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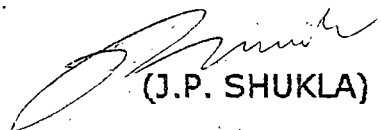
16. On the contrary, learned counsel for the respondents argued that there were three eye witnesses to the incident, which occurred at 1715 hours and all of them during the course of preliminary inquiry as well as during the course of oral inquiry have testified the incident of threatening by the applicant. He again emphasized that all the officers (Disciplinary, Appellate and Revisionary Authorities) after due consideration of all the material placed on record, have applied their mind before passing the orders. He also stated that punishment imposed on the applicant is also already over.

17. On the submissions & arguments, which was produced by the learned counsel for the applicant, I am of the view that these all have already been gone through in detail by the Inquiry Officer in his inquiry report and there is no merit in it. As regards the comments of the Inquiry Officer, the applicant should be punished' has already been considered by the Disciplinary Authority. Moreover, the report of the Inquiry officer are only the findings and it is for the Disciplinary Authority to consider the details of the inquiry report and its finding to ^{base}~~base~~ his decision depending upon the same. As regards the bias-ness of Inquiry Officer, the applicant

Dr. M. V. S. Murthy

has also not produced any documentary evidence to show that the inquiry officer was biased against him and moreover, he has not made him party by name. Therefore, this allegation of the applicant is not sustainable in the eye of law and is rejected. As regards the XT-1 diary not been made available to the applicant, it has been already mentioned in the Inquiry report that it would not have made any material difference. The Disciplinary authority has already taken into account all the aspect and imposed the penalty of "withholding of three increments of pay without cumulative effect.", which according to me, seems a lenient view by the Disciplinary authority.

18. In view of what has been mentioned above, I am of the view that the applicant has not made any case for interference by this Tribunal. Accordingly, the OA is dismissed with no order as to costs.



(J.P. SHUKLA)

MEMBER (A)

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