

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 16.04.2013

+ **W.P.(C) 465/2013, C.M. APPL. 899/2013**

JALEY SINGH, S/O SH. HARDEVA RAMPetitioner

Through: Sh. Suresh Chand, Advocate.

Versus

UNION OF INDIA AND ORS.Respondents

Through: Sh. Tarun Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The petitioner in these proceedings has a litany of complaints against his employer, the Railway Protection Special Force (hereafter "the Force"); however, the subject matter of his grievance specifically is the penalty imposed upon him by the orders dated 18.01.2011, 31.05.2011 and 29.11.2011, which has resulted in the withholding of three of his annual increments ("the penalty").

2. The Force issued a charge sheet to the petitioner on 20.10.2010 in respect of an incident, which according to it, amounted to his misconduct. The petitioner, driver of a heavy duty vehicle (truck), was involved in an incident on 29.08.2010 at Gole Dakkhana, New Delhi,

with a Sashastra Seema Bal (SSB) heavy duty vehicle. The latter, i.e SSB is a police organization. The incident was inquired into by one Shri G.A. Khan, MTO; after receiving his report, the Force instituted disciplinary proceedings which culminated in the impugned penalty orders.

3. The petitioner alleges that the MTO who submitted his report, which formed the basis of the penalty, did not in fact conduct any inquiry; there was even no Vehicle Inspection Report on the record. The inquiry was conducted on 29th of August, 2010 and on the basis of the impressions of Shri Khan, the penalty was issued on the petitioner.

4. Dwelling on the incident, counsel for the petitioner submits that the disciplinary and appellate authorities lost sight of the sheer improbability of the allegations. The petitioner's truck had 20 armed personnel, none of whose deposition was recorded or even called for. It is submitted that one incident has led to three penal orders, i.e. transfer, withholding of increments, and a censure - the last being a punishment for asking a query under the Right to Information Act. Further, the SSB driver was rash, and tried to overtake the Petitioner's truck, which was idle due to a traffic jam. The petitioner relied on the fact that his truck did not suffer any damage, but that its bumper (fender) was pulled from the rear side, which clearly revealed that the SSB truck hit it while on the move.

5. Mr. Tarun Sharma, learned counsel for the Force relied on the counter affidavit and contended that this Court would not disturb findings of fact recorded by a disciplinary authority. The Force did not

choose to engage itself in a detailed inquiry, since the other organization was also a security agency. Further, even a First Information Report (FIR) was not lodged, having regard to the sensitivity of the situation. The Force did not make a big issue, even though its vehicle was damaged. Instead, it chose to initiate only minor penalty proceedings. Its official recorded the version of the petitioner, as well as the SSB, and on visual inspection of the vehicle concluded that the petitioner was at fault. There can be no objection to this procedure, since in minor penalty proceedings, the charged employee cannot insist upon the right to elaborate oral hearing and cross examination of witnesses. Counsel emphasized that this Court should desist from interfering with the penalty orders on the basis of appreciation of rival versions, which should not be undertaken in exercise of Article 226 proceedings.

6. Concededly in the present case, there was no formal inspection of the two vehicles to determine the nature and extent of damage; nor was any eyewitness neutral to the dispute - in the sense of those other than the drivers, examined by either the disciplinary authority or the MTO, Shri Khan. Significantly, the Force records that 20 armed personnel were in its vehicle, driven by the petitioner. Yet none was examined, or asked to narrate what happened.

7. As to the incident itself, the petitioner states that the SSB vehicle was driven fast, and it damaged the Force's truck, while overtaking. The latter truck was stationary, on account of a traffic jam. The MTO's report dated 01.09.2010 curiously records that:

“.....it seems that GRI/DVR Jaley Singh could not control his speed and he hit SSB truck No. 01-BC-0960 in the right side and SSB truck which was in front Bn truck got damaged from the left hand side and ran ahead after hitting the right side of the truck SSB truck.

Driver Jaley Singh in his statement has stated that his truck was not moving due to traffic jam if so SSB truck would also been stuck up in Traffic and therefore there is no question of any accident when asked about the damage to the bumper, driver Jaley Singh reply bumper was not damaged when, I myself saw the twisted bumper on the spot and even know the scratches of the straightened bumper are still visible. It shows the driver Jaley Singh is concealing the truth in order to proof himself innocent.....”

8. The report, contains questions put to the petitioner by the MTO. One of the queries was *“Q.4. There are marks on left side of the front of your truck while the SSB truck is damaged on left side near the rear wheel and it shows that you are responsible for the accident.”* The sheer improbability of this observation of the MTO, i.e. two vehicles heading in the same direction, being damaged due to an accident, both in the left side, hits the reader of the document. The other interesting aspect is that in the report, the MTO speaks of confabulations between him, officials of the SSB and his superior officer. He also reportedly insisted that the driver (i.e. the petitioner) *“must get something to get the truck repaired otherwise his service record may be spoiled. AC/SSB did not agree to pay any damage and said both are force it is between both of us and the mistake is of your driver, on this Delhi Police S.I. Kanaya Lal Yadav said since it is personal matter settle the issue I am posted at P.S. Jagat Puri and my*

Shockingly, the same letter went on to recommend the petitioner's transfer.

11. The Court has no doubt that the above letter is a vengeful act, calculated to break the morale of the petitioner. Not content with issuing an unfair and unjust penalty of withholding of three increments, the Force has further penalized the petitioner in respect of the same act, for (what it views as) his temerity in seeking information connected with the incident. Clearly, the penalty of censure is arbitrary; to the extent a recommendation for transfer is made, that order too is punitive. The said order (dated 18.11.2011) is also declared as unfair and arbitrary.

12. In view of the above discussion, the Writ Petition has to succeed. All the orders impugned, i.e. dated 18.01.2011, 31.05.2011 and 29.11.2011 and the Order dated 18.11.2011 (No. 6BN/Sr.Co/Conf/2011 filed as Annexure P-4) are hereby quashed. The Writ Petition and its accompanying application are allowed. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

APRIL 16, 2013