



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.751 OF 2013

Hindustan Petroleum Corporation ..Petitioner

V/S.

Mavji Jethalal Rathod ..Respondent

**WITH
WRIT PETITION NO.838 OF 2015**

Mavji Jethalal Rathod ..Petitioner

V/S.

1.Hindustan Petroleum Corporation
Limited
2. The Presiding Officer, Central
Government, Industrial Tribunal No.2.

..Respondents

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Mr. Sudhir Talsania, Senior Advocate with Mr. Vishal Talsania and Mr. V.M. Parkar for the Petitioner in WP/751/2013 and for Respondent in WP/838/2015.

Mr. Jaiprakash Sawant for the Petitioner in WP/838/2015 and for Respondent in WP/751/2013

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON: 5 APRIL 2024.

JUDGMENT PRONOUNCED ON: 12 APRIL 2024.

JUDGMENT:

1. An act of the workman slapping his superior officer is considered by the learned Presiding Officer of Central Government Industrial Tribunal

as ‘*not too serious to inflict the punishment of termination*’. The punishment of discharge/termination for proved misconduct of threatening, abusing and slapping superior officer has shocked the conscience of the learned Presiding Officer. The finding recording by him reads thus:

“Furthermore, though the workman has assaulted his superior officer, admittedly he merely gave a slap on the cheek of the officer. Neither he inflicted any bodily injury nor intended to inflict any such injury.”

Mere giving of a slap on cheek of the officer without causing any bodily injury, according to the learned Presiding Officer, is not a serious misconduct so as to entail punishment of discharge/termination. According to the learned Presiding Officer, stoppage one increment is the punishment commensurate with the gravity of ‘*not so serious*’ misconduct of slapping the officer. The Tribunal has accordingly directed reinstatement of the workman with 20% backwages. The employer-HPCL challenged the Award of the Tribunal, whereas the workman, out of his expectation of 100% backwages, has also challenged the Award.

2. These are the cross petitions filed by employer-Hindustan Petroleum Corporation Limited (**HPCL**) and by its workman challenging the Award dated 27/09/2012 passed by the Presiding Officer, Central Government Industrial Tribunal No. II, Mumbai (**CGIT**) in Reference No. CGIT-2/89 of 2002. By the impugned Award, CGIT has answered the Reference partly in the affirmative and has set aside the punishment of discharge /termination imposed on the Workman and has directed the same to be replaced by the punishment of permanent withholding of one increment. HPCL is further directed to reinstate the Workman with 20%

backwages from the date of service of order of discharge alongwith seniority as well as all consequential benefits. CGIT has held that the charges levelled against the workman are proved but has set aside the penalty of discharge/termination on the ground that the same is disproportionate and has directed its replacement with punishment of stoppage of one increment. The challenge by the HPCL to the impugned Award in its Writ Petition No. 751 of 2013 is only to the extent of setting aside the penalty of termination /discharge, direction for reinstatement and payment of backwages. On the other hand, the challenge by Workman in Writ Petition No.838 of 2015 is to the finding of the CGIT that the charge levelled against him is proved, and to the extent of denial of 100% backwages.

3. The facts of the case in brief are that the Workman-Mavji Jethalal Rathod was working with the HPCL on the post of Bulk Operator. On 23/07/1996, he was deployed on duty in the second shift starting from 3:00 p.m. to 11:00 p.m. and he was assigned TTL Gantry. One of the duties of Bulk Operator assigned to TTL Gantry is to look after filling/loading of tank trucks, lorries as well as checking density and temperature of the products and record the same. According to the HPCL, the task of checking density and temperature of the product at the TTL gantry is of immense importance as the figures are required for ascertaining the quantity of shrinkage or expansion in the product due to increase /decrease in the temperature at the loading time and at unloading time at the destination of the delivery. According to HPCL, the prescribed procedure mandated the Bulk Operator to check temperature at interval of every two hours during which time, the number of tank trucks are counted as one push. The temperature was required to be counted after the first push was over. The temperature is to be maintained for next two hours for all tankers, after

which the temperature was required to be recorded again for two hours for the second push. It is the HPCL's case that the Bulk Operator as well as the officers are authorised to record temperature.

4. According to HPCL, in the second shift from 3:00 p.m to 11:00 p.m. on 23/07/1996, Mr. N.H. Shahani was working as Shift Incharge and Shri Rajkumar was the Shift Supervisor, when the Workman was functioning as Bulk Operator and was responsible for recording the correct temperature. It was alleged that at 6:30 p.m. when tank truck No. MCU-588 deployed by the Saurashtra Colour Company arrived at Mahul Terminal for collecting delivery of 16 KI MTO-2445, the Workman wrote the temperature as 26⁰ C. When the driver of the truck approached Shri Rajkumar for a signature on the invoice, Shri Rajkumar noticed recording of temperature by the Workman as 26⁰ C on the invoice. He sent the invoice back with the driver with instructions to the Workman to change the temperature figure to 27⁰C. The Workman refused to do so and threatened Shri Rajkumar with dire consequences if he changed the figure of temperature. Shri Rajkumar changed the figure of temperature from 26⁰C to 27⁰C . When the truck driver went back to the Workman with the corrected temperature on invoice, the Workman allegedly snatched the invoice from the driver, went to Rajkumar with a wild gesture, dropped the intercom set from the table with a bang and slapped Shri Rajkumar on his right cheek without any provocation.

5. The Workman was placed under suspension by order dated 24/07/1996. He was served with memorandum of charge sheet dated 01/08/1996 alleging insubordination, riotous, disorderly and indecent behaviour and use of abusive language, threatening, intimidating, etc. He

was also accused of slapping Shri Rajkumar. The Workman denied the charges on 02/09/1996 and instead accused Rajkumar of threatening, abusing and misbehaving with him. Domestic Enquiry was conducted into the charges. The Workman participated in the enquiry. The prosecution examined three witnesses, who were subjected to cross examination by the Workman. At the end of the enquiry, Enquiry Officer submitted report dated 02/03/2001 and held that all the charges were proved. The report of the Enquiry Officer was served on the Workman by letter dated 14/03/2001, who submitted reply thereto on 30/03/2001. The Disciplinary Authority proceeded to pass order dated 18/05/2001 imposing the penalty of discharge from service by paying one month's wages in lieu of notice period. The Workman preferred appeal before the Appellate Authority, which came to be turned down by order dated 02/11/2001.

6. The Workman raised demand for reinstatement with back wages, which was admitted in conciliation. The conciliation proceedings ended in failure and thereafter the Ministry of Labour, Government of India made an order of Reference Dated 13/11/2002 as under :-

“whether the action of the management of Hindustan Petroleum Corporation Limited, Mahul Refinery, Mumbai, in terminating the services of Shri M.J. Rathod, Bulk Operator, w.e.f. 18.5.2001 is legal and justified? If not, what relief the workman concerned is entitled to?”

7. The Reference was marked to CGIT and was numbered as Reference No.CGIT No.2/89 of 2002. The Workman filed his statement of claim, which was resisted by the HPCL by filing its written statement. The preliminary issue was framed on fairness of the enquiry and perversity in the findings of the Enquiry Officer. The Workman examined himself in support

of preliminary issues. CGIT made Part I Award dated 06/08/2008 on preliminary issues and held that the enquiry was not fair or proper and that the findings of the Enquiry Officer were perverse.

8. HPCL thereafter led evidence before the Labour Court by examining Shri Rajkumar, Shri. N.H. Shahani and Shri. Prakash Kamble. The Workman examined himself before the Labour Court. After considering the evidence on record, CGIT passed Part II Award dated 27/09/2012 holding that the Workman was guilty of the charges levelled against him. However, CGIT held that the punishment of termination /discharge was shockingly disproportionate. CGIT therefore set aside the punishment of termination /discharge and directed it to be substituted by punishment of permanent withholding of one increment. CGIT further directed to reinstate the Workman with 20% back wages from the date of discharge, seniority and other consequential benefits. Aggrieved by the Award dated 27/09/2012 the HPCL has filed Writ Petition No.751 of 2013, which came to be admitted by this Court by order dated 11/06/2013. This Court stayed the effect, operation and implementation of both Part I and Part II Awards till final disposal of the petition. The Workman took out Notice of Motion No.196 of 2013 in Writ Petition No.751 of 2013 seeking wages under the provisions of Section 17-B of the Industrial Disputes Act, 1947 w.e.f. 27/09/2012 till the final decision of the petition. The Motion came to be made absolute by this Court by order dated 13/02/2014 directing payment of wages to the Workman under Section 17B of the Industrial Disputes Act from 11/06/2013 till final decision of the petition or till he attained age of superannuation. HPCL was thus directed to pay last drawn monthly wages to the Workman on or before 10th of each month and the arrears were also directed to be paid from 11/06/2013. In accordance with the order passed by this Court on

13/02/2014, HPCL paid last drawn wages of Rs.8,577/- per month to the Workman till he attained the age of superannuation on 03/06/2015.

9. Shortly before his retirement, the Workman filed Writ Petition No.838 of 2015 challenging the Part II Award dated 27/09/2012 to the extent of finding where he is held guilty of the charges and prayed for reinstatement in service with full back wages, continuity and other consequential benefits. By order dated 10/06/2015, this Court admitted Writ Petition No.838 of 2015. This is how both the Petitions challenging the same Award dated 27/09/2012 are heard.

10. Mr. Talsania, the learned senior advocate appearing for employer-HPCL would submit that CGIT had erred in holding that the punishment of discharge/termination is shockingly disproportionate. He would submit that the misconduct proved against the Workman is of grave nature. That CGIT has erred in holding that mere act of slapping does not amount to grave misconduct. He would submit that the findings recorded by CGIT that the acts of insubordination and assault are not too serious to inflict punishment of termination, are perverse. That on previous occasions also, the Workman was found guilty of misconduct and was punished. Mr. Talsania would therefore submit that CGIT had erred in interfering in the penalty imposed on the Workman. He would therefore pray for setting aside the impugned Award and for upholding the penalty of discharge imposed on the Workman.

11. So far as the Writ Petition No.838 of 2015 is concerned, Mr. Talsania would submit that the same was belatedly filed after securing the

order for payment of wages under Section 17B of the ID Act. He would submit that the CGIT had correctly held that the misconduct alleged against the Workman was proved before the Tribunal. That the HPCL produced direct evidence of not only the Complainant but also of Mr. Sahani, who witnessed the act of assault. That the charges were proved by examining three witnesses before the Tribunal. He would take me through the evidence of the three witnesses and submit that the evidence produced before the Labour Court is sufficient to withstand the finding of guilt against the Workman. He would pray for dismissal of Writ Petition No.838 of 2015.

12. *Per contra*, Mr. Sawant, the learned counsel appearing for the Workman would oppose the Writ Petition filed by the HPCL and pray for allowing Writ Petition No.838 of 2015. In support of the petition filed by the Workman he would submit that the Workman has been victimised by HPCL. That the evidence produced before the Tribunal is neither sufficient nor cogent for proving charges. That the incident occurred in the year 1996 and the witnesses were examined 14 years later in the year 2010. That the enquiry was held to be not fair and proper by the Tribunal. That after HPCL decided to lead evidence to prove charges before the Labour Court, separate charges were required to be framed against the Workman, in absence of which, it was impermissible to lead oral evidence. That vague allegations were made against the Workman by the witnesses in their pre-drafted affidavits of evidence. That in fact, the reply of the Workman to the charge-sheet would indicate as to how he was abused in filthy language by Shri Rajkumar. That evidence to that effect was led by the Workman.

13. Mr. Sawant would submit that the findings recorded by CGIT about proof of charges are perverse. That HPCL was unable to prove before

CGIT that the Workman actually slapped Shri Rajkumar. That therefore the Workman is entitled for payment of full back wages and continuity of service without infliction of any alternate penalty. Without prejudice. Mr. Sawant would submit that CGIT had rightly held the penalty of discharge /termination to be shockingly disproportionate to the misconduct proved. That the Workman could not be thrown out of service on account of stray allegations without involvement of any malafide intention on the part of the Workman. He would therefore submit that in the event of this Court not allowing Writ Petition No.838 of 2015, at least Writ Petition No.751 of 2013 filed by HPCL be dismissed.

14. Rival contentions of the parties now fall for my consideration.

15. The Workman faced the charges of not obeying the directions of superior officer, riotous behaviour and assault on Shri Rajkumar. Though the charge was held to be proved in the domestic enquiry, CGIT held that the enquiry was not fair or proper and that the findings recorded by the Enquiry Officer were perverse. Instead of challenging the Part I Award, HPCL proceeded to prove the misconduct before the Tribunal by leading evidence to prove the charges. Before the Tribunal, HPCL examined Shri Rajkumar, who was the Complainant and was allegedly assaulted by the Workman. It also examined Shri N.H. Shahani, who was at the relevant time working as Shift Incharge at Mahul Terminal and Shri Prakash Kamble, Manager, Operations. All the three witnesses were cross-examined on behalf of the Workman. The Workman also examined himself before the Tribunal and was subjected to cross examination.

16. As observed above, after considering the evidence on record, the Tribunal has held that the Workman is guilty of charges levelled against him. This finding is challenged by the Workman in Writ Petition No.838 of 2015. It is therefore necessary to examine the correctness of the findings recorded by the CGIT on guilt of the Workman in respect of the charges levelled against him.

17. I have gone through the evidence of Shri Rajkumar, Shri N.H. Shahani and Shri Prakash Kamble, who are the three prosecution witnesses examined by the HPCL.

18. Perusal of deposition of Shri Rajkumar before the Tribunal would indicate that he has given evidence of assault committed on him by the Workman by stating that *"I say that the second party Workman dropped the intercom set from the table with a bang and slapped me on my right cheek"*. He also gave evidence as to how the Workman threatened Shri Rajkumar if he was to change the recording of temperature. A perusal of the cross-examination conducted at the behest of the Workman shows that evidence of threats, abuses and assault is not seriously dented. It is evident that Mr. N.H. Shahani, the then Shift Incharge also witnessed the incident of slapping and disorderly behaviour of the Workman. He deposed in his evidence that :-

"13. I say that when the tank driver went back to the second party workman and showed him the invoice signed by Mr. Rajkumar, the second party workman rushed to the driver, snatched the invoice from the driver and turned towards Mr. Rajkumar, dropped the intercom set from the table with a bang and slapped Mr. Rajkumar on his right cheek. This happened at around approximately 6:30 p.m. on July 23, 1996 and this assault was witnessed by Shri S.S. Nath, the Operations Officer."

Again in the cross-examination of Mr. Shahani, there is not much challenge to the direct evidence of assault committed by the Workman. In my view therefore, the misconduct of threatening, disorderly behaviour and assault committed by the Workman is proved by direct evidence of Complainant as well as Shri Shahani.

19. In Domestic Enquiry, the test of proof of charge is preponderance of probability. The charge is not required to be proved beyond reasonable doubt. As long as there is some evidence on record to establish the connection with the charge, no perversity can be found in the finding of guilt. It is only in cases where the finding of guilt is not based on any evidence or where there is total absence of evidence, Court or Tribunal can interfere in the finding of guilt. In the present case, evidence is led before CGIT by HPCL on account of findings in Part-I Award. Therefore, CGIT was required to consider whether the evidence led before it was sufficient to raise a probability that the workman might have committed the misconduct alleged against him. After appreciating the evidence, the Tribunal has held that there is evidence on record to prove the charges. The depositions of the complainant and Mr. Shahani are sufficient to hold the charges of threatening, abusing and assault. I do not see any perversity in the findings recorded by CGIT. Therefore, the contention of Mr. Sawant about perversity in the findings of the Tribunal deserves to be rejected.

20. Another point sought to be raised by Mr. Sawant is that separate charges were required to be framed against the Workman before permitting HPCL to lead oral evidence before the Tribunal. This ground, in

my view, is stated only to be rejected. There is no procedural requirement under which fresh set of charges are required to be levelled before adducing evidence before the Labour Court/Industrial Court. Once the enquiry is held to be not fair or proper or where the finding of the Enquiry Officer are held to be perverse, the Employer has a right to prove the charges before the Labour /Industrial Court by production of evidence. This does not require any procedural nicety of framing of fresh set of charges against the Workman. What the employer is required to do is to lead evidence to prove the charges, which were earlier held to be proved in domestic enquiry. Therefore, the objection of non-framing of charges by CGIT sought to be raised on behalf of the Workman deserves rejection.

21. The other points raised by Mr. Sawant about victimisation of the Workman or time gap of 14 years between termination and leading of oral evidence before the CGIT, do not impress me. HPCL had right to prove the charges by leading evidence before CGIT. Mere delay in decision of proceedings before CGIT cannot dilute the evidence produced before it by HPCL. The charge of threatening and assault by the Workman is proved by production of evidence. Therefore, such evidence cannot be ignored on specious grounds of alleged victimisation of the Workman or time gap between the incident and leading of evidence.

22. Having held that CGIT has rightly held the workman guilty of charges levelled against him, the next issue is whether CGIT is justified in setting aside the punishment of discharge/termination and substituting the same by penalty of permanent withholding of one increment. CGIT has set

aside the punishment of discharge /termination by holding that the punishment is shockingly disproportionate. CGIT had recorded following findings in paragraph 17 of the Award:-

*“17. In most of these cases the respective workmen therein were involved in a serious misconduct of assault on superior officer causing bodily injuries. In some cases though the victim survived Hon’ble Court held that it cannot be a ground to take a lenient view to set aside the punishment of dismissal or termination from service. In one of the cases the workman therein had inflicted bodily injury to the victim when in another case the workman was released under the provision of Probation of Offender’s Act, when in one matter the workman therein was acquitted by the criminal court. In one more matter a school teacher had abused the Head Master in filthy language and assaulted him with chappal. Considering the status as a teacher, the Hon’ble Court held that, no lenient view can be taken to reduce the punishment of termination. However, in the case at hand, though the workman had refused to make correction in the temperance, the said act of disobedience cannot be said very serious. **Furthermore though the workman has assaulted his superior officer, admittedly he merely gave a slap on the cheek of the officer. Neither he inflicted any bodily injury nor intended to inflict any such injury. In the circumstances the act of in-subordination and assault herein is also not too serious to inflict the punishment of termination.** The ratio laid down in the above ruling are not attracted to the set of facts of the case at hand as facts of the above referred cases were altogether different than the facts of the case at hand. In this respect it is case of the first party that the workman was also given warning on earlier two occasions as mentioned in paras 37 & 38 of their written statement at Ex-9. It is alleged that, two tankers were derailed due to the mistake of the workman for which he has prayed for apology and he was given warning. In the next incident the workman was found sleeping while on duty. However, both these incidences were of nature of mistakes or at the most dereliction on the part of the workman. There was no malice or any intentional action on the part of the second party. Thus these previous misconducts sort of mistakes. **In this backdrop, looking into the nature of misconduct proved against the second party, I come to the conclusion that the punishment of discharge or termination from services is no doubt shockingly disproportionate.** In this respect I would also like to point out that the workman is not in service since more than 15 years. **In my opinion he has suffered much and slapping his superior officer. In the circumstances instead of discharging or terminating him from services, I think it proper withholding one***

increment would suffice the purpose. In short, the workman can be reinstated by withholding one increment for disobedience, insubordination by indecent behaviour with his superior and for slapping him.”

(emphasis and underline supplied)

23. CGIT has arrived at a conclusion that the acts of insubordination and assault are not serious enough to inflict punishment of termination. The view taken by CGIT that act of assault on co-employee is not serious is startling. Commission of assault on a co-employee is the gravest form of misconduct which a workman can commit. Far from penalty shocking my conscious, actually the findings recorded by the learned Presiding Officer of CGIT are shocking. The learned Presiding Officer has held that the Workman did actually assault his superior officer. However, he has further held that *“He merely gave a slap on the cheek of the officer. Neither he inflicted any bodily injury nor intended to inflict any such injury.”* These findings recorded by the learned Presiding Officer are astounding. Shockingly, the act of giving a slap on the cheek of the superior officer by a subordinate employee is not considered as serious by the learned Presiding Officer. The finding recorded by the Presiding Officer of CGIT that only when bodily injury is suffered by person, who is assaulted, the penalty of discharge/termination can be imposed is totally unsustainable. The learned Presiding Officer ought to have been mindful of the fact that he was dealing with the issue of proportionality of penalty imposed in disciplinary proceedings, where the purpose of imposition of penalty is to enforce discipline amongst the staff. Viewed from this objective, is an employee slapping his superior in front of others is retained in service, the same would encourage similar acts by others. Slapping his superior by the workman is one of the gravest forms of misconduct, which ought to be visited with penalty of discharge/termination.

24. I am therefore of the view that the finding recorded by the learned Presiding Officer of CGIT that the punishment of discharge/termination is shockingly disproportionate to the misconduct of insubordination and assault, is totally unsustainable and liable to be set aside. The punishment of discharge /termination is commensurate with the misconduct proved against the Workman. After holding that the charges against the Workman were proved, the Tribunal ought to have answered the Reference in the negative by upholding the penalty of dismissal /discharge. The learned Presiding Officer has rewarded the Workman with reinstatement with 20% back wages alongwith seniority and consequential benefits despite commission of serious misconduct of assaulting his superior officer. The impugned Award is therefore liable to be set aside.

25. I accordingly proceed to pass the following order:-

- i) Award dated 27/09/2012 passed by the Presiding Officer-CGIT No. II, Mumbai in Reference No. CGIT-2/89 of 2002 is set aside.
- ii) Writ Petition No.751 of 2013 is allowed and Writ Petition No.838 of 2015 is dismissed.
- iii) Rule is made absolute in Writ Petition No.751 of 2013 and Rule is discharged in Writ Petition No.838 of 2015.

SANDEEP V. MARNE, J.