

Court No. - 19

Case :- WRIT - C No. - 1002642 of 2007

Petitioner :- Ainul Husain Siddiqui

Respondent :- Presiding Officer Labour Court U.P.Lucknow And
Another

Counsel for Petitioner :- Amar Nath Tripathi,Akhter Abbas,Asif
Iqbal,Manoj Kumar Sahu,Syed Husain Abbas

Counsel for Respondent :- C.S.C.,Anupras Singh,J.N.Mathur

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Amar Nath Tripathi, the learned counsel for the petitioner, Smt. Seema Dixit, the learned Standing Counsel and Sri Anupras Singh, the learned counsel for opposite party no. 2.
2. By means of instant petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an award dated 30.10.2006 passed by the Prescribed Authority, Labour Court, U.P., Lucknow in Case No. 103 of 2002 as well as an order dated 10.08.2000 passed by opposite party no. 2 dismissing the petitioner from the service of Telco, which is now known as Tata Motors Ltd.
3. Briefly stated, facts of the case are that the petitioner was appointed as an operator in the factory of opposite party no. 2 situated at Lucknow on 27.04.1995. On 28.03.2000, several employees of the Company indulged into violent process for pressing their demands and they indulged into arson and loot and held the General Manager of the Company hostage, who could be freed with the intervention of the police. The petitioner was suspended by means of an order dated 30.03.2000, pending disciplinary enquiry.
4. The Suspension order was put in abeyance by means of another order dated 07.04.2000, wherein it was stated that as the lock out of the

factory has been declared by the management, the suspension has become redundant during continuance of lock out.

5. On 03.04.2000, the charge sheet was issued to the petitioner, a copy whereof has been annexed with the petition which *inter alia* stated that the petitioner was on duty in B-shift. After coming to the factory, the petitioner did not go to his work place and struck the work. He went to the office of the General Manager and joined the ongoing 'Dharna' and 'Gherao' of the General Manager. He actively participated in illegal and unconstitutional activities and agitated other workers against the management. He threatened the General Manager that his 'Gherao' will continue until the demand of increase in wages was met. Defamatory, intimidating and abusive slogans were hurled which have been reproduced in the charge-sheet and considering the indecent language whereof, the same cannot be reproduced in this judgment. The charge-sheet states that the door of General Manager's Lobby was broken open and the petitioner alongwith some other persons forcibly entered into the room of the General Manager and demanded a meeting with him. During the meeting, the petitioner continued provoking and instigating the workers, which whipped up the passion of the workers and surcharged the already tense atmosphere. The District Magistrate and Police officials had to intervene in the matter and they warned the workmen to lift the illegal confinement of the General Manager. The Administration thereafter warned the workmen to vacate the Chassis Assembly Block Building immediately otherwise the police will be forced to take action. Sensing danger to the life of the General Manager, the police started a rescue operation at about 09:30 p.m. and when he was being taken out in police protection, the petitioner alongwith other workers turned violent and indulged in arson and looting and they assaulted the officials of the district administration, police and of the company with iron rods, broken flower pots, pieces of broken furniture and broken glass panes. The Additional District Magistrate, Trans Gomti, Superintendent of Police, Trans Gomti, Circle Officer Trans Gomti, Station House Officer, Chinhat, some other police personnel and the

company's officials Mr. Vinay Kumar Pathak, Mr. Sivdasan and Mr. S. Banerjee were severely injured. Thereafter the petitioner put the expensive property of the Company to fire, in which the Chassis Assembly Block Office building and Planning Department Office of the Company were engulfed. The petitioner indulged in damaging the company's vehicles parked near time office by bricks and missiles. Due to the aforesaid activities, the company suffered losses of Crores of Rupees. The charge-sheet stated that the aforesaid acts amount to serious and grave misconduct as per the provisions of Clause 24(I), 24(2), 24(9), 24(15(a), 24(15)(b), 24(17), 24(18) and 24(39) of the certified standing orders of the company which were reproduced in the charge-sheet. The petitioner claims to have given a letter dated 07.04.2000 demanding copies of certain documents. The enquiry commenced on 28.05.2000 on which date the petitioner had given an application to the Enquiry Officer stating that the documents had not been provided to him and, therefore, he could not file any reply.

6. The Enquiry Officer submitted a report dated 05.07.2000, wherein it is recorded that the petitioner had given an application that he will represent himself. The employer submitted 28 documents. The petitioner stated that he will not produce any document in defence. As per narration made in the enquiry report, Sri Sanjay Sablok PW-1, stated regarding the incident that took place on 28.03.2000. However the enquiry report also refers to PW-1 as Sri Amitabh Nandi. Sri Vinay Pathak was examined as PW-2 and Vikas Bindal was examined as PW-3 Lieutenant Colonel S.S. Maan was examined as PW-4. The petitioner declined to cross-examine the witnesses produced by the employer.
7. The Enquiry Officer concluded that all statements of the witnesses produced by the employer established that on 28.03.2000, the petitioner had made 'Gherao' of the General Manager of the Company alongwith other employees. He was present where speeches were being given, obscene and intimidating slogans and were being raised and the General Manager was being forced to come out of his room to accept the demands and when he did not come out, the door of the

General Manager Lobby was broken open. He was 'Gheraoed' for several hours. The Enquiry Officer also referred to the photographs of the incident, newspaper cuttings, FIR, Charter of demands, medico legal examination reports and report of damages, which establishes the active involvement of the petitioner in the incident. The statement of Sanjay Sablok PW-1 and Senior Engineer Vikas Bindal proved that at that point of time, the petitioner was not present in the department and he was seen in the General Manager Office. He was stopped but he did not agree. PW-2 Vikas Bindal had seen the petitioner in the crowd that was causing damage to the General Manager Office.

8. The petitioner did not adduce any documentary evidence and in his oral submission, he admitted that no work was being done in the factory since morning of 28.03.2000. Most of the employees of B-shift had gone towards the General Manager office and he had also gone there. In his cross examination, he stated that he had gone to attend the sit-in and he had not done it under any fear. He further admitted that all the employees were present in the office of the General Manager.
9. The enquiry officer found that the entire evidence available before him indicates that the petitioner was involved with several employees in laying 'Gherao' of General Manager, raising slogans, indulging in damaging the company property and the charges leveled against him were proved.
10. On the basis of the aforesaid enquiry report, the petitioner was dismissed from service by means of an order dated 10.08.2000.
11. The validity of the dismissal order was challenged before the Presiding Officer, Labour Court, U.P., Lucknow by the following reference made on 26.06.2000 by the Deputy Labour Commissioner, Lucknow Zone, Lucknow: -

Whether the order dated 10.08.2000 passed by the employer dismissing the petitioner from service is proper and legal ? If no, then to what relief the workman is entitled thereon?.

12. The Labour Court framed the following preliminary issues: -

(i) Whether the departmental enquiry had been conducted against the petitioner in accordance with law or not, and its effect

(ii) Whether the case of the petitioner can continue before the Industrial Tribunal-2, Lucknow when the cases of other (similarly situated) workmen were going on before Industrial Tribunal-2, Lucknow.

13. While deciding the preliminary objections, the Labour Court held that the departmental enquiry was conducted in a proper and legal manner, in which the petitioner had himself participated. On the second point, the Labour Court held that it had jurisdiction to decide the case.
14. On the point referred to the Labour Court for adjudication of the case, it held that the punishment awarded to the petitioner is proper and the dismissal order dated 10.08.2000 does not want any interference.
15. While assailing the aforesaid award, the learned counsel for the petitioner has submitted that the Labour Court has recorded the factual background of the case while deciding the preliminary issue, wherein it is stated that the petitioner had been appointed as an Operator on 12.07.1995. The Telco Employees Union was constituted around that time and it had entered into a settlement regarding fixation of the salary in the year, 1996 which was in force till 31.03.1999. Thereafter the Union raised a fresh demand for increment of wages and decided to reduce the pace of production, which resulted in decrease of production by 50%. The learned counsel for the petitioner submitted that these facts are not borne out all the pleadings of the parties.
16. The Labour Court held that in reply to the charge-sheet, the petitioner had demanded certain documents. Clause 27 of the Standing Orders of the Company, demanded by the petitioner, had been shown to him during enquiry. He had demanded a copy of another report submitted against him whereas no separate report had been submitted against the petitioner. The petitioner did not submit any reply to the charge-sheet. The employer had appointed an Enquiry Officer by means of a letter dated 15.05.2000 and the enquiry proceedings commenced on 26.05.2000, on which date the petitioner again demanded the copies

of documents. The employer's representative submitted that the enquiry was based on common facts, and, therefore, no separate report was there. The petitioner was shown Clause 7 of the Standing Order and he had noted the same.

17. Statement of Sanjay Sablok was recorded as employer witness and the petitioner had cross-examined him on 15.06.2000. The petitioner stated that he was unable to understand Clause 27 and he wanted to engage a legal representative, which was opposed by the employer stating that no outsider could be permitted to be involved in the departmental proceedings. Sri Vinay Pathak and Vikas Bindal were examined in the presence of the petitioner but he did not cross-examine them.
18. Accordingly, the Labour Court held that enquiry against the petitioner was held in a proper manner and there was no illegality in it. While deciding the questions referred to it by the Deputy Labour Commissioner, the Presiding Officer, Labour Court held that the employee did not lead any evidence and the employer also stated that as the employee has not led any evidence, the employer also would not given any evidence. The Labour Court found that it was for the petitioner to prove by leading evidence as to how the departmental proceedings had not been held properly, but he failed to discharge this burden of proof by leading any evidence.
19. The Labour Court further held that during the proceedings before the Labour Court, the petitioner informed on 07.07.2006 that he had filed a Writ Petition No. 2601 of 2006 against the order passed by the Labour Court, on which ground, time was granted to him. However, this fact stated by the petitioner was false as the Writ Petition had already been dismissed on 24.05.2006 at the admission stage itself and the petitioner had been permitted to participate in further proceedings before the Labour Court. At this stage, the petitioner engaged another Advocate who gave an application for directing the employers to adduce evidences, upon which a detailed order was passed on 28.02.2006 stating that the employers cannot be compelled to lead

evidence because the reference was made at the instance of the employee and the burden to establish the illegality committed in the enquiry proceedings lied on the employee but he did not discharge this.

20. The learned counsel for the petitioner has submitted that the petitioner has filed a copy of the enquiry report as paper No. 13 and the learned counsel for the employer had endorsed “Not Admitted” on it and when the enquiry report itself had been denied by the employer, no penal action could be taken against the petitioner, on the basis of such enquiry report, however, the learned Labour Court has held that the document No. 13, filed by the employee, was an incomplete document as the enquiry report filed by the employer as paper No. 66 contains a mention of 28 documents whereas copy of the enquiry report filed by the petitioner contains a list of only 25 documents and the copy of documents at Serial Nos. 26, 27, 28 have not been filed with it. It could have been done by the petitioner deliberately or inadvertently but in any case, the enquiry report filed by the petitioner was not the same as the report filed by the employer “not admitted, was endorsed on the copy of the enquiry report filed for the reason and the petitioner cannot get any benefit from it”.
21. The learned Counsel for the petitioner has relied upon the judgments in the cases of **Anil Kumar v. Presiding Officer**, (1985) 3 SCC 378, **Rajeev Saxena versus Punjab National Bank**, 2018 (36) LCD 1218, **Canara Bank Vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and Ors.** 2004 (102) FLR 1146 and **Rajinder Kumar Kindra v. Delhi Admn.:** (1984) 4 SCC 635.
22. The learned Counsel for the respondent has relied upon the judgments in the cases of **Airtech Private Ltd. v. State of U.P.**, 1983 SCC OnLine All 954 and **M.P. Electricity Board v. Jagdish Chandra Sharma**, (2005) 3 SCC 401.

23. In **Anil Kumar v. Presiding Officer**, (1985) 3 SCC 378, it was held that: -

“5. ... It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. The enquiry officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not creditworthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the enquiry officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent...”

*6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, **the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.***

(emphasis added)

24. In **Rajeev Saxena versus Punjab National Bank**, 2018 (36) LCD 1218, it was held that: -

“35. It is amply clear that the petitioner’s defence was not properly considered by the Inquiry Officer, disciplinary authority and also the appellate authority. The punishment of dismissal from service without notice was awarded to him on the basis of defective inquiry, by withholding prime witnesses from the inquiry proceedings. The burden of proof of disproving the charge was wrongly shifted towards the petitioner. It was proved from documentary evidence that the amount of Rs. 10,000/- was received by Shri Vikas Kudesia in cash, but the finding is that this payment to Shri Vikas Kudesia was not proved. The misconduct of posting fraudulent entries was accepted by Shri Vikas Kudesia in writing even then it was attributed to the petitioner. Neither the disciplinary nor the appellate authority

considered the defence and evidence of the petitioner is correct perspective. Hence their findings are perverse and deserve to be set aside. The punishment awarded to the petitioner is unwarranted. This is one of such "exceptional case" as held by the Apex Court above.

25. In **Canara Bank Vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and Ors.** 2004 (102) FLR 1146, it was held that even if the domestic enquiry was proper and valid, the labour court can reappraise the entire evidence for recording its own findings for the purposes of satisfying itself whether the evidence relied on by the employer establishes the misconduct alleged against the workman.
26. In **Rajinder Kumar Kindra v. Delhi Admn.:** (1984) 4 SCC 635 the Hon'ble Supreme Court held that: -

16. ... It is thus well-settled that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under Section 10-A or this Court in appeal under Article 136 can reject such findings as perverse. Holding that the findings are perverse does not constitute reappraisal of evidence, though we would have been perfectly justified in exercise of powers conferred by Section 11-A to do so.

17. It is equally well settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The Industrial Tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind....

* * *

20. Where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and the enquiry is vitiated as suffering from non-application of mind the only course open to us is to set it aside and consequently relief of reinstatement must be granted and nothing was pointed to us why we should not grant the same."

27. In **Airtech Private Ltd. v. State of U.P.**, 1983 SCC OnLine All 954, this Court held that: -

“7. The matter can be looked at from another angle, which party will fail if the evidence is not led before the Labour Court in proceedings in a reference made to it for adjudication by the State Government ? The obvious answer is that the workman will fail. Here the reference was made by the State Government at the instance of the workmen and for the benefit of the workman. In the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workmen. In such a situation it is not necessary for the employers to lead any evidence at all....”

28. In **Airtech Pvt. Ltd.** (Supra) this Court had relied upon a judgment of the Hon’ble Supreme Court in **Shankar Chakravarti v. Britannia Biscuit Co. Ltd.**, (1979) 3 SCC 371, wherein it was held that: -

“31...It has to decide the lis on the evidence adduced before it. While it may not be hide bound by the rules prescribed in the Evidence Act it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a lis between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the lis on any extraneous considerations. Justice, equity and good conscience will inform its adjudication. Therefore, the Labour Court or the Industrial Tribunal has all the trappings of a Court. 32. If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led.”

29. In **M.P. Electricity Board v. Jagdish Chandra Sharma**, (2005) 3 SCC 401, it was held that: -

“8. The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the

employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved.

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...Recently, in *Muriadih Colliery BCC Ltd. v. Bihar Colliery Kamgar Union* (2005) 3 SCC 331 this Court after referring to and quoting the relevant passages from *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh* (2004) 8 SCC 200 and *Tournamulla Estate v. Workmen* (1973) 2 SCC 502 held:

“The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal.”

9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organisation. Discipline at the workplace in an organisation like the employer herein, is the *sine qua non* for the efficient working of the organisation. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan,

“discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large”.

Obviously this idea is more relevant in considering the working of an organisation like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organisation as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating

circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion.”

30. The principles which can be culled out from the aforesaid decisions are that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. The enquiry report must reflect the reasons for its conclusion. The Court may not enter into the adequacy or sufficiency of evidence. The labour court has power to reappraise the entire evidence for recording its own findings for the purposes of satisfying itself whether the evidence relied on by the employer establishes the misconduct alleged against the workman. Where the order of dismissal is based on a perverse finding in the domestic enquiry, the enquiry is vitiated as suffering from non-application of mind and it is unsustainable in law. The burden of proof to challenge the validity of the enquiry report or the order of punishment lies on the workman who assails its validity. If he does not discharge this burden, his claim is liable to fail. The Courts will not interfere in the quantum of punishment unless it is so disproportionate as would shock the Court's conscience.
31. When we examine the facts of the present case in light of the law laid down in the aforesaid precedents, what comes to light is that the employer had submitted 28 documents before the Enquiry Officer and the petitioner stated that he will not produce any document in defence. The employer produced four witnesses in support of its case but the petitioner declined to cross-examine those witnesses.
32. The Enquiry Officer concluded that all statements of the witnesses produced by the employer established that on 28.03.2000, the petitioner had made 'Gherao' of the General Manager of the Company alongwith other employees. He was present where speeches were being given, obscene and intimidating slogans and were being raised and the General Manager was being forced to come out of his room to

accept the demands and when he did not come out, the door of the General Manager Lobby was broken open. He was 'Gheraoed' for several hours. The Enquiry Officer also referred to the photographs of the incident, newspaper cuttings, FIR, Charter of demands, medico legal examination reports and report of damages, which established the active involvement of the petitioner in the incident. The statement of Sanjay Sablok and Senior Engineer Vikas Bindal proved that at that point of time, the petitioner was not present in the department and he was seen in the General Manager Office. He was stopped but he did not agree. Vikas Bindal had seen the petitioner in the crowd that was causing damage to the General Manager Office.

33. The petitioner admitted during his oral submissions that no work was being done in the factory since morning of 28.03.2000 and he had gone to the General Manager's Office alongwith other employees of B-shift and he was present in the office of the General Manager. He admitted that he had gone to attend the sit-in and he had not done it under any fear. The enquiry officer found that the entire evidence available before him indicates that the petitioner was involved with several employees in laying 'Gherao' of General Manager, raising slogans, indulging in damaging the company property and the charges leveled against him were proved.
34. The petitioner had given an application to the Enquiry Officer for being represented in the enquiry by an outsider, which request was not accepted by the enquiry officer. The Enquiry Officer has erroneously mentioned that the petitioner had given an application that he will represent himself, but this error is insignificant and it does not vitiate the outcome of the enquiry. At one place the Enquiry Officer has wrongly mentioned the name of PW-1 as Sri Amitabh Nandi whereas PW-1 was Sri. Sanjay Sablok and this error also does not vitiate the enquiry report as there is sufficient material to support the findings of the enquiry.
35. The Enquiry Officer has found that the petitioner had made 'Gherao' of the General Manager of the Company alongwith other employees.

He was present where speeches were being given, obscene and intimidating slogans and were being raised and the General Manager was being forced to come out of his room to accept the demands and when he did not come out, the door of the General Manager Lobby was broken open. He was 'Gheraoed' for several hours. The Enquiry Officer also referred to the photographs of the incident, newspaper cuttings, FIR, Charter of demands, medico legal examination reports and report of damages, which established active involvement of the petitioner in the incident. The findings of the Enquiry Officer are based on cogent material and the same are not perverse.

36. The burden to prove that the Enquiry Report was incorrect and the dismissal order was bad in law lied on the petitioner as he had sought to challenge the same, but he did not lead any evidence before the Labour Court also. Thus the evidence led by the employer remained uncontroverted.
37. The petitioner had left the place assigned to him for performing his duty and he had involved himself with numerous other employees, who turned violent causing injuries to several persons, including officials of the District Administration, Police and officials of the company. The aforesaid acts or causing damage to the company's property and physical injuries to the company's officials amount to indiscipline of the lowest category, which cannot be tolerated by any employer. In the aforesaid factual background, the punishment of dismissal from service cannot be said to be disproportionate.
38. The Labour Court has not committed any illegality in upholding the order of dismissal of the petitioner from service. The Writ Petition lacks merit and the same is **dismissed**.

(Subhash Vidyarthi J.)

Order Date: 23.05.2024

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