

Central Administrative Tribunal
Patna Bench, Patna.
OA/050/00760/2016

Date of CAV : 29.01.2020

Date of Order :- 14.02. 2020

C O R A M

Hon'ble Mr. J. V. Bhairavia, Member [J]

Hon'ble Mr. Dinesh Sharma, Member [A]



Raj Kishore Ram, son of Late Sunder Ram, R/o Mohalla – Bhikhanpur, Gumti No.2, Near Bishahari Asthan, P.S. Ishakchak, Town & District – Bhagalpur.

....Applicant

By Advocate : Shri P.K.Jha with Shri R.K.Bariar

Vs.

1. Union of India, through the Secretary, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi.
2. The Chairman, Indian Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, East Central Railway, Hazipur, Bihar.
4. The General Manager, Eastern Railway, Fairly Place, Kolkata [W.B.].
5. The General Manager [Vigilance], Eastern Railway, Fairly Place, Kolkata [W.B.].
6. The Chief Commercial Manager, East Central Railway, Hajipur, Bihar-cum-the Revisioning Authority.
7. The Divisional Railway Manager, Eastern Railway, Malda [W.B.].
8. The Divisional Railway Manager, East Central Railway, Dhanbad, Jharkhand-cum-the Appellate Authority.
9. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad, Jharkhand.
10. The Divisional Commercial Superintendent [now known as Senior Divisional Commercial Manager], Eastern Railway, Malda [W.B.] – cum- the Disciplinary Authority.
11. The Senior Divisional Commercial Manager, East Central Railway, Dhanbad, Jharkhand-cum-the Disciplinary Authority.

12. The Enquiry Officer, [Head Quarter], Eastern Railway, Fairly Place, Kolkata [W.B.].

..... Respondents.

By Advocate :Mr.B.K.Choudhary with Mr.P.K.Thakur

ORDER

Per Jayesh V. Bhairavia, Member [Judicial] : - In the present

OA, the applicant has prayed for the following reliefs : -



[i] For setting aside/quashing the memo of Charge dated 25.11.1991 communicated to the applicant by the Respondent No.10, vide ref no.COM/VIG/BGP/2/91 [Annexure-A/1 to this OA], whereby 3 [Three] unsustainable charges have been levelled against the applicant.

[ii] For setting aside/quashing the Enquiry Report dated 15.06.1999 [Annexure-9] whereby the Enquiry Officer has proved the Charges against the Applicant in a complete illegal, arbitrary and unauthorised manner.

[iii] For setting aside/quashing the order of punishment dated 22.09.1999 [Annexure-A/11] issued by the Respondent No.11, whereby the applicant was removed from the service of Indian Railway w.e.f. 23.09.1999.

[iv] For setting aside/ quashing the order passed by the Respondent No.8, i.e. Appellate Authority, as contained in Ref. No. COM/VIG/BGP/91 dated 05.01.2000, [Annexure-A/13] whereby the punishment of REMOVAL from service was reduced to the effect that three annual increments of the applicant was withheld for three [3] years with non-cumulative effect, which was passed on Applicant's Service Appeal dated 08.10.1999.

[v] For setting aside/quashing the order as contained in Ref. No.COM/VIG/BGP/91 dated 24.04.2001 [Annexure-A/15] passed by the Senior Divisional Commercial Manager, Eastern Railway, Dhanbad whereby the prayer of the applicant for regularising his services in between 23.09.1999 [the date of removal] to 05.01.2000 [the date of applicant's reinstatement] has not been regularized.

[vi] For setting aside/quashing the order passed by the Respondent No.6 i.e. the Revisioning Authority dated 11.07.2016 upholding the order passed by the Respondent No.8 i.e. the Appellate Authority, as contained in Ref. No.COM/VIG/BGP/91 dated 05.01.2000, whereby the

punishment of removal from service was reduced to the effect that three annual increments of the applicant was withheld for three [3] years with non-cumulative effect.

[vii] For grant of any other relief or reliefs to which the applicant may be found entitled to in the facts and circumstances of this case.”

2. The applicant’s case in short runs as follows : -

[i] The applicant was served with a departmental memorandum No.COM/VIG/BGP/2/91 dated 25.11.1991 [Annexure-A/1] under Rule 9 of the Railway Servants [Discipline and Appeal] Rules, 1968. The statement of the articles of charge framed against the applicant reads as under :-



Article-I

Shri Raj Kishore Ram Hd TTE/BGP while working as Coach TTE of Sleeper Coach No.1, Bogie No.7652 attached to the Train No.3072 Dn. Of 29.03.1991 was found responsible for the following lapses :-

That said Shri R.K. Ram, HD.TTE failed to regularize one without ticket Passenger namely Sri Narayan Yadav prior to vigilance check conducted between BWN and DAKE on 30.03.1991 in S-1 [7652].

Article-II

That the said Sri R.K.Ram was located in FAC No.1858 attached to S.1 [7652] who was having Rs. 108/- Excess in Govt. cash in course of the cash check carried out between BWN and DAKE.

Article-III

As the squad-in-charge of the Train working TTEs by that train he failed to take any action against the booked TTEs [for deserting the allotted coaches earmark] either at Howrah or at Bhagalpur jn.

Thus by the above activities, Shri R.K. Ram, Hd. TTE/BGP has exposed lack of absolute integrity and devotion to duty and acted in a manner unbecoming of

Rly Servant in contravention of rule No.3.1[i],[ii]&[iii] of the Railway Service [Conduct] Rules, 1968.

Along with the aforesaid articles of charge the applicant was also served with statement of imputation and list of documents [Annexure-III] as also the list of witnesses by whom the articles of charge framed against the applicant are provided, vide memo dated 25.11.1991 [Annexure-A/1].



[ii] The applicant had submitted his representation/application dated 12.12.1991 [Annexure-A/2] in reply to the charge memorandum and denied the charges levelled against him. He has also stated that he did not receive any complaint from one Shri Vrijesh Agrawal and as such, the said complaint could not be dealt with. He submitted that considering my clarification/explanation to withdraw the allegations levelled against him.

[iii] It is further contended that, vide letter dated 28.12.1995 [Annexure-A/3], the applicant was directed to inspect the documents available in the office with reference to the charge memorandum which was served upon him.

In response to it, the applicant had inspected the documents and submitted his additional representation/clarification, vide letter dated 21st Jan., 1996 [Annexure-A/4], therein it is contended that as per the circular dated 22.12.1992 a major penalty case has



to be finalized within 150 days from the issue of charge-sheet. But, a period of 4 years 3 months have already passed from the date of charge-sheet and as the norms for finalizing the case within the scheduled period has not been observed, therefore, the major penalty case does not stand at this stage. Therein it is further stated that the document no.1 and document no.3 relied upon under the charge memorandum has not been supplied to him nor made available for inspection. It was further clarified by the applicant that the documents on which his signature has been taken, the writing on the said documents are not in his own hand-writing and he was compelled to put his signature even on his protest. He has also submitted various grounds and explained his innocence and thereby he requested to withdraw the allegation, which is pending for more than four years.

- [iv] The applicant contended that, vide letter dated 13.05.1996 [Annexure-A/5], whereby one Sri N.C. Das an officer of J.A. Grade was nominated as Enquiry Officer to conduct DAR proceedings against him since the said Mr. N.C. Das also was also nominated as Enquiry Officer to conduct the DAR against one Shri D.P. Sahu, TTE/BGP as also one Shri K. Sah, TTE. BGP. However, many enquiry officers were changed by different orders and ultimately, vide order dated 13.11.1998, the Respondent No.11, nominated one Mr. G.C. Poddar as Enquiry Officer and after conducting the

departmental enquiry, said Enquiry Officer submitted his findings on 15.06.1999 [Annexure-A/9], therein the Enquiry Officer recorded his findings in para 5.1, which reads as under –

"In view of the above discussions and analysis contained in para 4.1 to 4.8 above and in consideration of the oral and documentary evidence adduced during the course of enquiry and in consideration of the brief of the CO, I do find Sri R.K. Ram, Ex. Hd, TTE/BGP now TTI/ER/GMO guilty of the charges brought against him in Article-I, II and III of Annexure-1 of the major penalty memorandum no.COM/VIG/BGP/2/91 dtd. 25.11.91."



- [v] On receipt of enquiry report, the applicant submitted a representation dated 10.09.1999 [Annexure-A/10] therein it is contended that the EO has not considered his defence note dated 31.05.1999 in letter and spirit. The EO simply wrote one line vide para 4.8 that the CO could not able to rebut the charge. The said comment of the EO is devoid of Rules and materials on record. He had submitted detailed ground for his innocence and further contended that though relevant documents including the TTEs Book were not found during the enquiry, the EO held that allegation was sustained. It is also submitted by the applicant in his representation the principle of natural justice has not been observed by the EO. This opinion of EO after eight years is erroneous and not sustainable. He requested the DA to consider his representation and requested the authorities for a personal hearing along with his defence helper.



[vi] The Disciplinary Authority, vide impugned order dated 22.09.1999 [Annexure-A/11] after considering the findings of the D&A enquiry in respect of major penalty charge-sheet dated 25.11.1991, decided to hold the applicant guilty of the charges brought against him under Article –II & III of Annexure-I of the charge-sheet in agreement with the findings of the EO, and as a measure of penalty, **awarded punishment of “removal from Railway service with effect from 23.09.1999”** and further given liberty to the applicant to make an appeal against the penalty within forty five days to the Divisional Railway Manager, Eastern Railway, Dhanbad through proper channel.

[vii] The applicant preferred an appeal dated 08.10.1999 [Annexure-A/12] stating therein that the entire proceedings of the enquiry report and the findings dated 15.06.1999 was erroneously accepted by the Disciplinary Authority. It is further stated that on 26.02.1999, in his absence, one Shri R.N.Das was examined as prosecution witness by the Enquiry Officer. Only one chance given to defence witness in such a way short margin of time that he could not ensure his attendance in the enquiry on 21.05.1999. No further chance was given by the EO to defence witness to appear in the enquiry despite the repeated request made by the charge official. When the case was delayed for eight years, the EO have ought to have grant due

opportunity to offer defence witness to sustain his defence. The relied upon documents as endorsed in the Annexure-III of the memorandum was not handed over by the DA to conduct the enquiry properly and judiciously. More particularly, the documents, i.e. [a] EFT page no.895596 dated 30.03.1991 issued by Shri R.N.Das TTI/AF/CCS/RG [b] Statement of R.K.Ram dated 30.03.1991 in 3 pages. The POD cum duty register of BGP of TTEs dated 28.03.1991 could not be produced in the enquiry as demanded by the CO. This was the vital documents.



The EO had also asked the DCM/E.Rly./MLDT to produce the same vide letter dated 06.05.1999. The copy of relied upon documents were not supplied to the CO. The statement of prosecution witnesses were false and erroneously the same has been believed as correct by the EO that too without any supportive corroborative evidence. The EO has also failed to consider the representation of the applicant dated 12.12.1991 and reference of the said representation was also stated in his explanation in his defence note. The Disciplinary Authority has not assigned reason for rejecting the grounds stated by the applicant in his representation and in a mechanical manner order of punishment has been issued. It is also submitted that on the basis of record, deposition of witness and the attempt of the prosecution to destroy the record of defence within a

short span of 27 months, it reasonably prove that the charges levelled against the CO is only with a view to prepare the case against him. The applicant has been made victim of discrimination. The other TTEs who were also served with the identical charge memo were let off and were allowed to work in BGP and only he was evicted out of the division.



It is contended that the the Appellate Authority, vide Annexure-A/13 dated 05.01.2000 has reduced the punishment by recording following observations :-

*"I have gone through the entire case. The punishment given to the staff appears to be excessive in view of the fact the irregularities committed by him are not very grave in nature. In the given circumstances, one may conclude that irregularities committed by him may not be intentional. **The punishment may be reduced to stoppage of increment for a period of three years [NC] when next due.**"*

[viii] Thereafter, the applicant preferred a representation dated 30.08.2000 to the Sr. D.G.M, Eastern Railway Dhanbad for regularization of the period of removal from service, i.e. 23.09.1999 to 05.01.2000, which was disposed of vide letter dated 24.04.2001 with stipulation that – "No specific orders in regard to regularisation of intervening period i.e. the date of removal to the date of reinstatement has been passed by the appellate authority. It is also noticed that charged official has not been fully exonerated." Thereafter, the applicant had submitted another representation before the DRM with a request to arrange payment of arrear of removal period

from 23.09.1999 to 05.01.2000. However, the request of the applicant has not yet been considered.

[ix] It is contended that aggrieved by the order passed by the Appellate Authority dated 05.01.2000, the applicant had also preferred a revision petition dated 9th August, 2007 to the Chief Commercial Manager, E.C. Railway, Hajipur, but no order has been passed. Though the applicant had time and again requested the Revisional Authority to consider his revision application but no reply whatsoever has been given to him. Therefore, the applicant was compelled to sought information under the RTI with request to result of his application. However, no satisfactory information has been supplied to him. His revision application against the order passed by the Appellate Authority remained pending before the Revisional Authority.

[x] Thereafter, the applicant filed an OA bearing No.265/2012 with MA 304/2012 challenging the order passed by the Disciplinary Authority as well as the order passed by the Appellate Authority and also challenged the order dated 24.04.2001 passed by the Sr. DCM, E.C. Railway Dhanbad rejecting the prayer for regularization of his service between 23rd Sept., 1999 to 05.01.2000 along with an MA for condonation of delay. The Tribunal vide its order dated 19th October, 2012 dismissed the aforesaid OA on the ground of limitation.



Aggrieved by the order passed by this Tribunal, the applicant preferred a writ petition bearing CWJC No.2272/2014 before the Hon'ble High Court of Patna. The Hon'ble High Court vide its order dated 03.11.2015 disposed of the writ petition with directions to the Revisional Authority to dispose of the revision petition dated 09.08.2007 pending before Chief Commercial Manager, East Central Railway, Hajipur as early as possible, in any case within two months from the date of receipt/production of a copy of this order.



Thereafter, the Revisional Authority, vide its order dated 11.07.2016 [Annexure-A/28] decided the revision petition of the applicant. The relevant portion of the order reads as under : -

"After observation of all papers and documents in this case, it is clear that the concerned staff had erred in not reporting the absence of TTEs who had run away from intermediate stations and he had been found wanting on all the charges. The then DRM/DHN had taken very lenient view and reduced the punishment. Now, after the retirement of the concerned staff, a sympathetic and lenient consideration is taken and the punishment order by the then DRM/DHN is allowed to stand. This is without any prejudice and bias."

- [xi] It is submitted that aggrieved by the order passed by the Revisional Authority dated 11.07.2016, and has also challenged the order passed by the Disciplinary Authority dated 22.09.1999 and the order passed by the Appellate Authority as also the order passed by the Sr. DCM for not regularising the service period from

23.09.1999 [date of removal] to 05.01.2000 [date of applicant's reinstatement] in the present OA.



[xii] The Id. Counsel for the applicant mainly submitted that the order of punishment cannot be sustained in law, since the same has been passed on the basis of unsustainable enquiry report. In this regard, it is further submitted that since none was appointed as Presenting Officer to lead evidence before the Enquiry Officer to prove charges against the applicant. The counsel for the applicant placed reliance on the order passed by Hon'ble High Court of Patna in CWJC No. 1013 of 2003 in the case of RajibLochanJha vs. The State of Bihar &Ors. reported in 2004 [4] PLJR 2003.

[xiii] The Revisional Authority has not given any reason and in a mechanical manner the application of the applicant was rejected.

[xiv] It is submitted that the disciplinary proceedings is vitiated on the ground of violation of rule of principle of natural justice and not following correct procedure for conducting the enquiry against the applicant. Therefore, the impugned orders are required to be set aside.

3. The respondents have filed their written statement and contested the case. The respondents submitted that major penalty charges sheet dated 25.11.1991 was issued by the DCS/ER/Malda against the applicant as mentioned in the charge memorandum. The applicant had objected the charges



levelled against him. The Disciplinary Authority appointed an Enquiry Officer. The relied upon documents were made available to the charged official, i.e. the applicant herein. He participated in the enquiry. During the enquiry, the documents relied upon by the Disciplinary Authority has been admitted and accordingly exhibits were granted. On request of the CO, the Enquiry Officer granted permission to him to examine his defence witness. However, none turned up in the regular hearing. Finally the CO submitted his defence brief on 31.05.1999. After considering the brief submitted by the CO and considering the materials on record, the Enquiry Officer had submitted his enquiry report on 15th June, 1999 [Annexure-A/9]. The copy of the said report and findings of the enquiry report was supplied to the CO, i.e. the applicant herein. Further opportunity was also granted to file his representation on the said enquiry report. In response to it, the applicant had filed his representation and offered his explanation.

Thereafter, considering the materials on record of the departmental enquiry, findings of the enquiry report, the Disciplinary Authority agreeing with reasons and findings recorded by the Enquiry Officer and held that the applicant is guilty of charges levelled against him and awarded punishment of removal by punishment order dated 22.09.1999 [Annexure-A/11].

It is further contended that the applicant has availed the opportunity of filing statutory appeal and the said appeal was

duly considered by the Appellate Authority and found that the punishment awarded by the Disciplinary Authority was excessive and also held that the irregularity committed by the CO was not very grave in nature. It is also observed by the Appellate authority that the irregularity committed by the CO may not be intentional and thereby the punishment was

reduced to stoppage of increments for a period of three years [NC] when next due.

The Revisional Authority vide order dated 11.07.2016 [Annexure-A/20] also observed that on a sympathetic and lenient consideration necessary punishment order has been passed by the then DRM/DHN, which is allowed to stand and thereby the order passed by the Appellate Authority was upheld.



4. The learned Standing Counsel for the respondents further submitted that the sufficient opportunity has been granted to the applicant during departmental enquiry as also by the Disciplinary Authority before taking final decision, therefore, it is not correct on the part of the applicant that he was not granted due opportunity to defend his case. As such, the Appellate Authority has considered all his grievances and pleased to take lenient view and reduced the punishment awarded by the D.A. The order passed by the Appellate Authority on 05.01.2000 [Annexure-A/13] accepted by the applicant and remained silent for seven years and filed the revision application against the said order, which was also considered by the Revisional Authority as per the direction of

the Hon'ble High Court. In view of the aforesaid fact, there is no violation of principle of natural justice in the present case.

5. It is vehemently submitted that the applicant had never raised any grievance with respect to non-appointment of Presenting Officer in the enquiry nor he had raised the said grievance before the Appellate/Revisional Authority. The respondents further contended that as per the instructions under RB's dated 20.10.1971 it is not obligatory for the Disciplinary Authority to nominate a Presenting Officer in disciplinary enquiry but it is discretionary [Annexure-R/4]. Even the D&A Rules does not provide any mandatory condition for appointment of Presenting Officer. There is no material on record which can establish that Enquiry Officer acted bias to the applicant. On the contrary, the applicant had participated in the enquiry by availing all the opportunities to submit his defence till conclusion of the enquiry. Therefore, no prejudice has been caused nor it has been stated by the applicant. In absence of it, it is not correct on the part of the applicant to raise grievance of non-appointment of Presenting Officer, that too first time, in the present OA. The applicant has already been retired from service in the year 2011. The applicant is not entitled for the relief as sought for in the instant OA.



6. The Id. Counsel for the applicant additionally submitted that he has submitted his objection about correctness of report of Enquiry Officer before the Disciplinary Authority in his representation as also before the Appellate Authority and submitted therein that the Enquiry Officer has examined

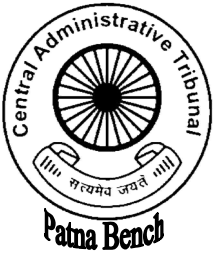
prosecution witness in his absence and the documents demanded by him was not supplied during the enquiry. Therefore, in absence of Presenting Officer enquiry was concluded which vitiates the enquiry. The Id. Counsel for the applicant placed reliance on the judgment passed by the Hon'ble Patna High Court in the case of Lalan Pandey vs. State of Bihar, CWJC No. 270/2016 decided on 26.10.2016 and submitted that the Enquiry Officer could not have assumed, the role of prosecutor in absence of Presenting Officer. Further he has also placed reliance on the judgment passed by Hon'ble High Court of Patna in CWJC No. 1013 of 2003 in the case of Rajib Lochan Jha vs. The State of Bihar & Ors. reported in 2004 [4] PLJR 2003 in support of his submissions.



7. Heard the parties and perused the materials on record.

8. It is noticed that in pursuance of charge memorandum dated 25.11.1991 [Annexure-A/1] issued under Rule 9 of Railway Servants [D&A] Rules, 1968. The defence statement was not accepted by the Disciplinary Authority and the departmental enquiry was initiated against him. The applicant participated in the said enquiry. It is also noticed that no Presenting Officer was nominated in the departmental enquiry. The Enquiry Officer conducted the enquiry by granting opportunity to the applicant to defend himself as also with the defence helper. On conclusion of the enquiry, the Enquiry Officer based on oral and documentary evidence, and in consideration of the brief note of the CO, recorded his findings that the CO is guilty of the charges brought against him in

Article-I, II and III of major penalty memorandum dated 25.11.1991. The said enquiry report dated 15.06.1999 was submitted to the Disciplinary Authority and the copy of it was also given to the applicant with a direction to submit his representation on the said enquiry report. In response to it, the applicant submitted his representation before the Disciplinary Authority. Thereafter, the Disciplinary Authority in agreement with the findings of the Enquiry Officer held the applicant guilty and awarded major punishment of removal from service w.e.f. 23.09.1999, vide impugned order dated 22.09.1999 [Annexure-A/11].



9. It is mainly argued by the counsel for the applicant that the departmental enquiry vitiated due to non-appointment of the Presenting Officer. In the said enquiry, since the Enquiry Officer has adopted the role of prosecutor which caused prejudice to the applicant. To examine the said submission, we have carefully gone through the materials on record. It is noticed from the enquiry report dated 25.11.1991 [Annexure-A/9] that during the enquiry, the applicant had availed the opportunity of inspection of relied upon documents and he inspected the same on 09.01.1996 [except EFT Page No.895596 dated 30.03.1991 and complaint of Shri Brijesh Agarwal dated 30.03.1991]. The said EFT page was not available as intimated by the Disciplinary Authority. However, the complaint of Shri Brijesh Agarwal, was subsequently produced before the CO in presence of his defence helper.

10. It is also noticed that in the presence of the applicant all documents relied upon had been admitted for the purpose of departmental enquiry. On request of CO, i.e. the applicant herein, one Shri R.D.Paswan was allowed to appear before the enquiry as defence witness. However, the said defence witness did not turn up in the regular hearing. The applicant attended regular hearing of enquiry till its conclusion and subsequently he has also submitted his defence brief dated 31.05.1999. After considering the brief note submitted by the applicant/CO herein, the enquiry officer submitted his report.



11. At this juncture, it is appropriate to refer the judgment passed by Hon'ble Apex Court in the case of Union of India & Ors. Vs. Ram Lakhan Sharma reported in [2018] 2 SCC [L&S] 356=[2018] 7 SCC 670 therein the Hon'ble Apex Court after discussing the law laid down by the Hon'ble Supreme Court in various case as also by the Hon'ble High Courts, held that **"there is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enables the authority to make an appointment or silent. It is further held that the question whether the Enquiry Officer who is supposed to act independently, in an enquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case."** In the said judgment, the Hon'ble Apex Court endorsed the principles enumerated by the division bench of Madhya Pradesh High Court in the case of Union of India vs. Mohd. Naseem Siddiqui. In the said judgment passed by the Hon'ble High Court of M.P., it is held that –

"16. We may summarise the principles thus –

(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

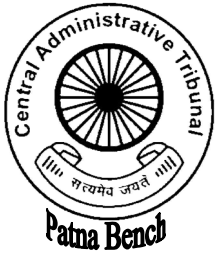
(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he

should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may."



It can be seen from aforesaid dictum of Hon'ble Apex Court that there is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enables the authority to make an appointment or silent. In the present case, the charge memorandum was issued under the provision of Rule 9 of the Railway Servants [D&A] Rules, 1968. The said Rule do not cast any mandatory responsibility on the Disciplinary Authority to appoint a Presenting Officer. It is noticed hereinabove that due opportunity has been made available by the Enquiry Officer during the departmental enquiry.

12. It is noticed that at no point of time, the applicant had raised any grievance or objection for non-appointment of the Presenting Officer during the enquiry. The applicant has availed all the opportunity to submit his defence. It is not the case of the applicant before the Enquiry Officer nor before the Disciplinary Authority that Enquiry Officer acted prejudice to the CO. No allegation of bias has been raised by the CO. He

had not demanded cross examination of the departmental witness. As such, there is no material placed on record which can establish or substantiate the submission of the applicant that some prejudice has been caused for non-appointment of the Presenting Officer nor any details or materials placed on record which can be said that Enquiry Officer acted as prosecutor and caused injustice to the CO.



13. Thus, in the light of law laid down by Hon'ble Apex Court in the case of Union of India vs. Ram Lakhani Sharma [supra] and in view of the factual matrix of the present case as discussed hereinabove, in our considered opinion, the submission of the applicant with regard to vitiation of the enquiry on the ground of non-appointment of Presenting Officer in the departmental enquiry in the present case, is not tenable

It is further noticed that aggrieved by order punishment awarded by the Disciplinary Authority the applicant herein preferred statutory appeal and after considering all the aspect of applicant's case, the appellate authority found that the punishment awarded by the Disciplinary Authority excessive in view of the irregularities committed by the applicant are not very grave in nature. It was further held by the said authority that in the given circumstances, one may conclude that irregularity committed by the CO may not be intentional. Accordingly, the Appellate authority reduced the punishment to stoppage of increment for a period of three years [NC] when next due, vide order dated 05.01.2000 [Annexure-

A/13]. Thereafter, the applicant had submitted his representation before the concerned competent authority for regularisation of the period between removal on 23.09.1999 to 05.01.2000. His revision application which was filed on 09.08.2007 against the order passed by the Appellate Authority was also subsequently considered and decided on 11.07.2016 [Annexure-A/28] which is impugned herein. In the said order it is observed that the then DRM/DHN had taken very lenient view and reduced the punishment. Now, after the retirement of the concerned staff, a sympathetic and lenient consideration has taken and the punishment orders passed by the DRM/DHN was allowed to stand. Considering, the findings of Appellate Authority and observation of the Revisional Authority we do not find any reason to interfere with the said orders. The decision making process in the present case, in the facts and circumstances as discussed hereinabove cannot be said to be suffers from any infirmities. Hence, the OA fails.

14. Accordingly, the OA is dismissed. No costs.

Sd/-
[Dinesh Sharma]M[A]

Sd/-
[Jayesh V. Bhairavia]M[J]

Mps.

