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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.418/2014
with OA Nos.316/2016 & 454 & 701 of 2014

Dated this Thursday, the 02nd day of January, 2020

CORAM: R.VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Mr. Santosh Pal, Aged 38 years,
 Working as Sr. ACC/Andheri, Under Station Superintendent, Andheri,
 Residing at 502, B-Wing, Ramdev Paradise, Indralok Phase No. 6,
 Near Radha Krishna Mandir, Bhayander(E),
 Dist: Thane. - *Applicant in OA No. 418/2014*

Mr. Sakharam Shiv, Aged 56 years,
 Working as Head Booking Clerk at Mira Road Railway Station,
 Residing at Subh Labh Apartment, Bldg. No.2, B-5,
 Near Viva College (old), Virar (W),
 Dist: Palghar 401 303. - *Applicant in OA No.316/2016*

Mr. Ramsakal Vishwakarma, aged 48 years,
 Working as HBC at Khar Railway Station, Residing at R. No. 1,
 Chawl No. 2, Bank Prasad Gupta Chawl, M.D. Road, Kandivli(E),
 Mumbai- 400 001. - *Applicant in OA No.454/2014*

Mr. Bhaskar Hari Potinde, Aged 46 years,
 Working as Asst. Commercial Clerk Senior ACC at Dadar,
 Residing at R.No.102, B Wing, Yamuna Bai Apartment,
 Govind Complex, Tisgaon Naka, Jarimari Gate,
 Kalyan. - *Applicant in OA No.701/2014*

(By Advocate Shri C.M.Jha)

VERSUS

1. Union of India, through its General Manager, Western Railway,
 Head Quarter Office, Churchgate, Mumbai 400 020.
2. Chief Commercial Manager (P.M.), Head Quarter Office,
 Churchgate, Mumbai 400 020.
3. Asst. Divisional Railway Manager,
 Divisional Railway Manager Office, Western Railway,
 Mumbai Central, Mumbai 400 008.
4. Sr. Divisional Commercial Manager,
 Divisional Railway Manager Office, Western Railway,
 Mumbai Central, Mumbai 400 008. - *Respondents in all OAs*

(By Advocates *Shri S.Ravi* in OA No.454 & 701 of 2014;
Shri V.D.Vadhavkar in OA No.316/2016 and
Shri V.S.Masurkar in OA No.701 of 2014)

ORDER (Oral)

Per : *R.Vijaykumar*, Member (A)

The four OAs have been heard together by common consent of the learned counsel for the applicant and the learned counsel for the respondents by virtue of the fact that the four applicants have allegedly been involved in the same incident and inspection by which disciplinary action against them was conducted, inquiry held by which charges against them have been proved. In these circumstances, these four cases are heard together and common order is being passed. For the purpose of referring facts and various details, OA No.418/2014 is taken as the lead case.

2. This batch of applications were filed in OA No.418/2014 on 26.06.2014, in OA No.454/2014 on 11.06.2014, in OA No.701/2014 on 12.09.2014 and in OA No.316/2016 on 09.02.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8.a. The Hon'ble Tribunal be pleased to call for, record of the (DAR) case of the Applicant and after

going through the same, and after examining the legality & validity of the same, be pleased to quash & set aside the order dt. 02/08/2011 (Annex. "A-1" to the OA Nos.418, 454 & 701 of 2014), order dt. 04.04.2012 (Annex. "A-1" to the OA No.316/2016), passed by Disciplinary Authority, the order of the Appellate Authority dt. 11/10/2011 (Annex. "A-2" to the OA No.418/2014), dt. 28/10/2011 (Annex. "A-2" to the OA No.454/2014), dt. 23.05.2012 (Annex. "A-2" to the OA No.316/2016) and dt. 26.04.2012 (Annex. "A-2" to the OA No.701/2014) & Revisionary Authority's order dt. 27/01/2014 (Annex "A-3" to OA No.418/2014), order dt. 29/01/2014 (Annex. "A-3" to OA No.454/2014), order dt. 14.10.2015 (Annex. "A-3" to OA No.316/2016) and order dt. 10.01.2014 (Annex "A-3" to OA No.701/2014) with all consequential relief thereon.

8.b. Cost of the OA, be provided for.

8.c. Any other and further order as this Hon'ble Tribunal may deem fit and proper.

8.d. Costs."

3. The respondents have detected a racket of tampering and issue of fake or forged tickets and charges were framed against the applicants individually in Annexure A-5 on 31.10.2005 with imputations as below:

"Statement of imputations framed against Shri Santosh Pal, Sr. ACC – Khar:

In that Shri Santosh Pal, Sr. ACC – Khar while working at Khar used to sell fake SPTM tickets and this exhibited lack of devotion, integrity and tarnished the Railway image is as much as that he corroborated and acted in tandem with TCM staff i.e. Shri J.A.Kazi, TCM Gr. I and Shri A.Kistaih, Sr. Khalasi SPT – CCG, Shri Harish Gupta, HBC – Khar had tampered SPT machines and removed fake tickets. He has admitted selling of fake SPTM tickets in his statement taken after this raid conducted at Khar as explained below :

During the surprise check at Khar Road at 06-07-05 by ACM (TC) 59 & 83 fake tickets were recovered from Shri

Imtiyaz Yusuf, Sr. ACC – Khar & Shri Sandeep Y. Patil, Sr. ACC – Khar who disclosed voluntarily that the said above tickets 59 & 83 in numbers were supplied by Shri Harish Gupta in support of above disclosure Rs. 974.50/- and Rs.1654.50/- were recovered from the counters of Shri Imtiyaz Yusuf and Shri Sandeep Y. Patil respectively. A further scrutiny of sale of SPTM tickets it was established that tampering of SPT machines was in progress and drop in figures of sale of SPT Tickets and revenue generated confirm this as under :-

Year	No. of SPT tickets sold (in Lakhs)	Earning due to sale of SPT tickets. (in Lakhs)
2002-2003	33.85	200.57
2003-2004	35.15	205.62
2004-2005	34.68	200.18

To confirm the unscrupulous act, Shri Harish Gupta voluntarily disclosed in his statement dated 06-07-05 that he was the party of the fraud along with others. The corroborative statement of Shri Ramsakal Vishwakarma, HBC – Khar dated 06-07-05, voluntary statement of Shri Imtiyaz Yusuf dated 06-07-05, voluntary statement of Shri Sandeep Y. Patil dated 06-07-05 confirmed the involvement.

Statement of Shri J. A. Kazi, SPT Mechanic & Shri A. Kistaih, Sr. Khalasi, SPT – CCG dated 07-07-05 confirmed the above act and the involvement. Further the demonstration by Shri J. A. Kazi regarding the modus operandi on 07-07-05 before the team of officers confirmed the involvement in fraud and misappropriation. He connived with the above SPT staff and in tandem got tampered the machine. From above statistics there is a visible decrease in the revenue to the tune of Rs.05 Lakhs on above account and the involvement. On further cross-examination, Shri Imtiyaz Yusuf dated 11-07-05, Shri Sandeep Y. Patil dated 11-07-05, Shri Chandrakant Dubey, ACC – Khar, Shri Hazari Prasad Meena dated 13-07-05, Shri Santosh Kumar Pal dated 13-07-05, Shri Ram Shakal Vishwakarma dated 13-07-05 and his admission dated 13-07-05. Thus Shri Santosh Pal connived and corroborated in illegal acts and irregularity and tarnished the Railway image.

Thus by above act Shri Santosh Pal, Sr. ACC – Khar violated rule no.3.1 (i) (ii) & (iii) of Railway Service

Conduct Rule, 1966."

4. During the raid by the Investigation Committee, the applicant has confessed to their involvement and his confessional statement, cited as RUD 1 in the charge memo, was considered during the Inquiry and verified by the Head of the Investigation Committee. After giving due opportunity to the applicants for cross-examination and after compliance with the required procedure as per the rules prescribed and in accordance with the principles of natural justice, the Inquiry Officer gave his report dated 15.02.2010 (Annexure A-15) to the Disciplinary Authority holding the charges against the applicant proved. This was considered by the Disciplinary Authority and orders were passed on 02.08.2011 by the Disciplinary Authority holding that although the CO was not selling any fake or duplicate ticket nor was any ticket recovered from his possession and there was no direct evidence against the CO for selling any fake or duplicate ticket but he had himself admitted before the Committee that he was involved in the racket alleged selling of fake/duplicate

ticket. The Disciplinary Authority also took into consideration the denial of the CO before the Inquiry Officer that he had been put under duress or undue pressure by the Investigation Committee and such a statement of denial at the present time could not be taken cognizance to establish his innocence. Accordingly, the Disciplinary Authority has held that this statement of the CO was clearly an afterthought he was under no pressure or any duress during conduct of the investigation and this statement had been recorded by his own consent without duress. Accordingly, the Disciplinary Authority imposed the penalty of reduction of lower time scale of pay i.e. on pay Rs.10840/- in scale Rs.5200-20200 + 2400 (GP) for a period of three years with future effect.

5. The applicant then filed an appeal on 16.09.2011 at page 83 (Annexure A-17) in which he has reiterated his arguments that there was no evidence or proof of his generating fake or duplicate tickets and that there is no involvement of his having sold any ticket as submitted by such witnesses. He argued that since there was

no evidence for his guilt, it could not be held on the basis of evidence and preponderance of probabilities that he was guilty of the offences charged.

6. The Appellate Authority considered his appeal and recorded the order on 11.10.2012 as below:

"I have gone through the charges, enquiry report, fact finding enquiry conducted and other documents available in the case file. I have gone through the appeal. But as per your own admission you were involved in the racket of alleged selling of false tickets and thus your involvement cannot be ruled out. Therefore the punishment of reduction of lower time scale of pay for a period of three years with future effect imposed vide NIP of even no.dt.2.8.11 is up held as you are guilty."

7. The applicant then filed a Revision Petition on 11.12.2011 which was considered by the Revisionary Authority and orders were passed on 27.01.2014 considering the issues raised by him and it was pointed out that two individuals cited as witnesses did not attend the inquiry as both had been compulsory retired. Further, keeping in view his voluntary admission of misconduct in his statement dated 13.07.2005, the Revisionary Authority rejected the Revision Petition preferred by the applicants on the basis of preponderance of probabilities.

8. The main argument advanced by the learned counsel for the applicants is that the admission of misconduct by the applicants cannot be construed as misconduct keeping in view the fact that the same was procured by the Inquiry Officer under duress and by slapping the applicants. On the basis of the impugned order of penalty dated 02.08.2011 (Annexure A-1) and to strengthen he refers and relies on judgment of the Hon'ble Apex Court in **Roop Singh Negi Vs. Punjab National Bank and others reported in (2009) 1 SCC (L&S) 398**. The judgment of the Hon'ble Apex Court in the case of Roop Singh Negi (supra) is not applicable in the facts and circumstances of the present OAs, more particularly in view of the fact that in the case before the Hon'ble Apex Court, it was found that the documents relied for the inquiry were not proved by the concerned witnesses whereas in the present case, the relied upon documents especially the critical RUD 1, have been duly proved by the respondents during the course of the regular inquiry.

9. The learned counsel for the applicant further argues that in the inquiry, the respondents have not even appointed the Presenting Officer and therefore, the inquiry and resultant orders are vitiated. He further argument is that the order of the Appellate Authority is cryptic in nature and therefore, is bad in law. Per contra, the learned counsel for the respondents have argued that the inquiry has been conducted by the respondents by following rules, instructions and principles of natural justice. They contend that adequate opportunity has been accorded to the applicants in the disciplinary proceedings. It is also contended that the admission of misconduct at the end of the applicants has been made voluntarily by the applicants and the allegation of the applicants that the same has obtained under duress is an afterthought and the same is evident from the record of the disciplinary authority.

10. In this regard, Shri V.S. Masurkar, learned counsel for the respondents refers to the statement of cross examination of Shri A.B.Gautam, one of the officers of the

investigating team wherein the said witness had not only affirmed the confession in the inquiry conducted but has also not been questioned on veracity even on the cross-examination. There is no suggestion made or any allegation of threat or duress applied by the officers team by the applicant. Shri V.S.Masurkar, learned counsel for the respondents further argues that once the inquiry had been conducted by the Inquiry Officer, this Tribunal while exercising the power of judicial review has no jurisdiction to interfere with the findings of the Inquiry Officer.

11. In view of the settled law and in this regard he also submits that the Hon'ble Apex Court in the case of **Chairman and Managing Director Vs. Goparaju Sri Prabhakara Hari Babu reported in (2008) 5 SCC 569** has held that in cases where the charged officer has admitted the delinquency, there is no need for elaborate inquiry and principles of natural justice were not violative.

12. Further, in regard to the non-appointment of the Presenting Officer which has been charged as vitiating the

proceedings, the learned counsel for the respondents refers and states that along with the fact that no such detailed inquiry is necessary, the applicant has not established that any prejudice has been caused to him by virtue of the fact that no Presenting Officer has been appointed nor has he demonstrated any bias caused to the witnesses or to the applicant in the course of the inquiry. In this connection, the judgment of the Hon'ble High Court of Kerela in **H.Rajendra Pasi Vs. Chairman, Canara Bank, 1990 (1) SLR 127** is relevant and the subsequent Railway Board RBE No.89/2001 dated 04.05.2001 which authorizes the Inquiry Officer in this regard so long as he does not put any leading questions to the witnesses. More particularly, when the applicants have freely cross-examined the witnesses produced by the Department and the applicants have never raised any objections in this regard during the entire course of the proceedings.

13. Shri V.D.Vadhavkar, learned counsel for the respondents further submits that in OA No.316/2016, the applicant did not choose

to participate in the Disciplinary Proceedings and therefore, based on the documents and evidence produced by the Department, the Inquiry Officer has examined the relevant materials and records and passed the impugned order. Therefore, the arguments advanced by the learned counsel for the applicants are not remotely applicable in the case of the applicant in OA No.316/2016.

14. In the aforesaid terms, these applications are entirely devoid of merits and in OA No.316/2016, there is extreme delay in approaching the Tribunal and further, no application has been filed seeking condonation of delay and therefore, this said OA is not maintainable along with its lack of merits as argued and by reference to its facts.

15. In view of the aforesaid, the OAs are dismissed. However, in the facts and circumstances, no costs.

(R.N. Singh)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

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