CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 22/2001

New Delhi this the 24th day of October, 2003

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri R.K.Upadhyaya, Member (A)

Shri N.N.S.Rana,
Ex.Chief Personnel Officer,
North Central Railway,
Allahabad (UP)
..Applicant

(By Advocates Shri R.Venkataramani,
learned senior counsel with
Shri B.S.Mainee)

VERSUS

Union of India : Through

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.

2. The Chairman,
Railway Board,
Rail Bhawan, New Delhi.

3. The General Manager/O.S.D.,
North Central Railway,
Allahabad (UP)
..Respondents

(By Advocate Shri V.S.R.Krishna)

O R D E R

(Hon'ble Smt.Laskhmi Swaminatham, Vice Chairman (J)

The applicant has impugned the order issued by the respondents dated 13.1.2000 by which the penalty of reduction by one stage in the same scale for a period of six months without cumulative effect was imposed on him. He has also impugned the order issued by the respondents dated 19.12.2001 by which a show cause notice was issued for enhancement of the penalty and the order dated 26.12.2002 by which he has been removed from service w.e.f. 31.12.2002.

2. The OA was originally filed by the applicant on 21.1.2001 and later amended OA was filed on 11.2.2003.

3. The brief relevant facts of the case are that the applicant while working as Chief Personnel Officer (CPO) was issued a Memo of Chargesheet for major penalty dated 16.12.1996. The statement of articles of charge framed against the applicant reads as follows:-

> "(i) He misbehaved and indulged in loose, lewd and suggestive talks with his Secretary, Smt. Kuljit Kaur, on several occasions on one pretext or the other with a view to sexually harass and seduce her. On one occasion he even propositioned her and suggested sexual relations which were spurned by her.
>
> (ii) He deliberately created such privy situations by detaining her in office late into the night after closing hours, sometimes as late as 22:30 hrs. at night despite her protestations, under threat of D&AR action for deserting her duty.
>
> (iii) He further created such privy situations by calling her to Office on Saturdays and other Gazetted holidays and detained her in office after sunset despite her protestations, under threat of D&AR action for deserting her duty.
>
> (iv) When his advances were spurned by Smt. Kuljit Kaur he initiated D&AR action against her on frivolous ground with an ulterior motive of making her more pliable so that she could give in to him ".

It was alleged that by the above acts the applicant displayed lack of integrity, gross moral turpitude and thereby failed to maintain devotion to duty. He acted in a manner unbecoming of a Railway Servant in contravention of Rule 3 of the Railway Services Conduct Rules 1966.

4. The applicant has denied the above charges and hence, a Departmental inquiry has been held against him. The Inquiry Officer in his inquiry report dated 1.2.1999 has found the applicant guilty of four charges levelled against him and a copy of the report is stated to have been sent to him by the Railway Board in February, 1999 calling for his comments. The disciplinary authority after a careful consideration of the Inquiry Officer's report and the representation of the applicant and all other factors relevant to the case has held that Charges I, II and III as not proved and Charge IV partially proved in his order dated 13.1.2000, on which he has imposed the penalty of reduction by one stage in the same pay scale for a period of six months without cumulative effect. The applicant has himself stated that he has not enclosed the copy of the Inquiry Officer's report being very bulky and moreover the report has been elaborately discussed by the disciplinary authority in his order dated 13.1.2000. The applicant has filed an appeal against the disciplinary authority's order to the appellate authority on 22.2.2000. The applicant has stated that as the appellate authority has failed to decide his appeal after having waited for about ten months, he has filed the present OA praying for quashing the impugned order dated 13.1.2000 issued by the disciplinary authority with further direction to the respondents to promote him in the next higher administrative grade with all consequential benefits.

5. The appellate authority had issued a show cause notice to the applicant which was served on him on 24.12.2001 which was challenged in MA 275/2002. That MA

has been dealt with by Tribunal's order dated 13.3.2002.

One of the contentions of Shri R. Venkataramani, learned senior counsel for the applicant is that the show cause notice issued by the respondents/appellate authority dated 19.12.2001 is outside the scope of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the Rules'). He has relied on the judgement of the Hon'ble Supreme Court in **M. N. Srivastava** Vs. **The State of Bihar and Ors** (1971 (1) SCC 662). The Tribunal by its order dated 13.3.2002, in which one of us (Smt.Lakshmi Swaminathan, Vice Chairman (J)) was also a Member had dismissed MA 275/2002, subject to the observations made in Para 7 of the order which read as follows:-

> "However, in the light of the submissions made by the learned senior counsel for the applicant and in the interest of justice and fair play, we consider it appropriate to grant 10 days further time from today to the applicant to make a supplementary reply incorporating whatever grounds he wishes to make against the show cause Memorandum dated 19.12.2001. If such a supplementary reply is made by the applicant to the appellate authority, that authority shall also consider the same and pass a reasoned and speaking order on applicant's appeal, within four months from the date of receipt of a copy of this order. In case the applicant is aggrieved by the appellate authority's order, the applicant may proceed in the matter, if so advised, in accordance with law".

6. Learned senior counsel for the applicant has submitted that the power of the appellate authority under Rule 22 (2) of the Rules is to the extent that he can look into only those charge(s) against which the appeal has been filed and not on any other matters and facts against which no appeal has been filed. In other words, his submission is that the appellate authority cannot look into any of the other charges which were held as not proved by the disciplinary authority on

which the applicant did not file any appeal and the appellate authority cannot enlarge the scope of the appeal in this manner. He has also submitted that the advice of UPSC dated 11.7.2002 had not been given to the applicant before the appellate authority passed the order. He has relied on Tribunals order in **S.K.Pandey** Vs. **UOI & Ors** (2003 (1) ATJ 538). Learned counsel has submitted that this alone is sufficient reason to vitiate the appellate authority's order as the material was not given to the applicant on which they have relied upon. He has also relied on the observations given by the UPSC in Paragraphs 7-9 of their letter dated 11.7.2002, namely, that the appellate authority cannot enlarge the scope of the appeal at appellate stage, by holding those charges proved which were dropped by the disciplinary authority and against which the applicant had not preferred any appeal. Another ground taken by the learned senior counsel for the applicant is that the appellate authority has passed the impugned order beyond the period of extension granted and therefore, the same is bad in law and without any jurisdiction. He has relied on Tribunal's order in **Pramab Kumar Dutta** Vs. **UOI & Ors** (ATJ 2001 (1) 104).

7. The respondents in their reply to amended OA have controverted the above allegations. We have also heard Shri V.S.R.Krishna, learned counsel for the respondents. He has submitted that the penalty of removal from service imposed on the applicant by the appellate authority's order dated 26.12.2002 is in accordance with the Rules and there is no illegality or any infirmity to warrant setting aside the same. According to the respondents, the applicant had indulged

in sexual harassment of his lady PS, Smt. Kuljit Kaur. When his advances were spurned by the lady, he had initiated Departmental inquiry against her on frivolous grounds with an ulterior motive of making her more pliable. They have stated that the disciplinary authority i.e. the Railway Board has held that Charges I, II and III were not proved and charge IV partially proved and accordingly the penalty of reduction by one stage in the same scale for a period of six months without cumulative effect was imposed, by the order dated 13.1.2000. The applicant had filed an appeal against this order to the President who was the appellate authority. As per the procedure laid down in the Rules, the appeal filed by the applicant has also to be referred to the UPSC for their advice. The respondents had issued a show cause notice dated 19.12.2001 proposing enhancement of the penalty already imposed on the applicant to that of removal from service. He had submitted reply to the same on 2.1.2002. The applicant had filed MA 275/2002 challenging the aforesaid show cause notice which was disposed of by Tribunal's order dated 13.3.2002. The applicant had filed supplementary reply as mentioned in Tribunal's order dated 13.3.2002, on 23.3.2002. The respondents have stated that the appellate authority had again carefully considered the matter in the light of the said supplementary reply and again referred thee matter to the UPSC as per the Rules. After receipt of the UPSC's advice, the matter was again carefully considered by the appellate authority/President who has disagreed with that advice and took a decision to pass the impugned order enhancing the penalty already imposed on the applicant to that of

removal from service. Accordingly, the appellate authority's order dated 26.12.2002 was communicated to him on 31.12.2002.

8. Shri V.S.R.Krishna, learned counsel has contended that the appellate authority has clearly given the reasons for enhancement of the penalty as well as the reasons for disagreeing with the advice of the UPSC, which had advised on similar terms as contended on behalf of the applicant. Leaned counsel has submitted that **M.N.Srivastava's** case (supra) relied upon by the applicant cannot assist him in the present facts, where the Rules clearly vest the powers of enhancement of the penalty in the appellate authority under Rule 22(2) of the Rules. He has submitted that the judgement of the Hon'ble Supreme Court in **M.N.Srivastava's** case (supra) has to be read as a whole, where it has been held, inter-alia, that in the absence of any provision of law or any Rule conferring on the State Government, the power to pass an order of dismissal, certain things cannot be done which according to the learned counsel, is not the situation in the present case. He has also tried to show that in the present case under Rule 22(2) of the Rules, the power is vested in the appellate authority to enhance the penalty imposed on the applicant after following the procedure laid down therein. He has submitted that if, as contended by the learned senior counsel for the applicant, the appellate authority is divested of the powers of enhancement of the penalty imposed by the disciplinary authority, then the Rules would be rendered meaningless, which cannot be the intention of the framers of the statutory Rules which must be followed. He has submitted that the applicant could file appeal against

any order imposing any of the penalties specified in Rule 6, including orders made by the disciplinary authority. He has emphasised that under Rule 22 (2) of the Rules, in case an appeal has been filed against an order imposing any of the penalties specified in Rule 6, which includes reduction to a lower scale of pay for a period not exceeding three years without cumulative effect, the appellate authority has the power to enhance the penalty after following the laid down procedure. The appellate authority can also confirm, reduce or set aside the penalty or remit the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. Learned counsel has, therefore, submitted that the powers of the appellate authority are wide and no such compartmentalisation of the charges and penalty imposed by the disciplinary authority on a particular charge can limit the powers of the appellate authority. The appellate authority can exercise such powers as are conferred on him under Rule 22 (2) (c) of the Rules. He has submitted that in the facts and circumstances of the case, the appellate authority has correctly exercised his power of enhancement of the penalty after following due procedure, like giving show cause notice to the applicant and taking into account his reply and, therefore, there is no infirmity in the appellate authority's order.

9. Learned counsel for the respondents has submitted that the advice of the UPSC was in favour of the applicant and the applicant had been given ample opportunity to submit his replies to the show cause

notice. No prejudice has been caused to him and there is no infirmity on this account also. He has submitted that, as provided under Rule 28 of the Rules the advice of the UPSC has been furnished to the applicant along with the copy of the order passed in the case by the appellate authority. He has, therefore, contended that there is no infirmity on this ground also, as the UPSC's advice was in any case in favour of the applicant with which the competent authority has not agreed. He has submitted that the appellate authority has passed a detailed and speaking order when enhancing the penalty imposed by the disciplinary authority on the applicant to one of removal from service. He has submitted that in the impugned order the reasons for the conclusions arrived at by the appellate authority have been given as to why the punishment should be enhanced. He has submitted that the conclusions are based on sound reasoning and the reasons for not accepting the advice of UPSC have also been given in the appellate authority's order. He has, therefore, submitted that on all accounts the appellate authority's order is legal and valid and he has prayed that the amended O.A. should be dismissed as devoid of merits.

10. We have also heard learned senior counsel in reply who has emphasised that the appellate authority could not enlarge the scope of the appeal as Rule 22 does not confer any such powers on him.

11. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

12. Rule 22 (2) of the Rules reads as follows:

"22. Consideration of appeal.

(1) x x x x x x x

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case".

The provisos to the Rules provide consultation with the UPSC and the procedure to be followed in case of enhancement of the penalty by the appellate authority. Proviso (v) provides that no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

13. The applicant had admittedly filed an appeal dated 22.2.2000 against the order of the disciplinary authority dated 13.1.2000, imposing on him the minor penalty of reduction by one stage in the same pay scale for a period of six months without cumulative effect on

part of Charge IV which was held proved. No doubt as emphasised by the learned senior counsel for the applicant, the disciplinary authority has dealt with the four articles of charges issued to the applicant vide Memo dated 16.12.1996 and he had come to the conclusion that only part of Charge IV had been proved. This article of charge was that when his advances towards his lady PS, Smt. Kuljit Kaur, were spurned by her, he initiated Departmental proceedings against her on frivolous grounds with ulterior motive of making her more pliable so that she gives in to him. Under Rule 18 of the Rules, the Railway Servant can prefer an appeal against an order imposing any of the penalties specified in Rule 6, including an order made by the disciplinary authority. Having regard to the provisions of Rule 22 (2) of the Rules quoted in Paragraph 12 above, in case an appeal against an order imposing any of the penalties specified in Rule 6 has been preferred to the appellate authority, that authority has to consider whether the procedure laid down in the Rules has been complied with, whether the findings of the disciplinary authority are warranted by the evidence on record and whether the penalty should be enhanced or is adequate and pass such orders as he may deem fit. In the facts and circumstances of the case, we, therefore, find no merit in the submissions made by the learned senior counsel for the applicant that the appellate authority acting under Rule 22 (2) of the Rules should confine himself only to that part of the submissions made by the appellant in his appeal and nothing more. In the facts and circumstances of the case, we find merit in the submissions made by the learned counsel for the respondents that the powers of

the appellate authority under Rule 22 of the Rules cannot be limited or compartmentalised to the particular charge on which the disciplinary authority had given the punishment and nothing else. The appellate authority is to consider the appeal submitted by the appellant against the order imposing on him the penalties as specified in Rule 6, which includes consideration whether the Rules have been complied with and whether the findings of the disciplinary authority are warranted by the evidence on record. He has the power to confirm, enhance or set aside the penalty or remit the case to the authority which imposed the penalty as deemed fit in the circumstances of the case.

14. The judgment of the Hon'ble Supreme Court in **M.N.Srivastava's** case has been relied upon by both the parties. The Supreme Court was dealing with the provisions of the Bihar and Orissa Manual, 1930, Rules 851 (b), 853-A. In that case, it was held that in the absence of any other provision of law or any rule conferring on the State Government the power to pass an order of dismissal in exercise of its revisional power under Rule 853 or power of general superintendence under Section 3 of the Police Act, the general principle must prevail, namely, that an appellate authority in an appeal by an aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. It was held that the Government cannot impose on such an appellant a higher penalty and condemn him to a position worse than the one he would be in, if he had not hazarded to file an appeal. This latter portion of the judgement of the Hon'ble Supreme Court has been relied

upon by the learned senior counsel for the applicant that as the applicant had not filed appeal against the findings of the disciplinary authority of three plus charges which were not held proved against him, there was no question of enhancing the penalty imposed by the disciplinary authority. In Para 9 of the judgment, the Supreme Court held as follows:

> "Under this rule an appeal would lie before the Government against the order of the Inspector-General reverting the appellant to his substantive post of Sub-Inspector for one year. Such an appeal was in fact filed by the appellant. But no appeal was filed by the department against the order of the Inspector-General exonerating the appellant of the charges of misappropriation and connivance of misappropriation by the two constables. Under Rule 851 (b), therefore, the only question before the Government was whether the order of reversion should be sustained or not. There was no other matter by way of an appeal before the Government by the department or by any one else being aggrieved against the order of the Inspector-General by which he held that the charges against the appellant had not been established. That being so, the Government could pass in exercise of its appellate power under Rule 851(b) such an order as it thought fit in the appeal filed by the appellant, i.e. either upholding the order of reversion or setting it aside. In the absence of any other appeal, the Government could not sit in judgement over the findings of the Inspector-General given by him under the power conferred upon him by Section 7 of the Act. An appeal before the Government having been provided for under Rule 851(b), presumably both by the delinquent Police officer, as also by the department, if aggrieved by an order passed by the Inspector General, there would also be no question of the Government exercising its general power of superintendence under Section 3 of the Act. The exercise of such a power is ordinarily possible when there is no provision for an appeal unless there are other provisions proving for it. The order of dismissal passed by the Government in the appeal filed by the appellant, therefore, was not sustainable".
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> (emphasis added)

15. In the present case, we find force in the submissions made by the learned counsel for the respondents that the factual situation in the aforesaid case dealt with by the Hon'ble Apex Court does not apply

here. Under Rule 22 of the Rules, when an appeal has been filed by the appellant against all or any of the orders specified in Rule 18, the appellate authority has been given powers to confirm, enhance, reduce or set aside the penalty orders after following the required procedure provided in the Rules. In the judgment of the Hon'ble Supreme Court in **M.N. Srivastava's** case, it is mentioned that in the absence of any other provisions of law or any rule conferring such powers on the State Government, the general principle of dealing with an appeal has to be applied. Therefore, having regard to the specific Rules in the present case, it cannot be held that the appellate authority has only limited powers to deal with only part of Charge IV which was held proved by the disciplinary authority, against which the applicant had filed an appeal and nothing more. In this connection, the Tribunal's order dated 13.3.2002 in MA 275/2002 refers. The applicant has given the reply to the show cause notice issued by the appellate authority and also given a supplementary reply and the appellate authority has passed a speaking order on his appeal. Therefore, the judgement of the Hon'ble Supreme Court in **M.N. Srivastava's** case (supra) will not be applicable to the present case as he has also been afforded full opportunity to submit his reply.

16. The UPSC in its advice dated 11.7.2002 had held the view that under Rule 22 (2) of the Rules, it does not seem logical that while considering the appeal of the charged officer, the appellate authority should enhance the penalty by considering other charges held not proved by the disciplinary authority for which no appeal has been filed. They have referred to the

aforementioned judgment of the Hon'ble Supreme Court in **M.N. Srivastava's** case (supra). They have, however, referred to the provisions of Rules 25 and 25A of the Rules dealing with Revision and Review, that is the power of the President on his own motion to consider and revise any order made under the Rules. They have observed that no proceedings for revision can be commenced till the appeal is disposed of. They have come to the conclusion that the appellate authority cannot enlarge the scope of the appeal at appellate stage. The learned senior counsel for the applicant has submitted that in the present O.A., he has only raised the illegality of the orders so far as the exercise of powers under Rule 22 of the Rules is considered and has not as such, dealt with the question of other materials and evidence to prove the other charges which were earlier held not proved by the disciplinary authority. The copy of the UPSC's advice had been given to the applicant along with the impugned order dated 26.12.2002. The applicant had relied upon the orders of the Tribunal in **S.K. Pandey's** case (supra). In the present case, the applicant had been issued Memorandum/show cause notice dated 6.1.1994 giving him an opportunity to explain why the penalty already imposed on him should not be enhanced to removal from service. He has submitted the reply dated 3.1.2002 and supplementary reply dated 23.3.2002 to the show cause notice, in terms of the liberty granted by Tribunal's aforesaid order dated 14.3.2002. In the impugned order passed by the appellate authority/President, he had submitted that the appeal as well as the replies given by the applicant had been considered in consultation with the UPSC. The reasons for disagreement with the

Commission's advice dated 11.7.2002 had also been given in the appellate authority's order. Some of these reasons are worth mentioning, namely, (1) that the power of the appellate authority under the Rules is of wide amplitude and does not envisage any charge-wise compartmentalisation of the Departmental proceedings. We have already observed above that this reasoning cannot be held to be invalid. The reason given by the appellate authority on the merits of the case reads as follows:

> "I am of the view that charges of sexual harassment not only constitute misconduct of the gravest kind but they, in fact, have the potential of polluting the entire atmosphere of the work-place and creating a feeling of insecurity among the working womenfolk ultimately leading to less than desired over all output of the organization. Perpetrators of sexual harassment have thus to be handled very sternly. Quite obviously, the drawback of such cases is lack of direct evidence and there is no option but to place reliance on the indirect circumstantial evidences. In doing so, however, there is undeniably an apprehension of truth tending to become elusive and a misjudgement of the slightest kind could lead to injustice to either parties.
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> Appreciating the case in this view of the matter, I am inclined to take a view that the partially proved 4th charge cannot be taken as arising merely out of lack of sensitivity and managerial and leadership qualities on the part of the appellant as has been viewed by the Disciplinary Authority. A conclusion is irresistible that the action as stern and severe as the appellant placing his lady Secretary under suspension and initiating major penalty Disciplinary proceedings against her emanated from a background that had something more than meets the eye. Considering also the principle of preponderance of probability to be held as valid in departmental proceedings, it is quite reasonable to conclude that once the Article-iV of the charge is held as substantially proved, it is quite probable that the Appellant was also responsible for other misconduct including sexual harassment etc. as per the charge memo. In fact, action of the appellant to initiate major penalty proceedings against his lady Secretary on frivolous grounds is a glaring example of how an adverse consequence may visit on the victim, if the latter did not consent to the misconduct of the appellant in question or raises any objection thereto. It is, therefore, not unreasonable to conclude that overall context of the case does clearly suggest of incriminating background which propelled the appellant to resort

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to revengeful action by taking recourse to major penalty proceedings against his lady Secretary on another trivial and frivolous misconduct. This particular aspect assumes vital significance because the appellant, being Chief Personnel Officer must have been fully aware of the type of misconduct for which major penalty proceedings are to be taken. Besides the action of the appellant has essentially to be assessed in the light of the fact that in his capacity as the then Chief Personnel Officer of Northern Railway he was the custodian of the Human Resource Management of the entire Northern Railway and in that capacity he was supposed to guide others on Rules and Procedures and management skills towards betterment of the Organisation and towards creation of appropriate conditions for womenfolk in office. An important duty was thus cast on him to exhibit exemplary conduct inn such matters. In fact, in his capacity as the Chief Personnel Officer, the Appellate was expected to take, and guide others to take steps to prevent and deter the commission of acts of sexual harassment. Given such capacity and position of the appellant, action initiated by him against his own lady Secretary makes the guilt more serious".

17. The above reasons cannot be held to be either arbitrary or unreasonable, for the appellate authority to arrive at the conclusion that this is a fit case to meet out exemplary punishment for the grave misconduct of the applicant, by removing him from service. In such cases of sexual harassment of subordinate lady employees in offices, judgements of the Hon'ble Supreme Court in **Vishaka and Ors. Vs. State of Rajasthann and Ors.** (AIR 1997 SC 3011) and **Apparel Export Promotion Council v. A.K. Chopra** (1999 (1) SC SLJ 251) are fully applicable which support the reasoning and action taken by the respondents in the present case. The Hon'ble Supreme Court in **Vishaka's** case (supra) has held that sexual harassment of a working woman amounts to violation of rights of gender equality and right to life and liberty and the Constitution of India guarantees right to work with human dignity, particularly of working women at work places. In the circumstances of the case, we are unable to agree with the contentions of the learned senior counsel for applicant that the order

passed by the appellate authority/President is beyond the scope of Rule 22 of the Rules or is without jurisdiction.

18. In this connection, no doubt the appellate authority had passed the order removing the applicant from service after considerable delay having regard to the Tribunal's order dated 13.3.2002 in MA 275/2002 and order dated 4.10.2002 in MA 1669/2002. However, having regard to the above discussion on the powers vested with the appellate authority by the statutory Rules, it cannot be held that the order itself has been passed without jurisdiction although we do deprecate the delayed action on the part of the respondents in passing the order removing the applicant from service. In the present case, it is also relevant to note that the disciplinary authority has already passed the penalty order on 13.1.2000 against which the applicant had filed the appeal and what is in question here is the power and scope of the appellate authority under Rule 22 of the Rules and not that of the disciplinary authority.

19. In the peculiar facts and circumstances of the case, in exercise of the powers of judicial review we do not find that this is a fit case to set aside the appellate authority's order dated 26.12.2002. We say so having regard to the nature of the charges, the fact that the applicant has had ample opportunities to put forward his case before the competent authority where no prejudice has been caused to him (See **Managing Director, ECIL** Vs. **B.Karunakar and Ors** (1993 SCC (L&S) 1184); **State Bank of Patiala and Ors.** Vs. **S.K.Sharma** (JT 1996(3)SC 722) and **State of UP** Vs. **Harendra Arora and**

Anrs. (2001 (2) SCSLJ 29) and also the aforesaid judgments of the Hon'ble Supreme Court in **Vishaka** and **A.K. Chopra**'s cases (supra).

20. The validity of the disciplinary authority's order was not at all seriously questioned during the hearing and only the power of the appellate authority to pass the impugned order under Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968 was challenged. Besides, there is no question of setting aside the order dated 13.1.2000 which has merged with the order dated 26.12.2002.. Similarly, taking into account the previous order of the Tribunal dated 13.3.2002, the prayer to quash the show cause notice dated 19.12.2001 is also rejected. We have also considered the other submissions of the learned senior counsel for applicant but do not find any justification to set aside the impugned order passed by the appellate authority.

21. In the result, for the reasons given above, as we find no merit in the O.A., the same is accordingly dismissed. No order as to costs.

(R.K. Upadhyaya)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

`SRD'