**CENTRAL ADMINISTRATIVE TRIBUNAL**
**HYDERABAD BENCH**

**OA/021/1487/2014**

HYDERABAD, this the 6th day of January, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member**
**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Mohd. Shrafi, S/o. A.Q. Shrafi,
aged about 48 years,
Occ: Senior Ticket Examiner/Sleeper/ Akola,
(under orders of Compulsory Retirement)
O/o. CTI/SL/AK, Nanded Division,
South Central Railway, Akola and
R/o. Chilkalguda, Secunderabad.

...Applicant

(By Advocate : Ms. Hemlata Nageshwar Pitlewar for Sri J. Sudheer)

Vs.

1. The Union of India rep. by
The General Manager,
South Central Railway, Rail Nilayam,
III floor, Secunderabad – 500 071.

2. The Additional Divisional Railway Manager,
South Central Railway,
Nanded Division, Nanded.

3. The Senior Divisional Commercial Manager,
South Central Railway,
Nanded Division, Nanded.

4. Sri N. Subba Rayudu,
Room No.324/C, Rail Nilayam,
III floor, South Central Railway,
Secunderabad.

....Respondents

(By Advocate: Sri B. Pavan Kumar for Sri D. Madhava Reddy,
SC for Rlys. )

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**ORAL ORDER**
**(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)**

***Through Video Conferencing:***

2. The OA is filed challenging the modification of the penalty from removal to compulsory retirement and treating the intervening period between removal and compulsory retirement as dies-non.

3. Brief facts of the case are that the applicant while working as Sr Ticket Examiner was subjected to vigilance check on 29/30.9.2009 in Train No. 2797. Consequently applicant was suspended on 1.10.2009 and it was revoked on 2.12.2009 after issue of a charge memo with the same date. Inquiry was conducted and the penalty of removal was imposed on 5.3.2013 by the Disciplinary Authority which on appeal modified to Compulsory retirement by the Appellate Authority. The intervening period between removal and compulsory retirement was treated as dies-non. Aggrieved, OA is filed.

4. The contentions of the applicant are that the I.O is from the vigilance wing and was appointed before the written defence was submitted denying the charges, which is against the order of this tribunal in OA 318/2009 and in WP no 15962/2001. Appeal was disposed after a year of its submission. Applicant was appointed as Ticket Collector by Chief Personnel Officer (CPO) and hence he is the appointing authority whereas the Disciplinary authority (DA) who imposed the penalty is from the JAG grade and is subordinate to the CPO. When the initial order of the DA is illegal then the subsequent order of the Appellate Authority would not be legal. Inquiry

was conducted in an arbitrary manner and no Presenting Officer was appointed despite making a request. Inquiry officer made a searching examination of the defence witnesses by playing the dual role of Inquiry Officer and Presenting Officer, which is not permitted as was observed by this Tribunal in OA 938 of 2009 on 9.10.2012. Independent witness participated in another case which is violative of para 307.4 (iv) of IRVM. Therefore the inquiry is vitiated and hence subsequent penalties imposed are invalid as per the Hon'ble Kerala High Court Judgment in Ananthankrishnan V Oriental Fire & General Insurance Co. Ltd in 1988 II LLJ 526. Penalty imposed is shocking in view of the charge of excess cash under article 2, as held by Hon'ble Apex Court in SLP NO 14461/2014 in CA 10530 of 2014 dated 24.11.2014 in the context of a case relating to excess cash. Charge of demand and acceptance of bribe has not been proved. Applicant has produced documents to establish that berth Nos.41 & 42 of S-7 coach was occupied by DW -1.

5. Respondents state that based on the information, about the applicant having the habit of collecting extra amounts from passengers and allowing passengers to travel in sleeper class unauthorizedly, was subjected to a vigilance check while he was on duty manning S-7 to S-9 Coaches in Train no 2797 on 29/30.09.2009. Decoy passenger was given a sum of Rs.600 after recording the currency note numbers. The decoy passenger and the independent witness, when they approached the applicant for allotment of births, they were allotted births 41 & 42 in S/7 coach, after accepting an amount of Rs.150 towards difference of fare without granting the receipt. The decoy passenger gave the pre-recorded Govt. currency notes to the

applicant. Vigilance check proceedings were conducted in the presence of the TEs Sri M.K. Uday Bhaskar and Sri P. Kiran Kumar of the other coaches, which revealed that the applicant had excess Govt. Cash to the extent of Rs 490 which included the Rs 150 pre- recorded currency notes given by the decoy passenger. Inquiry was conducted and the report was submitted on 23.5.2012 which was given to the applicant and based on the written reply plus the submissions made by the applicant along with the defence counsel in the personal hearing granted by the Disciplinary Authority, penalty of removal was imposed on 5.3.2013. On appeal, it was modified to that of compulsory retirement. Inquiry officer has held the charges as proved and rules were followed at every stage of the disciplinary case. The penalty imposed is appropriate.

6. Heard both the counsel and perused the pleadings on record.

7. I. The preliminary objection of the applicant is that before he could submit the explanation for the charges framed, Inquiry officer was appointed. Charge Memo dt. 18.11.2009 was issued with the following Articles of Charge:

> *"Article I:*
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> *That the said Md. Sharfi, Sr. TE/KCG while working as such by Train No. 2797 Express manning S/7 to S/9 coaches on 29/30.09.2009, had demanded and collected Rs.150/- (Rs. One Hundred Fifty only) from Sri M. Chandran, decoy passenger towards difference in fares for allotment of berths in his manned sleeper class and did not grant receipt for the amount so collected and gained pecuniary benefit for himself as detailed in statement of imputations.*
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> *Thus, Sri Md. Sharfi, Sr. TE/KCG has violated the instructions contained in Para 2430 of IRCM Vol. II and failed to maintain absolute integrity, devotion to duty, and acted in a manner unbecoming of a Railway servant violating Rule 3(i), (ii) and (iii) and Rule 26 of the Railway Services (Conduct) Rules, 1966.*

*Article II:*

*That the said Md. Sharfi, Sr. TE/KCG while working as such and manning S7/ to S/9 coaches (Sleeper coaches) by Train No. 2797 Express on 29/30.09.2009 was found to have Rs.490/- (Rs. Four Hundred Ninety only) excess in his Government cash as detailed in the statement of imputations.*

*Thus, Sri Md. Sharfi, Sr. TE/KCG has violated the instructions contained in Para 101 of IRCM Vol. I and failed to maintain absolute integrity, devotion to duty, violating Rule 3(ii) and Rule 26 of the Railway Services (Conduct) Rules, 1966."*

We have examined the same and found that the applicant acknowledged receipt of charge memo on 02.12.2009 and did not submit the explanation within 10 days time as directed. Rule 7 of the RS (D&A) Rules, extracted hereunder, stipulates that the charged employee has to submit the written defence within 10 days or such further time as allowed by the disciplinary authority.

*"(7) The disciplinary authority shall deliver or cause to be delivered to the Railway servant a copy of Articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Railway servant to submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow.*

***Note:-** If copies of documents have not been delivered to the Railway servant along with the articles of charge and if he desires to inspect the same for the preparation of his defence, he may do so, within 10 days from the date of receipt of the articles of charge by him and complete inspection within ten days thereafter and shall state whether he desires to be heard in person."*

Further, Rule 9 (b) of the RS (D&A) Rules, reproduced hereunder, makes it clear that if no written statement is submitted, the disciplinary authority can appoint the Inquiry officer.

*"(b) If no written statement of defence is submitted by the Railway servant, the disciplinary authority may itself inquire into the articles*

*of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose and also inform the Railway servant of such appointment."*

After waiting for 17 days for the reply of the applicant, respondents appointed the Inquiry officer on 18.12.2009. The action of the Disciplinary authority was as per rules. The applicant in case, if he was not in a position to submit his reply in time, at least he could have sought for additional time claiming that he was on sick , which he did not, since there is no document to this extent appended to the OA. Thus from the above it is evident that the appointment of the Inquiry officer was in accordance with the rules and Hon'ble Supreme has emphasized the need to follow the rules in a series of judgments as under:

*The Hon'ble Supreme Court observation in* ***T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544*** *held that "Action in respect of matters covered by rules should be regulated by rules". Again in* ***Seighal's case (1992) (1) supp 1 SCC 304*** *the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules*

Therefore in view of the above observation of the Hon'ble Supreme Court, the verdicts cited by the applicant in support of his contention that the I.O was appointed before the written reply was submitted to the charge memo, would not render any assistance.

II. In regard to appointment of a Presenting officer, Rule 9 (c) of the RS (D&A) Rules, replicated hereunder, requires that the Disciplinary authority may appoint a Presenting officer. The rule uses the word 'may' and therefore, it is not mandatory to appoint the Presenting Officer.

*"(c) Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order*

> *in writing, appoint a railway or any other Government servant to be known as Presenting Officer to present on its behalf the case in support of the articles of charge."*

In addition, Hon'ble Supreme Court has held in **Union of India vs Ram Lakhan Sharma on 2 July, 2018 in Civil Appeal No. 2608 of 2012**, that there is no legal compulsion to appoint a Presenting Officer.

> *28. Justice M. Rama Jois of the Karnataka High Court had occasion to consider the above aspect in Bharath Electronics Ltd. vs. K. Kasi, ILR 1987 Karnataka 366. In the above case the order of domestic inquiry was challenged before the Labour and Industrial Tribunal. The grounds taken were, that inquiry is vitiated since Presenting Officer was not appointed and further Inquiry Officer played the role of prosecutor. This Court held that there is no legal compulsion that Presenting Officer should be appointed but if the Inquiry Officer plays the role of Presenting Officer, the inquiry would be invalid. Following was held in paragraphs 8 and 9:*
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> > *"8. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry See : Gopalakrishna Reddy v. State of Karnataka (ILR 1980 Kar 575).*

Therefore, as per the above verdict, appointment of a Presenting Officer is not compulsory. The IO has conducted the proceedings as per rules and allowed the applicant to defend himself in the manner as prescribed in the conduct of inquiry. Hence, it cannot be said that the applicant enacted the dual role of Presenting Officer and that of an Inquiry officer.

III. It is also observed that the applicant participated in the inquiry with the assistance of a defence assistant and did cross examine the witnesses. The applicant did introduce defence witness and documents to support his version. A reading of the IO report makes it clear that the Inquiry Officer has given ample opportunities to the applicant to

present his case effectively. I.O went by the rule book and questions were asked by the I.O to get to the truth. Branding them as searching questions is unfair and they appear to be searching from the perception of the applicant and not from the view point of rules/law. The Inquiry officer has held the 1st charge as partially proved and the second one as proved based on evidence. The applicant has made averments seeking re-appreciation of evidence which is not permitted as per legal principle laid down by the Hon'ble Supreme Court of India in **The State of Bihar vs Phulpari Kumari on 6 December, 2019 Civil Appeal No. 8782 of 2019** (Arising out of SLP (C) No.21197 of 2019), as under:

> *6. The criminal trial against the Respondent is still pending consideration by a competent criminal Court. The order of dismissal from service of the Respondent was pursuant to a departmental inquiry held against her. The Inquiry Officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the Respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in re-appreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the Respondent.*
>
> *It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer.*

The case of the applicant is not of no evidence. The very fact that the marked currency notes parted by the decoy passenger and accepted by the applicant is ample evidence which substantiates the charge. Further Hon'ble High Court of Madras has dealt with Judicial review as recently as on 3rd Jan 2020 relying on the judgments of the Hon'ble Apex Court, as

under, in **S. Seetharaman v/s The Government of Tamil Nadu,** in W.P.No. 16191 of 2019:

*21. xxxxxx In this regard, it is worthwhile to refer the following decision of the **Supreme Court reported in AIR 1997 SC 2286 (High Court of Judicature at Bombay through its Registrar Vs. Udaysingh and others**) regarding the scope of the Judicial Review:*

> *"10. .. .. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal when the conclusion reached by the authority is based on evidence .. .... The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. ..."*

> *"13. Under the circumstances, the question arises: whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is: what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference."*

*22. In this regard, more so, with regard to the Judicial Review, it is also fruitful to refer a decision of this Court reported in 2018 (7) MLJ 138 (K.Ganesan Vs. Government of Tamil Nadu), as relied on by the learned Senior Counsel appearing for the second respondent-High Court, wherein, a Division Bench of this Court held as under:*
*"Purview of Judicial Review:*

*41. Ordinarily, a 'Judicial Review' is competent when the punishment imposed was an irrational one and in defiance of logic. For the proved charges, the imposition of penalty must be commensurate with the gravity of misconduct. Although a choice and quantum of punishment are within the domain and jurisdiction of concerned authorities, yet, it must suit the offence.*

*42. In the decision of the Hon'ble Supreme Court in Union of India and others Vs. P.Chandra Mouli and others, (2003) 10 SCC 196, it is held that 'the power of punishment was within employer's discretion and the Court would not ordinarily interfere where there was no infirmity with the procedure'.*

*43. Furthermore, if there is some evidence within the Court or Tribunal in exercise of Judicial Review cannot sit as a Court of Appeal and interfere with the punishment by reassessing the evidence on its own as per decision in High Court of Judicature at Bombay Vs. Udaysingh reported in MANU/SC/0575/1997 : AIR 1997 SC 2286 : 1997 (5) SCC 129. No wonder, the 'proportionality' is a facet of principle of reasonableness.*

*44. The ambit of 'Judicial Review' is limited and the well settled legal principle is that the 'Judicial Review' is not directed against the decision. But it is directed against a 'Decision Making Process'.*

*45. Furthermore, in the decision of the Hon'ble Supreme Court in B.C.Chaturvedi Vs. Union of India, MANU/SC/0118/1996 : AIR 1996 SC 484 : 1995 (6) SCC 749, it is held that 'a Judicial Review is not an Appeal from a decision but a review of the manner in which the decision is made. The Power of Judicial Review is exercised to ensure that a person receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correctly, in the eye of the Court'.*

*46. In the decision of the Hon'ble Supreme Court in Karnataka Bank Limited Vs. A.L.Mohan Rao, 2006 SCC (L & S) 59 : 2006 (1) SCC 63 : 2006 (I) LLJ 987 [Three Judges Bench], it is observed and held as under:*

> *'Deal with the ambit of sympathy as a factor of 'Judicial Review'. In this case, a Bank Employee was charged with gross misconduct of colluding with a Branch Manager in regard to the grant of a fictitious loan. He admitted his guilt and he was dismissed from service. Before the Labour Court, the employee was successful. However, the Hon'ble High Court allowed the writ petition based on sympathy and ordered for his reinstatement. The Hon'ble Supreme Court held that the gross misconduct of this type does merit dismissal. Further, the Hon'ble Supreme Court opined that as*

> *long as the inquiry was 'Fair', 'Proper' and 'Misconduct' proved, then, 'it is not for the Courts to interfere with the decision of Disciplinary Authority in cases of gross misconduct of this type, on any mistaken notion of sympathy. In such matters, it is for the Disciplinary Authority to decide what is the fit punishment."*

> *23. Thus, it is evident from the above decisions that this Court has no power to interfere with the decision taken by the respondents in a departmental enquiry and to substitute its own conclusion. In such cases, the Judicial Review is only meant to ensure that the delinquent receives fair treatment in the departmental enquiry conducted against him and that the conclusion which the authority reached is based on semblance of evidence. In the present case, there are evidences made available against the petitioner based on which we cannot interfere with such a conclusion arrived at by the respondents."*

The Tribunal cannot question the decision of the respondents in imposing the penalty, but can go into the decision making process of arriving at the said decision. The decision was based on the inquiry, which was held as per procedure and hence, there is no deviance in the decision making process for the Tribunal to interfere. The other legal principles laid above in different judgments by the higher judicial fora squarely apply to the case of the applicant and hence, the averment made by the applicant questioning the findings of the Inquiry officer would not hold good.

IV. The other objection raised by the applicant is that the Inquiry Officer is from the vigilance wing and therefore, would be interested to prove the case. Applicant has not produced any rule, which prohibits appointment of the inquiry officer from the vigilance wing. On the contrary, officers from the vigilance wing are well trained in matters of inquiry and therefore, would be able to handle the job as is required. The Railway Board vide letter dated 16.5.2001, reproduced hereunder, has instructed that in vigilance cases, the vigilance wing will send a panel of Inquiry officers

to the disciplinary authority for selecting one of them as inquiry officer. Respondents followed the said instruction.

> *"(ii) However, in some cases, the Vigilance would forward a panel of Inquiry Officers, indicating the number of inquiries pending with each one of them. The Disciplinary Authority in that case may choose one out of panel and appoint him as Inquiry Officer. In cases involving more than one charged official, special care may be taken by all the concerned DAs to appoint the same inquiry officer out of the panel of IOs sent by Vigilance."*

V. The disciplinary authority after duly considering the request of the applicant to change the I.O has declined to do so. Respondents state that the applicant, despite being advised to cooperate in expediting the inquiry, did not comply. Appointment of the IO is the prerogative of the disciplinary authority. The applicant did not submit anything substantial to prove that the Inquiry officer was biased and that his findings were arbitrary. In fact, the Inquiry report submitted, which, we have gone through, indicates that the I.O has acted as an independent adjudicator.

VI. Further, the Government currency notes to the extent of Rs.150 whose numbers were pre-recorded and given to the decoy passenger for securing births in S-7 coach were found in possession of the applicant. The marked currency notes would not have been in possession of the applicant unless they were given by the decoy passenger. This is the crucial evidence which goes to prove that the applicant was indeed not above board. In a case of this nature, where there is clinching evidence against the charged employee, as pointed out above, even if there are minor deviations, as claimed by the applicant, they need to be ignored to hold the charged employee guilty of the charges, as held by the Hon'ble Supreme Court of India in **Vinod Kumar Garg vs. State (Govt. of National**

**Capital Territory of Delhi) on 27 November, 2019 Crl. Appeal No. 1781 of 2009**

> *11. xxx The contradictions as pointed out to us and noted are insignificant when juxtaposed with the vivid and eloquent narration of incriminating facts proved and established beyond doubt and debate. It would be sound to be cognitive of the time gap between the date of occurrence, 3 rd August 1994, and the dates when the testimony of Nand Lal (PW-2) was recorded, 9th July 1999 and 14th September 1999, and that Hemant Kumar's (PW-3) testimony was recorded on 18th December 2000 and 30th January 2001. Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt. Documents prepared contemporaneously noticed above affirm the primary and ocular evidence. We, therefore, find no good ground and reason to upset and set aside the findings recorded by the trial court that have been upheld by the High Court. Relevant in this context would be to refer to the judgment of this Court in State of U.P. v. Dr. G.K. Ghosh1- ( 1984) 1 SCC 254- wherein it was held that in a case involving an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, it may be safe to accept the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and inconsistent with his innocence, there should be no difficulty in upholding the conviction.*

In the light of the above judgment, the objection raised by the applicant about the witnesses stating that they are stock witnesses hold no water. The documents prepared by the vigilance team after the trap in the presence of TEs of the other coaches affirm the fact that the marked currency notes of value of Rs.150/- were given by the decoy passenger to the applicant for allotting the berths. The charge against the applicant is not just possession of excess cash, but being in possession of the marked currency notes which is grave misconduct. Therefore, the Hon'ble Supreme Court judgment cited supra by the applicant relating to excess cash would not be of any assistance, since in the instant case, excess cash is not the only charge.

VII. The averment about delay in disposal of the appeal by the Appellate Authority would in no way help to prove that the applicant was innocent. The charges are serious involving grave misconduct and therefore the penalty is neither disproportionate nor shocking. It is not the amount involved but the misconduct of the applicant in accepting Rs.150 against rules, which needs to be viewed seriously as observed by the Hon'ble Suprme Court in ***U.P State Road Transport Corporation V. Basudeo Choudhary and anr ( 1997) 11 SCC 370***, as under:

> *"In Basudeo Chaudhary (supra), the Honourable Apex Court has concluded that misappropriation committed by a bus conductor for an amount of Rs. 5.35 and a total loss of Rs. 65/- would not be a decisive factor. The conduct of committing misappropriation is sufficient to warrant the punishment of dismissal from service. Similarly, the view taken by the Honourable Apex Court in the matter of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [2000 AIR SCW 3439 = AIR 2000 SC 3129 = (2000) 7 SCC 517], and by the learned Division Bench of Bombay High Court in the matter of P.R. Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], is that the act of misappropriation, even of a small amount, would not render the punishment of dismissal, disproportionate.*

Similar view was held in 2015 in ***Diwan Singh v Life Insurance Corporation of India & Ors*** by the Hon'ble Supreme Court.

In fact, in a way, the Appellate Authority has been liberal in modifying the penalty to that of compulsory retirement, which enables the applicant to receive pension.

VIII. Further, respondents have asserted that the appointing authority for the applicant is the Sr. Divisional Personnel Officer, who is of the JAG grade and not the Chief Personnel Officer. The schedule of powers circulated in 2003 confirm the same. The Senior Divisional Commercial Manager, who is from the JAG grade, has imposed the penalty of removal,

which is in accordance with Rule 6 (vii), (viii) & (ix) of RS (D&A) Rules. The relevant portion of Rule 6 is extracted is hereunder:

*"**6. Penalties***

*(vii) Compulsory retirement;*

*(viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;*

*(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration.*

*Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of Railway trains, one of the penalties specified in Clauses (v) to (ix) shall, ordinarily, be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing.*

*Provided further that in cases of persons found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive reward for doing or forbearing to do any official act, one of the penalties specified in Clauses (viii) or (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons thereof shall be recorded in writing. "*

The applicant has enclosed the service book entry indicating that the applicant was appointed vide CPO Memo at page 126 of the OA. The important aspect that is to be considered is that even if the appointment was issued by a senior officer in senior grade at the time of appointment, but for the cadre in question if the designated appointing authority as per schedule of powers is from a lower grade at the time of appointment, then the lower authority can be construed as the appointing authority for taking disciplinary action. We are supported by the observations of the full bench of the Hon'ble Bihar High Court in **State of Bihar and ors v Manoj Madhup and anr in Letters Patent Appeal No. 833 of 2014 in Civil Writ Jurisdiction Case No 11307 of 2011** decided on 29.1.2020 as under, in making the above observations.

*4. The same has been challenged in the present appeal and this Court in the Division Bench, taking note of Rule 653, 656 and 825 of the Bihar Police*

*Manual, 1978 and placing reliance on the judgment of Honble Supreme Court in the case of FCI Vs. Sole Lal reported in AIR (2006) SC 264, doubted the correctness of the order of the learned Single Judge and has referred the matter to the Larger Bench for consideration on following questions of law:-*

> *'(i) Whether, if the appointing authority in terms of the Rule is Deputy Inspector General of Police but the letter of appointment is issued by the office of the Inspector General of Police, then whether the order passed by the Deputy Inspector General of Police can be said to be valid?*
>
> *(ii) Whether the expression appointing authority and the authority which appointed a candidate have different connotation in law, therefore, the Deputy Inspector General of Police cannot pass an order of punishment?*
>
> *xxxxx*

*9. The seminal question involved for consideration in the present case is as to whether the Deputy Inspector General of police, who was the appointing authority but, the appointment was made by the Inspector General of Police, could have passed the order of dismissal against the petitioner.*

*10. In nutshell, the issue is as to whether in case the authority who has appointed is higher in rank than the appointing authority who could have appointed the petitioner, the appointing authority i.e. the Deputy Inspector General of Police, in the present case, in exercise of his power, could dismiss the respondent no.1 from his services and as to whether the same would be in- consonance with Article 311 of the Constitution of India r/w Clause 825 of the Bihar Police Manual, as in both the provisions, it exposits that no civil servant will be dismissed or removed by an authority subordinate to the one which has appointed. Reliance has been placed on the provision of Rule 2(f)(iii) which defines the appointing authority as it mentions as to who has appointed the Government servant to such service, grade or post, as the case may be. So, emphasis has been given as to who has actually appointed the civil servant and further has been placed reliance on 2(j), which defines, the Disciplinary Authority to mean the Appointing Authority or any Authority authorized by it who shall be competent under these Rules to impose on a government servant any of the penalties specified in Rule 14 and reliance has also been placed on Rule 18 which says that a disciplinary authority would take an action on receipt of the enquiry report*

*xxxxx*

*11. To understand the spectrum of dispute and to resolve the same, this Court will have to examine Article 311 of the Constitution of India as well as different provisions of Bihar Police Manual and connected statutory provisions, which reads as follows:-*

> *'311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.*
>
> *(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*
>
> *[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:*

*{Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*

*Provided further that this clause shall not apply-*

*(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*

*(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*

*(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.*

*(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]'*

*12. In the Government of India Act, 1935, Section 240 deals with the issue relating to tenure of office of persons employed in civil capacities in India. Relevant portion are as follows:-*

*'240.-(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.*

*(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.*

*(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :*

*Provided that this subsection shall not apply-*

*(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or*

*(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.'*

*On reading justa opposition, it is lucid that Article 311 and Section 240 of the Government of India Act is similar and same.*

*xxxx*

*27. Again in the case of Krishna Kumar Vs. Divisional Assistant Electrical reported in 1979 AIR SC 1912 : 1979 SCR (1) 50 , the petitioner Krishna Kumar was appointed as a Train Lighting Inspector by the Chief Electrical Engineer but, was removed by the Divisional Assistant Engineer. The argument was made by the Railway that the Divisional Assistant Engineer was also delegated with power to make appointment and, as such, he has rightly exercised the power and accordingly took decision to remove the petitioner. It has been held that it has to be determined with reference to the state of affairs existing on the date of appointment and, it is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding the post, for*

*example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of Divisional Assistant Electrical Engineer in regard to making appointment to the post held by civil servant, cannot confer the power to remove him.*

*28. It is relevant to quote relevant portion of the order which reads as follows:-*

> *'4. Article 311(1) of the Constitution provides that no person who is a member of a civil service of the Union or an all- India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The simple question for determination is whether, as alleged by the appellant, he was removed from service by an authority subordinate to that which had appointed him. The relevant facts are but these and these only: The appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer and was removed from service under an order passed by the Divisional Assistant Electrical Engineer, Central Railway, Nagpur. The narrow question, therefore, for consideration is whether the Divisional Assistant Electrical Engineer is subordinate in rank to the Chief Electrical Engineer. None of the affidavits filed by Shri Sarathy, who passed the order of removal says that the post of Divisional Assistant Electrical Engineer is equivalent to that of the Chief Electrical Engineer in the official hierarchy. That the former is not higher in rank than the latter is self-evident. In the circumstances, it seems clear that the appellant was removed from service by an authority which is subordinate in rank to that by which he was appointed.*
>
> *5. In defence of the legality of the order of removal, counsel for the respondents relies on para 2 of Respondent 1's affidavit, dated January 7, 1978, wherein he has stated that the power to make Appointments to the post of the Train Lighting Inspector was delegated to certain other officers including the Divisional Assistant Electrical Engineer. It is urged that since the Divisional Assistant Electrical Engineer has been given the power to make appointments to the post of the Train Lighting Inspector, he would have the power to remove any person from that post. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorisation made in favour of Respondent 1 in regard to making appointments to the post held by the appellant cannot confer upon Respondent 1 the power to remove him. On the date of the appellant's appointment as a Train Lighting Inspector, Respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him.*
>
> *6. Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer, in other words, does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated to him.7. Since the appellant was appointed by the Chief Electrical Engineer and has been removed from service by an order passed by Respondent 1 who, at any rate, was subordinate in rank to the Chief Electrical Engineer on the*

*date of appellant's appointment, it must be held that Respondent 1 had no power to remove the appellant from service. The order of removal is in patent violation of the provisions of Article 311(1) of the Constitution.'*

*xxxx*

*46. In the case of S.R. Chaudhuri Vs. State of Punjab and Ors. reported in (2001) 7 SCC 126, the Honble Apex Court has held that the constitutional provision are required to be understood and interpreted with object oriented approach. A constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debate in the constituent assembly plays important element in arriving at the true import of meaning of particular word used in particular place of constitution. Its paragraph no.33, being relevant, reads as follows:-*

*'33. Constitutional provisions are required to be understood and interpreted with an object oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicates that non-member's inclusion in the cabinet was considered to be a 'privilege' that extends only for six months', during which period the member must get elected otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the 'privilege' to extend "only" for six months.'*

*47. Constitutional guarantee under Article 311(1) was available to the person holding the post. Different letters of the Constituent Assembly indicates that the authority who is competent to appoint would only be entitled to pass an order of dismissal or removal or to take a disciplinary action. In the present case, the Deputy Inspector General of police was the appointing authority, he was empowered to appoint but, in spite of that, the Inspector General of Police had appointed the private respondent. Now in that context, it has been argued and it has been tried to be persuaded that under Rule 825 of the Bihar Police Manual, the Deputy General of Police was actually empowered and has/had the authority to appoint Sub-Inspector, as such, he has the authority to take disciplinary action against the Sub-Inspector of Police. The Madras High Court has dealt with this issue, has held that the disciplinary action of removal/reduction in rank/dismissal can be taken only by the authority who has appointed. But, the question in the present case is that the Deputy Inspector General was capable to appoint Sub-Inspector and is also capable to take disciplinary action against him at the time of appointment, however, in the present case, the Inspector General of Police, who is higher in rank, had appointed the private respondent no.1, hence whether it can be construed that in terms of Rule 825 of the Bihar Police Manual, the Inspector General of Police is the only authority may be higher to the appointing authority, who is legally authorized to take disciplinary action of dismissal/removal/reduction in rank against the Sub-Inspector of Police.*

*48. Looking to the entire scheme/mechanism, the intention and upon harmonizing different proviso of Article 311 of the Constitution of India, the same should be interpreted in such a manner so as to find out the true import of the proviso. Article 311(1) of the Constitution of India, stipulates that Government servant cannot be dismissed by an authority subordinate to that by which he was appointed and sub-clause (b) of Article 311(2), wherein it has been mentioned 'the authority empowered to dismiss or remove a person', may grammatically be not the same and identical but, the tenor and intention of the framer of legislature, considering the discussion in the Constituent Assembly as well as the objection raised by the Home Department by various letters during the course of framing of the Constitution, itself reflects that the person who has authority to appoint is the proper authority to dismiss a Government servant. In such a situation, the word authority subordinate to that by which he was appointed in my view will mean that the authority who has power to appoint will also include the power to dismiss, otherwise, it will lead to an absurd situation in view of sub-clause (b) of Article 311(2) which uses the phrase 'the authority empowered to dismiss or remove'.*

*49. After harmonizing both the provisions, in my view, the true import will be that the authority, who has an authority to appoint a Government servant, will also have the authority to dismiss, remove or reduce in rank.*

*50. In that view of the matter, the reference is replied in the terms that the Deputy Inspector General of Police, who was/is the appointing authority, is also vested with the right to dismiss, terminate and reduce in rank and the expression appointing authority and the authority which appointed would mean and construe the same, inasmuch as, the appointing authority, who has been conferred with the power to appoint will also have the authority to dismiss, remove or reduce in rank.*

*51. Accordingly, the points of reference framed are answered."*

The respondents submitted that the Senior Divisional Commercial Manger, who is from the JAG grade, is the appointing authority for the cadre of Sr. TC as per schedule of powers and the same was not rebutted by the applicant through a rejoinder. We did peruse the schedule of powers circulated by the respondents in 2003 on the internet and found that the JAG officer is the appointing authority for the TC cadre. Hence, the order of the said authority is valid. Consequently, the order of the Appellate Authority also holds good, since the initial order of the Disciplinary Authority is valid.

IX. It is also not out of place to state that the applicant was mostly harping on technical aspects to wriggle out from the penalty imposed.

However, it is substantive justice that prevails than technical justice as pointed by the Hon'ble Supreme Court of India in State Rep By Inspector of Police, CBI vs M Subrahmanyam on 7 May, 2019 in Crl. Appeal No(s). 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019), as under:

*8. In Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597, the Court opined:*

> *"6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction….. The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?"*

*9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law andsocietal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.*

The substantive justice is that the I.O has held the charges as proved after holding a detailed inquiry and the respondents have imposed the penalty of compulsory retirement after weighing pros and cons of the case in accordance with rules and law. We, therefore, find no infirmity in compulsorily retiring the applicant for grave misconduct he has committed.

X. To end, we need to observe that in view of the Hon'ble Supreme Court observations on different aspects of the issue, as brought out above, the verdicts cited by the applicant would not come to his rescue. Moreover, facts and circumstances differ from case to case. As a consequence of the legal principles laid down by the Hon'ble Supreme

which apply to the case of the applicant and the action of the respondents being in tune with the relevant rules, we find no ground to intervene on behalf of the applicant and hence we dismiss the OA since it is devoid of merit. No costs.

**(B.V.SUDHAKAR)**
**ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)**
**JUDICIAL MEMBER**

*evr*