CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/01515/2014

Date of CAV: 16.02.2021

Date of Pronouncement: 26.02.2021

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

G.V. Ramana Murthy S/o late G. Sanyasi Rao
Aged 56 years, Ex. Deputy Chief Ticket Inspector,
South Central Railway, Kazipet,
R/o H.No.13-5-51, Near Mandapam,
Kothapeta, Kurellavari Street,
Vizianagaram – 535 002. ...Applicant

(By Advocate : Mr. K R K V Prasad)

Vs.

1.Union of India represented by
The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.

2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam, Secunderabad.

3. The Chief Commercial Manager (C&PS),
South Central Railway, Rail Nilayam, Secunderabad.

4. The Additional Divisional Railway Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

5. The Senior Divisional Commercial Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

6.The Divisional Commercial Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

7. Md. Mazeed Khan, Enquiry Inspector &
Inquiry Officer, O/o.The Senior Deputy
General Manager (Vigilance), South Central Railway,
Rail Nilayam, Secunderabad. ....Respondents

(By Advocate: Mr. D. Madhava Reddy, SC for Railway)

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

Through Video Conferencing:

2. The OA is filed with a prayer to set aside the penalty of compulsory retirement imposed by the disciplinary authority vide order dt. 03.05.2011, as confirmed by the appellate authority and the revising authority vide orders dt. 06.11.2013 and 17.02.2014 respectively and to consequently, reinstate the applicant.

3. Brief facts are that the applicant appointed as Probationary Ticket Collector in the respondents organization by the Chief Personnel Officer (for short "***CPO***") on 06.11.1980. While working as Dy. Chief Ticket Inspector, applicant was subjected to Vigilance check in Train No. 2727 on 19.05.2009 and issued a Charge Memo dt. 25.08.2009 under Rule 9 of Railway Servants (Discipline and Appeal) Rules 1968 [for brevity "***RSDA Rules***"], containing 2 articles of charge. Inquiry was conducted and charges were held to be proved and the disciplinary authority imposed the penalty of compulsory retirement on 3.5.2011, which was upheld by the appellate authority vide order dt. 06.11.2013 and by the revising authority vide order dt. 17.02.2014. Aggrieved, OA is filed.

4. The contentions of the applicant are that the disciplinary authority is incompetent to impose the penalty violating the Railway Board instructions in RBE No. 211/2001. Presenting Officer (PO) was not appointed. Hence, Inquiry Officer (IO) did not act independently. The IO, who worked as Vigilance Inspector earlier, has naturally supported the version of vigilance

inspector leading to bias. The IO is working under the administrative control of Vigilance Wing and therefore, administrative bias has crept in. Charge Memo was based on draft charge memo supplied by vigilance wing and hence, the disciplinary authority has not applied his mind. Objections were raised in regard to simultaneous appointment of IO with issue of Charge memo based on Railway Board letter dt. 29.03.1985, is violative of Rules 9(9)(a)(i) & (ii) of RSDA Rules. Decoy passengers and independent witnesses are from same department and therefore, lacks credibility. The currency for vigilance check was provided by the State and that too beyond sanctioned limit and hence, the check made is an illegal check. Provisions 306 & 307 of Vigilance Manual have been violated and demand & collection of money was not witnessed by an independent witness. IO has put leading questions and acted as a prosecutor. Documents were marked as exhibits during preliminary inquiry without being introduced by witness. The findings of I.O are perverse, as there is no evidence in support of the charges. Based on the orders of the Tribunal in OA 494/2011, appeal was filed which was rejected on 6.11.2013 by violating law. Revision petition was disposed of on 17.2.2014. Being under financial hardship, applicant accepted the terminal benefits. Applicant cited judgment of the Hon'ble Apex Court in ***Moni Shankar v. Union of India – (2008) 3 SCC 484*** in support of his contentions. The order of penalty is violative of Articles 14, 16, 21 & 311(1) of the Constitution of India.

5. Respondents *per contra*, state that the applicant demanded Rs.1200/- from decoy passenger and allowed him along with 3 others holding II Class tickets to travel in AC II Tier coach, A-1 in berth Nos. 2, 6, 44 & 46

without granting any receipt. Applicant produced Rs.1200 excess in private cash and Rs.8 in Government cash. Charge memo dt. 25.8.2099 was issued by the Divisional Commercial Manager, Secunderabad (for short "***DCM***") and after conducting due inquiry as per procedure, penalty of Compulsory Retirement was imposed on 3.5.2011 by Sr. DCM, Secunderabad who is the appointing authority of the applicant. Appeal and revision petition preferred thereon were rejected. CPO is not the appointing authority since he only communicates the selection. Letter of appointment is issued after selection and the authority, who issues the said letter is the appointment authority. Thus, Sr. DCM is the Appointment authority for applicant. After issue of charge sheet, applicant sought additional documents one after another through interim replies and observing the same, IO was appointed on 22.02.2010. Applicant has not raised any objection about the IO working under the control of Sr. Dy. General Manager (Sr. DGM), Vigilance, while the inquiry was on. IO appointed is competent and his past experience has no relation to the conduct of inquiry. Applicant attributed bias to the I.O after failing to stall the inquiry proceedings. Vigilance check was done as per procedure. As per Railway Board instructions, appointing a PO is not mandatory, Exhibits were not marked during preliminary inquiry, but during the regular inquiry. On appeal, penalty was confirmed, after careful examination by the appellate authority, Inquiry proceedings were conducted following the Principles of Natural Justice. Vigilance check was conducted based on source information that ticket checking staff are indulging in certain malpractices. Results of vigilance checks are communicated to disciplinary authority in the form of draft charges which are examined and only if required, charge memo is

issued. Due to revision of schedule of powers, though the charge memo was issued by DCM, it was transferred to Sr. DCM, who is the controlling authority, under Rule 10(3) of RSDA Rules. The contentions raised in para 5.5 (i) to (viii) have been discussed by IO. There is no bar to select decoy passenger from same department. Appellate authority and revision authority have arrived at the respective decisions after discussing the case at length. Applicant received terminal benefits only after OA 494/2011 was dismissed. If relief is granted to the applicant, it would amount to premium to proven misconduct committed by him.

Applicant filed rejoinder, claiming that the deponent who filed the reply earlier worked as Dy. Chief Vigilance Officer (Traffic), SC Railway when the applicant was subjected to vigilance check and later, he initiated the process from the issue of major penalty proceedings till the penalty was imposed. Therefore, he is not competent to file the reply. Besides, penalty, inter-divisional transfer was ordered. Applicant was placed in the grade pay of Rs.4200/4600 by DRM/ADRM, who are superior to Sr. DCM. Therefore, Sr. DCM is not the appointing authority of the applicant. In OA 494/2011, competency of the disciplinary authority was challenged and on direction therein, appeal/ revision have been exhausted. The rank of the officer matters in regard to his competency in statutory matters. The order of appointment was issued by CPO and it is incorrect to term him as a communicator. Once the order of disciplinary authority is null and void, the subsequent order of appellate authority and the revisionary authority are invalid. In terms of law, Chief Commercial Manager (P&S) (for short "***CCM"***) is not competent even otherwise to dispose the revision petition.

Correspondence between Vigilance Wing and the office of the disciplinary authority indicates that the names of the IOs were furnished to the disciplinary authority before defence statement was sought. Objections have been raised about appointment of IO belonging to the Vigilance Wing and that his contention is supported by law. Check conducted by vigilance is not as per procedure. Railway Board instructions are not above law and the law requires appointment of Presenting Officer. Specific points have not been answered but only general denials have been given. Respondents admitted that there was no specific complaint against the applicant. Disciplinary authority has not been given the freedom to frame charges. The case relates to vigilance case and hence, IO working under Sr. DGM, Vigilance wing was under obligation to prove the charges. The answering respondent who, as ex. Dy. Chief Vigilance Officer, who allowed illegal vigilance checks finds everything normal, like selection of witnesses from the same department etc. Terminal benefits were received under protest.

6. Heard both the counsel and perused the pleadings on record. The judgments relied upon by the learned counsel for both sides are as follows:

Counsel for the applicant:

i) Krishna Kumar v. Divisional Assistant Electrical Engineer & Ors – (1979) 4 SCC 289 : 1980 SCC (L&S) 1

ii) Mathura Prasad v. Union of India & Ors – AIR 2007 SC 381

iii) Union of India & Ors v. Gyan Chand Chattar – (2009) 12 SCC 78

Counsel for respondents:

i) Gulam Abbas & Ors v. State of UP & Ors – 1981 AIR 2198

7(I) The dispute is about imposing the penalty of compulsory retirement on the applicant by an incompetent authority and that too, by not following the rules in letter and spirit. The charges framed against the applicant are as follows:

*"**Article I:***

That the said Sri G. V. Ramana Murthy, DY.CTI/COR/BZA while working by 2727 Godisciplinary authorityvari Express manning upper class coaches between VSKP-BZA on 19.05.2009 had committed a serious misconduct in that he had demanded and collected Rs.1200/- from Sri D. Muralidharan, Technician-I, DLS/GY (Decoy Passenger) and allowed him along with three other persons holding II M/E ticket ex. ANV-BZA in AC 2 T class without granting receipt for the amount so collected for his pecuniary gain as detailed in the statement of imputations.

Thus Sri G.V. Ramana Murthy, DY. CTI/COR/BZA has violated the instructions contained in Para 2430 in Chapter XXIV of IRCM, Volume II and Para 522(a) in chapter V of IRCM Volume I and failed to maintain devotion to duty, absolute integrity and acted in a manner unbecoming of a Railway Servant violating Rule No.3 (1) (i) (ii) & (iii) and Rule No. 26 of Railway Services (Conduct) Rules, 1966.

***Article II**:*

That the said Sri G. V. Ramana Murthy, DY.CTI/COR/BZA while working by 2727 Godisciplinary authorityvari Express and looking after upper class coaches between VSKP-BZA on 19.05.2009 had committed the following irregularities:

*i) He had produced Rs.1200/- **excess** in his personal cash during the vigilance check.*

ii) He had produced Rs.8/- excess in his Government cash during the vigilance check

as detailed in the statement of imputations.

Thus, Sri G.V. Ramana Murthy, DY.CTI/COR/BZA has violated the instructions contained in Para 101 of IRCM Vol. I and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant violating Rule No.3 (1)(i) (ii) & (iii) and Rule No. 26 of Railway Services (Conduct) Rules, 1966."

To begin with, the applicant claims that the IO was appointed before explanation to the charge sheet was submitted as per Rule 9(9)(a)(i) & (ii) of RSDA Rules. It is seen from the records on file that the applicant has given four interim replies, on the pretext of seeking additional documents,

encompassing a period of 6 months. As per Rule 9(9)(b) of RSDA Rules, if the charged employee does not submit his explanation, the respondents are empowered to appoint the IO. To deny or accept the allegation, it would not take 6 months and hence, it appears to be a tactic adopted to procrastinate the inquiry. Therefore, after waiting for 6 months, appointing an IO cannot be found fault with. Indeed, every action or objection taken/ raised has to have reasonableness in it. We find reasonableness in the action of the respondents in appointing the IO and unreasonableness in the approach of the applicant. After giving an extensive time period of 6 months to file the final reply to the charge sheet and when not given, the IO was appointed as per Rule 9(9)(b) of RS (DA) Rules. The Hon'ble Supreme Court in ***Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr.*** that disciplinary inquiry to be completed within 6 months and if it could not for justifiable reason within one year.

> *"... ... we are of the considered view that every employer (whether State or private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."*

Thus, the Hon'ble Supreme Court has observed that the due inquiry has to be mostly completed in 6 months time and here, we find the applicant submitting interim replies one after the other for 6 months. At this rate, the respondents cannot go forward with disciplinary inquiry for years together, which is neither in the interest of the charged employee nor that of the

organization, particularly in cases of alleged corruption, which has severe ramifications for both parties.

II. Carrying forward his objections, the applicant has contended that the IO is working under the Sr. DGM, Vigilance and is under obligation to prove the charges. The Sr. DGM has 3 branches under him, namely Vigilance, Inquiry and Law. Conducting inquiry is a specialized activity and one need to be trained as IO to perform the role of an independent adjudicator. Therefore, those who are trained and experienced in this domain are appointed. Otherwise, injustice could be caused to the applicant as well for not being conversant with the procedures and lack of independent orientation required for the task. In fact, applicant has not cited any rule which prohibits the appointment of an IO from the inquiry wing. On the contrary, we find in many organizations, they do not have a specialized wing for inquiry and as a result, glaring procedural inaccuracies are found in abundance in disciplinary inquiries taken up by such organizations. Consequently disciplinary cases hang on even after the retirement of employees for one reason or the other, which indeed is painful and distressing. Railway Board instructions bearing No.E(D&A)2000 RG 6-30 dt. 16.05.2001 indicate that in vigilance cases the disciplinary authority has to choose an IO from among those forwarded by Vigilance Organization. The important aspect to note is to whether the IO has done justice in enacting the role of an independent adjudicator . After going through the IO report, we found that the IO did not act in a manner that would undermine the role of an IO.

III. Further, the non-appointment of PO was also objected to by the applicant. A reference to the statutory RS (DA) Rules, and in particular to Rule 9(9)(c) would make it clear that appointment of PO is not mandatory. It is the discretion of the disciplinary authority to appoint the PO as is evident from the use of the word 'may' in the cited rule extracted hereunder:

"Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiry 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."

Moreover, Hon'ble Supreme Court in regard to appointment of PO has held in ***Union of India vs Ram Lakhan Sharma*** on 2 July, 2018 in Civil Appeal No. 2608 OF 2012, as under:

> *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, the respondents exercising discretion in not appointing the PO as per rules and the legal principles referred to, would therefore over rule the applicant's contention raised in respect of appointment of PO.

III. In addition, applicant contended that the draft charges sent by the vigilance wing has been approved by the disciplinary authority without

application of mind. The applicant was subjected to vigilance check by the Vigilance wing and therefore, it is the onerous responsibility of the vigilance wing to send a report on the check made indicating the rules and regulations violated by the employee subjected to vigilance check. It is for the disciplinary authority to examine the same and come to a conclusion as to whether on the basis of the vigilance report and the rules violated, a charge memo has to be issued. The discretion of the disciplinary authority in issuing the Charge memo by considering the material forwarded by the vigilance wing, therefore cannot be called into question. Issue of the charge memo by the disciplinary authority, would thus cannot be sweepingly construed as one issued by disciplinary authority under instructions from Vigilance wing without independent application of mind.

IV. In the rejoinder, applicant submitted that there was no complaint against the applicant, as admitted by the respondents. True, there has been no complaint against the applicant, but Vigilance Wing has to carry out an important function of preventive vigilance. The organization has to be alert and conduct preventive checks so as to prevent unscrupulous employees indulging in grave misconduct compromising the image of the organization and in flagrant violation of rules. Vigilance wings acts on source information which need not be revealed. In the instant case, the vigilance check did bring out elements of violation of rules leading to a detailed disciplinary inquiry wherein the articles of charge were held to be proved. Therefore, it is not necessary that a complaint has to be there, for conduct of a vigilance check.

V. About the inquiry, applicant averred that the documents were marked at the preliminary inquiry stage, which is not true since the preliminary inquiry was conducted on 10.3.2010 and the documents were marked on 05.04.2010. Further, the applicant has pointed out the answers given by PW-1, PW-2, PW-3, PW-8 in respect of question Nos. 10, 12, 16 & 84, to claim that they are in favour of the applicant, to disprove the charges. These were dealt by the Inquiry Officer during the inquiry. By raising such issues, applicant's expectation is that the Tribunal should re-appreciate the evidence, which is not permitted under law, as observed by Hon'ble Supreme Court 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."*

VI. Going further, the applicant objected to the selection of witnesses/ decoy from the same department. The critical aspect to be borne in mind is that, as per para 307.3 of Railway Vigilance Manual, the decoy should not

have any previous enmity with the applicant. Further, para 307.4 states that the witnesses should be independent, implying they should be impartial. The witnesses are from the respondents organization and hence, responsible, unlike those taken from outside the organization. The Govt. witnesses would be held accountable to what they state. Therefore, selection of the witnesses from the same department has to be scrutinized from the perspective of whether they have been independent in tendering their deposition before the IO. The applicant himself has cited instances where he claims that the prosecution witnesses gave answers which were in his favour. Hence, the contention that the witnesses should not be selected from the same department does not hold good. Besides, there is no rule cited by applicant which restrains selection of witnesses from the same department. In fact, the foreword to the Vigilance Manual makes it clear that the instructions given are only executive in nature. They lack the statutory basis for enforceability and hence, are not mandatory. More importantly, what is to be seen broadly is whether the interests of the applicant have been prejudiced by any minor procedural lapses. We find it, not so, in the instant case. Thus, the averment that Rules 306 & 307, which are by nature procedural, have been violated does not have required force to come to the rescue of the applicant. The inquiry has been conducted by examining 17 PW documents, 1 defence document and 8 PWs were examined and reexamined. The inquiry officer thus gave the applicant reasonable opportunity to defend himself adequately.

VII. Interestingly, applicant has contested that the respondents have drawn more amount than the limit of Rs.500/- permitted to be drawn from

the secret fund. It is difficult to appreciate, as to in what way does it disprove the fact that the applicant has accepted the amount of Rs.1200/- from the decoy. What is important in the case is as to why did the applicant accept Rs.1200/- from the decoy at the first instance and that too, without issuing a receipt. This act of the applicant is more illegal than the procedural lapse of overstepping the sanctioned limit. In the latter case, there is scope for seeking post facto approval but in the former case, when an illegality is committed by the applicant, there is no legal provision to legalize the illegality. Hence, even this contention is more in the nature of being hyper technical and is of no help to the applicant to disprove the charge laid against him.

VIII. The sum and synopses of the inquiry is that there is evidence to prove the charges. The applicant has taken Rs.1200/- from the decoy passengers and has not issued the receipt. The explanation given by the applicant is that the decoy and witnesses were asked to pay Rs.3200/-, but they said they will pay the balance after applicant completes the ticket checking in another coach. Primarily, applicant should either demand total amount of Rs.3200/- as per rule or not allow the decoy and others in the AC coach. There is no rule which allows the applicant to accept part amount and allow the decoy with others to travel in AC coach. Therefore, the applicant has infringed the norm by taking law into his hands. Only after about 20 minutes, the vigilance inspector and his team confronted the applicant about the episode. The inquiry report conclusively establishes that the applicant has demanded and accepted the amount of Rs.1200/-, from the decoy, without granting any receipt. Consequently, this amount

was obviously found to be excess in the personal cash. Moreover, when the decoy and others could not pay the total amount, the minimum thing that would have been done was to restrict the number of berths to be allotted to the amount paid and given receipt. Thereafter, when the balance was paid the others should have been allotted the births or else direct them to their entitled class. The applicant has not done so and hence, the needle of suspicion undoubtedly points towards the applicant. Thus, the contention of the applicant that there is no evidence to hold the charges proved is incorrect.

IX. In continuance of the defence mounted, applicant has raised the ground that incompetent authority viz., Sr. DCM has imposed the penalty of Compulsory retirement, when the letter of appointment was issued by CPO. However, we have verified the service book appended to the OA and it is true that the CPO has issued the letter of appointment, as Probationary Ticket Collector. Besides, applicant has also claimed that he was placed in the grade of Rs.4200/4600 by the DRM/ADRM. The latter part of the submission has not been countered by the respondents. By making the above submission, applicant contends that an authority i.e. Sr. DCM in JAG grade, who is subordinate to the CPO in the SAG grade and the appointing authority, has imposed the penalty of compulsory retirement, which is not permitted under Article 311 (1) of the Constitution.

The fact on record is that the applicant was promoted as Dy. CTI vide letter dt. 16.11.2004 by Sr. Divisional Personnel Officer, from the JAG cadre. Hence, JAG rank officer is the appointing authority. The applicant has contended that rank of the officer is important in deciding the

appointing authority. We agree and in his case as he was promoted to the post of Dy. CTI by Sr. DPO, who is from the JAG rank, is thus the appointing authority for the applicant in the cadre of Dy. CTI. Therefore, any other authority of the rank of JAG, as admitted by the applicant, can be the disciplinary authority. Sr. DCM who belongs to the JAG grade imposing the penalty of compulsory retirement is within the ambit of the rules of the respondents organization. Hence there can be no further questions on the same.

Nevertheless, applicant has raised an important question of law by asserting that the Sr. DCM, being subordinate to CPO/DRM/ADRM, cannot don the role of a disciplinary authority. This is a stock contention, which we often notice in cases emerging from the respondents organization. Hence, we wish to deal with it at length and clear the mist enveloping the issue so as to give a quietus to the controversy.

X. Applicant took support of the judgment of the Hon'ble Apex Court in Krishna Kumar v. Divisional Assistant Electrical Engineer & ors, in CA 755 of 1978 dt. 17.7.1979. We have gone through the judgment and in the context of its application to the instant case, our view is as under:

A. The provisions of the Constitution are to be understood and interpreted with an object oriented approach. The words used in general are to be appreciated in the context and the purpose for which they have been used. Debates in the Constituent Assembly are to be relied upon to interpret the Constitutional provisions. The Constitution is a living framework for the Government of the people. The above words were the

solemn words spoken by their Lordships in ***SR Chaudhuri v. State of Punjab & ors*** reported in (2001) 7 SCC 126 as under:

> *'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.'*

B. In the context of the above, the Constituent Assembly indicated that the authority who is competent to appoint an employee is competent to dismiss/ remove or take disciplinary action. The Articles 311(1) & (2), related to the issue, are reproduced hereunder:

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 a 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

C. In the instant case, originally it was the DCM, who was the appointing authority, as claimed by the respondents and later, it was changed to Sr. DCM as per Schedule II of powers, enclosed as material papers by the respondents. It is the Sr. DCM, who as the appointing authority as per Schedule III imposed the penalty of compulsory retirement. In this context, by applying Article 311(1), it is explicit that only the appointing authority can remove/ dismiss the applicant. The offer of appointment for the post of Probationary Ticket Collector was issued by the CPO, who belongs to the SAG grade and is superior to the Sr. DCM from the JAG grade, who imposed the penalty. The applicant claims that Article 311(1) is thus infringed. However, a closer look at Article 311(2) (b) would make it evident that the authority empowered to dismiss or remove a person, in the context of the discussion in the Constituent Assembly, points towards the conclusion that the authority to appoint is the proper authority to remove/ dismiss a government servant. Therefore, the authority subordinate to the appointing authority who has power to appoint, can remove/ dismiss the applicant. Otherwise, clause (2)(b) of the Article 311 will be inoperative. Therefore, though the applicant was appointed by CPO as probationary ticket collector, a superior authority than the Sr. DCM, yet the Sr. DCM being the appointing authority and is empowered to dismiss or remove as per clause Article 311(2)(b), is very well within his right to exercise the power of imposing the penalty in question.

D. After stating the above, we have perused the judgment of ***Krishna Kumar*** of Hon'ble Supreme Court cited supra by the applicant. The relevant portion of the judgment is extracted hereunder:

> *"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.*
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> *In defence of the legality of the order of removal, counsel for the respondents relies on paragraph 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 Div. Asstt. Elect. 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 Art. 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 authorization 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.*
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> *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.*
>
> *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 the 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."*

E. The essence of the judgment is that any change in the status of the appointing authority after the issue of offer of appointment would not be acceptable to impose the penalty of dismissal/ removal. In the instant case, it was the Sr. DCM who was competent as appointing authority to impose the penalty of compulsory retirement as per Schedule III of schedule of powers. There is no change in regard to the change of appointing authority as envisaged in the judgment cited by applicant. Thus, a harmonious reading of the Hon'ble Supreme Court judgment in ***S.R. Chaudhuri*** cited supra, Articles 311(1) & (2) of the Constitution and the one relied upon by the applicant in ***Krishna Kumar***, would make it explicit that the penalty imposed by the Sr. DCM is within the domain of law. Consequently, the averment that the DRM/ADRM granted grade pay of Rs.4200/4600, made by the applicant in the context of the competency of disciplinary authority, would not hold good. The aspects elaborated by us, as at above, have been conclusively dealt by a **larger Bench of Hon'ble Bihar High Court in State of Bihar & Ors v. Manoj Madhup & Anr.** in Letters Patent Appeal No. 833/2014 in Civil Writ Jurisdiction Case No.11307/2011 decided on 29.1.2020, after referring to many judgments of the Hon'ble Apex Court. The judgment referred to by the applicant has also been discussed by the Larger Bench and the relevant portions are extracted hereunder:

> *"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?

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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.

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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, xxx

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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 authorization 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. Xxx

'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."

XI. In view of the above legal authentication, the competency of the Sr. DCM in imposing the penalty of compulsory retirement is in order. The above discussion has been taken assuming that the applicant is the probationary ticket collector and the appointing authority is CPO. However,

on the promotion of the applicant as Dy. CTI, the appointing authority has changed to that of a JAG rank office and in the changed scenario, the contention about the competency of the disciplinary authority holds no water. We undertook the above discussions to drive home the point that the appointing authority is not only the one who issued the offer of appointment but others who are identified as Appointing Authority under the statutory rules.

The applicant further contends that the appeal was not disposed as per law. The appellate authority discussed at length the contentions submitted by the applicant. The relevant paras are extracted hereunder:

"The major points that the charged employee made in defense of his case are as discussed under:

- *Tap conducted is not as per the provisions of the vigilance manual and contains lot of discrepancies.*
- *The Inspector of Vigilance who has led the team to conduct the trap who is a material witness to the case has not been cited as witness to the case and his request to introduce/ summon him as material witness to the transaction has not been heeded to by IO.*
- *All the prosecution witnesses are interested/ planted/ stock witnesses and none of them were independent witnesses.*
- *The prosecution witness A.M. Satyamurthy, Helper-I, DLS had participated in 2 decoy checks earlier.*
- *The IO in the instant case was working earlier as VI, EI & EO who cannot be expected to act independently.*
- *Copy of complaint said to be source information on the basis of which check was conducted has not been given to him thereby depriving him chances of proving his innocence.*
- *The time between the transaction and the vigilance check was only 20 minutes during which he was attending some other urgent work and vigilance authorities cannot come to the conclusion that he was with the idea of pocketing revenue due to railways.*
- *DISCIPLINARY AUTHORITY is selective in his opinion and not considered the material furnished by him while coming to the conclusion and imposing the penalty. The punishment imposed is harsh and disproportionate to the charge.*
- *As he was appointed by CPO, only officer of his rank or above can only impose the penalty of compulsory retirement.*
- *His awards at GM, CCM & DRM's level for his outstanding performance have not been taken into account.*

All the points raised by the charged employee have been gone through carefully. Many of the points raised by charged employee are of minor procedural and trivial issues. Charged employee is trying to prove his

innocence by taking shelter under other issues without touching the main charge. Relying on the procedural issues, CE wants the entire enquiry proceedings to be set aside without producing any substantial material evidence against the charges leveled against him.

The currency notes used for trap have been recovered finally from the charged employee and charged employee himself has accepted that he had collected the money from the decoy passenger but receipt could not be issued till the vigilance check and seizure memo was drawn which was dealt in detail in the inquiry report and the charged employee could not produce any new evidence now than what has already been stated at the time of enquiry.

Charged employee could not bring out how non-following of instructions in vigilance manual, if at all is there, can have any material effect on the charges against him which have been proved beyond doubt. There is no merit in charged employee's argument that IO having worked earlier as VI cannot be expected to act independently and fairly. Charged employee has been given fair opportunity duly following principles of natural justice to come out clean of the charges. Similarly, it is not understood how not listing/ summoning of VI as prosecution witness would help the charged employee's case, whereas it is otherwise. There is also no strength in the charged employee's arguments that the witnesses are not really independent witnesses and they are interested/ stock/ planted witnesses. No material evidences could be produced by charged employee to this effect and also failed in establishing that they are interested witnesses. Other arguments that copy of the source information not supplied to him does not in any way effect the case as the charges were proved. Further, it is seen that there is sufficient/ reasonable time and opportunity allowed to the charged employee during the check and there is no truth in charged employee's statement that the time gap is very less. From the available records on the file, a JA grade officer is competent to impose the penalty. As such, Sr. DCM is competent to impose the penalty. From the disciplinary authority's orders, it is seen that there is no selective opinion as alleged by the charged employee and disciplinary authority's orders are based on the evidence available and after going through in detail of the case. The penalty imposed by the disciplinary authority is quite judicious and warranted in the case even after taking into consideration all the information furnished by charged employee. disciplinary authority had clearly mentioned that subject penalty was purely on humanitarian grounds which shows that the case demands a higher penalty but taking into consideration all the aspects of the case the subject penalty was imposed.

Thus, the penalty imposed by the disciplinary authority i.e. Compulsory Retirement with 100% pensionary benefits purely on humanitarian grounds which meet the ends of justice and quite reasonable considering the gravity of case. "

The order is speaking and reasoned with valid assertions, which cannot be ignored while taking a view in the case. Trying to punch holes into such an

elaborate order covering the contentions of the applicant may not be a fair preposition.

XII. Coming to the review petition, the concerned authority has observed as follows:

> *"No new points have been brought out by the appellant except repeating the submissions made earlier. All through his appeal he is trying to find fault with the manner in which vigilance check was conducted. He is trying to cover up his failure to grant receipts for the money collected as detailed in commercial manual as 'pressure of work' which is not acceptable. Having allotted four berths at ANV it was his duty to collect proper fares and grant receipts."*

The CCM (C&PS), an SAG officer, under whom the applicant worked, is higher than Dy. HOD, a JAG officer, disposing the revision petition as revising authority is in accordance with Rule 25(i)(v) of RS (DA) Rules, which reads under:

> *"any other authority not below the rank of a Deputy Head of a Department, in the case of a Railway servant serving under its control (may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or, under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary, and may) –*
>
> *(a) Confirm, modify or set aside the order: or*
> *(b) Confirm, reduce, enhance, or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or*
> *(c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the cases, or*
> *(d) Pass such other orders as it may deem fit; "*

Thus, CCM (CPS) as revising authority dealing with the revision petition is very much within his competence. Therefore, all the authorities i.e. Disciplinary authority, Appellate Authority and Revising Authorities have exercised their competence as per rules. In fact, para 307.11 of Vigilance Manual cites Rule 6 of RSDA Rules to emphasize the need to

impose the penalty of removal/ dismissal in proven cases of bribery and corruption, as under:

> *"It is essential that a successful decoy check should be followed to its logical conclusion namely – the issue of a major penalty charge sheet which should eventually entail imposition of penalties of compulsory retirement, removal or dismissal from service. Rule 6 of RS (D&A) Rules specifies dismissal/ removal for proven cases of bribery & corruption. The disciplinary authority should not take up a position of misplaced sympathy for people who do not deserve it. If not, then, the message that is conveyed to delinquent employees – present and potential – is that 'anything goes'(sab chalta hai) and they can get away with just about anything. The Executive and Vigilance wings need to cooperate in making the tool of decoy checks a very effective deterrent to the wrongdoer, and not take up a confrontationist approach which would ultimately benefit him. "*

XIII. *Defacto*, respondents have been liberal enough to impose the penalty of compulsory retirement with 100% pension. In fact, the compulsory retirement is not treated as a punishment as observed by the Hon'ble Supreme court in ***State of Gujarat vs Umedbhai M. Patel*** on 27 February, 2001 in Appeal (Civil) No.1561 of 2001 (Special Leave Petition (Civil) 12652 of 2000), as under:

> *A Government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences. Though compulsory retirement deprives a Government servant of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get pension that cannot be regarded in the eye of law as punishment as pointed out in the case of Shyamlal (supra) and Union of India vs. M.E. Reddy 1980 (2) SCC 15.*

XIV. By going through the OA, through and through, we gained the impression that the applicant has labored on technical aspects rather than defending himself on the substantive issue as to why he did not issue the receipt for Rs.1200/-, as is expected under the Rules. Substantive justice prevails over technical justice as observed by the Hon'ble Supreme Court 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):

"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 and societal 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."

XV. In cases of alleged corruption, procedural irregularities should not take the centre stage and are to be ignored as observed by the Hon'ble Supreme Court in **Vinod Kumar Garg vs State (Govt. Of National Capital 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 dated of occurrence, 3 rd August 1994, and the date 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. "

Even in ***Moni Shankar v. Union of India*** Hon'ble Apex court, referring to its own judgment in Chief commercial Manger v Ratnam, has observed that para 704/705 of Vigilance Manual which were later changed as 306/307, are though procedural in nature, their infringement has to be looked from the perspective of total violation and other factors.

"14. While we say so we must place on record that this Court in the Chief Commercial Manager, South Central Railway, Secunderabad and Ors. vs. G. Ratnam and Ors. : (2007) 8 SCC 212 opined that non-adherence of the instructions laid down in Paras 704 and 705 of the Vigilance Manual would not invalidate a departmental proceeding, stating :-

> *"17. We shall now examine whether on the facts and the material available on record, non-adherence of the instructions as laid down in paragraphs 704 and 705 of the Manual would invalidate the departmental proceedings initiated against the respondents and rendering the consequential orders of penalty imposed upon the respondents by the authorities, as held by the High Court in the impugned order. It is not in dispute that the departmental traps were conducted by the investigating officers when the respondents were on official duty undertaking journey on trains going from one destination to another destination. The Tribunal in its order noticed that the decoy passengers deployed by the investigation officers were RPF Constables in whose presence the respondents allegedly collected excess amount for arranging sleeper class reservation accommodation etc. to the passengers. The transaction between the decoy passengers and the respondents was reported to have been witnessed by the RPF Constables. In the facts and circumstances of the matters, the Tribunal held that the investigations were conducted by the investigating officers in violation of the mandatory Instructions contained in paragraphs 704 and 705 of the Vigilance Manual, 1996, on the basis of which inquiries were held by the Enquiry Officer which finally resulted in the imposition of penalty upon the respondents by the Railway Authority. The High Court in its impugned judgment has come to the conclusion that the Inquiry Reports in the absence of joining any independent witnesses in the departmental traps, are found inadequate and where the Instructions relating to such departmental trap cases are not fully adhered to, the punishment*

imposed upon the basis of such defective traps are not sustainable under law. The High Court has observed that in the present cases the service of some RPF Constables and Railway staff attached to the Vigilance Wing were utilised as decoy passengers and they were also associated as witnesses in the traps. The RPF Constables, in no terms, can be said to be independent witnesses and non- association of independent witnesses by the investigating officers in the investigation of the departmental trap cases has caused prejudice to the rights of the respondents in their defence before the Enquiry Officers.

18. We are not inclined to agree that the non-adherence of the mandatory Instructions and Guidelines contained in paragraphs 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained."

15. *It has been noticed in that judgment that Paras 704 and 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. This Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued.*

16. *We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the Department has been able to prove the charges against the delinquent official.*

17. *xxx The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. Xxx"*

In the case of the applicant, the canons of principles of natural justice were followed by conducting an elaborate inquiry where applicant cross-examined the witnesses and placed his defence as effectively as he could before the Disciplinary Authority/ Appellate Authority/ Revising Authority. The preponderance of probability is confirming the misconduct to the applicant, as was brought out in the Inquiry report. Intrinsically relevant

facts were considered and inference was based on evidence, as elaborated in paras supra. Thus, the case of the applicant is not total violation of the procedures nor ignoring other factors relevant to the case. In fact, in the personal interview granted on 29.04.2011, the prayer of the applicant was to consider his case sympathetically and the outcome was compulsory retirement, rather than dismissal/ removal as stipulated under Rule 6 of RS (DA) Rules. Thus, it cannot be said that any prejudice has been caused to the applicant in regard to following the certain procedures under paras 306/307 of vigilance manual by the respondents. Hence, reliance on ***Moni Shankar*** is of no solace to the applicant given the contours of the case as discussed at length above. Law has to take a balanced view by taking an overall perspective of the facts and circumstances and not based on a narrow plank of certain insignificant side tracks of a story, losing focus on the main theme. The main theme is demand and acceptance of an amount of Rs.1200/- for grant of berths in AC coach without grant of receipt and held to be proved in the inquiry. The side track is the technical lapses, which lack the requisite vigour to support the cause of the applicant.

XVI. Applicant also contended that some other employees with excess cash were let off with a warning. Each case has to be dealt, based on facts and circumstances relevant to it. Facts and circumstances differ from case to case and even if an illegality/ mistake has been committed by the respondents, the same cannot be perpetuated by forcing the respondents to provide similar relief to the applicant.

XVII. The reliance of the applicant in ***Mathur Prasad v. Union of India*** may not be relevant because the dispute in the said case is that the disciplinary authority ordered return of inquiry report to the inquiry officer without giving reasons for disagreement, which is not the issue in the case on hand. True, procedures are to be followed, but in cases of corruption, Hon'ble Supreme Court in its own judgment cited supra has held that minor procedure lapses can be ignored like the one in question. Further, in the case of ***Govt. of India & Ors v. Gyan Chand Chattar***, relied upon by the applicant in CA 4171/2003 dt. 28.05.2009, the IO in the said case relied on non-existing material which is not the case in the present dispute. The applicant has not contended that non existing material was considered by the IO. Further, the IO in the cited case did not examine any witnesses from whom demand of bribe was made. In the case on hand, they were examined. Hence, the cited judgments are of no assistance to the applicant. Other contentions made by the applicant have also been gone through and in view of their irrelevance, they have not been referred to and dealt.

XVIII. Therefore, in view of the aforesaid circumstances, after examining the contentions made by the applicant in a holistic manner, we are of the view that the OA is devoid of merit, merits dismissal and hence, dismissed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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