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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2348/2004

New Delhi, this the 1st day of September 2006

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Shri S.N. Narula,

...Applicant.

(By Advocate Shri Dhruv Mehta with Sh. B.S. Mainee)

VERSUS

Union of India & Ors.

... Respondents.

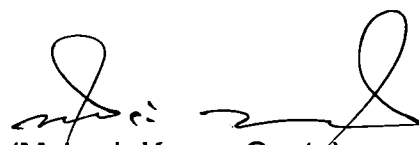
(By Advocate Shri V.S.R. Krishna)

1. To be referred to the Reporter or not.

✓
Yes / No

2. To be circulated to other Benches or not.

✓
Yes / No.


(Mukesh Kumar Gupta)
Member (J)

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**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
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Shri S.N. Narula,
Retired Sr. Commercial Manager,
Northern Railway,
R/o C-161, Surajmal Vihar,
Delhi – 110 092.

...Applicant.

(By Advocate Shri Dhruv Mehta with Sh. B.S. Mainee)

VERSUS

Union of India through

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Commercial Manager,
Northern Railway,
Baroda House,
New Delhi.

... Respondents.

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

ORDER

By Mr. Mukesh Kumar Gupta, Member (J):-

Validity of order dated 17.6.2004, reducing pension to the minimum of Rs.1275/- per month on permanent basis & forfeiting entire gratuity, is the subject matter of present OA.

2. Shri Dhruv Mehta, learned counsel for applicant basically raised four submissions namely: a) that finding on article-I is at variance with charge levelled; b) document nos.19 & 20 of list of additional documents were not supplied without assigning any reason, which caused serious prejudice to him in

placing his defence; c) no prosecution witness was examined during the course of enquiry; and d) procedure provided under Rule 2308 had been violated in as much as that in a departmental proceeding of present nature, final decision could be arrived only by the President not by the disciplinary authority.

3. In order to appreciate the contentions raised, brief background of matter is required to be detailed. Applicant initially joined as Asstt. Station Master, Group-C post in 1955. In 1963 he was selected for the post of Traffic Apprentice, and later earned various promotions, lastly in Senior Time Scale Group-B Gazetted post i.e. Sr. Commercial Manager in 1990. In said capacity, he was posted in Refund Department of Northern Railway Headquarters. A major penalty charge-sheet was issued on 25.6.1982, containing eight articles of charge. He attained age of superannuation on 30.11.1993. Since he denied aforesaid charges, enquiry officer was appointed and enquiry was entrusted to Central Vigilance Commission. On 21.3.1995, he made representation to respondents to provide him twenty additional documents / circular / file etc. Enquiry officer vide proceeding dated 04.4.1995 allowed all documents except at serial nos.19 & 20. Vide his request dated 21.3.1995, relevancy shown in respect of said documents of serial nos.19 & 20 had been that: "charges no.1, 2, 4 & 5 framed against Shri Ram Chander, ACO/N.Rly. and others in the memorandum for minor penalty are the same as alleged on Article I, III, VI and VIII to the C.O. and Disciplinary authority/Rly. Board/ CVC dropped these charges." He submitted his defence brief highlighting non-supply of afore-mentioned documents. Enquiry officer submitted his report dated 27.8.1996 holding charge nos.5 and 7 "partly proved" and "proved" respectively, and other charges "as not proved." General Manager, Northern Railway vide communication dated 12.8.1998 disagreed with findings of enquiry officer on charge nos. I, II and IV and concluded that said charges were proved by submitting his disagreement note. Applicant was given an opportunity of making representation vide aforesaid communication, which he availed by making a detailed representation dated 01.9.1998, wherein it was stated that he rendered 38 years' unblemished service and there had never been any complaint

or vigilance during the said period. Another memorandum dated 03.8.2000 was issued by Joint Secretary (E), Railway Board in the name of President conveying that on consideration of charges, enquiry officer's report, his representation and other relevant records / aspects of case, President provisionally decided to disagree with findings of the IO in respect of charges no.III, VI & VIII" as contained in charge memorandum dated 25.6.1992. Reasons for disagreement were enclosed and he was given an opportunity to make representation. Pursuant thereto he submitted further detailed representation dated 05.9.2000. A final order was passed on 14.3.2002 reducing his pension to the minimum and also forfeiting entire gratuity, which became the subject matter of OA 1154/2002. Though various grounds had been raised challenging the aforesaid order dated 14.3.2002 but aforesaid OA was disposed of vide order dated 13.11.2002 holding that penalty order was non-speaking order which could not be sustained in law and thus matter was remitted back to disciplinary authority to pass detailed, reasoned & speaking order in accordance with instructions and law on the subject. Said order had been carried before Hon'ble Delhi High Court vide Writ Petition (C) No.2577/2003, which was allowed vide order dated 21.4.2003 and finding of this Tribunal was reversed. In such circumstances, matter had been carried before Hon'ble Apex Court vide Civil Appeal No.642/2004, which was disposed of vide order dated 30.01.2004 upsetting findings of Hon'ble High Court and restoring judgment of this Tribunal. Accordingly, direction was issued to respondents to dispose of disciplinary proceedings pending against applicant, in accordance with directions of this Tribunal contained vide para-6 of the order. Applicant was also allowed to make representation, which was directed to be disposed of within the time-limit prescribed therein. In compliance of aforesaid directions, a representation dated 17.2.2004 had been submitted highlighting irregularities committed during the said proceedings. Respondents thereafter passed speaking order dated 17.6.2004 imposing penalty of reducing pension to the minimum of Rs.1275/- per month on permanent basis as well as forfeiting entire amount of gratuity of Rs.74,200/-. Hence present application.

4. Before we proceed further, it would be relevant to notice charge levelled against applicant, which reads as follows:-

"STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI S.N. NARULA EX. SCO (R), NOW WORKING AS SR. PRO.

That the said Shri S.N. Narula, while functioning as SCO (R) during the period from August 1990 to July, 1991 committed serious irregularities with ulterior motive and caused undue favour and pecuniary benefit to certain rail users at the cost of the Railways.

ARTICLE I

That he refunded wharfage and demurrage charges amounting to Rs.54.43 lakhs collected as per railway rules to certain parties, though no such powers were delegated to him by the General Manager, Northern Railway or Railway Board.

ARTICLE II

That he aided and abetted CCS(R), Shri Harit and AGM, Sh. S.P. Sharma in dispensing with the prevalent procedure and codal provisions of accounts code and finance code of obtaining prior finance concurrence in cases involving refund of wharfage/ demurrage charges exceeding Rs.25,000/- by tendering inaccurate advice and distorted version of some available circulars on the subject as evident from file No.II/481-486/RF.II/DW/90.

ARTICLE III

That he sanctioned refund of wharfage and demurrage charges in cases where the appeals for refund were preferred by the parties after the stipulated period of 60 days from the date of delivery of the goods in violation of the instructions issued by Railway Board under letter No. TC-I/88/201/6 dated 30.6.88.

ARTICLE IV

That by liberally refunding the normal and penal demurrage and wharfage charges imposed by the Divisional Authority under the Railways Rules, he not only mitigated the very purpose of Railways (Warehousing & Wharfage) Rules, 1968 but also negated the efforts of the division to induce the parties to remove their goods from Goods Shed premises at the earliest.

ARTICLE V

That he assumed the position of appellate authority while granting further relief in refund of demurrage charges deposited as per the decision of the Divisional authorities holding equal or higher position than him in contravention to the instructions contained in Northern Railway letter No.227/MC/O/III/Pt. IV dated 9.12.83.

ARTICLE VI

That he failed to ensure prior Accounts verification in refund cases above Rs.200/- to establish that the amount proposed to be

refunded has actually been received by the Railway before sanctioning refund and sending over-charge sheet to Accounts Office for issue of cheques to the parties as required under Board's letter No. TC-IV/87/4950/Wharfage and Demurrage dated 6.3.87.

ARTICLE VII

That he, in his zeal to provide maximum undue benefit to certain private parties, decided and refunded wharfage charges in cases falling within the delegated powers of Assistant Officers.

ARTICLE VIII

That while dealing with time barred claim for refund of wharfage / demurrage charges, he failed to abide by the instructions contained in Board's letter No. TC-IV/77/4950/22 dated 02.11.77 and 05.01.78 and sanctioned the refund without obtaining the finance concurrence and personal sanction of General Manager as per extent rules.

By his above acts of omission and commission, the said Sh. S.N. Narula failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened Rule No.3(1)(i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966."

5. Elaborating the contentions raised, as noticed hereinabove, learned counsel contended that finding recorded in first article of charge is beyond the charge framed as noticed hereinabove. Finding recorded is that applicant exceeded his delegation though charge levelled had been that no such powers were delegated, therefore, finding recorded is at variance with charge levelled. Strong reliance was placed on (2006) 5 SCC 88 [M.V. Bijlani vs. Union of India & Ors.] particularly paras-14, 23, 25 and 26 to contend that disciplinary authority proceeded on a wrong premise; evidence recorded by enquiry officer & inferences drawn were not in commensurate with charges; finding could not have been recorded without framing appropriate charges. Although charges in departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, one cannot lose sight of facts that enquiry officer performed a quasi-judicial function, who upon analyzing documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of material on record. While doing so he cannot take into consideration any irrelevant fact; cannot refuse to consider relevant facts; cannot

shift burden of proof; cannot enquire into the allegations with which delinquent officer had not been charged with.

6. Further contention raised had been regarding non-supply of documents. Learned counsel with reference to Government of India, MHA OM dated 25.8.1961, as available at page 58-61 of Swamy's compilation of CCS (CCA) Rules, 2005 Edition under heading of "INSPECTION OF DOCUMENTS", & titled "Supply of copies of documents and affording access to official records to the delinquent official", contended that power to refuse access to official records should be very sparingly exercised and such request should be rejected only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. In any case, reasons for refusal should be recorded which in turn should be cogent and substantial. Learned counsel contended that no reasons were assigned by enquiry officer while refusing to supply documents listed at serial nos.19 & 20 of his request dated 21.3.1995. Said documents were extremely relevant in as much as four articles of charge were common to applicant as well as other officials, as already noticed hereinabove, particularly when departmental proceedings against S/Sh. Ram Chander, Darshan Singh and others were dropped by authorities concerned & vigilance file in respect of said officials became extremely relevant. It was contended that interpretation of same circular and document had been the subject matter therein. Reliance was placed on (1990) 4 SCC 464 [**U.P. State Road Transport Corporation vs. Muniruddin**], wherein delinquent official was dismissed from service in a trap laid. His main contention had been that all the way bills, carbon copies of tickets issued on said dates and carbon copies of checking report were not shown to him by investigating officer though he was permitted to inspect such documents. The charge against him was that he erased the way bills & resold some already sold tickets. The carbon copies of way bills of relevant dates were not shown to him. Plea had been that from carbon copies he would have shown that he could not have carried on such eraser or made file entries and non-supply of them had caused great prejudice. Hon'ble High Court in an elaborate judgment referring to

various documents ultimately came to conclusion that important documents had been purposely withheld, which resulted prejudice to the employee. Said findings were maintained by the Hon'ble Supreme Court. Reliance was also placed on **ATR 1990 (2) 255** [S.K. Jain vs. Union of India] to buttress the contention regarding supply of documents.

7. Third contention raised had been that as per charged memorandum only one person was cited as witness namely Shri Anand Jeevan, I.I. (Vig.), Railway Board. As he expired during the proceedings, no other witness was cited or produced, which fact is also reflected vide para-2 of enquiry report.

8. Last contention raised was in relation to Rule 2308, according to which, departmental proceedings initiated against railway servant while in service, were deemed to be treated as proceedings under said rule on his retirement or re-employment. Question was raised whether in case of a railway servant whose case falls within proviso (a) of aforesaid rule and proceedings against him were instituted by an authority subordinate to President, order for withdrawal / withholding of pension can be passed by subordinate authority on the conclusion of proceedings or that an authority should refer case to the President for final orders. Vide circular dated 22.7.1967, which was termed as pension circular no.27/1967, matter was examined in consultation with Ministry of Home Affairs & Law Ministry and it was clarified that "the function of the Disciplinary Authority is only to reach a finding on the charges and to submit a report recording its findings to the President. It is then for the President to consider the findings and take a final decision under Rule 2308 (CSR. 351-A) R-II". It was further clarified that in case the President decides to take action under said rule in the light of the findings of disciplinary authority, person concerned will be served with show cause notice specifying the action proposed to be taken and person concerned will be required to submit his reply to such show cause within a time-limit specified therein. The reply shall be considered by the President in consultation with UPSC. If as a result of such consideration in consultation with UPSC, it is decided to pass an order under the said rule, necessary orders will be issued in

the name of the President. Learned counsel contended that the procedure adopted in present case, issuing communication dated 12.8.1998 by the General Manager, Northern Railway being disciplinary authority is alien to the mandate of aforesaid rule. It was stressed that disagreement note cannot be issued by disciplinary authority as such power is vested only with the President. Reference was made to an Order dated 17.4.2001 passed in OA No.694/2000 [**M.I. Khan vs. Union of India & Anr.**] particularly para-5 to buttress the aforesaid contention. In said case, note of dissent to enquiry officer's findings was issued by the Commissioner (Customs) after the retirement of delinquent therein without Presidential mandate. Memorandum 14.5.1997 did not indicate that he has acted for or on behalf of President. In said case it was held that: "The Disciplinary Authority in the present case is admittedly the President and hence we are inclined to accept the argument advanced by the learned counsel."

9. Respondents resisted the claim laid and filed detailed reply stating that in judicial review this Tribunal would not sit as a Court of appeal, re-appreciating the evidence as the said aspect is exclusively within the domain of disciplinary / appellate authority. As per report of enquiry officer two charges were proved against the applicant. Case was put up to the Disciplinary Authority i.e. General Manager who after careful consideration intended to disagree with the findings of enquiry officer in respect of charges No I, II & IV. Accordingly, note of disagreement was issued and on applicant's request, he was granted personal hearing on 24.3.1999. Thereafter the case was referred to the President for final decision as per rule 2308. Railway Board vide letter dated 03.8.2000 informed him that the President intends to disagree with the findings of enquiry officer in respect of Articles of charge no.III, VI and VII also, along with memorandum of disagreement. He submitted representation dated 05.9.2000 and in consultation with UPSC, the President decided to reduce pension to the minimum on permanent basis & to forfeit his gratuity. In compliance to orders passed by the Hon'ble Supreme Court dated 30.1.2004, respondents considered his representation and passed speaking order dealing with all aspects of case, copy

of which was annexed along with order dated 17.6.2004. It was contended that the President has carefully considered all aspects as well as relevant records apart from representation dated 17.2.2004. Charges were specific and were established on the strength of evidence produced in the enquiry. His case was thoroughly appreciated at all levels. There was no illegality in action of the General Manager, Northern Railway issuing disagreement memorandum. Shri V.S.R. Krishna, learned counsel for respondents contended that charge no.1 is crystal clear and did not suffer from vagueness. The essence of charge is that the applicant refunded wharfage & demurrage charges amounting to Rs.54.43 lakhs collected as per Railway rules to certain parties though "no such powers were delegated" to him. Learned counsel further contended that statement of article of charge under Annexure-I to the charge memorandum has to be read with statement of imputation of misconduct / misbehaviour under Annexure-II to the said charge memorandum. As per Railway Board circular dated 06.3.1987 and 06.4.1986, the officials had been delegated powers to remit / write off and refund of wharfage & demurrage charges at different levels "to the extent", specified therein. Applicant being Sr. Scale Officer, was provided limit of Rs.3,000/- each on account of wharfage & demurrage charges. It was also stated therein that applicant while working as Sr. Commercial Officer (Refund) was not delegated with the power of remittance / refund but he on his own assumed the said powers and sanctioned refund of Rs.7,29,408/- in the cases listed in Annexure-A and refund of wharfage & demurrage charges to the extend of Rs.54,43,560/- during the period from August, 1990 to July 1991, as evident from Annexure-B.

10. With respect to non-supply of additional documents, as prayed, it was contended that vigilance file of other officials is a confidential matter and cannot be used by him particularly when a detailed, reasoned & speaking order has been passed pursuant to directions issued by Hon'ble Supreme Court. Moreover, relevancy of file has to be examined by the enquiry officer before acceding such request. Since enquiry officer did not find any relevancy and

necessity to supply & produce such file in present case, particularly when said documents or orders were neither listed documents nor relied upon either by the inquiry officer or disciplinary authority to sustain charges levelled against him, the same became irrelevant. In any case, it was contended that no prejudice was caused by non-production of such documents.

11. As far as question of non-production of witness is concerned, learned counsel contended that it being an admitted fact, requires no further elaboration. On further contention regarding violation of Rule 2308 and circular dated 22.7.1967, it was contended that as per aforesaid clarification disciplinary authority had competence, jurisdiction and power to "reach a finding on the charges" and, thereafter to submit a report regarding disagreement to the President. The "final decision" rests with the President under the aforesaid rule. In other words, it cannot be contended that note of disagreement cannot be issued by the General Manager, being the disciplinary authority. What is impermissible is "final decision" under the said rule and not reaching or recording the "findings on the charge". By recording disagreement note, he had only arrived at a finding on charges and nothing more. Therefore, the contention raised is misplaced and untenable, contended learned counsel. For judgments relied upon, it was suggested that none of them have application & applicability in peculiar facts & circumstances of present case.

12. We heard learned counsel for parties and perused the pleadings & other material & documents placed on record, carefully.

13. At the outset we may note that apart from raising four contentions, noticed hereinabove, no other submissions were made before us. Though there were as many as eight articles of charge, no arguments were addressed except on first article of charge. On perusal & examination of charge No 1 under Annexure-I read with statement of imputation of misconduct / misbehaviour under Annexure-II of charge memorandum, we find that there was no vagueness in the charge. On the other hand, we find that the charge had been crystal clear and did not

suffer either on ground of lacking material particulars or details. Annexures-I & II to charge memorandum in our considered view had to be read together and not in isolation. Under Article of charge no.1, what is alleged is that he refunded wharfage & demurrage charges, a whopping amount of Rs.54.43 lakhs though "no said powers were delegated." As far as delegation is concerned, Annexure-II, detailed in specific extent to which such delegation was permissible. It is not his case that he had not allowed refund of wharfage or demurrage charges beyond Rs.3000/- per wagon. His contention that "waivel" and "refund" are two different, distinct and independent processes and he dealt with only refund file and not the waivel, had not been accepted to vide impugned order dated 15.6.2004 stating that such argument was faulty and the very fact that the instructions were issued separately and waivel & refund are two different processes governed by different rules as refund does not always / necessarily relates to refund of wharfage or demurrages only. Refund rules also include refund on rate claims and over-charges. If examined in aforesaid context, no refund of wharfage can be granted without waivel. It was observed by competent authority that waivel & refund are two sides of the same coin and refund cannot be obtained without going into for waivel. The said documents clearly stated that: **"refund of wharfage / demurrage is a continuation of the process of waivel and cannot, therefore, be treated in isolation."** As per exhibit S-81, the Sr. Scale Officers were delegated powers to grant refund of wharfage charges upto Rs.3000/- and of demurrage charges also upto to Rs.3000/- per wagon. UPSC had observed that applicant "exceeded his delegated powers in most of the cases cited in Annexure A & B"; which was further corroborated by documentary evidence. We are conscious of the fact that in exercise of powers of judicial review this Tribunal has neither competence nor jurisdiction to re-appreciate the evidence and substitute its own independent conclusion. What has to be seen is whether there is some evidence to substantiate its finding. The scope of judicial review is limited in order to find out the correctness of allegation

that the impugned order of disciplinary authority suffers from the vice of non-application of mind and tainted by malice.

14. On a cumulative reading of charge memorandum, disagreement note and order dated 15.6.2004 we are of the view that the competent authority has based his conclusion on material available on record. After considering the contentions put forth by the applicant, such decision has been taken in a reasonable manner and objectively. The conclusion arrived at cannot be termed as either perverse or based on irrelevant material nor is it a case where there is a non-application of mind on the part of concerned authority. As repeatedly held by the Apex Court "if there is **some evidence** to reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. [See 1999 (8) SCC 90, - **R.S. Saini vs. State of Punjab & Ors.**].

15. As far as the contention raised about non-supply of additional documents listed at serial nos.19 & 20 of his request dated 21.3.1995 is concerned, we may note that the only relevancy cited for supplying or producing the vigilance files in relation to proceedings initiated against Ram Chander, Darshan Singh & Ors. had been that charges no.I, II, IV and V against them were same as alleged in articles I, III, VI and VIII to the applicant. We may note that the proceedings initiated against said officials had been for "minor penalty" and secondly, said officials were Asstt. Commercial Officer, while applicant was holding rank of Sr. Commercial Manager, which are two distinct and different posts. Applicant was holding Group-B Gazetted post, which is not the factual aspect in relation to other officials. Therefore, in our view applicant's case is not comparable with said officials. Moreover, as per OM cited by applicant, the power to deny access to material record could be on the ground of public interest and when there are reasonable and sufficient grounds. It is not the law that each & every additional document asked for should be allowed particularly when the same are neither relied upon documents nor have been used against the applicant. The law on

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this subject, in our considered view, has been settled long back in **Chandrama Tewari vs. Union of India** [1987 (Supp) SCC 518] wherein it has been held that:

"it is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

Aforesaid law in our respectful view has to be applied and the facts and contentions raised in present case, if examined and tested in the light of above context, we are of the opinion that the minor penalty proceedings issued to said officials was not such material document which has either been relied upon or which was necessary for cross-examination of the witness and, therefore, its denial had not caused any prejudice at all to the applicant. In view of aforementioned law, we do not find any substance in the contentions raised and the judgments, as relied upon, are clearly distinguishable.

16. The contention that punishment imposed upon the applicant comparing to other persons who have been allowed to go scot-free and, therefore, discriminated treatment has been meted out, in our considered opinion is not well founded. In 1997 (3) SCC 72 [**Indian Oil Corporation Ltd. & Anr. & Ors. vs. Ashok Kumar Arora**], contention was raised that there was a patent discrimination while awarding extreme penalty of dismissal against the respondent therein whereas other employees were let off on minor punishment. The order passed by the disciplinary authority was thus discriminatory. Rejecting said argument, Hon'ble Supreme Court observed that holding the award of punishment of dismissal to the respondents and lesser punishment to other

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employees to be discriminatory, the High Court totally overlooked the findings of the enquiry officer as affirmed by the disciplinary authority that the respondent was instrumental in obtaining forged medical bills not only for himself but also for other employees and he was the main actor behind cheating the Corporation. In our considered view, as we have already noticed, several distinctive features between the applicant and the officials against whom minor penalty charge-sheet was initiated. Accordingly, we hold that plea of discrimination is not tenable and well founded. Each case has to be decided keeping in view the gravity of allegations. The plea of non-supply of documents particularly vigilance files relating to those officials against whom minor penalty was initiated and was dropped, was in relation of the alleged discrimination committed by the respondents.

17. We may note that perusal of the original documents/records reveals that that applicant's contention that Ram Chander was exonerated completely is not correct inasmuch as he was conveyed 'Govt. displeasure' vide Memorandum dated 3.3.1998, as he had retired during the pendency of proceedings initiated against him.

18. Coming to the last contention about violation of Rule 2308 is concerned, we may note that "no final decision" had been arrived at by the General Manager, Northern Railway, being the disciplinary authority after issuing a note of disagreement dated 12.8.1998. It is not the case of the applicant either that 'any final decision' had been taken by said authority. What has been emphasized under aforesaid rule is 'final decision by the President.' At the same time, said clarification envisages and clarifies that the disciplinary authority has to reach "the finding on the charges." In other words, it is exclusively within the domain of disciplinary authority to arrive at such a finding on the charges levelled. No prejudice has been caused to applicant by mere issuance of disagreement note by General Manager. As far as judgment of M.I. Khan (supra) of this Tribunal is concerned, we may note that there disciplinary authority had been the President

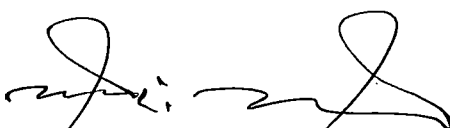
and not the other official, which is quite distinctive to the facts of present case. In our considered view, said judgment is clearly distinguishable and not applicable to the facts of present case.

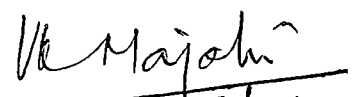
19. We may note that Hon'ble Supreme Court in ***Union of India vs. Sardar Bahadur*** [1972 (4) SCC 618] para-15 observed that "where there is some relevant material which the authority had accepted and which material may reasonably support the conclusion that the officer is guilty. It is not the function of the High Court exercised his jurisdiction under Article 226 to review the material and to arrive at an independent finding on the material."

20. Recently Hon'ble Supreme Court in 2005 (10) SCC 84 [***Damoh Panna Sagar Rural Regional Bank & Anr. Vs. Munna Lal Jain***] followed its earlier judgment in 1996 (9) SCC 69 [***Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik***] holding that: "**there is no defence to say that no loss or profit resulted in the case when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct.**" Keeping in view the aforesaid principle in mind, if we examined the facts of present case particularly article 7 which initially alleged that the applicant in his zeal to provide "maximum undue benefit" to certain private parties, decided and refunded wharfage charges in cases falling within the delegated powers of Asstt. Officer, which has been duly established during the course of enquiry, is itself grave misconduct and sufficient to invite a penalty of present nature. Though these observations were made where the respondent had been working in a Bank, but it would be aptly applicable in the facts & circumstances of present case where applicant has been working as Sr. Commercial Manager, Group-B Gazetted post and was responsible for refund of whopping sum. The findings recorded, in our considered opinion, clearly established that the applicant usurped the jurisdiction, power &

authority of lower functionaries, i.e. ACO. Certainly such course of action cannot be allowed and approved.

21. Taking a cumulative view of the matter, we do not find any justification & reasons to interfere with the conclusion arrived at. The order dated 15.6.2004 is quite comprehensive, analytical, detailed and speaking order dealing with all aspects of the objections & contentions raised by applicant. Thus OA lacks merit and is dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)


(V.K. Majotra) 11/9/06
Vice-Chairman (A)

/gkk/