

(W) CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /96/92
T.A.NO.

DATE OF DECISION 6th March, 2000

A.A.Makwana Petitioner

Mr.K.K.Shah Advocate for the Petitioner [s]
Versus

Union of India & ors. Respondent

Mr.N.S.Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Ramakrishnan

Vice Chairman

The Hon'ble Mr. A.S.Sanghavi

Member (B)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? 7
- 2, To be referred to the Reporter or not ? 7
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

(52)

A.A.Makwana,
TTI, Ahmedabad.
C/o, K.K.Shah, Advocate,
3, Achalyatan Society,
B/H Memnagar Fire Station,
Navrangpura,
Ahmedabad,

applicant

By Advocate Mr.K.K.Shah

Versus

1. Union of India, Through :
The General Manager,
W.Rly., H Q Office, Churchgate,
Bombay.
2. Sr.Divisional Commercial Supdt.,
Divisional office, Pratapnagar,
Baroda.
3. Area Manager,
Kalupur Railway Station,
Ahmedabad.
4. Divisional Railway Manager,
Divisional office, Pratapnagar,
Baroda.

Respondents.

By Advocate Mr.N.S.Shevde

J U D G M E N T
IN
O.A.NO. 96/92

Dt. 6/3/2000

Per Hon'ble Mr.A.S.Sanghavi :

Member [J]

The applicant who was working as senior TT was on duty on dated 5.4.90 in 6 up express, going from Ahmedbad to Bombay Central. He was on duty in sleeper coach No. S 9 and after the train left Nadiad station, vigilance inspector of the railway carried out a surprise check. During the surprise check, it was found that the applicant had allotted B.No. 1 & 2 to one Gulabchand and his son, though ~~RSE~~ ^{RAC} listed passengers were not allotted any berth. It was also found by the vigilance inspector that berths to Gulabchand and his son were allotted by accepting bribe of Rs.20/-. The vigilance inspector had also carried out verification of the cash with the applicant and had found a shortage of Rs.40/- in the cash. The applicant had given explanation that while collecting the cash from the passengers two notes of Rs.20/- might have slipped away but the explanation of the applicant was not accepted by the vigilance inspector and he had reported the matter to the superiors. The applicant was ultimately served with the charge sheet for major penalty after holding the inquiry into the charges levelled against the applicant. The inquiry officer had found him guilty of charges levelled against him. Consequently the disciplinary authority had imposed the punishment of removal from the service

on the applicant. The applicant had challenged the order of punishment before the appellate authority and the appellate authority had ~~by~~ partly allowed the appeal reducing the penalty of removal from service to that of reduction in rank as Sr.T.C. in the grade of 1200-2040 at the minimum of scale for a period of three years with a direction that thereafter he would be reverted back to his original position in grade ^{of} Rs. 1600-2660 at the stage ^{where} from ^{he} was removed from service namely Rs. 1750/-. The applicant has now challenged the orders of appellate authority as well as the disciplinary authority contending that even though the charges leveled against him were not established, he has been wrongly punished by reduction in the rank etc.

2. The respondents in their reply have refuted the allegation of the applicant that the charges levelled against him were not established and that a wrong order of punishment is passed against him. They have contended inter alia that on a surprise check by the vigilance inspector shortage in cash of Rs.40/- was found from the applicant and therefore, it was the case of temporary misappropriation of the government money. It was also found by the vigilance inspector that the applicant had given two berths to two passengers

excluding the claim of RAC ticket holders and that on inquiry it was learnt that both the berths were given to these persons by accepting bribe from them. The applicant was, therefore, given charge sheet. Ultimately in inquiry, he was found to be guilty of both the charges by the inquiry officer. He was, therefore, imposed with the penalty of removal from service by the disciplinary authority which was subsequently in appeal reduced to reduction in rank for three years by the appellate officer. They have denied that the copies of the documents relied upon in the inquiry were not supplied to the applicant and that the inquiry was conducted against the principle of natural justice. They have supported the punishment imposed on the applicant and have prayed that the application be dismissed with costs.

3. We have heard the learned advocates of the parties at length and have also carefully gone through the documents produced on record. Apart from the question of non supply of documents and vitiation of inquiry report etc. as alleged by the applicant, we find that the order of the appellate officer deciding the appeal of the applicant is sufficient to dispose of this O.A. We re-produce the order of appellate officer which verbatim runs as under:-

" I have gone through the appeal preferred by Shri A A Makwana, TTI. I have also gone through the findings and the evidence recorded in the inquiry and the original statement recorded at the time of vigilance check. There are two major charges against the employee viz. [a] Rs.40/- was found short in Rly./ cash at the time of vigilance check, and [b] He had demanded and accepted Rs.220/- as illegal money from Shri Gulabchand. The employee has not been able to explain shortage of railway cash within approximately one hour of train departure from ADI. He has explained that two 20- rupee notes might have slipped from his hands or pocket which shows his negligent working. As regards the 2nd charge, there is no conclusive evidence that he demanded illegal money from Shri Gulabchand. Shri Gulabchand in his original statement, given at the time of vigilance check, has merely stated that Shri Makwana took Rs.20/- after the train started from ADI and receipt was not yet given by him. In case, Rs.20/- paid by Shri Gulabchand was illegal money, there was no question of a receipt being given to Shri Gulabchand. I find that cross examination of Shri Gulabchand in the DAR inquiry has not been correctly accepted by the inquiry officer and he has relied on the original statement of Shri Gulabchand dated 5.4.89. This original statement, by itself, was not ~~give~~ conclusive proof of the fact that a bribe of Rs.20/- was demanded and accepted by Shri Makwana, TTI. Shri Gulabchand in his statement before the inquiry officer has explained that Rs.20/- paid by him to Shri Makwana, was part of the money he was

required to pay for sleeper berth. Unfortunately, no clarification was obtained by the VI DRC who recorded the original statement on 5.4.89 as to whether Rs.20/- paid by him was illegal money or he was expecting a receipt for the same.

2. Keeping all the circumstances in view, I feel removal from service will be a very harsh punishment for Shri Makwana. Ends of justice will be met if he is reduced in rank as Sr.TC in grade Rs.1200-2040/-RP at the minimum of scale for a period of three years after which he will revert back to his original position in grade Rs.1600-2660/RP at the stage from where he was removed from service viz. 1750/-

His intervening period from the date of removal from service to reinstatement as Sr.TC is treated as leave due."

4. It is quite evident from the conclusion drawn by the appellate officer that the second charge i.e. demanding illegal gratification was not proved against the applicant and there was no conclusive evidence in that regard. It is therefore, quite obvious that the appellate officer had not accepted the finding of the inquiry officer and disciplinary authority in regard to the second charge of the acceptance of the illegal gratification. He has in terms stated "there is no conclusive evidence that he demanded illegal money

from Shri Gulabchand. Shri Gulabchand in his original statement given at the time of vigilance check has merely stated that Shri Makwana took Rs.20/- after the train started from Ahmedabad and receipt was not yet given by him. In case Rs.20/ paid by Shri Gulabchand was illegal money, there was no question of receipt being given to Shri Gulabchand. I find that cross examination of Shri Gulabchand in the DAR inquiry has not been correctly accepted by the inquiry officer and he has relied on the original statement of Shri Gulabchand dated 5.4.89. This original statement, by itself, does not give conclusive proof of the fact that a bribe of Rs.20/- was demanded and accepted by Shri Makwana, TTI. "

5. It is apparent from the above discussion on the second charge by the appellate officer that the second charge did not stand proved and hence, the applicant could not have been held guilty of having accepted illegal gratification. That would only leave first charge namely as regards the shortage of cash of Rs.40/- . Unfortunately the appellate officer has not discussed this point and has merely stated that the employee has not been able to explain the shortage of railway cash after the train's departure from ADI. He has however, noted the explanation that two 20- rupee

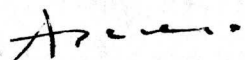
notes might have slipped from his pocket which shows his negligent working. He has however thereafter not given any finding on the explanation given by the applicant and has left the matter at that. It is not considered by the appellate officer as to when the shortage of cash can be considered to be a misconduct. It is quite obvious from the facts of the case that when the surprise check was carried out within one hour from the start of the train, there was every possibility that while refunding the amounts to passengers or while going from one compartment to another, the TT might have lost Rs.40/- in the way. This probability cannot be ruled out and no attempt is also made by disciplinary authority or appellate authority to rule out this probability. Further loss of Rs.40/- cannot be considered to be a shortage of cash as the conductor is required to make good that loss when he deposits that amount at the end of the journey. If he fails to deposit the total amount at the end of the journey then he could be hauled up for misconduct as he had misappropriated the government money. Merely because Rs. 40/- were found short at the time of surprise checking, it cannot be held that he had misappropriated the amount. Unfortunately the appellate officer has not considered this aspect and has held him guilty for the charge one. In fact the

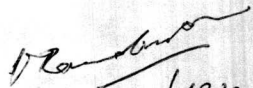
charge one also cannot be said to have been established against the applicant and therefore there was absolutely no reason for imposing any penalty on the applicant. The slip shod manner in which inquiry was conducted and appeal was heard and decided has clearly resulted in to miscarriage of justice. The appellate authority has also not applied his mind to the facts of the case and has not considered in its true perspective the aspect of the misconduct for shortage of Rs.40/-. The order of punishment passed by the appellate authority on the applicant is also clearly a perverse order and requires to be interfered with by this Tribunal. We find that the charges levelled against the applicant were not established during the inquiry as there was no evidence against the applicant in this regard. This was clearly a case of no evidence and hence punishment imposed on the applicant ~~can~~ cannot be allowed to stand. The punishment order is therefore clearly illegal and arbitrary and requires to be set aside. The O.A. deserves to be allowed.

6. We therefore allow the O.A. and set aside the order of punishment imposed by the appellate authority dated 16.12.90 as at Annexur A/2 as well as order of disciplinary authority and direct the

(21)

respondents not to treat the applicant as reverted and to allow all consequential benefits as available to him as per rules from the date of the appellate authority's order dated 16.12.90. No order is passed as to costs.


[A.S.Sanghavi]
Member[J]


6/12/2000
[V.Ramakrishnan]
Vice Chairman

S.Solanki

Sr.No. 41/200

Dated: 29/8/2000

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 14/8/2000 in CA/
Spl.C.A. No. 8367 of 2000 passed by the
Supreme Court/ High Court against the Judgment/ Oral Order
passed by this Tribunal in OA/96/92 is placed for perused
please.

8/30/8
A88H

S.O. (J)

for 30/8/2000
D.R. (J)

Hon'ble Vice Chairman

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

for 31/8/2000

for 31/8/2000

The number of days the Bench sat in the month.	The number of full day and half day's a division Bench worked during the month.	The number of cases (DA's & TA's) heard by a Bench in the month.	The number of Judgement pronounced by the division Bench during the month.	The number of Judgement dictated by each member of the Bench during the month.	The number of Particulars of disposal at the circuit bench. of during the month.	REMARKS
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I	II	III	IV	V	VI	VII	VIII
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..... Days division bench. Cases heard by division bench constituted by Hon'ble Mr. & Hon'ble Mr.	Judgement of division bench dictated by Hon'ble Mr. Hon'ble Mr.	MPs CCPS>	Recd. sed. dispo Not applicable.
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..... Days single Member Bench.

..... Cases heard by single member bench constituted by Hon'ble Mr.

..... Cases heard by single member bench constituted by Hon'ble Mr.

Judgement of single member bench dictated by Hon'ble Mr.

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(23)

16628

(2)



Dispatch No.

WRIT

(TO BE RETURNED TO THIS COURT/TO BE SERVED ON RESPONDENT NO.)

(TO BE RETURNED TO THIS COURT DULY EXECUTED)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Interim stay of execution

Special Civil Application No 8367 of 2000

Fixed on : 28/08/2000

District AHMEDABAD

Petitioner(s) Advocate

MRS SIDDHI D TALATI

Opponent(s).

UNION OF INDIA

& 3

Vs

A A MAKWANA

To

1.

THE REGISTRAR,
CENTRAL ADMINISTRATIVE
TRIBUNAL, AHMEDABAD BENCH
AHMEDABAD

6-3-2000

UPON Reading the petition of the abovenamed petitioner(s) presented this Court through his/her/their Advocate MRS SIDDHI D TALATI praying that Pending admission, hearing and till final disposal of the Spl.Civil Application to stay the execution, implementation and operation of the judgment and order dtd.6/3/2000 Annexure- to this petition

And Whereas Upon hearing MRS SIDDHI D TALATI, Advocate for the petitioner, Court passed the following order :-

Coram : B.C.Patel & P.S.Majmudar, JJ. (Dt.31/7/2000)

Rule. Ad-interim relief in terms of para-12(C). Notice as to interim relief returnable on 28th August, 2000.

~~/ or any other subsequent day which to this Court may seem convenient~~

It is hereby accordingly ordered that, the execution, implementation and operation of the judgment and order dtd.6/3/2000 passed by you in O.A.No.96/92, be and are hereby stayed.

Witness DEVDATTA MADHAV DHARMADHIKARI, Esquire Chief Justice

at Ahmedabad aforesaid this 31st day of Jul, 2000

By the Court.

For Deputy Registrar

This 14th day of Aug 2000

True Copy

For Deputy Registrar.

*Judicial
Amr
24/8/2000
21/8*

*Razvan
25/8*

Sr.No. 41/2000

Dated: 16.10.2000

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 14.10.2000 in CA/
Spl.C.A. No. 8367 of 2000 passed by the
Supreme Court/ High Court against the Judgment/ Oral Order
passed by this Tribunal in OA/96/92 is placed for perusal
please.

16/10

S.O. (J)

D.R. (J)

Hon'ble Vice Chairman

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Hon'ble Mr. G.C. Sivasthna, Member

Ced

The number of days the Bench sat in the month.	The number of full day and half day's a division Bench worked during the month.	The number of cases (CA's & TA's) heard by a bench in the month.	The number of Judgement pronounced by the division bench during the month.	The number of Judgement dictated by each member of the bench during the month.	The number of MPs and CCPS entertained and disposed of during the month.	Particulars of disposal at the circuit bench.	REMARKS
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..... Days division bench. Cases heard by division bench constituted by Hon'ble Mr. & Hon'ble Mr. Judgement of division bench dictated by Hon'ble Mr. Hon'ble Mr. & Hon'ble Mr.	Recd. sed.	dispo sed.	Not applicable.	
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..... Days Sigle Member Bench. Cases heard by single member bench constituted by Hon'ble Mr.	Judgement of single member bench dictated by Hon'ble Mr.				
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..... Cases heard by single member bench constituted by Hon'ble Mr.	Judgement of single member bench dictated by Hon'ble Mr.					
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23368

WRIT

(24)



Dispatch No.

(TO BE RETURNED TO THIS COURT/TO BE SERVED ON RESPONDENT NO.)

(TO BE RETURNED TO THIS COURT DULY EXECUTED)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Interim stay & execution of order
Special Civil Application No 8367 of 2000

Fixed on :

District AHMEDABAD

Petitioner(s) Advocate

MRS SIDDHI D TALATI

UNION OF INDIA

& 3

S
A MAKWANA

Opponent(s).

I. THE REGISTRAR
CENTRAL ADMINISTRATIVE
TRIBUNAL, AHMEDABAD.

UPON Reading the petition of the abovenamed petitioner(s) presented this Court through his/her/their Advocate MRS SIDDHI D TALATI praying that pending admission, hearing and till final disposal of the Spl.Civil Application this Hon'ble court may be pleased to stay the execution, implementation and operation of the judgment and order dated.6.3.2000 Annexure to this petition.

And Whereas Upon hearing MRS SIDDHI D TALATI, Advocate for the petitioner, and RULE SERVED for Respondent No. 1 Court passed the following order :-

Coram : B.C.Patel & C.K.Buch,JJ. (Dt.4/10/2000)

Despite the process being served, none has appeared on behalf of the respondents. Hence, interim relief granted in terms of para 12(C).

It is hereby accordingly ordered that, the execution, operation and implementation of the order and judgment dated 6/3/2000 passed by you in O.A.No.96/92, be and are hereby stayed.

Witness DEVDATTA MADHAV DHARMADHIKARI, Esquire Chief Justice

at Ahmedabad aforesaid this 04th day of Oct, 2000

By the Court.

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py
11/10*
M1010
Deputy Registrar

This 09th day of Oct 2000

True Copy

13-10-2000
Deputy Registrar.

Tech. Support : NATIONAL INFORMATICS CENTRE - GUHC

Judicial
13-10-2000
2/10

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

25/A

Serial No. 196

Register No. 04

Page No. 104

Date: 10/4/06

Respectfully submitted:

Hon'ble Vice Chairman, ✓

Hon'ble Member (J)

Hon'ble Member (A)

~~Hon'ble Member (-)~~

Certified copy of order dated 12/01/06 in ~~C.A.~~ /
Special C.A. No. 8367 of 2000 passed by the
~~Hon'ble Supreme Court~~ / Hon'ble High Court against the
Judgment / Oral Order passed by this Tribunal in Original
Application No. 0A/96/92 placed for perusal please.

Amarendra
Dealing Clerk

S.O. (J)

Position of this Case is: ✓ 1. Confirming CAT Order.
2. Partly allowed.
3. Reversing CAT Order.

Registrar

Hon'ble Vice Chairman, 10/4

Hon'ble Member (J)

Hon'ble Member (A)

~~Hon'ble Member (-)~~

10/04/06
19/4/06

URGENT

Decree/Despatch No. 22771
Date 28/13

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 8367 of 2000
(Under Article(s) 226,227 of the Constitution of India)

1. UNION OF INDIA & ORS.
Vs
1. A A MAKWANA

Central Admn. Tribunal
Ahmedabad Bench

Petitioners

Inward No. 418
Date 06/11/06

Respondent

To

1. UNION OF INDIA
THRO GENERAL MANAGER
WESTERN RAILWAY
CHURCH GATE
MUMBAI
3. AREA MANAGER
KALUPUR RAILWAY STATION
AHMEDABAD

2. SR.DIVISIONAL COMMERCIAL SUPERVISOR

DIVISIONAL OFFICE
PRATAPNAGAR
BARODA

4. DIVISIONAL RAILWAY MANAGER

DIVISIONAL OFFICER
PRATAPNAGAR
BARODA

5. THE MEMBER
CENTRAL ADMN. TRIBUNAL,
OPP. SARDAR PATEL BHAVAN,
AHMEDABAD.
[REF: O.A. NO. 96 OF 1992]

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 28/07/2000 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 31/07/2000.

And Whereas Upon hearing
MRS SIDDHI D TALATI for the Petitioner no. 1-4
MS AVANI S MEHTA for the Petitioner no. 1,2,3,4
MR MG NAGARKAR for the Respondent no. 1

Court passed the following order :-

CORAM : BHAWANI SINGH, THE CHIEF JUSTICE & ABHILASHA KUMARI, J.
DATE : 12/01/2006

"This Special Civil Application has been preferred by the.....
.....Rule is discharged. Interim order stands vacated."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

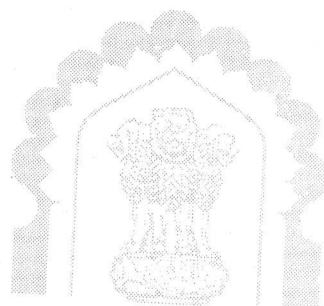
5/4 Link Start up
Recd

Witness BHAWANI SINGH, Esquire Chief Justice at Ahmedabad
aforesaid this 12th day of Jan, 2006.

By the Court

For Deputy Registrar
This day of Feb 2006

Note : This writ should be returned
duly certified within 2 weeks.
(3346) 180220



सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

(28)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 8367 of 2000

Date of Decision: 12-01-2006

=====

UNION OF INDIA & 3 - Petitioner(s)

Versus

A A MAKWANA - Respondent(s)

(for full cause title, see next sheet)

=====

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Smt. Justice Abhilasha Kumari, Judge

Whether approved for reporting? Yes

For the Petitioner(s):

MS AVANI S MEHTA, Adv.

None for the Respondent.

=====

PER : ABHILASHA KUMARI, JUDGE (ORAL):-

=====

This Special Civil Application has been
preferred by the petitioner, Union of India,

=====

Whether reporters of Local Papers may be allowed to see the judgment?

Yes

(29)

being aggrieved by and dissatisfied with the order passed by the Central Administrative Tribunal, Ahmedabad bench (hereinafter referred CAT) in O.A. No.96/92, decided on 6th March, 2000 whereby the CAT has set-aside the order of punishment imposed upon the respondent (original applicant before the CAT) by the appellate authority as well as the order of the disciplinary authority and has directed the petitioner (original respondent before the CAT) not to treat the applicant as "reverted" and further directed that all the consequential benefits available to the respondent be allowed to him as per the rules.

Briefly stated, the facts of the case pleaded by the petitioner are that the respondent was in the service of the petitioner as Senior TTI. The respondent was

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on duty on 5th April, 1990 in Gujarat Express, going from Ahmedabad to Bombay Central, in Sleeper Coach S-9. Soon after the train left Nadiad station, a Vigilance Inspector of the Railways carried out a surprise check, during which it was allegedly found that the applicant had allotted Berth No.1 and 2 to one Shri Gulabchand and his son, though RAC listed passengers were not allotted any berth. Further, it was found by the Vigilance Inspector that the berths were allotted to Gulabchand and his son after accepting a bribe of Rs.20/-. It was also found that there was a shortage of Rs.40/- after verification of the cash with the respondent at that point of time.

The matter was referred to the superior authority and the present respondent was served with a charge-sheet. The Inquiry

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Officer found him guilty of charges levelled against him and as a consequence thereof, the disciplinary authority imposed the major penalty of removal from service upon the respondent. The respondent challenged this order of punishment before the appellate authority. The appeal of the respondent was partly allowed and the penalty of removal from service was reduced to that of reduction in rank as Senior TC in the grade of Rs.1200-2040 at the minimum of scale for a period of three years with the direction that thereafter he would be reverted back to his original position in the grade of Rs.1600-2660, at the stage from where he was removed from service namely Rs.1750. The respondent thereafter challenged the orders of the disciplinary authority as well as the appellate authority by filing original application before the CAT, the decision of which has been assailed by way

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of the present Special Civil Application.

We have heard Ms. Avani S. Mehta, learned counsel for the petitioner. The respondent has been served but none has appeared on his behalf. It has been contended by the learned counsel for the petitioner that the impugned order of the CAT dated 6th March, 2000 is unsustainable since the CAT had no power to interfere with the quantum of punishment imposed by the disciplinary authority or to reappreciate the evidence recorded by the Inquiry Officer. It has been contended that since there was a shortage of cash for which the respondent was responsible, it casts a doubt upon his integrity and the penalty imposed upon him is just and proper. Moreover, the appellate authority, taking a lenient view, considered all aspects of the matter and reduced the said penalty of removal to that of

(33)

reduction in rank and there was no justification for the CAT to have set-aside the same. It is further contended that the CAT could have remanded the case to the Inquiry Officer or authority for reconsideration of penalty instead of passing an order of reinstatement. According to the learned counsel for the petitioner, the impugned order of the CAT dated 6th March, 2000 is liable to be set-aside for the above said reasons.

We have gone through the materials on record and perused the impugned order of the CAT dated 6th March, 2000. The charge against the respondent was two-fold which is reproduced herein below :

Shri A.A.Makwana, HTTE ADI while working as TTE in sleeper coach No.S/9 of 6UP of 5.4.89 ex ADI/BCT is charged for misconduct and that:

i.he was having Rs.40/- short in his Rly.

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cash at the time of vigilance check between ND ANND.

ii. He had demanded and accepted Rs.20/- an illegal money from Shri Gulabchand and his son holding II M/E journey ticket bearing No. 7752 and 7753 JP/ADI for the allotment of 2 sleeper berths.

Admittedly, the major penalty of removal imposed upon the applicant was reduced by the appellate authority to that of reduction in rank. The appellate authority, after scrutinising the record and evidence, felt that the penalty of removal from service was a very harsh.

As far as the first count of the charge that the respondent was having Rs.40/- short in his railway cash at the time of vigilance check between Nadiad and Anand, it is relevant to keep in mind that the vigilance check took

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place within one hour of the starting of the train from Ahmedabad, soon after it left the Nadiad station. The final destination of the train was Bombay Central and since the check was carried out within one hour from the starting of the train there was every possibility that the refunding of amounts to the passengers against the tickets was still going on and Rs.40/-, in the shape of two notes of Rs.20/- may have slipped out of the pocket of the respondent. The respondent had given the explanation that while collecting the cash from the passengers, two notes of Rs.20/- might have slipped away. This explanation was not accepted by the Vigilance Inspector, who reported the matter to the superior authority. Regarding the shortage of cash, this is the only material on record but unfortunately the appellate authority has not discussed this point in its order and has

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merely stated that the employee has not been able to give a satisfactory explanation regarding shortage of railway cash after the departure of the train. In fact, he has observed that this explanation shows the negligence of the respondent.

It can also be seen that the verification of the cash is to be done on reaching the final destination of the journey and if at that point of time there is a shortage of cash, which is not made good by the concerned official, then it can be said that he is responsible for the said shortage and suitable action can be taken against him. In the present case, the surprise check has been done within one hour of the starting of the train, soon after it left the Nadiad station. Therefore, it cannot be said that there is temporary misappropriation of Rs.40/- by the

(37)

respondent since the train was yet to arrive at the final destination where the total amount of receipt was to be deposited. Had there been a shortage of cash on reaching the final destination, the respondent could be asked to deposit the same and only on his failure to do so, it could be said that he misappropriated the amount which fell short. This aspect of the matter, as rightly observed by the CAT, has not been considered or discussed either by the Inquiry Officer or by the appellate authority. In fact, we find that there is no evidence whatsoever on the basis of the material on record that the respondent has misappropriated the amount of Rs.40/-. The charge regarding shortage of cash, being taken as misappropriation of the amount falling short, is based on no clear or cogent evidence that the amount fell short due to misappropriation by the respondent.

As far as the charge of having accepted Rs.20/- as an illegal gratification from Shri Gulabchand and his son is concerned, there is no evidence that the respondent demanded money in the form of bribe from Shri Gulabchand. In his original statement given at the time of vigilance check Shri Gulabchand has merely stated that the respondent took Rs.20/- after the train started from ADI and the receipt was not given by him. In the cross-examination Shri Gulabchand deposed that he did not make any attempt to give illegal gratification of Rs.20/- to the respondent and no sooner had he paid Rs.20/- the respondent was immediately called by the checking party before he could part with the receipt and collect the balance amount. The appellate authority has also observed that the original statement of Shri Gulabchand, by itself does not give any

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conclusive proof of the fact that bribe of Rs.20/- was demanded and accepted by the respondent. Unfortunately, no clarification was obtained by the authorities whether Rs.20/- paid by Shri Gulabchand was illegal gratification or whether he was expecting a receipt for the same. Just because a receipt has not been issued for Rs.20/- it cannot be presumed that the said amount was given by way of illegal gratification.

Normally, the courts and tribunals are precluded from reappreciating the evidence in a case of departmental inquiry, where penalty has been inflicted. However, the courts can judicially review the findings of the inquiry if there is a procedural lapse or the case suffers from malafide or when there is no evidence in support of the findings arrived at. If the charge is based on no evidence,

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then the Court/Tribunal may interfere and mould the relief, in order to do substantial justice to the parties. The Supreme Court, in **AIR 1996 SC 484, B.C.Chaturvedi v/s. Union of India and others**, has observed as follows :

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined

(411)

therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(emphasis supplied)

In the present case, we find that there is no evidence whatsoever to sustain either of the charges with which the respondent has been charged. The charge of misappropriation of

Rs.40/-, which was found short at the time of vigilance check, rests upon no plausible ground and there is no evidence to the effect that the respondent, in fact, misappropriated the said amount. Moreover, the explanation of the respondent that Rs.40/- in the form of Rs.20 notes might have slipped away was not accepted and was attributed to be a negligent act on his part by the appellate authority. Similarly, there is not an iota of evidence of misappropriation of Rs.40/- by the respondent, when the train was yet to reach the final destination and the cash was to be finally verified. Had the respondent failed to deposit the amount of Rs.40/-, being shortage of cash at the end of the journey, then he could have been charged with misappropriation of the amount. This charge seems to be baseless, even otherwise, not been dealt with by the appellate authority in its proper perspective.

Clearly, it seems to be a case of no evidence.

In view of the above discussion, we find that there is no illegality or infirmity in the order dated 6th March, 2000 passed by the CAT in O.A. No.96/92. The petition is, therefore, dismissed. Rule is discharged. Interim order stands vacated.

sd/-
(Bhawani Singh)
Chief Justice

sd/-
(Abhilasha Kumari)
Judge

(moin)

TRUE COPY

MA Sanyal
P.S. TO THE HON'BLE JUDGE
HIGH COURT OF GUJARAT.

By order of the Court

13-2-06
Deputy Registrar

18.2.06

(43)

In the Central Administrative Tribunal at Ahmedabad.

O.A. 96/92

A.A.MakwanaApplicant

V/s

Union of India & Others.....Respondents

List of Citations by applicant

1.Appointing authority-competency to issue removal order

Art 311 1) of Constitution of India

Rly servant Dis.Appeal rules 1968 4th edition

page 9 para (7) Authority competent to impose major penalty

page 10 para (8)"Appointing authority" of staff in relation to imposition of penalties of dismissal/removal/Compulsary retirement-clarification

Page 11 Appointing authority where records are not available

Schedule of powers and appointing authority.
Page 14 of Rly.Servants(D&A)Rules 1968.

1. 1990(12)ATC page 388 para 18 to 21 ,55to59,61 to63 & 69,72,73.
A.S.Murthy's case.

2. The Sr.DCM-BRC was not having the competency authority and power to punish the applicant nor can have the dual charge.

Rly Servants (D&A)rules 1968

Page 4 Disciplinary action against the employee not under the the administrative control of the authority procedurally wrong.

Rly.Board's order E(D&A)72RG 6-13 of 16/10/73 and E(D&A)78 RG 6-15 of 10 .1.79,E (D&A)RG-1546-7-79.

2.Preliminary inquiry-report /vigilance report-non supply -

The preliminary inquiry report and the files pertains to the same not made available to the applicant-relied by the Disciplinary authority for framing the charges.

Even the Tribunal was also not able to examine the same

Supplied by
Mr. K. K. Shah
24/9
18/12/00

2 (44)

in absence of producing. Denial of natural justice. the statement made and material relied behind the back of the applicant is improper and violative of natural justice.

1. AIR 1982 SC 937 para 2,3,
State of U.P. V/s Mohd. Sharif
2. AIR 1961 SC 1623 para 9,10
State of M.P. V/s Chintaman
3. 1988(1) ATR371 para 5,6.
Gunandhi Sahu v/s Union of India
4. 1992 (19) ATC659 para 11 to 16
Harigiri v/s Union of India
5. 1990(14) ATC 99 para 13 to 17
V.D. Joseph v/s Union of India

The above cases are referred by our Tribunal in O.A. 482/89 in the case of M.B. Solanki V/s Union of India the said judgement may be called from the record since it is not yet reported.

3. Non supply of documents.

1. 1987 (2) ATC 205 para 4 to 6
Pattipaban Ray v/s Union of India & Others.
2. 1989(9) ATC21 para 4
Jagannath Behra v/s U. Of India
3. 1989(10) ATC565 para above 6
Sachidanand Singh v/s Union of India
4. 1990(14) ATC99 para 8,9,
V.D. Joseph v/s Union of India

4. No effective defence could be prepared due to non supply of documents before appointment of inquiry officer since there is an important stage either to drop the charges after considering the defence or to convert into minor penalty chargesheet or to proceed with the inquiry.

Rly Servant (D&A) rules 1968.

page 144 Dropping charges after receiving written statement of defence .

5. Burden of proof
Onus lies on prosecution and not on applicant

1989(10) ATC565 relevant page 567, para 7.

3 (45)

6. Inquiry officer cannot examined and crossexamined the applicant extensively and no P.O. was appointed so performing the dual role-not permissible inquiry to be vitiated.

1. AIR 1958 SC 96 para 9, to 11, 13, 20, 21, 24.

2. V.D. Joseph v/s Union of India
1990(14)ATC 99, para 7

3. 1991 (18)ATC 560, para 6, 7,
K. Kannan v/s U.O. India

4. 1991(18)ATC 33 para 11, 12.
G. Sela Vathy v/s Director Social welfare

5. 1987(4)ATC 727 para 6, 7, 8.
Prem Baboo v/s Union of India

7. Inquiry officer report is bias and one sided without appreciating the defence and the evidence of defence witness..

The evidence relied by the prosecution is admitted and accepted by the D.A. and A.A. as hostile and the charges cannot be held as proved on circumstantial evidence or preponderance of probability.

T.A. 1392/86 decided on 9/7/87 by our bench
Please refer be ing covering all the points.

8. No eyewitness or direct evidence substantiating the charge inquiry to be vitiated.

Since the D.A. and A.A. accepted that the Gulabchand the key witness become hostile and the statement in the DAR inquiry is to be examined and not in the preliminary inquiry.

The order of Appellate authority is not on the other issues and so the appeal deemed to have been accepted by him.

9. Penalty orders are perverse and non speaking both by D.A. and by Appellate Authority.

In view of the charges are not proved as per the law and admission of appellate authority at annexure A-2 no penalty is warranted and hence it is perverse.

1. 1988(7)ATC 552 para 6.
R. Ramasesiah v/s G.M. Southern Railway.

2. 1986(2)ATR 405 , para 8, 10.
Tarlochan Singh v/s Union Of India

3. 1990(12)ATC 388 para 52, 53.
A.S. Muthy

10. Effect of illegal orders -to be set aside and all consequential benefits of backwages continuity of service and promotion if given to the juniors requires to be given -due to retired and no fresh inquiry is to

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be ordered.

1996 (10)SCC page 10

relied by Ahmedabad Bench in O.A. 118/90 Copy enclosed.

1. A.L.Kalra 1984(3)SCC 316 para 33 on page 338.
2. A.S.Murthy V/s Station Director.
1990(12)ATC 388 para 108
3. 1991 (18)ATC560 para 7
K.Kannan

11. The deffence of the applicant not accepted of shortage of 40 as satisfactory in absence of evidence and the same was to be made good when the applicant put of duty and not just on performing duty. The appellate authority is silent on the same means he has accepted the grounds made out by the applicant and to be held as deemed to have been established.

Even otherwise there is a provisin under the commercial Manual how to make good the shortage by recovering from the employee and from his salary and if not done than only the DAR proceedings can be initiated but not be a matter of misconduct directly in the manner it is alleged and punished.

Please refer Commercial Mabnual of the Railway.

*Shri
T. S. S. S.*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Q. No.

198

T.A. No. 1392 of 1986

DATE OF DECISION 9-7-1987

Shri Ghanshyam Ladikram

Petitioner

Jhantani

Shri S.K. Zhaveri

Advocate for the Petitioner(s)

Versus

Union of India and Ors.

Respondent

for

Sh. N.S. Shevde / Shri R.P. Bhatt.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukherji ; Administrative Member

The Hon'ble Mr. P.M. Joshi ; Judicial Member.

C. A. T.

Ahmedabad Bench

- (a) Serial Number of the Application: TA/1392/86
(b) Name of the Applicant: Shri S.K. Zhaveri
(c) Date of presentation of application for copy: 09/07/87
(d) Number of Pages: Fourteen (14)
(e) Copying fee charged
(f) Date of calling for deposit of copying fee
(g) Date of deposit of copying fee
(h) Urgent fee charged if any
(i) Date of receipt of record for copy
(j) Date of presentation of copy: 15/07/87
(k) Date of Delivery of copy to the applicant: 15/07/87

} Advocate
for the
petitioner

(48)
(5)

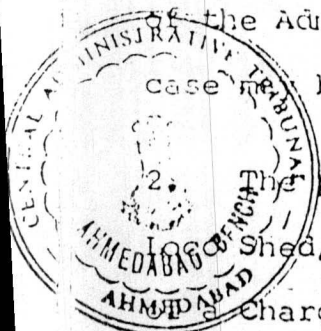
J U D G M E N T

TA/1392/86

Date : 09/07/1987

Per : Hon'ble Mr S P Mukherjee : Administrative Member

The petitioner who was working as Head Fitter Chargeman, Loco Shed, Kankaria, Western Railways moved the High Court of Gujarat by his Writ Petition dated 21/6/1982 under articles 226, 14, 16 and 311 of the Constitution of India praying that the impugned order of the Disciplinary and the Appellate Authorities imposing the punishment of removal from service upon him be set aside and that he should be reinstated with full back wages and continuity of service. He ~~was~~ also prayed for an interim injunction restraining the respondents from evicting him from Railway Quarters. The petition stood transferred to the Tribunal under Section 29 of the Administrative Tribunals Act, 1985. The brief facts of the case may be summarised as follows.



The petitioner was working as Head Fitter Chargeman at the Loco Shed, Kankaria during the period from 1978 to 1979. The post of Chargeman is a supervisory post and the staff under him had to obey to him. One Shri Shankar Lakhaji worked as Fitter/Khalasi under the petitioner at the Loco Shed, Kankaria from 30/4/1975 to 24/11/1975 and was thereafter deputed to the post of Pump Operator in the same Loco Shed under another Chargeman. According to the respondents the petitioner had been threatening Shri Lakhaji to return to the petitioner's section in his original post or else he has to pay a monthly 'Hapta' (bribe), to the petitioner for allowing him to continue as Pump Operator. Since Shri Lakhaji wanted to continue as Pump Operator, according to the respondents he agreed to give Rs.10/- every month to the petitioner. On 17-1-1979 the petitioner demanded the Hapta of Rs.10/- but Shri Lakhaji expressed his inability to pay the same on the ground that he had not received his night duty allowance. Thereupon, the

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petitioner asked him to pay two Haptas together i.e. Rs.20/- during the next month of February, 1979. As Shri Lakhaji did not want to pay the money, he lodged a complaint with the C.B.I., Ahmedabad Branch that the petitioner had demanded a bribe of Rs.20/- and according to the respondents the complaint was made on 17-2-1979 and was registered under the I.P.C. and Prevention of Corruption Act. According to the respondents a trap was arranged on 17-2-1979 and the petitioner was caught red-handed accepting bribe of Rs.20/-. Disciplinary proceedings were initiated and after holding the inquiry and considering the inquiry officer's report the disciplinary authority issued a ~~show cause~~ Notice for the penalty of removal from service, On 11-3-1981. The appeal of the petitioner was rejected on 15.4.1981.

3. According to the petitioner, Shri Lakhaji while working under the petitioner applied for the vacancy of Stationary Pump Attendant (S.P.A.) under another Loco Foreman Shri Harishchandra Sharma who took Shri Lakhaji under him. Since the transfer was made from the Loco Foreman who was superior to the petitioner, the question of petitioner threatening Shri Lakhaji of reversion back to the Loco Shed at Kankaria as Khalasi did not arise. The petitioner had no control over Shri Lakhaji since 24-11-1975 when he was transferred as S.P.A. According to the petitioner in the middle of June, 1978 when Shri Harishchandra Sharma who had retired in September, 1977 along with his friend Shri Joshi who was also retired Railway servant was visiting the Loco Shed, Shri Lakhaji approached Shri Sharma as usual for a loan of Rs.50/- to which he (Shri Sharma) did not agree (as he had retired and had no control for recovery) but requested the petitioner to advance the loan to Shri Lakhaji. On Shri Sharma's recommendation the petitioner advanced the loan of Rs.50/-. This was not being re-paid by Shri Lakhaji and in December, 1978 when Shri Sharma again visited the Loco Shed the petitioner complained to him who thereupon called Shri Lakhaji who expressed regret for his default and promised to pay his loan by instalments of Rs.10/- every month.

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In January, 1979 Shri Lakhaji did not pay the monthly instalment on the excuse that he had not received his night duty allowance and promised to pay both the instalments next month. On 17th February, 1979 according to the petitioner Shri Lakhaji came to the petitioner and paid Rs.20/- towards re-payment of two monthly instalments against the loan of Rs.50/- but it appears that a trap had been arranged by Shri Lakhaji but the petitioner there and then pointed out to the Investigating Officer that the money was paid to him towards payment of loan instalments.

According to the petitioner, the C.B.I. recorded the statements of Shri Lakhaji, Shri Sharma, Shri Joshi and others but did not find the case good enough for being put up for criminal prosecution and only departmental proceedings were started on the solitary basis of the complaint of Shri Lakhaji. The petitioner's grievance is that the disciplinary authority by nominating the

Inspector as a Presenting Officer and by denying him an opportunity of complete inspection of documents acted in excess of his powers and illegally. It was after repeated protests that the Inquiry Officer asked the Presenting Officer to allow the petitioner to inspect the documents and to get copies thereof including the statement of witnesses obtained by the C.B.I. during investigation. It is also alleged that the Inquiry Officer refused to examine four officers present on 10-10-1980 who were material witnesses and the Inquiry Officer closed the record of evidence examining only two defence witnesses ^{leaving four} and ~~having~~ others untouched. The petitioner has further referred to the Inquiry Officer's report in which he stated that "this is a case of preponderance of probability wherein the petitioner who was Head Chargeman had demanded Rs.10/- per month as Hapta from Shri Shankar Lakhaji, Khalasi." and yet held him guilty of the charges. The petitioner preferred an appeal to the Divisional Railway Manager on 16-6-1981 and requested for a personal hearing but the appellate authority rejected his appeal on 15-4-1982 stating that "I do not consider

necessary to give him personal hearing in this case." The petitioner's further argument is that the disciplinary and the appellate authorities have not applied their mind to the material evidence brought out at the inquiry and thus failed in their duty to act in accordance with law. He has further referred that besides Shri Lakhaji's complaint, there is no evidence that the amount of Rs.20/- had been paid to the petitioner as bribe and not as re-payment of loan. The witnesses on the spot did not corroborate the allegation of bribe while the petitioner himself on the spot and instant of trap had stated that the money was in repayment of loan. The plaintiff has also argued that if it was a case of bribe as alleged to the C.B.I. by the complainant Shri Lakhaji, there was no reason why the C.B.I. during the preliminary investigation should have recorded the statement of Shri Sharma on whose recommendation the loan had been given to the

complainant. It is also stated that the Inquiry Officer by not putting questions to the petitioner who did not examine himself as a defence witness, did not discharge his duties as enjoined by the rule.

4. It may be stated that the petitioner expired on 01/02/83 during the pendency of the Writ and his legal heirs were brought on record on 22.2.1983 by the order of the High Court.

5. We have heard the arguments of learned counsel for both the parties and gone through the documents carefully. We cannot help noticing that the case made out by the respondents suffers from a number of infirmities of logic and ratiocination evidenciary value and procedural and legal lapses. To start with, it was admitted by the prosecution witness ^{Shri} Shri Sethi and Murlidhar that the petitioner ^{during the period in question} had no official command over the complainant Shri Lakhaji ^{at} who had been transferred from the petitioner's jurisdiction as far back as in 1975. Accordingly the plausibility of the respondents'

allegation that the petitioner was extorting money from the complainant on pain of being transferred back as Khalasi is not convincing. The inquiry officer himself in his report stated that the PW Shri Sethi clarified that "It is true that the complainant could not be transferred by the delinquent officer of his own but that does not mean that he could not suggest or recommend the transfer of the complainant." The inquiry officer further considered that Shri Lakhaji was quite aware that the petitioner can withdraw him from his working as Pump Attendant at any time "with the approval of loco foreman." Thus having ^{been aware} ~~considered~~ that the petitioner could not transfer the complainant on his own without getting the approval of the higher officers, it cannot be logically concluded that the complainant was so simple as to allow himself to be subjected to extortion by the petitioner.



6. It is also difficult to believe that the petitioner should have if he had any evil intention demanded Rs.10/- every month in broad day light in the loco shed itself. He could have easily extorted the money either in lumpsum or at his residence. The fact that he was demanding money in broad day light in the loco shed gives more ^{credibility} ~~credibility~~ to the petitioner's story of the amount being monthly repayment of the loan ^{then} ~~that~~ of ^{right} ~~right~~ bribe.

7. ^{is} It is also very difficult to believe that the complainant Shri Lakhaji having been periodically pressed for giving 'Hapta' by the petitioner should not have made any oral or written complaint ^{whatsoever} to his superiors but at the last moment he should have gone to the C.B.I's Office eight miles from the loco shed to arrange a trap.

8. It is also difficult to believe that the C.B.I. should have laid the trap within 45 minutes of the complainant's alleging a complaint eight miles away from the loco shed.

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9. It is also difficult to believe that no other person from whom the petitioner was alleged by the complainant to be extorting money should ~~not~~ have made any complaint against the petitioner. As against the logical ^{incongruity} ~~incongruence~~ and lack of plausibility about the story of bribe the petitioner's version of loan^{and} was fully ~~in~~consistently corroborated by him on the ^{spot} ~~trap~~ of the trap by independent and senior retired officials Shri Pharna and Shri Joshi.

10. It has been held by the Madras High Court in K. Sugder Rajan Vs. D.I.G. of Police, 1972 SLR 723 that

"Though the proof required to sustain a conviction in a criminal case, namely, proof beyond reasonable doubt, should not be insisted upon in departmental enquiry, still the proof should be capable of scrutiny and should stand the test of reasonableness consistent with human conduct and probabilities. Where the finding is totally perverse on an erroneous view of the evidence, it would be a case for interference by this Court. Where the evidence relevant for the consideration of the charge is misapprehended and is not given its legal effect then also it would be a case for interference by this Court, for the finding arrived at on such a basis is liable to be characterised as unreasonable and perverse."



11. The story of the respondent further suffers from evidentiary vacuum. It is admitted that the entire story of the respondent is dependent upon the ^{only} corroborated solitary complaint of Shri Lakhaji. Though the trap ~~indicated~~ ^{proved} the transaction of Rs. 20/- between the petitioner and Sh. Lakhaji, there is no proof documentary or oral, to substantiate the basic charge that the amount was paid in the form of bribe.

On the other hand, the evidence of two independent witnesses Shri Sharma and Shri Joshi clearly shows that Shri Lakhaji had taken a loan of Rs.50/- from the petitioner in June, 1978 and that it had been arranged that the repayment will be made in monthly instalments of Rs.10/-. It is also evident that when the petitioner was caught in the trap he came out ^{then and then} with a clear ⁶ statement of the loan and even named the defence witnesses Shri Sharma and Shri Joshi who were witnesses to the loan having been given to Shri Lakhaji. If there were any element of concoction in the petitioner's story he could not have named 'extempore' Shri Sharma and Shri Joshi who are retired senior officers of the Railways and who during the investigation by the C.B.I. subsequent to the trap fully corroborated the loan version. At best, Shri Lakhaji can be held to be an accomplice motivated to get ^{hid} ~~wide~~ of the loan and his solitary complaint that it was a bribe cannot to our mind neutralise the corroboration of the petitioner's version of the loan through the evidence of two independent witnesses. We find that the inquiry officer has grievously erred in dismissing the vital evidence of Shri Sharma and Shri Joshi. It is also clear that there is no corroborative evidence by any witness or document about the amount of Rs.20/- being given as a bribe or the demand of Rs.10/- on 17/1/1979 by the petitioner. We feel that it will be far fetched to deduce from the solitary and tainted complaint of Shri Lakhaji without any corroboration, that on 17-1-1979 the petitioner had demanded Rs.10/- and that he further accepted the bribe of Rs.20/- on 17-2-1979 as per the charge sheet. The inquiry officer completely over-stepped the logical limits of the evidence before him by concluding that since the petitioner did not mention about the balance of loan at the time of trap the loan story is false. The inquiry officer was not reasonable either to dismiss the story of loan on the ground that no documentary evidence has been produced by the petitioner.

On the other hand the independent witness Shri Sharma clearly stated that Shri Lakhaji had been habitually in need of money and while he was working under Shri Sharma the latter used to advance small loans to Shri Lakhaji. For such small amounts of loan amongst officials it may be un-realistic to expect any documentary evidence. The inquiry officer also was un-convincing in concluding that the amount of Rs.20/- was in the form of bribe and not loan merely because the petitioner at the time of trap asked Shri Lakhaji "how many brought" and Shri Lakhaji replied "for two months". These question and answer are as much if not more plausible for repayment of monthly instalments of loans as for payment of bribe.

12. Perhaps, because of these circumstantial and evidenciary infirmities, the inquiry officer fairly concluded that "this case of preponderance of probability wherein defencant head Chorgeman might have demanded Rs.10/- per month as Hapta from Shri Shanker Lakhaji, Khalsi" (emphasis added). It has been held by the Supreme Court in a number of cases e.g. Union of India Vs. Sardar Bahadur 1972 Lab I.C. (SC) 627 and State of Assam Vs. Mohan Chandra Kulati, AIR 1972 SC 2535, that even during disciplinary proceedings where it is not required to have proof beyond reasonable doubt, inferences should be drawn from proved facts of the case. The charges cannot be held be sustained on conjectures only. The same view has been taken by them in State of Madras Vs. A.R. Srinivasan, AIR 1966 SC 1827. In Union of India Vs. H.C. Goyal, AIR 1964 S.S. 364, the Supreme Court observed that :

"Though we fully appreciate the anxiety of the appellant (i.e. the Union of India) to root out corruption from public service we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic inquiries."

13. In Gian Singh Vs. State of Himachal Pradesh, 1975 Labour I.C. 73 it was observed as follows :-

"When it is proposed to take action against a Government Servant for dereliction of duty, the penalty for which is dismissal or removal, it is of the utmost importance that the mind of the Enquiry Officer and the disciplinary authority should be applied with scrupulous regard to the material on the record and that it should be followed by a clear and definite finding. A halting and inconclusive finding serves no purpose at all. It is meaningless."

14. We therefore conclude that the report of the inquiry officer based on conjectures, surmises and suspicion and improper assessment of evidence cannot be relied upon to bring home the charges against the petitioner.

15. We are fully convinced about the injustice done to the petitioner by the self evident fact of the nature and character of the appellate order passed on 15-4-82. We have gone through the memorandum of appeal 'Annexure G' and we have identified the following sixteen major convincing grounds of appeal therefrom. These are summarised as follows :-

1. Request of the petitioner for perusal of documents for preparation of defence turned down.
2. Statements of prosecution witness during investigation were handed over to the petitioner after repeated requests which is on the date of their examination during inquiry.
3. There was no oral statement of the complainant who merely read out his written complaint during inquiry.



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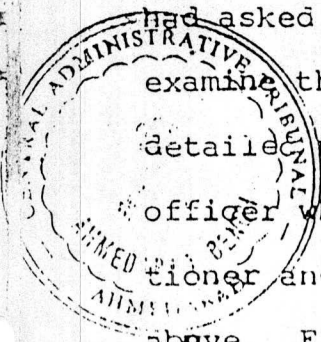
4. No corroborative evidence of the complaint ~~present~~.
5. The statement of prosecution witnesses that the complainant could not be shifted without higher orders and he was not under petitioner's control was ignored by the inquiry officer.
6. The inquiry officer held him ^gquilty on preponderance of probability of petitioner being capable of doing a favour to the complainant, a fact which is not supported by evidence.
7. The complaint was lodged with the C.B.I. at 11-30 a.m. on 17-3-1979, eight miles away from the loco shed and the trap proceeding commenced at 12-15 p.m. on the same day within 45 minutes. The genuineness of the complaint was not verified by the E.O.
8. PW 2 had stated that the complainant had received night duty allowance on 17-1-1979 which was denied by the complainant.
None of the prosecution witnesses corroborated demanding of money as a bribe by the petitioner.
The petitioner had accepted Rs.20/- openly in the loco shed in presence of every one present in the yard because his conscience was clear that he was accepting the money as repayment of loan.
11. The fact that the C.B.I. had contacted Shri H.C.Sharma and Shri Joshi shows that the petitioner's version on the spot about the loan given by him in presence of these witness was correct.
12. Inconsistency about the words spoken by the petitioner to the complainant about giving of money which arose between panchnama and the statement of witness was ignored.
13. Panchnama does not mention that the transaction was related to bribe.

14. Shri Sharma and Joshi defence witnesses consistently spoke about the loan but the enquiry officer unwarrantedly over-looked their evidence.

15. Charge No.1 being based on probability, Charge No.2 does not survive.

16. He should be given personal hearing.

16. From the perusal of the appellate order it is clear that the appellate authority did not ~~gough~~ upon any of the 15 points and rejected the 16th point of personal hearing by saying that "I do not consider necessary to give him personal hearing in this case". The appellate order is hopelessly non-speaking and mindless. We wonder ~~y~~ ~~that~~ the appellate authority even cared to glance ~~through~~ ~~the~~ memorandum of appeal. It is interesting to note that the appellate authority i.e. the Divisional Railway Manager

 had asked the Senior Divisional Mechanical Engineer to examine the case and the Senior D.M.E. had submitted a detailed note a copy of which is at Annexure I. It is this officer who seems to have examined the appeal of the petitioner and dealt with a number of the points mentioned above. Finally he came to the conclusion that "From all the evidence adduced I consider that Ghanshyam.L. Jhamtani, Hd. FCH KKF is not guilty of the charges levelled against him and recommend to be dropped".

17. The cavalier manner in which the appellate authority has dealt with the appeal by itself would merit allowing of the petition. The Supreme Court and ~~other~~ ^{several} High Courts have given ~~plethora~~ ^{pl} of rulings about the need of the appellate order being "speaking" in the real sense of the term. The need of a speaking and reasoned appellate order assumed greater importance after the 42nd amendment by which the ~~stand~~ ^{second} opportunity to the delinquent official to defend himself on the quantum of punishment was taken away. The

latest ruling of the Supreme Court on this aspect is available in a similar railway case in Ramchander Vs. U.O.I. and Others ATR 1986(2) SC 252. The Hon'ble Judges pointedly observed as follows :-

"The right to make a representation on the proposed penalty which was to be found in clause(2) of Rt.311 of the Constitution having been taken away by the Forty-Second Amendment, there is no provision of law under which a government servant can claim this right. The majority in Talsiram Patel case (1985) SCC (L&S) 672, unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to be given sufficient in this case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Talsiram Patel case that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by Tribunals, such as Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent



servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed in his appeal. Consideration of fair play and justice also require that such a personal hearing should be given." (emphasis supplied)

18. In view of the above facts and circumstances we set aside the impugned order of punishment dated 11-3-81 and the appellate order dated 15-4-82. Since the petitioner has unfortunately already expired, the question of remanding the case for further inquiry or in appeal does not arise. Even otherwise, in view of the aforesaid grave infirmities in the case of the respondents, no useful purpose would have been served in such a remand. The impugned orders having been set aside the petitioner should be deemed to have been reinstated in service with effect from the date of his dismissal and entitled to consequential benefits of arrears of pay, promotion, seniority and retirement/death and family pension benefits as if he died while in service on the date of his demise. The monetary benefits including family pension accruing to the petitioner's legal heirs should be sanctioned and paid to them in accordance with the rules within 4 months of the date of communication of the order. There will be no order as to costs.

Sd/-

(P.M. JOSHI)
JUDICIAL MEMBER

Sd/-

(S.P. MUKHERJI)
ADMINISTRATIVE MEMBER



017.
15/01/87

TRUE COPY

Amal
Deputy Registrar 15/7/87
Central Admn. Tribunal,
Ahmedabad Bench

IN THE CENTRAL JAIL MUMBAI, Bench at Jaipur

T.A.No.1554/86

Dt. of order: 15.9.1994

R.P.Bhatnagar

, Applicant

vs.

Union of India & Ors.

: Respondents

Mr.R.N.Mathur

: Counsel for applicant

Mr.K.N.Shrimal

: Counsel for respondents

CORAM:

Hon'ble Mr.Copal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.)

AR HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant R.P.Bhatnagar had filed a civil suit in the Court of Munsif & Judicial Magistrate, Jaipur City, Jaipur on 2.12.'82 praying that the orders dated 1.12.'78 passed by the D.C.S. by which penalty of removal from service was imposed on the applicant, order dated 24.10.'78 passed by the Appellate Authority and the order dated 23.4.'81 passed by the Reviewing Authority, rejecting the appeal and the review applications of the applicant respectively may all be quashed, and the applicant be reinstated in service with all consequential benefits. He had also prayed that Rule 9(5) of the Railway Servants (Discipline & Appeal) Rules, 1968 may be quashed as being ultra vires of the Constitution. The Suit was transferred to this Tribunal and registered as T.A.No.1554/86.

2. A Charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, was issued to the applicant then working as a TTE in the year 1975. The charge in the charge sheet was that the applicant demanded illegal ratification from passengers for providing the seating accommodation in the coach under his charge in a particular train on 26.7.75 and he was also found drunk while on duty. It was further mentioned in the charge sheet that the illegal ratification accepted by the applicant was recovered from his possession by Raiding Party of CBI, Jaipur. On denying the charges in enquiry was held against the applicant. The charges were held as established by the Enquiry Officer.

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Thereafter the D.C.S. imposed on the applicant the penalty of removal from service vide order Annx. (R) dated 31.8.78. The appeal and the review applications preferred by the applicant were rejected by the concerned authorities.

3. The applicant has assailed the orders passed by the Disciplinary Authority, Appellate Authority and the Reviewing Authority on various grounds. He has also challenged the findings of the Enquiry Officer and has added that full opportunity as prescribed under the Rules was not granted to him for defending himself during the enquiry. He has also assailed the decision of the respondents not to allow him to engage a Lawyer to defend himself during the enquiry, when the Presenting Officer was an officer from the CBI. Further, according to him he was appointed as Ticket Collector in the Railways by the authority who was then known as Divisional Superintendent. The order removing him from service was passed by the DCS. The authority DS is equivalent to DM and not the DCS. Therefore, the order removing him from service was passed by an authority subordinate to ^{the} one which appointed him. On this ground also the order of the Disciplinary Authority is liable to be quashed.

4. The respondents in their reply have maintained that all the actions in this case had taken properly by the authorities concerned and that the order of removal from service and the order of appointment of the applicant was issued by DS (R) who is an authority equivalent to DCS. Therefore, the passing of the order of removal from service by the DCS does not suffer from any illegality.

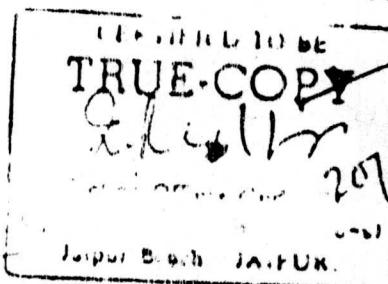
5. We have heard the learned counsel for the parties and have gone through the records. We find that the matter was decided by us on the limited question whether the order removing the applicant from service was issued by the authority which appointed him or by an authority subordinate to that which appointed him in the service of the Railways. We have perused the original order of appointment which is in the possession of the respondent and a copy of which has been put up as Annx. (2). The order dated

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26.6.1964 appointing the applicant to the post of Ticket Collector a class III post has been signed by an officer who has described himself as "For DS(E) labour". The contention of the learned counsel for the respondents is that the Officer equivalent to DS(E) is DCS. ^{However} Earlier, the officer who is now designated as Divisional Railway Manager was designated as Divisional Superintendent(DS). The officer equivalent in rank to DS would therefore be the DRM. It has not been explained how the addition of the letter (E) would make the authority concerned as some one other than the DS. In any case, no document has been produced before us to show that DS(E) stands for DCS or he is now equivalent to DCS. On plain understanding of the matter it appears to us that the applicant was appointed to his post as Ticket Collector in 1964 by the DS. Under Article 311(1) of the Constitution, a penalty of removal or dismissal from service cannot be imposed on a government servant by an authority subordinate to the one by which he was appointed in service. The authority equivalent to the DS now would be the DRM. In the circumstances of the present case we are satisfied that the order removing the applicant from service was not passed by the authority which appointed the applicant to service or by an equivalent authority but was passed by an authority subordinate to the authority which appointed him in the service, because DCS is subordinate to DRM. In the circumstances, the order removing the applicant from service is quashed with all consequential benefits. Consequently, the orders of the Appellate Authority and the Reviewing Authority are also quashed. We however make it clear that the appropriate Disciplinary authority shall be free to pass such fresh order as it considers appropriate in the circumstances of the present case. Before passing any fresh order, the appropriate Disciplinary Authority shall grant an opportunity of personal hearing to the applicant.

6. The T.A. is allowed as above with no order as to costs.

(O.P. Sharma)
Member (A).



(O.P. Krishna)
Member (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

OA/118/1990

Date of Decision : 11/02/2000

Shri. Ramsamuj Girdharilal : Petitioner (s)

Mr.K. K. Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr.N.S.Shevde : Advocate for the Respondent(s)



The Hon'ble Mr.V.Radhakrishnan : Member(A)

The Hon'ble Mr. P.C. Kamman : Member (J)

Ramsamuj Girdharilal
House No. A/23
Hanse Colony,
New Bapunagar,
Ahmedabad
Gujarat State.

= Applicant =

Advocate : Mr. K.K. Shah

Versus

1. Union of India,
Notice to be served through
Shri. Subramaniam or his
Successor, General Manager,
W.Rly., Church gate,
Mumbai - 20.
2. Shri. Govind Vallabh or his successor
Divisional Rly., Manager,
Divl. Office, W.Rly.,
Pratapnagar, Baroda (BRC).
3. Shri. A.K. Singh or his successor,
Divl. Mechanical Engineer (L)
W.Rly., Pratapnagar,
Baroda (BRC).

= Respondents =

Advocate : Mr. N. S. Shevde

JUDGMENT
O.A 118 OF 1990

Date : 11.02.2000

Per Hon'ble Shri. P. C. Kannan : Member (J).

The applicant in this O.A has challenged the orders of the respondents imposing the penalty of compulsory retirement (Annexure A-8 & A -10).

2. The case of the applicant is that he was working as Driver Grade 'B' under the respondents and had completed 32 years of satisfactory service. On 08.06.89 he was running a goods train on UP line from Ahmedabad to Baroda. On the river Mahi a single track bridge at Vasad is there as given in the Map (Annexure A). The applicant was running the train and it reached at Starter Main Line. As there was no red signal at Starter Main Line and at Signal B-33 also, there was no red signal, he continued the train. The signal GF-2 was found to be defective both before and after the incident. In spite of the fact that the signal at GF-2 was faulty, the respondents did not take any action. The applicant after getting signal at B-33, (Advance Starter) passed GF-2 which was also found to be yellow. The applicant proceeded further with an impression that the train was going straight on the bridge and setting of point for dead section surprised him and due to poor earth work, the train was derailed.

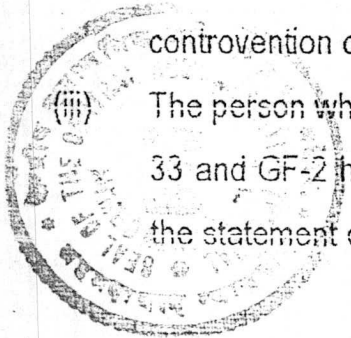
The applicant claims that the subsequent inquiry found that due to poor earth work, the derailment occurred. The applicant submits that subsequently he was charge sheeted and gives chronologically the series of action taken.

- (a) 08.06.89 ; the accident took place.
- (b) 10.06.89 ; joint enquiry held.

- (c) 21/22.06.89 ; charge sheet was served on the applicant (Annexure A-1).
- (d) 23.10.89 ; the applicant was placed under suspension (Annexure A-2).
- (e) 29.06.89 ; the applicant's defence counsel demanded certain documents (Annexure A-3).
- (f) 12.09.89 ; the applicant asked for certain documents (Annexure A-4).
- (g) 03.07.89; letter from the applicant to the Disciplinary Authority (Annexure A-5)
- (h) 26.09.89 ; letter of the applicant to the Inquiry Officer.
- (i) 03.11.89 ; Order of the Disciplinary Authority (Annexure A-8).
- (j) 19.11.89 ; Appeal to the Appellate Authority (Annexure A-9).
- (k) 21/22.12.89 ; Order of the Appellate Authority (Annexure A-10).

3. The applicant has challenged the report of the inquiring authority, Disciplinary Authority and the appellate authority inter alia on the following main grounds :-

- (i) No evidence was tendered to show that the applicant passed signal GF-2 at 'ON' position. The linesman who was the crucial witness was not examined. The applicant has never admitted that he passed the signal No. B-33 at VDA 'B' Cabin at 'ON' position and failed to control the Train (as given in the statement of imputation in the charge sheet).
- (ii) The respondents took no action against ASM, Vasad S/Shri. S. A. Patel and I.K. Mehta who were responsible for setting the wrong point and in controvention of SWR.
- (iii) The person who has given the signal to the goods train of the applicant for B-33 and GF-2 has not been examined and in the absence of direct evidence, the statement of Asstt., Driver cannot be believed.



- (iv) The findings of the Inquiry Officer have been arrived at not on the basis of evidence received by him but on the basis of report and statements made before Major Joint Enquiry. The inquiry officer did not assess the evidence in the disciplinary inquiry and given reasons.
- (v) The disciplinary authority did not examine the records of the proceedings of the inquiry independently and did not apply his mind. The appellate authority had also not ^{led} apply his mind and dispose^d of the appeal in accordance with the DAR Rules.
- (vi) The action of the respondents by dropping certain witnesses and officers who have been examined in the Major Joint Inquiry clearly shows that the respondents failed to discharge their burden of proof.
- (vii) The fact that the respondents did not impose any penalty on the Guard of the Train clearly shows about the discriminatory attitude of the respondents.
- (viii) The action of the respondents by changing the SWR of Vasad after the above accident shows that the wrong was done by the Railways.
- (ix) The inquiry officer after his findings, has given certain "suggestions". This clearly implies that the derailment has occurred due to faulty signal system and the defective GF-2 signal and the operation on block section on single track was not implemented properly.
- (x) The action of the respondents by furnishing the inquiry report with the notice, imposing penalty is not in conformity with the rules.
- (xi) The respondents did not supply GR & SR Rules particularly Rules 2.01, 3.39, 3.26 etc., These rules clearly shows that the action of the applicant was fully justified and whatever misconduct that may be attributed should be against Assistant Station Master etc.,

(xii) After the accident, the provisions of the Accident Manual (Chapter IX) are required to be followed. The respondents did not produced the relevant reports.

(xiii) The respondents did not produce the following vital documents as required by the applicant at the time of inquiry :-

- (i) Signal Defects and Maintenance Register
- (ii) T.S.R. of GF & VDA 'A',
- (iii) Signal Commissioned Register
- (iv) Charge book diary of ASM, GF
- (v) Statements of S/Shri. S.A. Patel, ASM, VDA ; I.K. Mehta, ASM, GF, VDA ; Ram Vilas Asst., Driver, (Preliminary inquiry) and Inquiry (Major Joint Inquiry).

(XIV) The applicant states that provisions of Station Working Rules (SWR) of Vasad shows that if a train running on UP line and once it is from Starter main line then after entering into block section; any down main line train requires to be stopped at Vasad 'A' Cabin or before that. This provision was violated in this case. The applicant demanded the production of the above rules but the same were not produced. The vital documents were also not produced. The applicant contends that this amount to violation of principles of natural justice and the DAR Rules.

The respondents in their reply denied all the allegations and contended that the orders passed by the authorities are legal, proper and constitutional.

The respondents admitted that there is a single track Mahi bridge and there are loop lines (as per the Map at Annexure R-1). According to the respondents, GF-2 Signal is an important signal and GF-4 was not operated at the time of accident. The signaling installation at VDA / EGF was commissioned on 20.03.89 and being a new installation there were teething troubles for sometime causing signal / points failures. The Signal Failure Register enters all such failures.

5. Regarding the accident, it is stated that as the signal was yellow at B-33, at Starter Main Line and the applicant ought to have been cautious, it appears that the applicant got 'Off' signal on approach. It is also contended that signal was not defective on that date and the signal failure result is not relevant for the purpose of inquiry. It is claimed that the applicant had passed the signal GF-2 at Danger and had not observed the safety Rules. In the facts and circumstances, the respondents submitted that the O.A is devoid of merits.

6. We have heard Shri. K.K. Shah, counsel for the applicant and Shri. N. S. Shevde, counsel for the respondents. At our direction, the respondents produced the relevant file.

7. The charge sheet at Annexure A-1 refers to the statement of imputation of misconduct or misbehaviour of the applicant ;

While working as a driver by SIKI A-BRC up goods on 08.03.89 with engine No. WDM-2-17843, you were given UP Home Signal of VDA 'C' Cabin on approach because your train was to cross a down train at EGF, accordingly point No. 1 of EGF VDA was set for dead end and signal No. EGF 2 was at 'ON' and no line

clear was also obtained by EGF VDA ASM for your train No. EGF VDA 'A' Cabin. But you failed to observe 'ON' aspect of signal No. EGF.2, failed to control your train, passed signal No. EGF.2 at 'ON' position and entered into the dead end which caused derailment of your train. You also clearly admitted in your statement that, you passed signal No. B-33 at VDA 'B' Cabin at 'ON' position and failed to control the train.

You are thus, considered responsible for passing signal No. EGF 2 of EGF VDA at danger and non-observance of Safety Rules, violating GR.3.78 (1) (a) (b) and (4) GR.3.81 (1) (2) (3) and SR. 4.40 (2) and (3).

A perusal of the charge sheet shows that the applicant was proceeded against with major DAR enquiry mainly on the basis of 'Major Joint Inquiry' ^{Conducted by the} respondents. While extracts from the findings of the report were annexed with the charge sheet, a copy of the said report along with the statements recorded in the inquiry were not supplied to the applicant. It is also admitted by the respondents that the applicant demanded the production of Signal Defects and Maintenance Register ; JSR of GF & VDA 'A'; Signal commissioned Register ; and charge book of ASM GF. In addition to copies of certain statements of certain employees recorded at the time of primary and Major Joint Inquiry were also demanded by the applicant (Annexure A-3 and Annexure A-4). It is admitted by the respondents that a copy of the Major Inquiry Report was not supplied to the applicant. It is also found that the Signal Defects Maintenance Register and other documents were not supplied to the applicant probably on the ground that the same were ^{not} relevant for the purpose of the inquiry.

8. The case of the respondents against the applicant is that he failed to observe 'ON' aspect of signal No. GF-2 ; failed to control the train ; passed signal GF-2 at 'ON' position and entered the dead end which caused the derailment. The respondents alleged that he clearly admitted the guilt.

The respondents for the purpose of the above imputation relied upon the copy of the findings of the major inquiry report. The case of the applicant is that (i) the signals at that time were defective ; (ii) there were no violation of GR / SR Rules as contended by the respondents ; (iii) The evidence of Shri. I.K. Mehta clearly shows that he has given 'ON' position for B-33 signal and as per the rules, (^{single} signal block section) the applicant proceeded with the UP line train upto A-4. The inquiry report shows that the applicant passed B-33 signal not in the danger position. It is also claimed that between Vasad 'A' and GF, there is no station section and signal B-33 at Vasad 'A' is one block section. As the signal GF-2 was found defective, the applicant claims that he cannot be held guilty of the charge. The applicant also claim that there was not even one single witness before the inquiry officer who had deposed that the applicant had passed GF-2 signal in danger position. The inquiry officer in the report indirectly admitted that GF-2 signal was defective and the permission of the Chief Commissioner of Safety was not obtained and the driver cannot be held responsible for violating GR/ SR. The main thrust of the defence of the applicant is that there was no admission by him as claimed in the charge sheet about the guilt and that the section GF-2 signal was defective and the signal was not operated at the time of accident. For this purpose, the applicant relied upon the report of the Major Joint Inquiry, TSR of GF and VDA 'A', signal defects and Maintenance Register, Signal commission register and charge book of ASM GF. In our view, these are vital documents which are required to be placed before the inquiry officer to show that the contention of the applicant had no basis.

9. The Supreme Court in the case of Kashinath Dilshita V/s. UOI (1986) ATC 176 made the following observations at para 12 and 13;

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"When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental inquiry can effectively meet the charges unless the copies of the relevant statements and documents to be issued against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible."

The apex court at para 13 of the above judgment made the following observations :

"13. The appellant relied on *Trilok Nath V/s. UOI* in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case :

Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents being furnished to the appellant he might, after perusing them, have exercised his rights under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the inquiry officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura House and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.

Reliance has also been placed on *State of Punjab V/s Bhagat Ram* and *State of U.P. V/s. Mohd. Sharif* in support of the proposition that copies of statement of witnesses must be supplied to the Govt., servant facing a departmental inquiry. It has been emphatically stated in *State of Punjab V/s Bhagat Ram* by this Court as under (SCC p. 156, SCC (L & S) p. 19, paras 6, 7 and 8)

The State contended that the respondents was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondents would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondents with the gist of the evidence.

The meaning of the reasonable opportunity of showing cause against the action proposed to be taken is that the Govt., servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Govt., servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statement is that the Govt., servant will be able to refer to the previous statement of the witnesses proposed to be examined against the government servant. Unless the statements are given to the Govt., servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the govt. servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges leveled against the govt. servant. A synopsis does not satisfy the requirements of giving the govt. servant a reasonable opportunity of showing cause against the action proposed to be taken. "

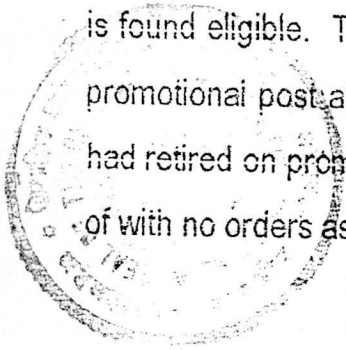
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We have carefully examined the matter whether there has been a denial to afford a reasonable opportunity in this case. In our view the documents like Major Inquiry Report, Signal Defects and Maintenance Register, Signal Commission Register, Statements recorded at Major Inquiry are important documents and the failure to furnish the same must be held to have caused prejudice to the applicant. The applicant was superannuated during the pendency of this O.A. In the case of R. Parangusam Vs. Chief Electrical Inspector and Another (1996) 10 SCC 55, the Hon'ble Supreme Court in similar circumstances, set aside the compulsory retirement and directed that there should not be any fresh inquiry and the Govt., was directed to consider the case of the appellant for promotion on a par with the juniors promoted pending inquiry, and if found eligible grant him promotion and other consequential benefits. Taking into account all the facts and circumstances of this case and the time which has elapsed and the observations of the Supreme Court in the cases referred to the above, We are of the opinion that the impugned order of the compulsory retirement rendered by the disciplinary authority is violative of article 311 (2) of the Constitution as the applicant had been denied reasonable opportunity of defending himself and ^{he} ~~is~~ ^{is} on that account null and void. In the light of the above, we do not propose to deal with other grounds raised in the O.A. We accordingly allow the O.A and quash the order of the disciplinary authority as at Annexure A-8 and the order of the appellate authority as at Annexure A-10.

We are of the opinion that the respondents should not be permitted to hold a fresh inquiry against the applicant on the charges in question. The respondents are directed to consider the case of the applicant as if he was in service till the date of

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superannuation and consider him for further promotion on par with his juniors who were promoted during the pendency of the inquiry and then grant him promotion if he is found eligible. The respondents may determine the notional scale of pay of such promotional post and pay the arrears of the salary and pension as if the applicant had retired on promotional post. With the above direction the O.A is finally disposed of with no orders as to costs.



sd/-

(P.C. Kannan)
Member (J)

sd/-

(V. Radhakrishnan)
Member (A)

mb

Prepared by:

Checked by:

Compared by:

Final Copy

1286
14/2/2000

P419.22

Signature of Officer (A)

Signature of Officer (J)

Signature of Officer (A)

Signature of Officer (J)

Signature of Officer (A)

Signature of Officer (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH

OA/TA/RA/CP/MA/PT 96 of 199 2Mr. A.A. Mankwani

APPLICANT (s)

VERSUS

U.O.I. & Ors.

RESPONDENT (s)

I N D E X S H E E T

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
1.	OA	1 to 35
2.	Reply	56 to 63
3.	OA/466/94	64 to 66
4.	Truly dtl. 06/03/2000	(11 pages)
5.	SCA No 8367/200 H.C m.w. No 665/200	Two pages
	Documents found in 'C' part	1 to 6

Certified that the file is complete in all respects.

Signature of S.O. (J)

Signature of Deal. Hand.

Copy of Judgement part 'A' total twenty eight

page

10/4/00

.....

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Submitted: C.A.T./JUDICIAL SECTION.

Original Petition No: 96

of 1992

Miscellaneous Petition No: -

of -

Shri AA Makwana

Petitioner(s)

Versus.

WIZ

Respondent(s).

This application has been submitted to the Tribunal by
Shri KK Shah

Under Section 13 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant/Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O.(J):

D.R.(J):

KNP181191

Sp (J) (on leave)

By R. Singh

29/11/92

Advocate concerned has removed office objection to day. ∴ we may fix for admission

22/12/92

By AB

24/2/92

By Shankar

20/2/92

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT(S)

AA Mapnam

RESPONDENT(S)

WestPARTICULARS TO BE EXAMINEDENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ? Yes
2. (A) Is the application in the prescribed form ? Yes
(B) Is the application in paper book form ? Yes
(C) Have prescribed number complete sets of the application been filed ? Yes
3. Is the application in time ? Yes
If not by how many days is it beyond time ? Yes
Has sufficient cause for not making the application in time stated ? Yes
4. Has the document of authorisation/ Vakalat Nama been filed ? Yes
5. Is the application accompanied by D.D./I.P.S. for Rs. 50/-? Number of D.D./I.P.S. to be recorded. not supplied
6. Has the copy/copies of the order(s) against which the application is made, been filed ? Yes
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? Yes
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? Yes
(c) Are the documents referred to in (a) above neatly typed in double space ? Yes
8. Has the index of documents has been filed and has the paging been done properly ? Yes

...2..

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT
OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application.? *Yes*
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ? *No*
11. Are the application/duplicate copy/~~opere~~ copies signed.? *Yes*
12. Are extra copies of the application with annexures filed.? *Yes*
- (a) Identical with the Original.
- (b) Defective.
- (c) Wanting in Annexures.
- No. _____ Page Nos. _____ ?
- (d) Distinctly Typed ? *No*
13. Have full size envelopes bearing full address of the respondents been filed? *Yes*
14. Are the given addressed, the registered ad ressed ? *Yes*
15. Do the nomes of the parties stated in the copies, tally with Name(s) those indicated in the application? *Yes*
16. Are the transations certified to be true or supported by an affidavit affirming that they are true? *Yes*
17. Are the facts for the cases mentioned under item No.6 of the application? *Yes*
- (a) Concise ?
- (b) Under Distinct heads ?
- (c) Numbered consecutively ?
- (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons.? *Yes*

checked
24/1/92

OAO- 5/92
3/1/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

O.A. No. 96 of 1992.

A.A. Makwana

.....Applicant

v/s

Union of India and others

.....Respondents

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Date: 3-1-92
Ahmedabad.

Kiran K. Shah
(Advocate)

DD NO.
OT/A/134
191221.
29-1-92.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

O.A. No. 96 of 1992

A.A. Makwana	...	Applicant
	VS	
Union of India and others	...	Respondents

Details of Application

1. Particulars of the applicant
A.A. Makwana
T.T.I./Ahmedabad (BG)

Address of Service of notices

C/o Shri Kiran K. Shah, Advocate
3, Achalyatan Society
B/H Memnagar Fire Station
Navrangpura
Ahmedabad-380009

2. Particulars of the Respondents

1. Union of India Notice to be served through
The General Manager,
Western Railway,
Head Quarter Office
Churchgate, Bombay.
2. Senior Divisional Commercial Superintendent,
Divisional Office
Pratapnagar
Baroda
3. Area Manager, Kalupur Railway Station,
Area Manager's Office
Ahmedabad.
4. Divisional Railway Manager, (E)
Divisional Office
Pratapnagar
Baroda.

3. Particulars of the order against which application is made

1. Charge sheet dated 10-6-89 bearing no. E.O./161/308/27/6422 issued by senior DCS, Baroda. A copy of the same is annexed herewith as annexure-A.
2. NIP No.E.O./161/308/27/6422 dated 3-8-89 imposing the penalty by the respondent no.2 of removal from service. A copy of the same is annexed hereby as Annexure A-1
3. order no.E.O./161/308/27/6422 issued by Area Manager, Ahmedabad, respondent no.3 dated 6-12-90 reducing the penalty from removal to that of reduction in rank as Senior Ticket Collector in the grade of Rs.1200-2040 (RP) at the minimum of scale for three years. A copy of the order is annexed herewith as Annexure A-2

Subject in brief

The applicant was working as Senior T.T. in the scale of Rs.1600-2660 (RP) on 5-4-90. When he was on duty on 6 UP express ADI to BCT manning sleeper coach no.59 of the train, after Nadiad the said coach was subjected to check by Vigilance Inspector. During the surprise check and on verification of cash collected by the applicant and issuing money receipts for allotting berth to the wait list passengers, was done and shortage of an amount of Rs.40.00 in government cash was alleged. However, the applicant had given satisfactory reason to this shortage by saying that as he was suddenly called by the Vigilance Inspector while he was collecting cash from the passenger, two notes of rupees twenty each might have slipped away. Further it was alleged that the applicant had allotted berth no.1 and 2 to one Shri Gulabchand and his son who were traveling ex-JD to BCT while RAC listed passengers were not allotted berth as was found during verifications by vigilance Inspectors. As such the applicant was served with a charge sheet annexure A above for major penalty. After holding the inquiry in a arbitrary manner and by ignoring the provisions contained in railway servant (D & A) rules 1968 and also in violation of article of 14, 16, 311 (1) & 311 (2) of the constitution of India. The impugned orders under challenged are illegal, null and void and therefore requires to be held invalid, unwarranted and unjustified in the eyes of law.

4. Jurisdiction of the Tribunal

The applicant declares that the subject matter of the order against which he wants to redressal of the grievance is within the jurisdiction of the Tribunal.

5. Limitation

The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act 1985.

6. Facts of the Case

The applicant is a citizen of India and is enshrined by the provision of the constitution of India. These facts of the case are as under:

1. That the applicant joined the railway service on 13-4-1963 and at the relevant time he was working as HTTE ADI in the scale of Rs.1600-2660 (R.P.)
2. That the incident related to 5th April of when the applicant was working on T.T.E. in sleeper coach No.s/9 of 6 UP Ex Ad/BCT.
3. After the train left Nadiad sleeper coach No.s/9 was subjected to check by vigilance inspectors under an assistance of Shri B.V. Shah HTTE ADI.
4. That on entering the sleeper coach S/9 Shri Rohatgi asked the applicant to produce railway as well as private cash. The personal cash was Rs.50/- and the railway cash was also Rs.50/-.
5. That the CVI has checked the EFT Book and according to calculation the amount came to Rs.90/- for issue of 6 EFT & at the rate of Rs.15 each. Thus it was alleged that railway cash was short by Rs.40/-.
6. That the applicant had stated the shortage of railway cash that he had two notes of 20/- denomination in the government cash which were not forthcoming at the time of checking of cash by CVI. The applicant had told CVI that he was checking the berths of passenger and he was immediately called by the CVI so in hurry the two twenty rupee denomination notes got missed and were hence not traceable.
7. Thereafter it was inquired whether the list of RAC listed passengers was cleared by allotting them berths. As this could not be done by this time

complete it was pointed out that the work of clearing RAC passenger was not completely closed.

8. That moving S/10 coach through the testing passage some member of the checking party happened to see that in the closed compartment having berth 1 to 6, the passengers were traveling with current tickets without any berth reservation but they were occupying the berth no.1 & 2. So this was referred to the applicant. The applicant replied that the concerned passenger have not yet been allotted berth and they might have placed their luggage in the hope that they might be allotted these berths.
9. It is alleged that the passenger by name Shri Gulabchand, the alleged occupant of berth No.1 stated before the checking party on query that he had made payment of Rs.40/- for two berths one for himself and the other for his son to the TTE concerned, who was checking coach No.S/9 at that time.
10. It is further alleged that Shri Gulabchand on being asked whether the T.T.E. concern had issued him in any receipt to an amount of Rs.40/- replied in the negative and this was taken by the checking party on acceptance of illegal gratification of Rs.40/- to allotment of berths to current ticket holders by the applicant.
11. That according to the report of the vigilance party, there were two charges against the applicant as under:
 - a) That the railway cash was short by Rs.40/- at the time of vigilance check between Nadiad - Anand
 - b) That the applicant demanded and accepted Rs.40/- as illegal gratification from one passenger Shri Gulabchand who was traveling ex-JD to BCT with his son.
12. That on the basis of the report of the vigilance the applicant was served a charge sheet No.EC/101/308/27/6422 dated 10-6-89 by Sr.DCS/BRC containing two charges of misconduct and a statement of imputation in support of articles of charges framed against the applicant. A copy of the charge sheet is annexed herewith and marked annexure A-2 is the copy of the same.
13. In this charge sheet mention was made of the list of documents and witnesses relied upon to substantiate the charges against the applicant.

14. That the DRM (E) BRC VIDE HIS LETTER no.EC 161/308/27/642 dated 18.6.90 required the applicant to arrange and submit his defence at once. A copy of their letter is annexed hereby and marked annexure A-3 in the copy of the same.
15. That the applicant through his letter dated 18-6-89 addressed to Shri DCS/BRC submitted DAP defence for consideration wherein copies of documents as listed in the charge sheet were asked for but it was not supplied along with the charge sheet. Further the applicant sought permission to be assisted by Shri C.K.Vyas, Ex-Guard, and also conveyed his (of CK Vyas) willingness to act on defence counsel in the DAR case against the applicant. A copy of this letter dated 18-10-90 is annexed hereby and marked annexure A-4 is the copy of the same.
16. That the disciplinary authority i.e. Sr.DCS/BRC vide his order No.EC/161/308/27/6422 dated 28-9-89 appointed one Shri J.N.Hazari E.O.(HQ) as the inquiry officer in the DAR case against the applicant. A copy of this letter is annexed hereby and marked annexure A-5 is the copy of the same.
17. That the Inquiry officer completed his inquiry and submitted a 'Record Note No.4 bearing confidential No.EO (HQ)/22/89 dated 23-2-90 wherein it was also conveyed that the applicant (defendent in the inquiry) was allowed 10 days time from 23-2-90 to submit his written brief together with the zerox copy of the Reservation chart of coach no.S/9" in support of his defence. A copy of this record note is annexed herewith and marked annexure A-6 is the copy of the same which is subsequent on completion of inquiry.
18. That the applicant through his letter dated 5.3.90 submitted his final submission for consideration with reference to E.O. record note at 23-02-90. A copy of this final submission dated 5-3-90 is annexed hereby and marked annexure A-7 is the copy of the same.
19. The DRM (E)BRC vide his letter No.EC/161/308/27/6422 dated 25/4/90 with reference to his office memorandum dated 10-6-89 i.e. the charge sheet (annexure A) furnished the findings of the inquiry officer and giving a notice that the disciplinary authority would be taking suitable decision after considering the report and the applicant if so desires, might make any representation or submission in writing to the disciplinary authority within a period of 15 days

of the receipt of this letter. A copy of the letter dated 25.4.90 is annexed herewith and marked annexure A-8 is the copy of the same.

20. That the disciplinary authority on the basis of the findings of inquiry officer imposed the penalty of removal from service". This N.I.P is already marked as Annexure A-1.
21. That the applicant submitted his appeal dated 12-9-90 to the Area Manager, Ahmedabad against the N.I.P.dated 3-8-90. A copy of this appeal is annexed hereby and the marked annexure A-9 is the copy of the same.
22. That the appellate authority realising the harshness of the punishment imposed on the applicant reduced the penalty to reduction in rank a Sr.T.C in the grade of Rs.12000-2040 (RM at the minimum of scale for a period of 3 years after which the applicant would be reverting back to his original position in the grade of Rs.1600-2660 (RP) at the stage from where he was removed from service viz.1750.

GROUND

The applicant places reliance on the following grounds:

- A. At the very outset it is pointed out that the senior DCS/BRC who issued the charge sheet to the applicant is not the competent authority for issuing major penalty charge sheet. It is in violation of the railway servant (D & A) 1968 rule 2A to be read with rule 9. It is also violative of article 311 (1) of the constitution of India. The charge sheet is requires to be declared null and void.
- B. The charge sheet dated 10-6-89 was not issued in the proper proforma. There was no mention of annexures I, II, III, IV etc.
- C. It is submitted that charge sheet issued to the applicant was issued with a close mind. In the statement of imputation annexed to the charge sheet it is mentioned that he was having Rs.40/- short in his rail case at the time of checking and that he had demanded and accepted Rs.20/- as an illegal money from one Shri Gulabchand and his son holding a second class mail/express ticket for allotment of two berths in the sleeper coach. Further it has been mentioned that the applicant has exhibited lack in devotion in duty and conduct and becoming of a railway servant and thereby

violated rule 3 (1) (2) and (3) of railway servants (conduct) rules 1966. This shows that the alleged disciplinary authority was early as at the time of issuing charge sheets itself, had come to conclusion that the charges leveled against the applicant has been established. It is against the principles of natural justice, if the charge sheet itself is contained an allegation of commission of the offence/misconduct it shows that the disciplinary authority is working with the closed mind, having bias and prejudice against the applicant. The applicant places reliance of the decision of the Calcutta bench in the case of Mohit Mohan vs Union of India and others 1991 (3) SLJ 345. The ratio in the aforesaid case is that when the applicant the charge sheet itself taken to mean that the disciplinary authority has started with a bias and prejudice mind. The charge sheet is required to treated as bad in law.

- D. The disciplinary authority could not use their own discretion as an entire case was prepared by the vigilance authority in the case of the applicant. The action of the respondent is arbitrary.
- E. The documents relied in the inquiry and additional evidence and extraneous factor considered in the inquiry itself vitiate the inquiry. No documents were given to the applicant together with the charge sheet and as such the applicant could not put up proper defence and there he was demand reasonable opportunity to defend himself. This is against the principles of natural justice.
- F. That the disciplinary & appellate authority have stretched the point of shortage of railway cash to the extreme. In the statement of even Mr. Rohtgi it has been admitted that there were 6 excess fare tickets amounting to Rs.15 each on account of difference in fare and the total amount came to Rs.90/-. As such the government servant is responsible to account for Rs.90/- while depositing the railway cash. Even presuming an amount of Rs.40/- was found short even then the government/railway servant who was for the time being custodian of government money, is required to account for the entire amount as supported by the books or receipts. Thus even in case an amount of Rs.40/- was found short the applicant could not have put himself of the responsibility of loss of government money and in such a contingency that railway servant is duty bound to make good in loss. Only a foolish person, not understanding the consequences of, would do such an act to keep a portion of govt. money, which is supported by EFRS, out of it. The applicant had even stated that he had two twenty rupees denomination notes in railway cash but at the time of cash certification those were not traceable. Hence if amount to so called shortage.

Actually this is not so serious thing. If it can be at best called the difference in the cash balance and the official concerned is duty bound to make good the same. Thus it is not an offence or misconduct on the part of the railway official as to call for a major penalty. So the applicant was under obligation to make good the loss. It is further stated that the explanation of the applicant by possible missing of two twenty rupee notes was not accepted by the checking party as it was bent upon to ignore this truth and fact in a joint note at 5-4-89 prepared at 23.40 hours. In this manner the action of preparing a joint note is a matter of prejudicial action and full of doubt and this benefit of doubt has been extended to the administration whereas it should have been extended to the delinquent the applicant.

- G. Witness Shri B.V. Shah, Head TTE in his statement dated 10-4-89 has stated that he has paid Rs.20/- and receipts to be obtained. At page 9 of the statement Shri B.V. Shah P.W.3 on 5-12-89 has replied to a note. They have paid Rs.20/- and they are to receive the receipt from the conductor. This language has enough proof and believable force that the receipt is to be obtained. There was no foul game or malpractice implied as alleged by vigilance inspector.
- H. Shri Gulab Chand PW, the passenger concerned, stated in reply to question no.5 that while I was giving Rs.20/- considering Rs.10/- as rate per berth, in the meanwhile checking party called TTE and subsequently checked and asked to give in writing.
- I. The action of the respondents by not examining the son of Shri Gulab Chand who was also travelling with him being a material witness in the alleged incident and it amounts the major lapses in the inquiry. The preliminary report of the vigilance inspector was not furnished to the applicant and this also amounts violation of principles of natural justice and fair play. Over and above the original statement of Shri Gulab Chand was not furnished and examined by the senior DCS. The Sr. DCS was furnished only the translated copy which was different than the original statement of Shri Gulab Chand because the entire action was preplanned and to make victim to the applicant. The original statement was not furnished. The statement was also not recorded in front of the applicant and the statement which is recorded behind the back of the applicant cannot be relied as an evidence to substantiate the charges. The entire inquiry was held in an arbitrary manner and against the provisions of constitution, Article 14, 311 (2).

- J. The impugned orders at annexure A-1 and A-2 are non-speaking orders and the orders are also passed with a closed mind and therefore requires to be quash and set aside.
- K. Under the article of the charge, charge no.1 is not at all referred in the so called speaking order of senior DCS. So far as acceptance of Rs.20/- from Shri Gulab Chand and his son is also not proved but the so called disciplinary authority on the contrary defamed the passenger and considered his deposition during inquiry as hostile one which is incorrect and unjustified and sufficiently proved the ground of closed mind of the disciplinary authority. In the order it has not mentioned about the word about Shri Gulab Chand's son. The disciplinary authority fail to appreciate the non-availability of evidence and acted arbitrarily and therefore disciplinary authority's order requires to be quash and set aside.
- L. The appellate authority rightly observed that "this original statement by itself does not give conclusive proof of the facts that a bribe of Rs.20/- was demanded and accepted by Shri Makwana, TTI. Shri Gulab Chand in his statement before the inquiry officer has explained that Rs.20/- paid by him to Shri Makwana, was part of the money he was required to pay for sleeper berth. Unfortunately, no clarification was obtained by the VI BRC who recorded the original statement on 5-4-89 as to whether Rs.20/- paid by him was illegal money or he was expecting a receipt for the same." It means that the appellate authority makes it clear about the charge no.2 that there is no conclusive proof despite that he awarded the major penalty by replacing the penalty of removal which is also not justified.
- M. In the entire incident there is no eye witness who can bring any direct evidence as an eye witness for accepting Rs.20/- as gratification and therefore the charges leveled against the applicant are requires to be disbelieved, unwarranted and unjustified and the charge sheet is also requires to held bad in law.

7. Details of remedies exhausted

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

8. Matters not previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition, or suit regarding the matter in respect of which this

application has been made, before any court of law or any other authority or any other bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

9. Reliefs Sought:

In views of the fact mentioned in para 6 above the applicant prays for the following relief(s)

- (1) That the Hon'ble Tribunal be pleased to quash the impunged, charge sheet at annexure A and order dated 3-8-90 issue by the disciplinary authority A-1 and the appellate order dated 6-12-90 A-2 as issued by the Appellate Authority and set them aside and direct the respondents to grant and give all consequential benefits.
- (2) That the Hon'ble Tribunal be pleased to allow the application with costs
- (3) That the Hon'ble Tribunal be pleased to issue such direction or orders to the respondents as seemed fit in the interest of justice

10. Interim order if any prayed for

Pending final decision on the application, the applicant seeks issue of the following interim order:

- (1) That the Hon'ble Tribunal be pleased to order not to further implement the impunged orders dt. 3-8-90 and 6-12-90 till the decision of the application.
- (2) That the Hon'ble Tribunal be pleased to call for the entire record of the disciplinary proceedings
- (3) That the Hon'ble Tribunal be pleased to issue such order or discretion as deemed proper in the interest of justice.

11. Particulars of Bank Draft in respect of the application fee

1. Name of the Bank on which drawn:

STATE BANK OF INDIA
Navrangpura Branch,
AHMEDABAD

2. Demand Draft No.

34 191221
OT/A/1 ~~76615~~ Dt 29.1.92

VERIFICATION

I, Shri A.A.Makwana Age adult working as Sr.TC Ahmedabad in the office of Head Ticket Collector do hereby verify that the contents of paras 1 to 11 are true to my personal knowledge and the legal grounds mentioned in para 6 are believed to be true on legal advice and that I have not suppressed any material fact.

Date:

3-1-92

Ahmedabad

Ishtakpaleem
Shahli
Aditi

Chhagan
C. K. Chhagan

VERIFICATION

I, A.Makwana S/o Shri A.----- Age adult working as Sr.TC Ahmedabad in the office of Head Ticket Collector do hereby verify that the contents of paras ----- to ----- are true to my personal knowledge and the legal grounds believed to be true on legal advice and that I have not suppressed any material fact.

Date:

Ahmedabad

(Signature of the Applicant)

Filed by Mr. *K. K. Shah*
 Learned Advocate for Petitioners
 with ~~second set~~ &spares
 copies ~~copy served~~/not served to
 other side

Shah
 Dt. 3 / 1 / 92 Dy Registrar C.A.T.(I)
 A'bad Bench

भारतीय रेल का चार्ज कागज
STANDARD FORM OF CHARGE SHEET[रेल कर्मचारी (अनुशासन और अपील) नियम 1968 का नियम 9]
[Rule 9 of the Railway Servants (Discipline and Appeal) (Rules 1968)]

रेल प्रशासन का नाम Name of Rly. Admin... DRMS Office

दस्तावेज No. EC/161/308/27/6422

जारी करने का स्थान Place of issue... Baroda

तारीख Dated... 10-6-1989

ज्ञापन MEMORANDUM

निम्नहस्ताक्षरकर्ता रेल कर्मचारी (अनुशासन और अपील) नियम 1968 के नियम 9 को अधीन श्री..... के विरुद्ध जांच करने की प्रस्तापना करते हैं। अशुचि या कदाचार के आरोपों का सार, जिनके संबंध में जांच करने की प्रस्तापना है, आरोप के अनुच्छेदों के विवरण (अनुच्छेद-I) में दिया गया है। आरोप के प्रत्येक अनुच्छेद के समर्थन में अशुचि या कदाचार के आरोपों का विवरण संलग्न है (अनुच्छेद-II)। जिन दस्तावेजों से और जिन साक्षियों द्वारा आरोप के अनुच्छेदों की पुष्टि की जाने की प्रस्तापना है, इनकी भी एक सूची संलग्न है (अनुच्छेद III और IV) दस्तावेजों की सूची में उल्लिखित दस्तावेजों की प्रतियां अनुच्छेद III के रूप में संलग्न हैं।

The undersigned propose (s) to hold an inquiry against Shri... A. A. Makwana... under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge. (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV). *Further, copies of documents mentioned in the list of documents, as per Annexure III are enclosed.

2. **श्री..... को एतद्वारा सूचित किया जाता है कि यदि वह चाहे तो इस ज्ञापन की प्राप्ति के 10 दिनों के भीतर कार्यालय समय में किसी भी समय दस्तावेज सूची (अनुच्छेद-III) में वर्णित दस्तावेजों का निरीक्षण कर सकता है और उनके उद्धरण से सकता है। इस प्रयोजन के लिए, इस ज्ञापन की प्राप्ति के बाद उसे तत्काल..... से संपर्क स्थापित करना चाहिए।

**Shri... A. A. Makwana... is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact..... ~~DRMS~~ DRMS immediately on receipt of this memorandum.

3. श्री..... को आगे यह भी सूचित किया जाता है कि यदि वह चाहे तो दस्तावेजों का निरीक्षण करने तथा सीधे जांच की स्थिति में जांच प्राधिकारी के समक्ष अपना मान्यता प्रस्तुत करने में सहायता के लिए किसी अन्य रेल कर्मचारी / रेलवे ट्रेड यूनियन के किसी पदाधिकारी (जो रेल कर्मचारी (अनुशासन और अपील) नियम 1968 के नियम 9 (13) और यथा स्थिति उनके नीचे नोट 1 और/अथवा नोट 2 की प्रमेलाओं को पूरा करते हैं) की सहायता ले सकता है। इस प्रयोजन के लिए, अधिमाम्यता प्रम में उसे एक या अधिक व्यक्तियों का नाम निर्देशन करना चाहिए। सहायक रेल कर्मचारी (कर्मचारियों) या रेलवे ट्रेड यूनियन के पदाधिकारी (पदाधिकारियों) का नाम निर्देशन करने से पहले श्री..... द्वारा नामित व्यक्ति (व्यक्तियों) से वचन लेना चाहिए कि वह (वे) अनुशासनिक कार्यवाही के दौरान उसकी सहायता करने के लिए तैयार है। वचनपत्र में ऐसे ग्रन्थ नामले (मामलों) का, यदि कोई हो, विवरण भी दिया जाता चाहिए, जिसमें नामित व्यक्ति (व्यक्तियों) द्वारा सहायता करने का पहले ही वचन दिया जा चुका है और नाम निर्देशितों द्वारा दिया गया वचनपत्र नामांकन पत्र के साथ निम्नहस्ताक्षरकर्ता को भेजा जाना चाहिए।

Shri... A. A. Makwana... is further informed that he may, if he so desires take the assistance of any other Railway servant/an official of Railway Trade Union (who satisfies the requirements of Rule 9 (13) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the inquiring authority in the event of an oral inquiry being held. For this purpose he should nominate one or more persons in order of preference. Before nominating the assisting railway servant (s) or Railway Trade Union Official (s), Shri... A. A. Makwana... should obtain an undertaking from the nominee (s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any, in which the nominee (s) had already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.

Recd
on 10/6/89

4. श्री.....को एतद्वारा निर्देश दिया जाता है कि यदि उसे अपने प्रतिवाद तैयार करने के लिए किसी दस्तावेज का निरीक्षण करना अपेक्षित न हो तो इस आपन प्राप्ति के दस दिन के भीतर और यदि वह दस्तावेजों का निरीक्षण पूरा करना चाहे तो दस्तावेजों का निरीक्षण पूरा होने के बाद 10 दिन के भीतर निम्नलिखित कर्ता के पास अपने प्रतिवाद का लिखित कथन प्रस्तुत कर और यह भी—

Shri.....A. A. Makwana.....is hereby directed to submit to the undersigned a written statement of his defence which should reach the undersigned within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect any document and also—

(क) बताये कि क्या वह स्वयं पेश होकर कुछ कहना चाहता है, और

(a) to state whether he wishes to be heard in person; and

(ख) उन साक्षियों के, यदि कोई हों, नाम और पते बताये, जिन्हें वह अपने प्रतिवाद के समर्थन में बुलाना चाहता है।

(b) to furnish the names and addresses of the witnesses if any; whom he wishes to call in support of his defence.

5. श्री.....को सूचित किया जाता है कि आरोप के केवल उन अनुच्छेदों के बारे में जांच की जायेगी जो स्वीकार नहीं किए गए हैं। इसलिए उसे चाहिए कि आरोप के प्रत्येक अनुच्छेद को या विनिर्दिष्ट रूप से स्वीकार या अस्वीकार करें।

Shri.....A. A. Makwana.....is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

6. श्री.....को आगे सूचित किया जाता है कि पैरा 4 में विनिर्दिष्ट अवधि के भीतर यदि वह अपने प्रतिवाद का लिखित कथन प्रस्तुत नहीं करता है या जांच प्राधिकारी के सामने व्यक्तिगत रूप से हजर नहीं होता या रेल कर्मचारी (अनुशासन और अपील) नियम 1966 के नियम 9 के उपबंधों या उक्त नियम के अनुसरण में जारी आदेशों / निर्देशों का अनुपालन करने में अन्याय विफल रहता है या इनकार करता है तो जांच प्राधिकारी एक पक्षीय रूप से जांच कर सकता है।

Shri.....A. A. Makwana.....is further informed that if he does not submit his written statement of defence within the period specified in Para 4 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provision of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1966 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. श्री.....का ध्यान रेल सेवा (आचरण) नियम, 1966 के नियम 20 की ओर दिलाया जाता है जिसके अधीन कोई रेल कर्मचारी सरकार के अधीन अपनी सेवा से संबंधित मामलों के संबंध में अपने हितों को आगे बढ़ाने के लिए किसी बरिष्ठ प्राधिकारी पर कोई राजनैतिक या अन्य प्रभाव न तो डालेगा अथवा न ही डालने का प्रयत्न करेगा। यदि इन कार्यवाहियों से संबंधित किसी मामले में उसकी ओर से किसी अन्य व्यक्ति से कोई अभ्यावेदन प्राप्त होता है तो यह उपधारणा की जायेगी कि श्री.....को उस अभ्यावेदन की जानकारी है और वह उसके कहने पर दिया गया है और उसके विरुद्ध रेल सेवा (आचरण) नियम 1966 के नियम 20 का अतिक्रमण करने के लिए कार्रवाई की जायेगी।

The attention of Shri.....A. A. Makwana.....is invited to Rule 20 of the Railway Services (Conduct) Rules 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interest in respect matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri.....A. A. Makwana.....is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

8. इस आपन की पावती दें।

The receipt of this Memorandum may be acknowledged.

संलग्न Encls.

Charge in two parts

सेवा में To

श्री Shri.....A. A. Makwana.....

पदनाम Designation.....77/ Hdtte. AOI.....

स्थान Place.....AOI.....

प्रतिलिपि श्री Copy to Shri.....को सूचना के प्रेषित for information.

(उधारदाता प्राधिकारी का नाम और पदनाम Name and designation of the lending authority)

* जो लागू न हो, उसे काट दें।

Strike out whichever is not applicable.

* यदि आपन के साथ प्रतियां दी जाती हैं / नहीं दी जाती, तो यथास्थिति इसे काट दिया जायेगा।

To be deleted if copies are given/not given with the Memorandum as the case may be.

** प्राधिकारी का नाम (इसमें यह विधिवत होगा कि जब कभी जांच प्राधिकारी द्वारा अनुशासन प्राधिकारी या किसी प्राधिकारी को आरोप पत्र जारी करने के लिए कोई मामला निर्देशित किया जाता है तो उस प्राधिकारी को उस प्राधिकारी का उल्लेख करना चाहिए जिसकी अभिरक्षा में सूचीगत दस्तावेज हैं या जो दस्तावेजों के निरीक्षण की व्यवस्था करेगा ताकि इस प्राधिकारी का प्रारूप आपन में उल्लेख किया जाये)।

Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.

हस्ताक्षर Signature

सक्षम प्राधिकारी का नाम और पदनाम
Name and Designation of Competent Authority

Sr DCS-BRR

- viii) If there was no malafide intention of Shri Makwana, TTE, he should have not allowed these 2 unreserved passengers in reserved coach in face of RAC passengers available in the coach as per reservation charge.

Shri A.A.Makwana, by his above mentioned act has exhibited lack in devotion to duty & conduct unbecoming of Rly.Servant & thereby violated Rule 3-1(ii) & (iii) of Rly.Servant Conduct Rules, 1966.

List of documents relied upon :

- 1) Reservation chart of S/9 coach of 6 Up of 5.4.89 ADI/BCT.
- 2) Statement of Shri Gulabchand.
- 3) Statement of Shri B.V.Shah, HTTE ADI
- 4) Statement of Shri A.A.Makwana, HTTE ADI.
- 5) Joint note of dated.5.4.89 which was drawn at the time of check.

List of witness relied upon :

- 1) R.S.Rohatgi, CVI Rajmer.
- 2) V.P.Kaushik VI BRC
- 3) P.R.K.Pillai, VI RJT.
- 4) B.V.Shah HTTE ADI.
- 5) Shri Gulabchand B/165, Laxmi Narainpura, outside Surajpole Gate, Jaipur.

Sd/-
8v Dec-89
BRL

Article of charge :-

15 02

771

Shri A.A.Makwana, ~~HTTE~~ ADI while working as TTE in sleeper coach No.8/9 of 6 Up of 5.4.89 Ex.ADI/BCT is charged for misconduct in that :

- i) he was having Rs.40/- short in his Rly.cash at the time of Vigilance check between ND ANND.
- ii) he had demanded and accepted Rs.20/- an illegal money from Sati Gulabchand and his son holding II M/E journey ticket bearing No.7752 & 7753 JF/ADI for the allotment of 2 sleeper berths.

Shri Makwana, by his above mentioned act has exhibited lack in devotion to duty and conduct unbecoming of a Rly. servant & thereby violated Rule 3-1(ii)&(iii) of Rly.Service Conduct Rules, 1966.

Statement of Imputation in support of article of charge framed against Shri A.A.Makwana, ~~HTTE~~ ADI.

- i) Shri A.A.Makwana, ~~HTTE~~ ADI was manning sleeper coach No.8/9 of 6 Up of 5.4.89 ex.ADI to BCT.
- ii) After the train left from Nadiad station, the said coach was subjected to check by VIs under an assistance of Shri B.V.Shah, HTTE ADI.
- iii) Shri Makwana, TTE was asked to produce his Rly. as well as private cash and on check, Rs.40/- was found short in his Rly.cash & he had produced Rs.40/- against Rs.90/- as per EFT & coupon books. Shri Makwana could not reply satisfactorily for the said shortage and stated that 2 GC notes of Rs.20/- might have slipped from his pocket.
- iv) On further check, one person named Shri Gulabchand along with his son holding II M/E ticket No.7752 & 53 were found travelling on berth No.122 of the said coach.
- v) On enquiry, Shri Gulabchand had informed that the TTE had allowed them to occupy berth No.1 & 2 after accepting Rs.20/- from them and for which no receipt was granted. The above fact was narrated by Shri Gulabchand in presence of Shri B.V.Shah, HTTE ADI.
- vi) It was further seen that Shri Makwana HTTE had allotted berth No.3 to 8 between ADI/Nadiad before giving allotment to RAC Passengers.
- vii) had this check been not conducted, there was every possibilities for over looking RAC passengers & give allotment of berth No.1 & 2 to Shri Gulabchand & his son as they had already paid Rs.20/- to the TTE.

...2..

7- C. S. J. S. S.

रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 6 के अधीन दंड दिये जाने की सूचना (वा. प. नं.)

Notice of Imposition of a Penalty (N. I. P.) under Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968

संख्या No. EC/161/308/27/64 22

To: Shri A.A. Makvana,
TTI/ADI(BG).

(Through TTI/ADI(BG) के द्वारा)

कार्यालय Office: DRMs Office,

Baroda

दिनांक Dated: 3/8/90.

1. इसके द्वारा आपको सूचित किया जाता है कि आपके लिए निम्नलिखित दंड दिये जाने का निर्णय किया गया है :-
You are hereby informed that the following penalty has been awarded to you :- Removal from service.
This has reference to this office memorandum of even no. dt. 9.6.89, your written brief dt. 5.3.90 & your defence on findings dated 15.6.90.

2. नीचे दिये गए फार्म पर इस सूचना की पावती दीजिए।
You are required to acknowledge receipt of this Notice on the form subjoined. Please see on reverse side.

नाम Name: Mukul Jain

पदनाम Designation: Sr. DCS/BRC

हस्ताक्षर Signature

C/- TTI/ADI(BG): He may please handover the enclosed NIP to the abovenamed and send his ack. early.

C/- OSG(E) Tfc. & (E) PB.

अनुदेश Instruction

(क) दिनांक को आपके अपनी ह्यूटी से मुक्त कर दिया जाएगा।

(a) You will be relieved of your duties on

(ख) आपके देय रकम का निपटारा पर किया जाएगा।

(b) Settlement of your dues will be made at

(ग) रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 18 के अधीन, इन आदेशों के विरुद्ध अपील को प्रस्तुत की जा सकती है, वशत कि-

(c) Under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968, an appeal against these orders lies to ARM/ADI

provided :-

- (i) अपील इस सूचना के प्राप्त होने की तारीख से पैंतालीस दिन के भीतर की गई हो, और
The appeal is preferred within forty-five days of the date of receipt of this notice. and
(ii) अपील में अपमानजनक या अनुचित भाषा का प्रयोग न किया गया हो।
The appeal contains no disrespectful or improper language.

पावती Acknowledgement

मैंने To.....

मे १. इसके द्वारा दंड दिये जाने की सूचना संख्या

I hereby acknowledge receipt of N. I. P. Notice No.

दिनांक

Dated

त्रिमूर्ति कि मेरे ऊपर

conveying the orders of imposition of penalty of

का दंड देने का आदेश दिया गया है, की पावती देता हूँ।

on me.

स्टेशन/स्थान

Station / Place

कर्मचारी के हस्ताक्षर या बाएं हाथ के अंगुठे का निशान
Signature or left hand thumb impression of employeeनाम और पिता का नाम
(स्पष्ट अक्षरों में)
Name and Father's Name
(In Block Letters)

दिनांक Dated: 19

कर्मचारी का पदनाम
Designation of employee

विशेष ध्यान दीजिए :- इस भाग को निकालकर हस्ताक्षर किया जाए और जारी करने वाले कार्यालय को वापस किया जाए।

N. B.- This portion must be detached, signed and returned to the office of issue.

WRP MX. 81/05/139/6; 1-99 1,22,000.

17
speaking order:

I have examined the case and agree with the findings of the Enquiry Officer.

1. One of the prosecution witnesses Shri Gulabchand, resident of Jaipur, who had been found travelling unauthorisedly at berth Nos.1 & 2 along with his son, turned hostile during the enquiry. Although, he admits having given a written statement on the spot on 5.4.89 in G UP, he has subsequently changed his tone & tenor. There is a strong reason to doubt the integrity of Shri Gulabchand as well for reasons which are obvious. Thus, credence is given to his statement and not to his deposition during the enquiry.
2. The defendant has not been able to explain satisfactorily as to how he had allotted 4 berths to fresh ticket holders while overlooking the claim of 11 RAC passengers.
3. There is sufficient evidence to accept the fact that Shri Makwana, TTI ADI, defendant had accepted Rs.20/- as a consideration from Shri Gulabchand, the passenger.
4. The gravity of the charges against Shri A.A.Makwana, TTI ADI is serious. He is given the penalty of removal from service.

3.8.90
Sr. PCS

T. C. Singh
Jalpur

प. रे./W. R.

जी 30 बी/जी एन 19

C 30 B/GL 19

संख्या/No... C 9/186

दिनांक/Dated... 1.1.1999

प्रेषक/From... C.T.I.-ADI

सेवा में/To... S.S.-ADI C/... D.C.T.I.-BRC

विषय/Sub :: Promotions, Reversions & Transfers...

संदर्भ/Ref :: Class-III Staff, BRC Dir. Mr. Shri. A.A. Makwana

TTI-ADI, scale Rs 1600-2660 (RP)

→ S.DCS-BRC's No EC/A/1149, memorandum No. 02 dt 24-12-90

With reference to the above, Shri. A.A. Makwana TTI-ADI in scale Rs 1600-2660 (RP) is reverted as S.DCS-ADI in scale Rs 1200-2660 for a period of three years.

His pay particulars are as under:-

- (1) Name :: Shri. A.A. Makwana, TTI-ADI
- (2) Dt of Birth :: 1-10-1939 (First October Nineteen thirty Nine)
- (3) Rate of Pay :: scale Rs 1600-2660 (RP)
- (4) PF A/C No. 14099755

He has availed 11 days CL in 1990 + Sick 28 days

- (5) He has taken nil sets of free passes in 1990, and two sets of P. Passes were withheld vide S.DCS-BRC's No E 308/4/2/407 dt 9-4-90.

- (7) Uniform not issued in 1989-90

- (8) His pay for the month of ~~January~~ ^{Nov} 14-12-90 may be drawn at once.

- (9) His duty Pass - Duty card Pass & Residential CP C Pass were sent to PRIN for renewal, but not received.

- (10) He has taken NIL PTO in year 1990

- (11) He has availed 11 C. Leave in 1990.

- (12) J.C. Bank - Registn. No 205018, CTD No 41974, Loan NIL

- (13) RMCC - Registn. No 8453 CTD No 1050 Loan NIL

WRF MX (CC)

मुख्य टिकट निरीक्षक
अहमदाबाद (प. रे.)
Chief Ticket Inspector
AHMEDABAD W. Riv. BR

T. G. G. G.
G. G. G. G.

Western Railway

19
A 2 coll
Divisional Office,
Baroda-4.
Dtd: 24/12/90

No. EC/A/149

Memorandum No. 102

Sub: Promotion, reversion and transfer of class III NG
Staff Tfc. Deptt. BRC Divn. case of Sh. A. A. Mackwana
TTI ADI scale Rs. 1600-2660 (RP).
Ref: ARM ADI's letter No. EC161/308/27/6422 dt. 6.12.90
and this office letter No. EC/A/149 dt. 13.12.90

Shri A. A. Mackwana (SC) TTI/ADI scale Rs. 1600-2660 (RP),
who was removed from service is now reduced in rank as Sr. TC
in grade Rs. 1200-2040 (RP) at the minimum of scale & pay Rs. 1200/- p.m.
for a period of three years after which he will return back
to his original position in scale Rs. 1600-2660 (RP) at the stage
from where he was removed from service viz. Rs. 1750/- His
intervening period from the date of removal from service to
reinstatement as Sr. TC is treated as leave due. This is in
terms of ARM ADI's letter No. EC161/308/27/6422 dt. 6.12.90 and
this office letter No. EC/A/149 dt. 13.12.90.

Consent upon the above Shri A. A. Mackwana TTI ADI
scale Rs. 1600-2660 (RP) ADI is posted as Sr. TC ADI in scale
Rs. 1200-2040 (RP) on pay Rs. 1200/- p.m. in the existing vacancy.

The date of changes should be advised to this
office at once.

No joining time, TA/DA, Duty/Kit passes and transfer and
packing allowance is admissible.

For Sd/-
for DCS (S)-BRC

Copy to;
CTI ADI DCTI BRC SS ADI, ARNAD, DCS/ADI
G/file, OS PB Tfc. S/sheet clerk ET-1
CC DAR and Conf. CC ET 4&5
EC839/4/ET 17
WR EU/WRMS BRC
Comm'l. controller/BRC.

*T. Any
Shull
see*

A 2 20

P. W. R.

पॉ 29 बी G 29 B

संख्या No. EC/A/149 दिनांक Dated 13.12.1990

सेवा From ~~...~~ (C) सेवा में To S.S. A.S.I.

3RC C/CTI-A.S.I. ✓

विषय Sub Promotions, Reversions and Transfers

संदर्भ Ref: B class III staff - S.T.C. scale Rs. 1200-

2040 (AP) - Case of S.M. A.A. Makwana

Ex - T.T.I. scale Rs. 1600-2660 (AP) A.S.I.

Ref: ARM-A.S.I.'s letter no. EC/161/308

107/6482 of 6.12.90.

ARM/A.S.I. has reduced

the penalty from removal from

service of S.M. A.A. Makwana, T.T.I.

scale Rs. 1600-2660 (AP) A.S.I. to reversion

as S.T.C. scale Rs. 1200-2040 (AP) at the

minimum of scale Rs. 1200-2040 (AP)

for a period of 3 years vide ref.

quoted above.

Consequent upon the

above, S.M. A.A. Makwana Ex T.T.I.

scale Rs. 1600-2660 (AP) A.S.I. is reverted

as S.T.C. in scale Rs. 1200-2040 (AP) on

pay Rs. 1200/- per month and posted at A.S.I.

The regular orders will

follow.

Resubmitted

DT 14-12-90

For Director.

Family

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

For Director.

WESTERN RAILWAY

No. EC/101/300/27/6422

Divisional Office,
Baroda.Date : 11-10-60
11/10/60To,
Shri A.A. Makwana,
Ex.TTI/ADI/BG.

(Through CTI/ADI/

Sub : DAR action against you.

Ref : Your appeal dtd. 12-9-60, to ARM/ADI.

I have carefully considered your above quoted appeal and have observed as under :

1. I have gone through the Appeal preferred by Shri A.A. Makwana, TTI. I have also gone through the findings and the evidence recorded in the enquiry and the original statement recorded at the time of vigilance check. There are two major charges against the employee viz. (a) Rs. 40/- was found short in Rly. cash at the time of vigilance check, and (b) He had demanded and accepted Rs. 20/- as illegal money from Shri Gulabchand. The employee has not been able to explain shortage of Railway cash within approximately one hour of train departure from ADI. He has explained that two 20-rupee notes might have slipped from his hands or pocket which shows his negligent working. As regards the 2nd charge, there is no conclusive evidence that he demanded illegal money from Shri Gulabchand. Shri Gulabchand in his original statement, given at the time of vigilance check, has merely stated that Shri Makwana took Rs. 20/- after the train started from ADI and receipt was not yet given by him. In case, Rs. 20/- paid by Shri Gulabchand was (no question of a receipt being given to Shri Gulabchand. I find that cross-examination of Shri Gulabchand in the DAR enquiry has not been correctly accepted by the enquiry officer and he has relied on the original statement of Shri Gulabchand dtd. 5-4-60. This original statement, by itself, does not give conclusive proof of the fact that a bill of Rs. 20/- was demanded and accepted by Shri Makwana, TTI. Shri Gulabchand in his statement before the enquiry Officer has explained that Rs. 20/-, paid by him to Shri Makwana, was part of the money he was required to pay for sleeper berths. Unfortunately, no clarification was obtained by the VI OTC who recorded the original Statement on 5-4-60 as to whether Rs. 20/- paid by him was illegal money or he was expecting a receipt for the same.

illegal
money,
there was

2. Keeping all the circumstances in view, I feel removal from service will be a very harsh punishment for Shri Makwana. Ends of justice will be met if he is reduced in rank as Sr. TC in grade Rs. 1200-2640/RP at the minimum of scale for a period of three years after which he will revert back to his original position in grade Rs. 1000-2660/RP at the stage from where he was removed from service viz. Rs. 1750/-."

His intervening period from the date of removal from service to re-instatement as Sr. TC is treated as leave due."

Please acknowledge.

A.A. Makwana
ARM/ADI

1/- CTI/ADI : He may handover the enclosed letter to Shri Makwana and send him ack. early.

Shri Makwana
ARM Ahmedabad

2/- CS/CT, Payroll and Settlement for information and necessary action.

T. C. Singh
Shri Singh

WESTERN RAILWAY

ANNEXURE A 22

Confidential.

Divisional Office,
Baroda.

Date : 18-6-90.

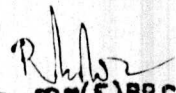
No.EC/161/308/27/6422

To,
Shri A. A. Patwara,
TTI-ADI. (Through CTI-ADI.

Sub : D/R action against you.

Ref : This office letter of even number dt.25-4-90.

Please refer to this office letter quoted above and arrange to send defence on finding at once to enable to this office to deal with case, further. Please note that if your defence is not received within 7 days on receipt of this letter the case will be processed ex further and decision will be taken Ex. Party.


For DM(E)BRC

C/- CTI-ADI: He may please link this office letters dt.25-4-90 and 14-5-90, and obtain to defence at once it deal the case further.

T. G. G.
Shah

C. K. Vyas
Ex. Guard W. Rly.

ANNEXURE A/1
Dt: 18-6-89

Opp. Malalaxhi Talkies,
SURENDRANAGAR. 363001
Dt.

From: A. H. M. Adarsh
TTI-ADI

23

To The Sr. DCS - BRo

Through: ETI-ADI

Sub: DAR - defence for Consideration

Ref: Standard form No 5 Memo No
EC/161/308/27/6422 dt. 10-6-89

Reg:- Alleged Charge of demanding and
accepting Rs 20/- by Sup on 15-4-89

Respected Sir,

Reg to State as under

Para 1. Noted Copies of documents and statements
mentioned in the Memo as enclosed are really
not enclosed and therefore not received. Please
make it convenient to furnish early to enable
to submit detailed and para-wise defence.

Para 2. I may please be supplied with the above
referred documents along with my defence
Counsel Shri C.K. Vyas ex Guard A. Sunk

Para 3. I may please be permitted to be assisted
by Shri C.K. Vyas ex Guard A. Sunk & ex Div. Vice-
Chairman W.R.M. Singh. R/o Div. His willing
note is also enclosed.

Para 4. This will be done on receipt of documents
referred upon in the Memo which please arrange.
Arrangements may please be made for
inspection etc. of documents, statements etc.

Para 5. Noted. I deny Article of charge NO 11 & 12.

Para 6. Noted.

W. R.

25
ANNEXURE A5

G 323 F
Standard Form 7

Standard Form of Order relating to Appointment of Inquiry Officer/Board of Inquiry
Rule 9 (2) of R. S. (D & A) Rules, 1968]

No. EC/161/308/27/6422 Name of Railway Administration DRM office
REF: - This office Place of Issue Nagpur
memorandum of Dated 28/9/89
even no: dated 9/6/89 Order

WHEREAS an Inquiry Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, is being held against Shri A. A. Makwana TTI-ADI
(Name and Designation of Railway Servant).

And whereas the undersigned considers that a Board of Inquiry/an Inquiry Officer should be appointed to enquire into the charges framed against him.

Now, therefore the undersigned, in exercise of the powers conferred by Sub-Rule (2) of the said Rule, hereby appoints :- A Board of Inquiry consisting of -

Name	Designation
1.	
2.	
3.	

OR

Shri J. N. Hazan ECHQ-CC as Inquiry Officer to enquire
into the charges framed against the said Shri A. A. Makwana

Signature [Signature]

Name Mukul Jain
Designation of the
Disciplinary Authority SR DCS-BRC

Copy to Shri A. A. Makwana TTI-ADI (Name & Designation
of the Railway Servants).

Copy to Shri J. N. Hazan ECHQ-CC (Name & Designation
of the Members of the Board of Inquiry/Inquiry Board).

Copy to CTI-ADI - He may please hand over the (Name & Designation
of the Lending Authority). Enclosed to the above-
fo information. and send his
ack. early.

Note : To be used wherever applicable Not to be inserted in the copy sent to the railway servant.

[Signature]
Per

CONFIDENTIAL
NO.EO(HQ)/22/89.

26
ANNE XURE A-6
EO(HQ)CCG
Camp at ADI.
Date:23/02/90.

RECORD NOTE NO.4.

Sub: DAR enquiry in the case against
Shri A.A.Makwana, Hd.TTE ADI.

Ref: Memorandum No.EC/161/308/27/6422
dtd. 9.6.89.

.....

DAR enquiry in the subject case was fixed in the officers' Rest House/Retiring Room at ADI on 23/2/90 at 10.00 hrs.

Shri A.A.Makwana, Hd.TTE ADI and defendant attended the enquiry alongwith his Defence Asstt. Shri C.K.Vyas Retd.A grade Guard RJT Divn.

Final examination of Shri Makwana, Hd.TTE ADI was conducted and concluded. Shri Makwana produced an original memo duly signed by Shri R.S.Rohatgi, CVI AII, dtd.6.4.89 saying "received Reservation chart of coach no.S/9 for verification at 0/25 hrs on 6.4." he stated that he would submit a xerox copy/the said memo alongwith his written brief in support of his defence. E.O. informed Shri Makwana that he may submit a xerox copy with his written brief.

Enquiry concluded.

Shri Makwana TTE ADI and defendant has requested for ~~submitted~~ submission of his written brief in support of his final defence which was allowed by E.O. Shri Makwana has been instructed to submit his written brief with a period of 10 days from today by a register post A.M. addressed to E.O.(HQ)CCG.

Uy chag
(A.A.Makwana)
Defdt.

Chagab
23/2/90
(C.K.Vyas)
D.A.

Chagab
(J.N.Hazari)
E.O.

C/-DRM(E)BRC - for information.

E.O.(HQ)CCG

Chagab
J.N.Hazari
D.A.

27
ANNEXURE A7

A.A. Makwana.
TT1 - ADI (BG)
Dt : 5-3-90.

Shri H.N. Hazari,
E.O.(V) W.Rly.
CCG - Bombay.

To :
Enquiry Officer (H.Q.),
Churchgate, W.Rly.,
Bombay.

Sub :- D & A Rulls - Final submission for Consideration.

- (1) Sr. DCS-BRC's Memo.No.EC/161/308/27/6422 Dt.10.6.89
(2) Your No.EC/HQ)/22/89 Dt. 23.2.90.

Reg :- Alleged charges of (1) Shortage of Cash.Rs. 40/- and
(11) Demand and Acceptance of Rs. 20/- for allotment
of berths by 6 up on 5.4.89 in Coach No. S/7
between ADI-B RC.

Respected Sir,

Enquiry in the above matter is concluded on 23.2.90
and I am asked to submit written statement of defence which
I attempt to do here under for kind and sympathetic consideration.

(2) There are two charges leveled against me as enquired
by the Vigilance Deptt. The report and the statement of Vis
as not furnished to me. It is not enclosed as documents were
set up. In absence of any tentative report of version of the
investigation of Vi. it is difficult to arrive at any
conclusion on more statements.

(3) Here in this instance some irregularities are cooked
up and fabricated in a way quite suitable to Vis to frame
the charges. For that I would like to mention contradictions
of the prosecution witness mentioned in the Memo and examined
by the so.

(4) Charge No(1) Shortage of Rly.Cash Rs. 40/-
Statement of imputation No(1) (11) and (111)

A.. R.S. Rohtagi CVI - Ajmer P.W.I. Page 3 A.N.S. 1. After
entering in to coach Makwana was asked to produce Rly.
Private Cash. For shortage of Rs. 40/- he did not disclose any
reason.

Contd...2..

On further check it was seen that passengers on berth No. 1 & 2 were having no reservation. The TTE after accepting Rs. 20/- asked to occupy berths 1/2.

Ans. to Q-5.

Entered at ND. disclosed identity and checked Rly. and private cash.

Ans to Q-7. After check of cash of TTE we checked first the Cabin. (This is denied by all the P.WS 2-3-4-5 as per Statements.)

We started checking of other passengers. Casually we checked (Shri B.V. Shah TTE has categorically denied this).

Q.8 First we checked the Cabin (This is denied by VI Shri Pillai, TTE Shri B.V. Shah Even RAC Passengers were not checked).

Q-9. We interrogated Shri Gulabchand after calling in the Corridor from cabin. (This fact is contradicted by Shri Kaushik VI, PW 4 Page 13 ANS to Q-8. (Some body + ran & the party pointed out.....Shri Rohtage Pillai and B.V. Shah were called back.)

Shri B.V. Shah Hd TTE, PW 3, Page 9210.

And to Q-4.

Makwana told rs. 40/- might have left to take from Passenger. There after we all proceeded to coach No.10. One constable of VI called us back. We are to receive the receipt for Rs. 20/-

" Shri Pillai VI-RJT " PW. 2 Page 7.

And to Q-9. We searched for the Conductor, He was in the coach.

ANS to Q-11. Occupied berth with permission of TTE and had paid Rs. 20/- for which no receipt was issued.

Throughout the check we all were together.

ANS to Q-14. Shri Makwana stated he will - accomodate all RAC Passengers.

ANS to Q-16. After hearing Voia of gents in Cabin and not sleeping but chit chating we entered. Door was half opened.

- A. Thus, it will be quite possible to believe that the Conductor was not readily available at the door where vis entired at ND but was busy in the coach for allotment of berths.
- B. Why this truth and foot is concealed by vis is a matter of consideration about bonafides of vis. However it remains fact that I was busy in dealing with passengers and at that time I was, all of a sudden and heastitly, called by vis. Their behaviour ~~perplexed~~ and dealing was sheeking one and I was perpolexed. On demand I produced Cash. It was Rs. 100/- in pockets. After deducting Rs. 50/- private cash the balance of Rs. 50/- was treated as Rly. Cash and Rs. 40/- as resultant shortage. I explained that Rs. 40/- 2 GC. notes of Rs. 20/- might have slipped of or left.

C. "Shri R.V. Shah Hd. TTE" PW. 3
Ans to Q-4. It must have left to take from Passenger. throgh and over sight.

D. Shri Kaushik Vi. Phe PW 4.
It was found Rs. 40/- Shri Makvana told It must have left to take from Passenger.
In this way I have explained shortage of Rs. 40/- but joint note is wrongly prepared by the vi is proved beyond doubt.

(6) " Shri R.V. Shah Hd. TTE" PW 3, Page 9.

Ans to Q-4. Vi asked Makvana whether RAC is cleared.
(Identity is not disclosed).

There after we were all proceeding to coach No. S/10 and one Constable called us back. (Thus coach was not checked)

B.V. Shah PW. 3 Page 9.

They (Constable and gulabechand were talking to one passenger. They told they have paid Rs. 20/- They are to obtain the receipt from the conductor. (This means it is not bribe money but the fare of Reservation fees and the dealing was in continucus process. It was never ended).

Ans to Q -6. Page 10.

Not checked tickets of passengers in Coach S/Q.

Ans to Q-7.

No today checked tickets of RAC Passengers.

This is contradicted by vis. i.e. WHY ?

Shri R.S. Rohtage (Vi PW.1)

Ans to Q-1. On further check it was found....

Ans to Q-7. We checked first the cabin we started Checking others Passengers. Casually checked.

Casually checked tickets.

(7) Shri P.R.K. Pillai PW 2

Ans to Q-11 After checking cabin/berths 1 to 6, We went and checked RAC Passengers and general out look of Passengers.

Shri V.P.Kaushik Vi. PRC PW 4

Ans to Q-9.

Vis Rohtagi & Pillai, HD TTE B.V. Shah were going to Coach No. S/10. One passenger opened ladies Cabin. Pointed out some body from party..... One of them come out.

S/Shri Rohtage, Pillai & B.V. Shah were called back.
(This obviously prove that RAC Passengers were not checked).

Ans to Q-6 at Page 12.

I have collected the chart from Shri A.A. Makwana after few days from the check.

As per acknowledgement dated : 6/9/89 at 0/25 hrs the reservation chart was seized on the spot. Thus it is attempted to produce a false picture and that to by Shri Rohtagi & not by Shri Kaushik.

" Shri Gulabchand" - Passenger PW 5

Ans to Q-5.

While I was giving Rs. 20/- considering Rs. 10/- as rate for one berth meanwhile checking party called TTE and subsequently checked me and asked me to give in writing.

Ans to Q-7. We boarded the coach without asking the TTE,

Ans to A-8 & 9. Did not occupy berths No 1 & 2 but we were standing. kept luggage, physically did not occupy.

Ans to Q-15. Rs. 20/- as illegal money did not pay no sooner Rs. 20/- paid towards fare for berths the conductor was called by checking party before He can part with receipt and collect balance of amount is the only occurrence in reality and truth.

Ans to Q-18. Forced to give statement.

Ans to Q-20. No grievance against TTE.

....5..

Ans to Q-22. Statement dated 5.4.89 Ex 3 is not correct.

I have deposed to day is correct.

Ans to Q-23. I have not changed my statement but I have narrated the fact.

(8) From All these Variations and material - Contradictions of joint check it apparently gives an impression that true and real picture is concocted and a cooked up story is fabricated and transplanted to arrive at a planned position. Had they but RPF Constable other TTE and Khalasi of the checking party as witness some more facts would have come to time light. All were through out in the coach. This is purposely avoided is a matter of fact and is deeply concerned for affording natural justice.

(9) Article of Charge (1)

Rs. 40/- Short in Rly. Cash at the time of Check.

After checking the coach No. 8/9. from one side to the other I found 15 berths vacant. There were 11 RAC Passengers So 4 current Ticket holders were allotted berths and accommodated as they were standing. The process of accommodating was going on and I was duly busy in my work. It is only at that time that some one from the vigilance checking party called me all of a sudden and hastily. In a cabin the movement of passengers spreading beddings going to toilet was going on. At this stage while going out hastily money had fallen down from my pocket or hand. This I did not know nor any body knew. I immediately went to checking party and disclosed cash as asked for by Vi. and told the fact.

This fact is authenticated by Vi Shri Kaushik ANS to Q-9. Page 12 - PW 4.

(He could not give cognate reply)

and Shri B.V. Shah Hd TTE ANS to Q-4. PW 3. Page 9.

In his version Makwana told 'must have left to take from passengers through and over sight'.

(10) In this way the joint Note dated 5.4.89 Ex S/2 is incorrect and the words "TTE can not explain & refused to declare the shortage.....".

The joint note is contradicted by Shri Kaushik, Vi, Shri B.V. Shah Hd TTE and by me. So it is a disbelievable document. The VIs are attributable for not recording the truth & fact

as told by me. I had no time to think cook up and reply after lapse of no time. Prompt and immediately reply will be the fact.

- (11) Sir, You will be pleased to know that when I went to that Cabin to complete, dealing of allotment of births the misplaced g.c. notes were found on the ground in mismatched condition due to movement of passengers over it. The so private cash Rs. 50/- It was sufficient to recoup shortage in transaction and as such may not be constituted a major irregularity. As per statement of of imputation No (iii) I have replied for shortage of Rs. 40/- but vis were not satisfied.

Article of charge (ii) :-

Demanded and accepted Rs. 20/- as illegal money from Shri Gulabchand.

Statement of Imputation :-

- (IV) Gulabchand and his son found travelling on berths No. land 2.*** &
 - (v) Allowed to occupy after accepting Rs. 20/- No receipt was granted. Narrated by Gulabchand in presence of B.V. Shah Hd TTE.
 - (VI) Gave allotment of berths 3 to 8 before giving allotment to RAC Passengers.
 - (VII) Possibility of over looking RAC Passengers.
 - (VIII) Malafide entention, Allowed un-reserved passengers in Reserved coach.
- (12) As for demand of Rs. 20/- the passenger him self has Catagorically denied this. So also is for demand of illegal money, None of the proseation withness have deposed this matter before this enquiry or in their earlier statements. The statement of Shri P.V. Shah Hd TTE D/10-4-89 Ex 6/4 Clarifing in the last 4 lines is worth reading.
- A. When transaction is done while issuing berths the question of demand and acceptance does not arrise as there is no time lag in between.
 - B. The words "Thegal money" is got up and added by vigilence Inspectors and not by passenger Shri Gulabchand and witness Shri P.V. Shah.

- C. Shri Rohtagi says "Gulabchand found sleeping". Where as Statement of Imputation (IV) says " found travelling ". thus this difference is a material contradiction. The passenger says " he kept bag and was standing", Thus non has seen him sleeping or travelling on berth or occupying berth. As such this say is not a fact.
- D. Vide statement of imputation(V) it is stated that "after accepting allowed to occupy. No receipt was granted by Shri Gulabchand in presence of Shri B.V. Shah, In fact s/Shri Gulabchand and B.V. Shah have stated that "receipt is to be obtained", This obviously means that a receipt was to be given to Shri Gulabchand. It is further deposed by Shri Gulabchand that at the time of allotment of berths, no sooner the amount was given and the receipt was likely to be issued the Conductor, was abruptly and hastily called Checking party. This fact is corroborating and is more acceptable and quite possible.
- E. Statement of Imputation. VI says " gave berths No 3 to 8 before clearing RAC Passengers. It is submitted that after checking Intire coach No. 8/9 it was Ascertained that there 15 Fifteen berths vacant. Only 11 RAC were to be cleared so 4 four fresh ticket holders standing in the coach were made to seat and allotment of berths was done in one spell continuously. And as such doubt and suspicion of Vi that "RAC not not cleared and fresh ticket holders given fberths is wrong and - dis believable.
- F. Statement of imputation VII is for " Possibility of overlooking RAC Passengers." However the fact is proved beyond doubt that "allotment of berths was done at a time" to all desirous. This is supported by Shri Gulabchand. I have also stated to Vi that " all RAC Passengers will be cleared. s such possibility is a matter of an imagination in the mind of Vi to strengthen there report and may be treated as far from correctness and beyond reasonable doubt.
- G. Statement of imputation VII is for " possibility of overlooking RAC Passenger giving allotment to berths No. 1 & 2 as they had already paid Rs. 20/-

This is a cooked up narration by Checking party. In fact allotment was done in sequence from one end to other and there were no passengers available to demand for ~~berths~~ ^{Berth} except 11 RAC and 4 fresh one. Thus against 15 vacant berths 15 Passengers were to be granted reservation so the question of any doubt or possibility of over looking RAC is quite baseless and unwarranted suspicion. We do not proper any punitive action on more doubt and benefit of doubt is always extended to the excused.

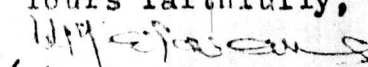
H. Statement of imputation (VIII) about malafide intention is a mere suspicion and not fact. None of the witnesses have deposed this from the coach. It is only vigilance Inspector's doubt and not fact. The passenger Shri Gulabchand, witness Shri B.V. Shah have not given any indication about malafide intention. If there was a little doubt about malintention the checking party would have deployed other R Ks 2 TE Shri Dharampal, TEE helper Shri Chaganlal etc and their statements should have been recorded to arrive at a factual position. But for their lapses I may not be attributable.

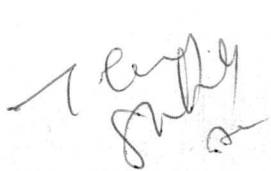
13. In conclusion I urge that the case is cooked up, fabricated and exaggerated with a view to entangle stated me in face of the fact to stick to their view point any how. In order to prove their existence the fact is so twisted that the real spirit of natural justice is vitiated and an artificial image created. If all the contradictions of only 3 viz s/Shri Rohtagi, Pillai and Kaushik are considered it will be surely transpired that there is quite reverse picture than what is stated by VI as they have out and out attempted to help each other but the variations in reply to cross examination have revealed the truth and fact that they differ with each other on important points.

14. Sir, Thus I have attempted to state the true picture to remove doubts and prove my innocence. I urge to please consider this truth and fact, the contradictions in the statements of vigilance inspectors, views of Shri B.V. Shah & Gulabchand and exonerate me of the charge and oblige.

With thanks in anticipation.

E/1 Seizure report of
CVI Agmer at BRC
Dt. 6/4/89.

Yours faithfully,

(A.A. Makwana.)



WESTERN RAILWAY

36

HEADQUARTER OFFICE
CHURCHGATE
BOMBAY-20.

CONFIDENTIAL
NO. EC(HQ)/22/89

Dt.: 12/7/90

F I N D I N G S

Sub.: DAR enquiry in the case against
Shri A.A. Makwana, TTI/ADI.

Ref.: Memorandum No. EC/161/308/27/6422
dt. 9.6.89.

I have been appointed as Enquiry Officer in
this case vide Order No. EC/161/308/27/6422 dt.28-9-89.

2.0 CHARGE:

2.1 Shri A.A. Makwana, HTTE ADI while working as
TTE in sleeper coach No. S/9 of 6UP of 5.4.89 ex ADI/BCT
is charged for misconduct in that:

- i. he was having Rs.40/- short in his Rly. cash
at the time of vigilance check between
ND ANND.
- ii. he had demanded and accepted Rs.20/- an
illegal money from Shri Gulabchand and his
son holding II M/E journey ticket bearing
No. 7752 & 7753 JP/ADI for the allotment
of 2 sleeper berths.

Shri Makwana, by his above mentioned act has
exhibited lack in devotion to duty and conducted unbecoming
of a Rly. servant and thereby violated Rule 3-1(ii)&(iii)
of Rly. Service Conduct Rules, 1966.

2.2 STATEMENTS OF IMPUTATION IN SUPPORT OF ARTICLE
OF CHARGE FRAMED AGAINST SHRI A.A. MAKWANA, HTTE ADI:

- i. Shri A.A. Makwana, HTTE ADI was manning
sleeper coach No.S/9 of 6UP of 5.4.89 ex. ADI
to BCT-
- ii. After the train left from Nadiad station, the
said coach was subjected to check by VIs under
an assistance of Shri B.V. Shah, HTTE ADI.
- iii. Shri Makwana, TTE was asked to produce his
Rly. as well as private cash and on check,
Rs.40/- was found short in his Rly. cash and
he had produced Rs.40/- against Rs.90/- as
per EFT & coupon books. Shri Makwana could
not reply satisfactorily for the said shortage
and stated that 2 GC notes of Rs.20/- might
have slipped from his pocket.
- iv. On further check, one person named Shri Gulab-
chand along with his son holding II M/E ticket
No. 7752 & 53 were found travelling on berth
No. 1 & 2 of the said. coach.

Makwana

- v. On enquiry, Shri Gulabchand had informed that the TTE had allowed them to occupy berth No. 1 & 2 after accepting Rs.20/- from them and for which no receipt was granted. The above fact was narrated by Shri Gulabchand in presence of Shri B.V. Shah, HTTE ADI.
- vi. It was further seen that Shri Makwana, HTTE had allotted berth No. 3 to 8 between ADI/Nadiad before giving allotment to RAC Passengers.
- vii. had this check been not conducted, there was every possibilities for over looking RAC passengers & give allotment of berth No.1 & 2 to Shri Gulabchand and his son as they had already paid Rs.20/- to the TTE.
- viii. If there was no malafide intention of Shri Makwana, TTE, he should have not allowed these 2 unreserved passengers in reserved coach, face of RAC passengers available in the coach as per reservation charge.

Shri A.A. Makwana, by his above mentioned act has exhibited lack in devotion to duty and conduct unbecoming of Rly. Servant and thereby violated Rule 3-1 (ii) & (iii) of Rly. Servant Conduct Rules, 1966.

2.3

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGES FRAMED AGAINST SHRI MAKWANA, ARE PROPOSED TO BE SUSTAINED:

1. Reservation chart of S/9 coach of 6UP of 5.4.89 ADI/BCT.
2. Statement of Shri Gulabchand.
3. Statement of Shri B.V. Shah, HTTE ADI.
4. Statement of Shri A.A. Makwana, HTTE ADI.
5. Joint Note of dt. 5.4.89 which was drawn at the time of check.

2.4

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGES FRAMED AGAINST SHRI MAKWANA, ARE PROPOSED TO BE SUSTAINED:

1. Shri R.S. Rohatgi, CVI Ajmer.
2. Shri V.P. Kaushik, VI BRC.
3. Shri P.R.K. Pillai, VI RJT.
4. Shri B.V. Shah, HTTE ADI.
5. Shri Gulabchand, B/165, Laxmi Narainpura, outside Surajpole Gate, Jaipur.

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3.0 ANALYSIS OF EVIDENCE(ORAL):

3.1 In the preliminary enquiry, Shri Makwana confirmed having received the memorandum No. EC/161/308/27/6422 dt. 9.6.89 alongwith its annexures. He stated that he has taken inspection of/extracts of relied upon documents. He said that he has understood the charges but denied the same. He has not admitted any of the relied upon documents. He showed his willingness to proceed with the enquiry.

3.2 Examination of Shri R.S. Rohatgi, CVI AIL, PW-1:

On being shown subject memorandum, Shri Rohatgi disclosed that on 5.4.89 he alongwith S/Shri V.P. Kaushik, VI BAC, P.R.K. Pillai, VI RJT and Shri Shan, TTB/Prosecution ADI checked sleeper coach S/9 of 6 UP between ND & BRC. During the course of check it was noticed that Shri A.A. Makwana, Hd.TTB/ADI was incharge of sleeper coach No.S/9 & S/10 between ADI and BCT of 6 UP. After entering into the coach Shri Makwana was requested to produce Rly. as well as private cash. As per an endorsement made by Shri Makwana, he had declared Rs.50/- as his private cash which was produced by him when he was asked to produce the Rly. cash he had also produced Rs.50/- against Rs.90/- as per EFT Book i.e.between ADI & ND he had prepared 6 EFTs amount to Rs.15/- each total amount Rs.90/-. A Joint Note to this effect was prepared and Shri Makwana was requested to disclose the reason for having shortage of Rs.40/- but on the spot he did not disclose any reason for it however, he had signed the Joint Note and further check it was seen that one cabin consist of 6 berths having No. 1 to 6 were occupied by the passengers. All the passengers were having current tickets ex, JP ADI etc. On further check it was seeing that the passenger on berth No.1 & 2 were having no reservation tickets alongwith them but rest all the passengers were having reservation tickets i.e. EFT was prepared by Shri Makwana, Passenger on berth No.1 name Shri Gulabchand. When inquired as to how he was occupying the said berth without any reservation he stated that he alongwith his son were coming from JP and requested the TTB of the coach for the allotment of two berths. The TTB after accepting Rs.20/- from them asked to occupy berth Nos.1 & 2 and accordingly they had occupied those berths, he further disclosed that no receipt for the same was granted to them. On going through the reservation chart it was seen that there were 11 passengers on QAC which were waiting for their allotment. As per rule after checking the coach Shri Makwana should have allotted the berth to the QAC passenger and in case if there were 12 berths then he should be allotted on first come first serve basis. Whatever, Shri Gulabchand stated verbally in presence of all the above inspectors he has also given in writing. The above incident was also witnessed by Shri B.V. Shah, T I prosecution ADI who was assisting the above inspectors in the check. He identified the reservation chart Exh. S/1, a Joint Note dt. 5.4.89, Ex.S/2.

In cross examination he disclosed that it was not a pre-planned check of coach No.9 of 6 UP on 5.4.89. He further stated that they entered the coach S/9 from ND station and after disclosing their identity they first check the railway and private cash of Shri Makwana and the joint note Ex.S/2 was prepared on spot. In reply to Q.7 he stated that after completing the check of private and railway cash, they checked first the cabin and at that time they all the above concerned were available and when

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they noticed that the 2 passengers in question were not having any reservation tickets alongwith them they made an enquiry and whatever they have stated it was witnessed and heard by all the members however, Shri Kaushik was deputed to take in writing from Shri Gulabchand and accordingly he took in writing from him and meanwhile they started checking the other passengers. They did not check individual passenger and it was around 11.30 to 12.00 hrs. time (AM) but casually they checked the tickets and finally they got down at BRC. In reply to Q.8 Shri Rohatgi clarified that they had first checked the cabin having 1 to 6 berths and the reservation chart was showing N/T against berth No. 1&2 and when they noticed that 2 passengers were sleeping off these berths they made an enquiry, and the result of the enquiry the tickets of these 2 passengers were seen by him personally and in token of it whatever the numbers of the tickets were available, he made an enquiry of these numbers on the reservation chart duly signed by him. As far as nipper was concerned vigilance inspectors have not having nippers available with them. Moreover, the TTE of the coach was also not having nipper with him. Rest of the other portion of the coach i.e. except cabin they made a casual check and not asked individually. He further clarified that there were total 6 members of passengers available in the cabin. Out of these 6, passengers berth No. 1 & 2 were not having any reservation receipt/ticket alongwith them, rest other four passengers were having reservation receipt with them. At this stage, he could not remember that how many VIs entered in the cabin but when they asked the ticket of the passengers they had produced it and the 2 passengers in question were not having reservation ticket were interrogated after calling Shri Gulabchand in the corridor to avoid disturbance to other passengers. To his memory one HRPK of each inspector were available with them in the coach. In reply to Q.10 he deposed that it was not a raid but a routine check and he was the senior most person among other VIs. He asked Shri Kaushik to take in writing from Shri Gulabchand as to how he occupied berth No.1 & 2 in the coach and normally they do not record the statement of TTE concerned of the spot.

3.3 Examination of Shri P.R.K. Pillai, VI RJT, PW-2:

On being shown the subject memorandum, Shri Pillai disclosed that on 5.4.89, he alongwith CVI AII & VI BRC, R.S. Rohatgi & Kaushik and Mr. Shah, Hd. TTE ADI have entered sleeper coach S/9 and 6 UP at ND and S/9 coach was subjected to check during the course of the check it was noticed that in lady's cabin on berth No.1 & 2 two passengers named Shri Gulabchand and his son found sleeping with tickets without reservation. On further enquiry they said that they have occupied the berth after consultation with the TTE of the said coach and the TTE allowed them after accepting Rs. 30/- for which no receipt was granted. Further check in the same cabin revealed that four passengers were allotted reservation right from ADI and coupons issued whereas there was not a single RAC passenger out of 11 have been accommodated upto the check. Shri Makwana, TTE ADI who manned the sleeper coach private cash and railway cash were checked and it was found a shortage of Rs. 40/- in his railway cash. The passenger Shri Gulabchand was contacted and his statement to the effect of the circumstances under which he was given accommodation was recorded by Shri V.P. Kaushik, VI B C in his presence, thereafter they got down at BRC.

He identified Joint Note Exh. S/2 and statement of passenger Shri Gulabchand, Ex. S/3.

In cross examination he stated that the details mentioned in Exh. S/2 were arrived at after checking the BTTs/Coupons, private and railway cash with the TTE. He said that they were not supposed to carry out any physical check of anybody. In reply to Q.6 he disclosed that / firstly Shri Makwana has shown his private cash it was found correct then he was asked to take out the railway cash he took only Rs.50/- as against the total of the coupons for Rs.90/-. He said that he did not remember the exact denominations of private and railway cash checked. In reply to Q.9&10 he said that they have searched for the conductor who was found to be inside the coach and after locating him their identities were disclosed. After disclosing the identities that the TTE was asked to get his railway cash and private cash checked. This was the first action. Thereafter, a Joint Note was prepared and got signed by all concerned. In reply to Q.11 Shri Pillai disclosed that Shri R.S. Rohatgi, CVI AII, himself and V.P. Kaushik VI BRC and Mr. Shah have checked the cabin having berth No.1 to 6 then after checking it is cabin & the passengers in the cabin were confronted. Passenger No.1 & 2 stated that they have occupied the said berths with the permission of Shri Makwana and they have paid Rs.20/- for which no receipt was issued thereafter passengers on berth No.3 to 6 were confronted and they stated orally that they were given reservation at ADI itself. Then they proceeded to the cabin where RAC passengers were accommodated. On check on the RAC passengers, it was found that they have been not provided with any berths and they were in the same position where they were. For through out the check they all were there. He said that he could not confirm whether there were other irregularities in the coach or not and he could not say anything about reservation chart as it was checked by Shri Rohatgi. In reply to Q.14 he deposed that at the time of check not a single RAC passenger was accommodated in the chart. Shri Makwana orally stated that he will accommodate all the RAC passengers and it was a fact that he did not allot any berth to any RAC passenger upto the time of check. On being shown the statement of the passenger he said that the said statement was recorded in running handwriting in the running train and Shri Kaushik had authenticated the same. In reply to Q.16 he stated that firstly, he would like to point out this cabin was earmarked for ladies but as there were more than one it may be allotted to the general passenger. After hearing the conversation inside they found that the voice was of gents and not sleeping. As they were not sleeping and chitchating & they all entered in the coach and checked the coach. The door was half opened. He said that he himself, Shri Rohatgi and other two members went in the cabin and he personally verified all the six passengers but he could not remember whether he had initialled the tickets or not and as per his memory except Joint Note no other document was prepared.

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3.4 Examination of Shri B.V. Shah, Hd. TTE/ADI PW-3:

On being shown a statement dt. 10.4.89 he stated that it was his statement given in his handwriting and confirmed the contents as true and correct, Ex.3/4. He identified a Joint Note Exh. 3/2 saying that it was drawn in his presence.

In cross examination he disclosed that on 5.4.89 VI had requisitioned the services of prosecution squad for detecting TOT passengers. They had first of all joined from ADI by 8UP from ADI to Nadiad, and they could detect only one TOT passenger and he was charged. They detained at Nadiad station with vigilance and his staff. In reply to Q.4 Shri Shah further disclosed that CVI AII R.S. Rastogi, V.P. Kaushik & Pillai and two constables and himself, his TTE Shri Dharampal and Khallasi Shri Jeyan all entered in S/9 coach. VI Rastogi asked A.A. Makwana, TTE who was manning that coach whether the RAC is cleared or not. ✓ Shri A.A. Makwana replied that no RAC was cleared. Thereafter, they checked the personal and railway cash of A.A. Makwana. As far as his personal cash was concerned it was correctly mentioned on his EFT and when they counted the railway cash it was found Rs.40/- short. In his version A.A. Makwana told that it must have left to take from passenger through an over sight. Thereafter they were all proceeding S/10 coach one of the constable of VI, (he did not know his name) called the VI's back and they were talking with one passenger as to how he has got the berth in a cabin. Out of 6 passengers only 4 passengers were having sleeper berth coupons of Rs.15/- each rest two were not having the sleeper coupons but they told that they have paid Rs.20/- and they are to receive the receipt from the conductor concerned. He said that he did not know who entered the cabin and who checked the tickets of the passengers and he did not check the tickets of the passenger with VI in coach No.3/9. In reply to Q.7 he disclosed that since Mr.A.A. Makwana had replied on question of Shri Rastogi that the RAC is not cleared nobody had checked the tickets on his statement. He said that it was in his knowledge that statement of one Shri Gulabchand was recorded in the running train by VI's between ND & BRC, and he did not remember the contents of the said statement as it was not recorded before him. In reply to Q.11 he stated that he could not say about the payment of Rs.20/- by the passenger to the TTE whether it was an illegal one when the receipt was not obtained and as per his statement the passenger had paid Rs.20/- and receipt was to be obtained.

3.5 Examination of Shri V.P. Kaushik, VI BRC PW-4:

On being shown the subject memorandum Shri Kaushik disclosed that check was conducted on 5.4.89 by GUP and sleeper coach No.3/9 was subjected to check between Nadiad and Anand which was manned by Shri A.A. Makwana. The private and Rly. cash of Shri Makwana checked and Rs.40/- found short in his Rly. cash. He issued 6 coupons of Rs.15/- (fifteen) each but he produced Rs.50/- as Rly. cash against Rs.20/-.

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A Joint Note was prepared in this regard. It was also seen that two passengers were occupying berth Nos. 1 & 2 in a cabin were holding current tickets ex JP to DCT and were not given reservation coupon or any receipt. One of them Shri Gulabchand disclosed that he had paid Rs. 20/- to the TTE of S/9 coach and the TTE Shri Makwana allowed him and his son to occupy berth No. 1 & 2 no receipt was given to him against Rs. 20/- which was paid as an illegal money. Berth No. 3 to 6 and 7, 8 were also allotted to the current tickets holders between ADI & Nadiad before check. The statement of Shri Gulabchand was recorded and he has stated that he had paid Rs. 20/- to the TTE on his demand and was allowed to occupy berth No. 1 & 2 along with his son. Further enquiries revealed that the RAC passengers were not allotted any berth till the time of check through there were 11 passengers who were waiting for the allotment of berths. It was evident that by accepting Rs. 20/- from Shri Gulabchand by Shri A.A. Makwana, TTE ADI, carried Shri Gulabchand and his son without allotting the berths properly. The passengers who were in RAC were not allotted any berth till the time of check. He identified a Joint Note dt. 5.4.89 Ex. S/2, Statement of Shri Gulabchand of JP, Ex. S/3, & statement of Shri B.V. Shah, Ex. S/4, Reservation chart of 6 UP of 5.4.89, Ex. S/9 coach, Ex. S/1, Statement of Shri A.A. Makwana, dt. 17.4.89, Ex. S/5. He said that he collected the said chart from Shri Makwana after few days from the check.

In cross examination he said that he boarded the coach S/9 along with Shri Rohatgi, CVI, Shri Pillai, VI, B.V. Shah, TTE/ADI & Constable of Vigilance Unit T/T for check. In reply to Q.9 he disclosed that the check was conducted on 5.4.89 and the considerable time was passed so it is very difficult to state exactly. However, he will try to give the facts. Shri R.S. Rohatgi and Shri P.R.K. Pillai and himself had a look of S/9 coach in general along with Shri B.V. Shah. Then Shri R.S. Rohatgi contacted Shri A.A. Makwana, TTE ADI who was in charge of the coach No. S/9. His private and railway cash was checked and a Joint Note was prepared in this regard. There was a shortage of Rs. 40/- in his railway cash for which he was asked to clarify but he could not give any cogent reply. Shri Makwana was also asked regarding the allotment to RAC passengers for which he replied that he was going to allot berths to the RAC passengers. As sufficient berths were available for the allotment Shri R.S. Rohatgi and Shri P.R.K. Pillai along with Shri B.V. Shah were going towards coach No. S/10 as the coach was vestibule through the passage provided. Meanwhile, one passenger opened the cabin which is generally earmarked as lady's cabin, it was seen and pointed out by somebody from party that the cabin was not manned for lady passengers only and was occupied by the male passengers. One of them came out to attend the natural call that passenger was asked to show his ticket it was observed that he was having a ticket ex JP but was not given any reservation coupon or any receipt regarding the allotment of berth. The passenger disclosed his name as Gulabchand and deposed that he along with his son was allowed to travel on berth No. 1 & 2 of that cabin when he was asked that why he was not having any reservation coupon or card ticket he disclosed that he had paid Rs. 20/- to the TTE Shri Makwana on demand and was allowed to travel on berth No. 1 & 2 no regular allotment of berth was done in his favour and no receipt was given to him against Rs. 20/-. Shri R.S. Rohatgi and Shri P.R.K. Pillai and Shri B.V. Shah who had left for S/10 coach & were called back and the facts were put before them. The further enquiries were made from the other passengers

It is agreed... 8/-

and found that the passengers occupying berth No.3 to 6 were having current tickets alongwith reservation coupons of Rs.15/- each. Shri R.S. Rohatgi interrogated Shri Gulabchand and then called for the chart from Shri Makwana, he endorsed his name of Shri Gulabchand and his son and signed in the reservation chart and asked him to obtain in writing from Shri Gulabchand which he disclosed regarding the occupation of berth No. 1 & 2 and payment of Rs.20/- as an illegal money. Shri Rohatgi and Shri Pillai went ahead to check the tickets of the RAC passengers and other allotment vis-a-vis the reservation chart Shri Gulabchand gave in writing which he had stated before us and also told his address which he wrote on below his statement. On being shown the statement of passenger Ex.S/3 Shri Kaushik translated the same in English - "Gulabchand, B/165 Ixmi Narain Puri, Outside Surajpole gate, Jaipur. I am alongwith my son travelling by GUP in S/9 coach on berth N.1 & 2 on 5.4.89. I am holding ticket Nos. 7752 & 7753 ex JP to BCT the tickets are current, the TTE has allowed us after accepting Rs.20/- and allowed on berth after the train left ADI but he had not given receipt up till now. Sd/- Gulabchand." He could not throw any light as to the denomination of CC Notes mentioned in Ex.S/2. He said that each person of coach S/9 was not checked being odd time.

(Kaushik)

3.6 Statement of Shri Gulabchand, Passenger of Jaipur, PW-5:

On being asked to identify himself as Gulabchand, he produced letter pad in his name containing address of Jaipur. He said that he had received summons dt. 7.12.89 and Hind Class Pass No. 48802 dt. 2.1.90. On being shown a statement he identified the same saying that it was his statement given in his handwriting under his signature and the contents were true and correct, Ex.S/3. He said that he was issued receipt for Rs.30/- after his statement was recorded by VI. In reply to Q.5 he said that while he was giving Rs.20/- to the TTE for his reservation and his son with the understanding that the rate of reservation was Rs.10/- per berth but in the meantime the checking party called the TTE and thereafter asked him to give in writing about this transaction which he gave. He said that at the time of boarding the coach at ADI, the TTE was standing at the door of the coach and he and his son entered the coach without asking the TTE and did not occupy berth N.1&2 but were standing. He further said that he kept his luggage only on the berth but physically did not occupy the berth. (He gave Rs.20/- to the TTE at ADI only and he was detected by the checking party at ADI.) He identified Shri Makwana the TTE in the custody.

In cross examination he disclosed that he did not attempt to offer an illegal money to Shri Makwana and after paying the amount Shri Makwana was called by the checking party before he could part with the receipt and collect the balance amount. (He said that he gave his statement to the checking party as asked for by them forcibly but it was not dictated by anybody but he gave of his own.)

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In re-examination when asked to clarify the factual position with reference to his statement Ex.S/3 he said that he could not clarify now and said that his statement was not correct and whatever he had deposed in the enquiry was correct, and that he has not changed his earlier statement to help Shri Makwana in the enquiry.

3.7 Final examination of Shri Makwana, Hd.TTE ADI and Defendant:

In his final examination Shri Makwana stated that he would give his written brief in support of his final defence covering all points. He said that his statement dt. 17.4.89, Ex. S/5 was given by him as desired by the CVI and has no comments on other & relied upon documents. As regards noticing Rs.40/- short in the Rly. cash during the course of check, he advanced an argument that he was abruptly called by the VIs and the amount in question had fallen down in the cabin which was later on traced and was recouped. As regard, demand and acceptance of Rs.20/- from the passenger Shri Gulabchand, he said that VIs have fabricated a story and S/Shri Gulabchand and Shah, TTE have not deposed anything against him in the enquiry.

4.0 DISCUSSION OF EVIDENCE WITH DOCUMENTS:

1. Shri Rohatgi, CVI AII disclosed that he alongwith S/Shri Kaushik, VI BRC & Pillai, VI/RJT & Shah, TTI (Prosecution) ADI checked sleeper coach No.S/9 of GUP on 5.4.89 between ND & BRC. Shri Makwana, Hd.TTE ADI was incharge of the sleeper coach S/9. He checked Rly. as well as private cash and Rs.40/- was found short in the Rly. cash. Shri Makwana could not give any & reason for the said shortage of Rs.40/-. On further check, two persons were found occupying berth No. 1 & 2 and on interrogation, the passenger Shri Gulabchand informed that the TTE after accepting Rs.20/- from him asked to occupy berth No. 1&2 for which no receipt was issued. He then disclosed that on further check it was noticed that 11 passengers on RAC were waiting for their allotment and as per Rule Shri Makwana should have first cleared RAC passengers. This was witnessed by an independent witness Shri Shah, TTI (prosecution) he added. Shri Rohatgi identified the relied upon documents.

In cross examination Shri Rohatgi confirmed that they entered S/9 coach from ND and a Joint Note Ex.S/2 was prepared on the spot. He also confirmed that private as well as Railway cash of Shri Makwana was subjected to check and two persons were detected travelling on berth No.1&2 without any reservation. He further stated that he himself entered the names of these two in the relevant reservation chart, Ex.S/1. The defendant Shri Makwana did not challenge the version of Shri Rohatgi.

2. Shri Pillai, VI RJT confirmed that he was one of the members of the checking party and carried out check of coach S/9 of 6 UP on 5.4.89 between ND & BRC which was manned by Shri Makwana, TTI ADI. He also confirmed that two persons were detected occupying berth No.1&2 without any reservation in the said coach and no receipt for Rs.20/- was issued by the TTE to the passenger Shri Gulabchand. He also confirmed that Rs.40/- was found short in Rly. cash with Shri Makwana at the time of check. He identified relied upon documents.

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In cross examination he confirmed that after carrying out the check of private and railway cash with Shri Makwana and on noticing Rs.40/- short in the railway cash a Joint Note, Ex.S/2 was prepared which was signed by the signatories including Shri Makwana. But physical check of Shri Makwana was not carried out as the VIs were not supposed to carry out physical check on anybody. He also confirmed that the check was witnessed by S/Shri Rohatgi, Kaushik & Shri Shah, TTE/ADI. The defendant did not challenge noticing Rs.40/- short in the Rly. cash and detecting two passengers in the cabin without reservation. He merely tried to know as to what was the denomination of G.C. notes found separately from private and government cash. Shri Pillai further confirmed that the private cash as well as railway cash with Shri Makwana was checked first and thereafter on further check the said two passengers were detected travelling without reservation on berth No.1&2 in the cabin. He (Pillai) also confirmed that not a single RAC passenger was accommodated upto the time of check.

3. Shri B.V. Shah, Hd.TTE/ADI, has admitted the contents of his statement dt. 10.4.89, Ex.S/4 as true and correct. In the said statement Shri Shah has mentioned that they entered S/9 sleeper coach of 6 UP on 5.4.89 which was manned by Shri Makwana and the VIs had checked the private and railway cash of Shri Makwana and Rs.40/- was found short in the railway cash. He has also mentioned that 6 persons were travelling in cabin on 1 to 6 berth, out of which 4 had sleeper berth coupons of Rs.15/- each and two passengers had ~~Joint/tickets~~ journey tickets only, and on enquiry by VI they informed that Rs.20/- was paid to the TTE for which no receipt was obtained and the RAC passengers had not been granted accommodation. He said that he was an eye-witness to the entire proceedings. He identified the Joint Note Ex. S/2 saying that it was drawn in his presence and bears his signature thereon.

In cross examination, he confirmed that his services were requisitioned by VIs and a check was carried out between ND & BRC in coach No.S/9. He also confirmed that Rs.40/- was found short in the railway cash with Shri Makwana and the two persons who were detected travelling on berth No.1 & 2 in the cabin had no reservation and they informed that Rs.20/- were paid to the TTE for which receipt was not obtained. He also confirmed that Shri Makwana, TTE informed them that he had not cleared RAC passengers and the statement of passenger Shri Gulabchand was recorded by VIs in his presence in the running train between ND & BRC. He confirmed that Rs.20/- was paid by the said passenger Shri Gulabchand for which the TTE had not issued any receipt.

4. Shri V.P. Kaushik, VI, deposed that Coach No.S/9 of 6UP of 5.4.89, was subjected to check between ND and BRC, which was manned by Shri Makwana, TTE. He further deposed that Rs.40/- was found short in the Rly. cash, on check, with Shri Makwana, further adding that 2 passengers were detected travelling on berth No.1 & 2 without any reservation and RAC passengers were not accommodated, and the passenger Shri Gulabchand of JP gave in writing that the TTE accepted Rs.20/- and allowed them. A Joint Note was prepared on the spot, he added. One of the passengers, who was detected travelling on berth No.1&2 in the cabin without reservation informed that Rs.20/- was paid to the TTE for which TTE did not issue any receipt, he said. Shri Kaushik identified the relied upon documents. He said that the statement of Shri Makwana was recorded in his presence, as per say of Shri Makwana and he authenticated the same, Ex.S/5.

In cross examination, Shri Kaushik confirmed his version by narrating the incident in brief. The defendant, Shri Makwana did not challenge the version of Shri Kaushik. But he merely asked the VI to indicate the denomination of GC notes, mentioned in the Joint Note, Ex.S/2. Shri Kaushik, however, could not state the denominations of the GC notes. Sh. Makwana, the defendant, did not dispute or challenge the contents of the said Joint Note, Ex.S/2.

5. Shri Gulabchand, the passenger, admitted the contents of his statement, Ex.S/3 as true and correct. In the said statement, Shri Gulabchand has mentioned that he was travelling by GUP on 5.4.89 in Coach No.S/9, with his son, occupying berth No.1&2, with 2nd class, ticket No. 7752 and 7753, ex JP to BCT, and that the TTE, after accepting Rs.20/- allowed them in the coach after the train left ADI for which the TTE has not issued any receipt. He admitted that he was issued receipt R for Rs.30/- by the TTE after his statement was recorded by VI. He, however, disclosed, in the enquiry that he was not aware of the rate of reservation, and boarded the train at ADI without the knowledge of TTE and kept his luggage only on berth No.1&2, which were vacant. He further deposed that the checking party board the train from ADI and he did not recollect about the money transaction with the TTE. He, however, identified Shri Makwana, Hd.TTE in the enquiry.

In cross examination, he deposed that he did not make any attempts to offer illegal gratification of Rs.20/- to Shri Makwana, and no sooner he paid Rs.20/- Shri Makwana was immediately called by the checking party before he could part with receipt and collect the balance amount. He further deposed that his statement, Ex.S/3, was obtained by VI by force but it was not dictated by anyone and he gave of his own. In re-examination, he disclosed that whatever he has deposed in the enquiry was correct and he has nothing to clarify further in regard to his earlier statement, Ex.S/3. He said that he has not changed his earlier statement, with a view to help Shri Makwana.

The contentions of Shri Gulabchand, the passenger, are not correct and cannot be accepted in view of the following reasons:

- a. In his examination of chief, Shri Gulabchand the passenger, has categorically admitted the contents of his statement, Ex.S/3 as true and correct. In cross-examination he has confirmed that though his statement was obtained by VI by force but he gave the same of his own. When Shri Gulabchand, gave his statement of his own, the question of obtaining his statement by force by VIs, does not arise. Secondly, the defendant did not challenge the contents.

- b. Shri Gulabchand has said that the checking party entered the coach at ADI itself. This is false because in fact the check was carried out after ND and the checking party entered from ND station only.
- c. In the statement, he has categorically mentioned that he and his son had occupied berth 1 & 2 in coach after Rs.20/- was paid to TTE. But in the enquiry he deposed that he merely kept his luggage on the berths. His contention is vague, baseless and an act of after thought as no passenger would like to stand in the mid-night when berths were vacant and when some amount has been paid to TTE. Secondly, he was travelling with his sons, as admitted by him. Therefore, the question of his not occupying the berths, does not arise.
- d. There is sufficient oral and documentary evidence, including that of an independent witness Shri Shah, TTE(prosecution), that the said passengers were occupying the berths No. 1&2 in the cabin on payment of Rs.20/- as illegal gratification to the TTE. Therefore, there is no reason to disbelieve the version of Shri Shah, TTE ADI.
- e. Shri Shah, TTE(prosecution) has categorically stated that he was an eye witness to the entire proceedings and was present, when the statement of Shri Gulabchand was being recorded by VIs.
- f. Shri Shah, TTE(prosecution) and other prosecution witnesses have categorically deposed that the passenger Shri Gulabchand was holding current tickets and had no reservation and that there were RAC passengers waiting for their accommodation. Shri Shah has further confirmed that other 4 passengers occupying the said cabin alongwith Shri Gulabchand had proper reservation. It therefore, goes to show that Shri Gulabchand alongwith his son was occupying berth No. 1&2 without proper reservation, and therefore possibility of his offering Rs.20/- as bribe to the TTE for occupying the said berths cannot be ruled out.
- g. Shri Gulabchand, the passenger has identified the TTE, Shri Makwana, in the enquiry, which further goes to establish that he was fully aware of entire incident that took place on that particular day.
- h. From his deposition in the enquiry, it appears that Shri Gulabchand, the passenger, has been won over by the TTE, Shri Makwana and he therefore, appears to have changed his earlier stand.

W. A. J.
....13/-

6. Reservation Chart of S/9 coach of GUP of 5.4.89 ex. ADI to BCT ex S/1. This has been identified by the prosecution & witnesses in the enquiry. Shri Rohatgi has disclosed that he himself has written the names of S/Shri Gulabchand and his son against berths No.1&2, which were vacant as the passengers booked against these berths did not turn up. It also reveals that RAC passengers were available. Though Shri Makwana, TTE, had worked GUP on 5.4.89, and manned the coach No.S/9, he did not admit the Reservation Chart in the enquiry for the reasons best known to him.

7. Statement of S/Shri Gulabchand, the passenger, and B.V. Shah, HTTE-ADI, Ex.S/3 and S/4, have already been discussed above.

8. Statement of Shri A.A. Makwana, HTTE ADI, Ex.S/5. Shri Makwana, TTE, has not admitted the same in the enquiry by advancing an argument that he gave the said statement, as desired by CVI. In the said statement Shri Makwana has, inter-alia, mentioned that he had allotted 4 berths to fresh ticket holders after checking the coach and noticed 15 berth vacant. He has also mentioned that Rs.40/- was found short in the Rly. cash with him due to 2 GC notes of Rs.20/- each being slipped away. As regards acceptance of Rs.20/- as illegal gratification from one passenger Shri Gulabchand, and allowing him to occupy berth No. 1&2, Shri Makwana has mentioned that he had neither accepted Rs.20/- from Shri Gulabchand as illegal gratification nor allowed them to occupy berths No.1&2. At the end, Shri Makwana, the defendant, has furnished the certificate, viz. "I have stated the above statement thoroughly and I am fully agree on it". In view of his furnishing the said certificate, it is crystal clear that Shri Makwana gave it in his statement to the VI without any coercion and he gave it with full sense of mind. Secondly, the said statement was written by third person Shri A.G. Pawar, TTE ADI, on his behalf, and duly authenticated by Shri Kaushik, VI, who identified it in the enquiry. His action in not admitting the contents of his statement, Ex.S/5, is an act of afterthought.

9. A Joint Note dt. 5.4.89, Ex.S/2. This has been signed by VIs who carried out check, including S/Shri B.V. Shah, TTE(prosecution), and Makwana, the defendant. It reveals from the said Joint Note was prepared in the train by GUP, on 5.4.89 at 23 hrs. between ND & BRG in coach No.S/9 & S/10. It also reveals that Rs.40/- was found short in the Rly. cash with Shri Makwana, Hd.TTE ADI for which Shri Makwana could not furnish any satisfactory explanation. In his final examination, Shri Makwana disclosed that he had signed the said Joint Note as he was mentally ~~prepared~~. He, however, did not dispute the contents thereof in his final examination.

per placed.

10. From above discussion, it will be evident that there is sufficient oral and documentary evidence on records to establish the charges levelled against Shri Makwana, HTTE ADI.

... 14/-

5.0

Discussion of arguments as advanced by Shri Makwana, Hd. TTE ADI, in his final examination and in his written brief dt. 5.3.90, parawise:

Para 1: No comments.

Para 2: The report of VI is confidential and cannot be produced in the enquiry. Secondly same has not been cited as a relied upon document. Hence the question of furnishing copy thereof does not arise. It neither violates the principles of natural justice nor vitiates the enquiry.

Para 3&4: There appear to be some minor contradictions, which do not in any way, alter or reduce the gravity of mis-conduct committed by Shri Makwana as the fact remains that Rs.40/- was found short in Rly. cash with him for which he could not furnish any explanation on the spot and Shri Gulabchand the passenger was found occupying the berth N.1&2 in the cabin, without proper reservation with his son whereas RAC passengers were waiting for their turn. Shri Gulabchand, the passenger has categorically mentioned in his statement, Ex.S/3, which he owned and admitted as true and correct in his examination in chief, that he was allowed by the TTE to occupy berth No.1&2, in coach S/9 after accepting Rs.20/- for which no receipt was issued by the TTE. Shri Shah, TTE (Prosecution) ADI was an independent eye witness to the entire incident as admitted by him in the enquiry. In his statement, Ex.S/4, Shri Shah has categorically mentioned the above facts, which were not challenged by him in enquiry. A Joint Note, Ex.S/5, which has been signed by the defendant alongwith other signatories clearly speak about shortage of Rs.40/- in the Rly. cash with Shri Makwana, at the time of check by VI for which Shri Makwana had no any explanation. Shri Shah, TTE ADI has identified this Joint Note in the enquiry saying that it was drawn in his presence. The defendant has not furnished any satisfactory explanation for shortage of Rs.40/- found with him during the check. The explanation furnished by him now is an act of afterthought.

Para 5: As discussed above there was no explanation from Shri Makwana with regard to Rs.40/- found short in the Rly. cash with him. A Joint Note, Ex.S/5, which had been prepared in the presence of an independent witness, Shri Shah, TTE ADI clearly brings out the fact Shri Makwana had also signed the said joint note without registering any protest or furnishing any explanation for the said shortage in Rly. cash. His argument that 2 GC notes of Rs.20/- might have slipped or left is vague, baseless and after thought. His further argument that he was busy in his checking and that he was not readily available at door is not convincing as it has nothing to do with the check of his private and Rly. cash. The fact remains that Shri Makwana produced the cash with him on demand by VI and Rs.40/- was found short for which he could not furnish any convincing explanation on the spot.

.....1

Para 6&7: As deposed by the prosecution witnesses including Shri B.V. Shah, TTE ADI, the RAC passengers were not accommodated, although number of berths were vacant and Shri Gulabchand and his son were allowed by the TTE Shri Makwana to occupy berth 1 & 2 in a cabin without proper reservation. Shri Shah, has further stated that when a check in the said cabin was carried out, out of 6 passengers, 4 passengers were issued proper reservation coupons of Rs.15/- each and the said two passengers were holding current tickets only. Shri Shah as well as Shri Gulabchand have confirmed that upto the check, no receipt was issued by the TTE. Shri Gulabchand, the passenger has further admitted in the enquiry that the TTE issued him receipt for Rs.20/- only after his statement was recorded by VIs. This goes to show that the TTE Shri Makwana had accepted Rs.20/- earlier from Shri Gulabchand for which no receipt was issued till the check was conducted. His action in retaining the said amount without preparing EFT is not free from doubt. In view of above, his argument that Rs.20/- was not a bribe money is not convincing. From the evidence on records, it is clear that VIs did carry out check of coach S/9 alongwith Shri B.V. Shah, TTE(Prosecution) ADI between ND & BRC. It is not disputed that there are no minor contradictions in deposition of VIs. But the said minor contradictions do not show that there was no check of coach S/9. A joint note, Ex.S/5, statements of S/Shri Makwana, TTE, Shah, and Gulabchand, the passenger, Ex.S/5, S/4 and S/2 respectively clearly establish the check conducted by VIs between ND & BRC. In his statement Ex.S/5, though not admitted as an afterthought, by Shri Makwana, he has categorically mentioned that he allotted 4 berths to fresh ticket holders and 11 berths to RAC (Ans.to Q.3). Shri Shah, TTE ADI, in his statement, Ex.S/4, has categorically mentioned that Shri Makwana had allotted berths overlooking priority of RAC passengers and subsequently also cleared RAC passengers. In face of this, his arguments are vague and baseless.

As per acknowledgement, the relevant Reservation Chart was collected by Shri Rohatgi. As regards the contentions of Shri Gulabchand, passenger, I have already discussed it at length at proper place in discussion above. In view of proved facts, as discussed, the contentions of Shri Gulabchand are not tenable.

Para 8: Shri Shah, TTE(Prosecution)-ADI was an independent witness to the entire incident and it cannot be a cooked or fabricated story, as argued. A Joint Note, Ex.S/2, which was signed by Shri Makwana on the spot clearly proves that it was not cooked or fabricated story. Shri Shah, in his statement, Ex.S/4, has mentioned that he witnessed the entire proceedings, and this has not been challenged by the defendant.

Para 9,10&11: This has already been discussed above. It would be evident that Shri Makwana could not give any explanation for shortage of Rs.40/- noticed in the Rly. cash during the vigilance check. His arguments are vague and baseless and an after thought. Shri Makwana, and Shri Shah, TTE have signed the said Joint Note in token of correctness of same. Shri Makwana has not registered any protest which goes to show that he has admitted its contents as true and correct.

Para 12: There is sufficient oral and documentary evidence on the records to show that Shri Makwana, TTE, has accepted Rs.20/- as bribe from Shri Gulabchand, the passenger, who was holding current tickets only and was allowed then to occupy berth 1 & 2 and Shri Shah has categorically mentioned in his statement, Ex.S/4 that Shri Makwana allotted them berths overlooking priority of RAC passengers and the RAC passengers were cleared subsequently. He has further mentioned that the said 2 passengers were holding current tickets whereas 4 other passengers who were in the same cabin had proper reservation coupons. He has confirmed that the said passenger i.e. Shri Gulabchand said that he had paid Rs.20/- for which receipt was yet to be obtained. Shri Makwana, was expected to collect the due charge from them and not Rs.20/- at random. Shri Gulabchand, the passenger has deposed in the enquiry that he was issued a receipt for Rs.30/- after his statement was recorded. The VIs, who have been examined in the enquiry, have deposed that Shri Makwana, TTE allowed Shri Gulabchand, and his son in the cabin in S/9 coach by accepting Rs.20/- as bribe. It is evident that the check was carried out between ND and BRC, and the said passenger Shri Gulabchand boarded the train at ADI and was not issued any receipt for Rs.20/- upto ND. It is also evident from the Reservation chart, Ex.S/1 that the passengers booked against berth No.1&2 did not turn up and Shri Gulabchand alongwith his son had occupied the said 2 berths in the cabin. The arguments as advanced by Shri Makwana are vague, baseless, after thought, and do not hold water. Shri Makwana, TTE, did not admit any of it the relied upon documents for the reasons best known to him. There does not seem to be material contradiction as argued by the defendant in the words "found sleeping" and "found travelling" as the fact remains that Shri Gulabchand was detected travelling in the said coach alongwith his son without proper reservation. The payment of Rs.20/- by the said passenger to the TTE and the TTE having not issued any receipt for the said amount upto the time of check, it goes to show that the TTE allowed them to travel in the said coach by accepting Rs.20/- as bribe. In view of what is discussed above I do not see any reasons to disbelieve the version of prosecution witnesses. As already discussed above, Shri Gulabchand, the passenger has turned hostile in the enquiry with a view to help the defendant Shri Makwana. Shri Makwana, the defendant, was asked to state whether he wanted to examine any defence witnesses from his side but he refused to examine any defence witnesses. He should have examined S/Shri Mahesh, TTE and helper Chhaganlal to prove his innocence but he did not examine them as defence witnesses for the reasons best known to him. His arguments are, therefore, baseless and afterthought.

False

Hostile

Para 13&14: There are two independent witnesses, viz. S/Shri B.V. Shah, TTE(Prosecution) ADI and Gulabchand, the passenger in addition to VIs. Although Shri Gulabchand the passenger, turned hostile in the enquiry, as discussed above. Shri Shah has categorically stated that he was an eye witness to the entire proceedings and the said Gulabchand has given in writing in his presence that he was allowed by the TTE to occupy berth No.1&2 in the coach on payment of Rs.20/- for which no receipt was issued. He has further stated that Shri Makwana has cleared RAC subsequently. Shri Gulabchand, the passenger, has owned the contents of his statement, Ex.S/3, as true and correct in the enquiry, in which he had mentioned that he was asked by the TTE to occupy berths 1&2, on payment of Rs.20/- for which no receipt was issued. In the enquiry, he confessed that he was issued a receipt for Rs.30/- only after his said statement was given. In the circumstances, it cannot be said to be a cooked up and fabricated story, as argued. His arguments are vague, baseless and are not tenable.

6.0 C O N C L U S I O N:

In view of what is discussed above and in view of oral and documentary evidence adduced during the course of enquiry, the charges levelled against Shri Makwana, Hd.TTE are SUBSTANTIATED.

By
(J.N. HAZARI)
ENQUIRY OFFICER/AQ

T. Chitambar
Jugilal
Sen

THROUGH PROPER CHANNEL

53
ANNEXURE Ag

From.

A.A. Makvana,

T.T.I. ADI (BG).

DT. 12-9-92

To,

The Area Manager,

Ahmedabad.

Departmental Appeal

Respected Sir,

Re: NIPNO. EC/161/308/27/6422 Dt. 3/8/90-Removal from service.

Sub: The Departmental Appeal as per Rule 18 of the Railway Servants D&A, 1968.

The undersigned hereby prefferring this Departmental Appeal for your active consideration and seeking justice on the averments and grounds raised in the appeal hereby and also seeking a personal hearing.

- (A) The Charge Sheet issued by Sr.DCS. BRC is not competent to issue the Charge Sheet for a Major penalty of Removal from Service. The Article 311(1) of the Constitution of India is violated as well as as per the rule he cannot take decision for removal from service.
- (B) The chargesheet dt. 10/9/89 was not in the form as require, not only that the annexures I, II, III e.t.c. are not mentioned nor any Specific charges have been shown. The ambiguous charges it self self explanatory to vititate the Inquiry.
- (C) The statements obtained during my absence or behind my back can not and not permissable to rely during the Inquiry, but the same have been relied, which is in violation of principle of natural justice and fair play.
- (D) The documents relied in the inquiry and additional evidence and strenuous factor consider in the inquiry itself vititate the inquiry. Your Honour may kindly see that no documents were given together with the chargesheet to enable me to prepare proper defence.
- The documents relied by the Disciplinary authority if would have been supplied to me, I could have prepare proper deffence and the D.A. might not havre further proceeded for Inquiry, but non supplying the documents together with the charge sheet amounts violative of Art, 311(2) of the constitution and against the ratio of the judgement in the case of Kashinath Dikshita v/s Union of India. 1986 (I) ATC. as well as Against the existing D&A rule 1968.
- (E) The alleged charge of vilating the Railway Servant conduct rules 1966(i)&(iii) on the allegation of finding Rs. 40 cash short and ignoring RAC passangers and allotting bearth to unreserved ticket holder does not form a matter of misconduct. Kindly reffered the case of J. Ahmed v/s Union of India.
- (F) The Disciplinary authority erred by holding that the charges are serious and substantiated despite coming to the conclusion that

the clear statement from Shri Gulabchand during the inquiry that he has not given any consideration for reservation to the delinquent. The statement recorded in absence ~~from any body~~ ^{of mine} on 5/4/89 has been given more weightage and the statements made during the inquiry has been wrongly considered as a hostile statement. The facts come out from the order of the D.A. that the charges of accepting Rs. 20 from Shri Gulabchand is baseless and not been proved with any or valid evidence and is requires to be held as disproved in the eyes of law and the penalty imposed is requires to be cancelled.

(G) The D.A. ~~failed to consider~~ has not considered the case as per the Railway Servants D&A rules, Since he relied only on the report and findings of the inquiry officer, with out applying his own mind. Neither he has examined the statements of presenting witnesses nor their reply in the cross examination e.g. Shri Rastogi VI has taken away the chart from the undersigned and has been clearly proved from the acknowledgement produced during the inquiry, While Shri Kaushik VI has stated that he has obtained the Reservation chart after few days from CTI so the ~~weightage~~ weightage unduly given to the evidence like this clearly shows that the entire case is without any evidence and with a malafide and to harass the ~~applicant~~ ^{appellant} the entire case was preplanned to remove the undersigned.

(E) The findings and report by the Inquiry officer are without any evidence and on the basis of the same the entire Inquiry requires to be vitiated, in the interest of justice.

(F) The Disciplinary authority failed to appreciate that there was not any complaint from any RAC passengers on the alleged charges and every one amongst the RAC has got the berth and after that to save Railway from the loss ~~hence~~ the undersigned is empowered to allot berth to unreserved passengers.

(G) The Disciplinary Authority should consider the time factor ~~also~~ also, since the 6Up leaves ADI at 22.30 and first stop is Nadiad which comes about after 50 mtd of its departure from ADI, after Nadiad ~~the~~ when the undersigned ~~was~~ when was performing his duty with integrity the VI started disturbing him not only that unless the undersigned finished his checking in the entire coach entrusted to him the VI cannot be held guilty or can find fault with the working of the undersigned. the same is not permissible to them. Since the undersigned being the Scheduled caste, to harass him and to throw out of employment in one way or the other the entire case was pre planned and the case was concocted against the undersigned.

(H) There is no power vested with the VI to take over the reservation chart, despite the undersigned not agreed to handover the chart till he clear the RAC as well as he signed of the duty as per procedure, but has to handover the Rastogi VI on his being insisting and on threat. The chart was acknowledged as received by

Shri Rastogi at Baroda on the same day and Mr. Kaushik has made incorrect statement is clearly proved. The above incorrectness has been wrongly considered as correct evidence by the Disciplinary Authority and he has wrongly considered as charges being proved by agreeing with the I.O. view.

(I). The charges havenot been proved with any direct or indirect evidence and the statement made by Shri Gulabchand during the Inquiry has not been considered and considered as hostile and over and above his integrity has been suspected which is not in his power and such an order of D.A. is requires to be cancelled in the interest of justice.

(J) The D.A. has acted biaaly against the undersigned by considering and by believir; the statements of presanting wittnesses like Mr. Kaushik and Mr. Rastogi and not considering their admission incross examination and ignoring the Gulabchand 's staement is shows bias and vindictive attitude.

(K) The order of the Disciplinary Authority is not the speaking order in terms with the Railway Boards circular aswell as the law laid down by the supreme court in the case of R.P. Bhatt v/s Union Of India.

(L) The undersigned is having a crystal clear record without any punishment in his 27 years of his service, and 11 years service as T.T. and to charge and to punish on the alleged ground of violating the conduct rules (ii)&(iii) of 1966 is nothing but an harrasment and to victimise the s.c. man.

(M) There are many cases of T.T. who have found negligent in duty and more serious charge have been proved in Black and White despite the same there is a minor penalty have been awarded either at a Disciplinary stage or at Appellate stage, while in the instant case though there is no valid evidence available on the alleged charge despite that an illegal order has been passed and highest punishment of removal has been given because of the same the entire family has been ruined and will face the socio economic death. I am not admitting my guilt but assuming that your honour still going to held me guilty even than the punishment may be reconsidered looking to the charges and where the Railway has not incurred any loss.

In view of the above grounds and averments and on examining the entire record your honour may kind enough to held that there were procedural lapses in the inquiry, the alleged charge doesnot amount misconduct and the charges requires to be held as diprove and to save my carrier as from any action and also to be seen for my retirement period of 7 years. The order of Disciplinary authority may be cancelled and I may be order reinstatement with consequential benefits.

Pending the Appeal a reinstatement order may kindly be issued in the interest of justice and personal hearing with deffence assistance of my choice may be granted in the interest of justice.

Thanking you and al ways at your service to show my integrity and sincerity.

Your's Faithfully,

(A.A. MAKWANA)

Handwritten signatures and initials:
 1. A large signature, possibly "A.A. Makwana".
 2. A signature that looks like "T. K. Singh".
 3. A signature that looks like "Gulabchand".

Reply/Rejoinder/written submission
 filed by Mr. N.S. Shervade
 learned advocate for petitioner/
 Respondent with second set.
 Copy served/not served & other side

By Registrar C.A.T. (I)
 Ahmedabad Bench
 19-1-93

D/F

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO.96 OF 1992

A. A. Makwana.....

... Applicant

V/s

&

Union of India/Ors.....

... Respondents

WRITTEN STATEMENT ON
 BEHALF OF RESPONDENTS

The respondent Nos.1 to 4 humbly beg to
 file written statement to the application as under:-

1. The Senior Divisional Personnel Officer,
 Western Railway, Baroda, is empowered and ~~was~~ authorised
 to file written statement on behalf of Union of India.
 He is also authorised and empowered to file written
 statement on behalf of the respondents and hence the
 present written statement is verified by the Senior
 DPO, Western Railway, Baroda.

2. Contents of paras 1 to 4 are procedural and
 need no detailed reply. However, it is stated that
 the orders passed by the Disciplinary Authority as well
 as the Appellate Authority are legal and proper.

Received
 Copy
 Sub. 11
 Adm. Secy
 19/1/93

3. Contents of para 5 are not true and are denied. It is denied that the present application filed by the applicant is within the period of limitation prescribed under section 21 of the Administrative Tribunals Act, 1985. It is stated that the order of the Appellate Authority has been served on the applicant on 6.12.90 (Annexure A/2 with the application). As such the applicant ought to have filed the original application challenging the order of the Appellate Authority on or before 6.12.91 but has filed the present application on 3.1.92. Hence there is a delay of 28 days in filing the application by the applicant. As such the present application is time-barred and deserves to be dismissed with costs on the ground of limitation alone. The applicant has not filed any application for condonation of delay along with the present application.

4. Regarding para 6.1, the respondents rely on the service sheet of the applicant for the purpose of his date of appointment, promotions earned, pay drawn, etc. It is not disputed that at relevant time the applicant was served with a charge-sheet, he was serving as Travelling Ticket Inspector/Head Travelling Ticket Examiner at Ahmedabad in the scale of Rs.1600-2660(RP).

5. Regarding para 6.2, to 6.5, the respondents rely on the original proceedings of inquiry. It is not disputed that on the date of incidence viz. 5.4.89 the

: 3 :

applicant was working as TTE in Sleeper Coach NO.S/9 of 6 Up Saurashtra Mail. It is not disputed that Vigilance Check was conducted between Nadiad and Anand in Coach No.S/9 of the said train by Vigilance Inspector under the assistance of Shri X B.V.Shah HTTE Ahmedabad. It is not disputed that the applicant was asked to produce his railway cash as well as private cash and on check. Rs.40/- was found short in his railway cash. It is not disputed that as per Excess Fare Ticket Book the applicant was required to produce Rs.90/- but Rs.40/- was short against the said cash.

8. Regarding para 6.6, it is stated that the applicant could not reply satisfactorily for the said shortage and stated that two Government Currency Notes of Rs.20/- might have slipped from his pocket. It is denied that the applicant who was checking the berths of passengers was immediately called by the Chief Vigilance Inspector and so in a hurry two twenty rupees notes got missed and hence were not traceable. The said averments are got up.

7. Regarding paras 6.7 & 6.8, it is submitted that applicant had allowed Shri Gulabchand to occupy Berth Nos.1 & 2 before clearing RAC passengers although said Shri Gulabchand was

holding unreserved/ordinary tickets for himself and his son. The applicant had allowed said Shri Gulabchand and his son to occupy the Berth Nos.1 & 2 in coach No.S/10. It is denied that on a query made by the Vigilance Inspector about the said two passengers Shri Gulabchand & his son the applicant replied that the said passengers were not allotted berth and they might have placed their luggage in the hope that they might be allotted these berths. The said averments are an after thought.

8. Regarding paras 6.9 & 6.10, on inquiry said Shri Gulabchand had informed that the TTE had allowed them to occupy Beth Nos.1 & 2 after accepting Rs.20/- from them and for which no receipt was granted. The said fact was narrated by Shri Gulabchand in the presence of Shri B.V.Shah, HTTE Ahmedabad. Acceptance of money by the applicant from Shri Gulabchand a holder of unreserved ordinary tickets without issuing any receipt is nothing but, a illegal gratification/bribe for the favour shown by the applicant to two ordinary ticket holders before clearing RAC passengers.

9. Contents of para 6.11 need no reply. The two charges narrated by the applicant were the main charges. ~~The respondents rely on the report of the vigilance party which is referred by the applicant as and when produced~~ The statement of imputation contains some more facts also.

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10. Regarding para 6.12, the respondents rely on charge-sheet dated 10.6.89 (Annexure A/2 with the application) for the contents thereof. The applicant, who was working as HTTE ADI while working as ^{TTE} ETE in Sleeper Coach No. S/9 of 6 UP of 5.4.89 ex-Adi & BCP^T was charged for misconduct in that he was having Rs.40/- short in his railway cash at the time of vigilance check between Nadiad and Anand and that he had demanded and accepted Rs.20/- ^{\$}an illegal money from Shri Gulabchand & his son ~~w~~ holding 2nd Second Class Mail/Express journey ticket bearing No.7752 & 7753 ex-Jaipur/Ahmedabad for the allotment of two sleeper berths and by the above mentioned act the applicant has exhibited lack in devotion to duty and conduct unbecoming of a railway servant and thereby violated rule ~~3(ii)~~ 3-1(ii) & (iii) of the Railway Service Conduct Rules, 1966. The Statement of Imputation in support of Article of Charges were also mentioned therein.

11. Contents of para 6.13 need no reply. The list of documents relied upon and list of witnesses relied upon were also mentioned in the charge-sheet.

12. Contents of para 6.14 need no reply. The applicant was given an opportunity to make a representation against the findings of the Inquiry Officer as stated in Annexure A/3 with the application dated 18.6.90.

13. Contents of para 6.15 are not true and are not admitted. It is denied that the ^{copies of} documents relied upon in the charge-sheet were not supplied to the applicant.

It is not disputed that the applicant requested the Department for nomination of Shri C.K.Vyas as his defence counsel. It is not disputed that the said Shri C.K.Vyas also gave his willingness to act as defence counsel of the applicant during the Departmental Inquiry. The respondents rely on the letter dated 18.6.89 submitted by the applicant for its contents. It is stated that the applicant has also acknowledged the receipt of all the copies of the relevant documents relied upon in the charge-sheet. It is stated that Annexure A/4 with the application is dated 18.6.89 and not 18.10.90.

14. Contents of para 6.16 are not disputed. It is not disputed that the Disciplinary Authority appointed Shri J.N.Hazari E.O.(HQ) as the Inquiry Officer vide order dated 28.9.89 (Annexure A/5 with the application).

15. Regarding para 6.17, the respondents rely on the record Note No.4, dated 23.2.90 (Annexure A/6 with the application). The enquiry was concluded on that day and the applicant was allowed 10 days time to submit his written brief.

16. Contents of para 6.18 need no reply. Annexure A/7, dated 5.3.90 is the written brief submitted by the applicant before the Enquiry Officer.

17. Regarding para 6.19, it is stated that the findings of the Inquiry Officer were supplied to the applicant along with letter dated 25.4.90 (Annexure A/8

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with the application) giving an opportunity to the applicant to make his representation against the said findings.

18. Contents of para 6.20 are not disputed. It is not disputed that the Disciplinary Authority imposed the penalty of removal from service vide NIP dated 3.8.90 (Annexure A/1 with the application). The said penalty was imposed by the Disciplinary Authority by speaking order.

19. Regarding paras 6.21 & 6.22, it is stated that the appeal filed by the applicant was duly considered by the Appellate Authority viz. Area Manager, Ahmedabad and the applicant was reduced in rank as Senior TC in the grade of Rs.1200-2040(RP) at the minimum of the scale for a period of three years after which the applicant would be reverted back to his original position in the grade of Rs.1600-2600(RP) at the stage from where he was removed from service viz., Rs.1750/-. The Appellate Authority has also passed a speaking order.

None of the grounds of challenge taken by the applicant exists.

(A) Contents of ground A are not true and are denied. It is denied that the ^{Senior} Divisional Commercial Superintendent, Baroda, who has issued the charge-sheet is not the competent authority for issuing major penalty charge-sheet. It is denied that there is violation of rule 2A read with Rule 9 of the Railway Servants (D&A) Rules, 1968. It is denied that it is also violative of Article

Article 311(1) of the Constitution of India and the charge-sheet is required to be declared null & void. The averments are without any substance. It is stated that the Senior Divisional Commercial Superintendent is the competent Disciplinary Authority of the applicant as per the Schedule of Powers and Disciplinary Rules. Hence the charge-sheet issued by the Senior DCS, Baroda to the applicant is legal and proper. There is no violation any Disciplinary Rules or Article 311(1) of the Constitution of India.

(B) Contents of Ground B are not true and are denied. The charge-sheet dated 10.6.89 is issued in proper form.

(C) Contents of Ground C are not true and are denied. It is denied that the charge-sheet is issued to the applicant with a closed mind. The charge-sheet issued to the applicant is clear and specific. It is denied that the wording of the charge-sheet shows that the Disciplinary Authority had at the time of issue of the charge-sheet come to the conclusion that the charges levelled against the applicant have been established. It is denied that there is a violation of principles of natural justice. It is denied that the wording of the charge-sheet shows that the Disciplinary Authority is working with a closed mind and having bias & prejudice

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against the applicant. The judgement of Calcutta Bench in the case of Mohit Mohan V/s Union of India & Others 1991(3) SLJ 345 is not applicable to the facts of the present case. The averments of the applicant are without any substance. The applicant was given full opportunity to understand the charges levelled against him so that he can defend the same properly. The statement of imputations are sufficiently mentioned in the charge-sheet. The Disciplinary Authority has not pre-determined the case of the applicant and has no bias against the applicant

(D) Contents of ground D are not true and are denied. The present case has arisen out of Vigilance Check but the charge-sheet has been issued by the Disciplinary Authority of the applicant. It is denied that the charge-sheet issued to the applicant and the departmental proceedings are arbitrary. The proceedings are legal and proper.

(E) Contents of Ground E are not true and are denied. It is denied that the documents relied upon in the inquiry itself vitiate the inquiry. It is denied that additional evidence and extraneous factors are considered in the inquiry itself which vitiate the inquiry. It is denied that the applicant could not pick-up proper defence as he had not received the copies of the documents relied upon along with the charge-sheet and therefore he was

denied reasonable opportunity to defend himself and the said action is against the principles of natural justice. It may be stated that the copies of all the documents are supplied to the applicant before commencement of evidence and the applicant had full opportunity to prepare himself for cross-examination of the witnesses. In reply to the charge-sheet the applicant is required to state whether he denied the charges or accepted the same. Final defence was to be given by the applicant after the evidence of the prosecution side was over. The inquiry cannot be vitiated on the ground ^{as} alleged by the applicant.

(F) Contents of Ground F are not true and are denied. It is denied that the Disciplinary Authority and Appellate Authority have stretched the point of shortage of railway cash to the extreme. It is denied that even if cash amount of Rs.40/- was found short, the applicant could not have been held himself to be responsible for the loss of Government money and in such^a contingency the railway servant is duty bound to make good the loss. It is submitted that the employees primarily¹ liable for the loss and making good the loss does not absolve him from the liability for shortage. Both the things are different. The theory put forward by the applicant that he had two Government currency notes of twenty rupees denominations in Railway Cash but at the time of cash certification the said notes were not traceable. The

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fact is that Rs.40/- was short in railway xcash with the applicant at the time of check. It is denied that the shortage is not a serious thing. It is denied the shortage can be at the best called as difference in cash balance. It is denied that finding shortage of cash is not a serious misconduct on the part of railway employee. The Joint Note prepared gives the position regarding cash on hand with the applicant at the time of vigilance check. The applicant could not explain the said shortage and refused to disclose the shortage in presence of Chief Ticket Inspector, VI, Baroda, VI, Rajkot, etc. It is denied that the action of preparation of Joint Note is a matter of prejudicial action and full of doubt and benefit of doubt should have been extended to the applicant as alleged. The applicant has been correctly issued major penalty charge-sheet.

(G) Regarding Ground G, it is submitted that the contents thereof are not fully true and are not admitted. The averments relate to the appreciation of evidence of Shri B.V.Shah. The fact is that no receipt was issued by the applicant to Shri Gulabchand when he accepted the money from him. The version of the applicant is that no amount was accepted by the applicant from Shri Gulabchand and had totally denied the allegations. According to applicant he had not accepted any money from Shri Gulabchand, he did not permit Shri Gulabchand to enter the coach and had not

allotted the berths to Gulabchand & his son before the vigilance check and the said version is ~~be~~ belied by the witnesses. The contention relates to appreciation of evidence.

(H) Contents of Ground H relate to appreciation of evidence to Shri Gulabchand. The appreciation made by the applicant is not correct. Shri Gulabchand has given his statement to the CVI willingly.

(I) Contents of Ground I are not fully true and are denied. The son of Gulabchand was not a witness listed in the charge-sheet and it was not necessary to examine him as a witness during the inquiry as money was paid by Shri Gulabchand. It is denied that son of Gulabchand is a material witness and failure to examine him amounts to major lapse in the inquiry. The applicant was not entitled to any preliminary report of the Vigilance Inspector as no such report was relied upon by the Department during the inquiry. It is denied that there is violation of principles of natural justice and fair play as the preliminary report of the Vigilance Inspector is not supplied to the applicant. It is denied that statement of Shri Gulabchand was not furnished to the applicant and he is not examined by the Senior DCS, Baroda. It is denied that the translated copy of the statement of Shri Gulabchand supplied to the applicant, which is different than original statement of Shri Gulabchand. It may be stated that the copy of the statement of Shri Gulabchand

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has been supplied to the applicant under his acknowledgement. It is denied that the entire action was pre-planned and was made to victimise the applicant. It is denied that the statement of Gulabchand cannot be relied upon as allegedly the same is not recorded in the presence of the applicant. It is denied that the entire inquiry is conducted in an arbitrary manner and against the provisions of Articles 14, 311(2) of the Constitution of India. The averments are baseless and without any substance. The witness Gulabchand was examined in the presence of the applicant and his defence counsel and the applicant has also cross-examined the said witness. There is no violation of rules of natural justice.

(J) Contents of Ground J are not true and are denied. It is denied that the impugned orders are not speaking orders and are passed with a closed mind. It is stated that the Disciplinary Authority as well as Appellate Authority applied their minds to the facts and the circumstances of the case and after going through the entire Disciplinary Proceedings and after carefully examining the charge-sheet, evidence as well ^{as} the defence submitted by the applicant and after applying their mind have passed speaking orders, which are legal and proper.

(K) Contents of Ground K are not true and are denied. It is denied that charge No.1 is not at all referred to by the Disciplinary Authority. The Disciplinary Authority has agreed with the findings of the Enquiry

Officer, who has held that the charges levelled against the applicant are substantiated. It is denied that acceptance of Rs.20/- by the applicant from Shri Gulabchand and his son is not proved but the so-called Disciplinary Authority has defamed the passenger. The amount of Rs.20/- is paid by Shri Gulabchand and hence no reference is required to be made to Shri Gulabchand's son. The son of Gulabchand was not required to be examined. Only Gulabchand has given his statement.

It is denied that the Disciplinary Authority has acted arbitrarily and therefore his order required to be quashed.

The averments are without any substance. The Inquiry Officer has appreciated the entire evidence on record.

(L) Regarding Ground L, it is stated that the applicant has reproduced some portion from the Appellate Order. The Appellate Authority found that the punishment imposed was harshed and therefore reduced the quantum of penalty. It is denied that the reduced penalty imposed by the Appellate Authority is also not justified. It is submitted that the Appellate Authority has considered the case and reduced the penalty, which shows application of mind by him.

(M) Contents of Ground M are not true and are denied. It is denied that in the absence of any eye witness, who must have witnessed the acceptance of Rs.20/- by the applicant as illegal gratification, the charges levelled against the applicant should be disbelieved and

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are
/unwarranted and unjustified and the charge-sheet is
required to be held bad in law as alleged. The averments
are baseless and without any substance. There is
sufficient evidence in the departmental inquiry which
proved that the applicant accepted Rs.20/- as illegal
gratification from Shri Gulabchand and did not issue
any receipt for the said amount of Rs.20/-, which he
accepted from Shri Gulabchand. The charges levelled
against the applicant are held to have been substantiated
by the Enquiry Officer on appreciation of evidence
produced during the inquiry. The Disciplinary Authority
has also agreed with the Inquiry Officer. The Inquiry
Officer as well as the Disciplinary Authority/Appellate
Authority has full jurisdiction to appreciate the
evidence and the Hon'ble Tribunal has no jurisdiction
to appreciate the said evidence or sit in appeal over
the findings of the Enquiry Officer or Disciplinary
Authority/Appellate Authority. The charge sheet issued
to the applicant is legal and proper.

20. Contents of paras 7 & 8 need no reply.
However, it is stated that the applicant has not
exhausted the remedy of revision/review under the
Disciplinary Rules before approaching this Hon'ble
Tribunal by filing the present Original Application and
to that extent the application is premature.

21. The applicant is not entitled to any of the reliefs claimed in para 9 of the application.

22. The applicant is not entitled to any interim order as prayed for in para 10 of the application.

23. Contents of para 11 onwards need no reply.

In view of what is stated above, the application may be dismissed with costs.


VERIFICATION.

I, B.N.Meena, age about 36 years, son of Shri R.N.Meena, working as Senior Divisional Personnel Officer, Western Railway, Baroda and residing at Baroda do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 12.7.1993

File 18.10.93


Senior Divisional Personnel Officer,
Western Railway, Baroda.


A. R. R. Singh

O.A./T.A./M.A./R.A./C.A. No. 466/94 in 04/96/92

MR. K. R. Shah
COUNSEL

VERSUS

U. O. I. & O. O.
RESPONDENT (S)

COUNSEL

Date	Office Report	ORDER
	Intensim Relief	

DO
27-1-95

DO
27-1-95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD.

M.A. NO. 466 /1994

IN

O.A. No.96/92.

A.A. Makwana Applicant

Vs.

Union of India and others Respondents.

Details of Application.

1. Particulars of the applicant. : A.A. Makwana
T.T.I/Ahmedabad- (BG)
2. Address of service of notice: C/o. Shri Kiran K.Shah,
3, Achalayatan Society,
B/h. Memnagar Fire Station
Navrangpura, Ahmedabad-9.
2. Particulars of the Respondents:
 1. Union of India : Notice to be served through
The General Manager,
Western Railway, Head Quarter
Office, Churchgate, Bombay.
 2. Senior Divisional Commercial Superintendent,
Divisional Office, Pratapnagar,
Baroda.
 3. Area Manager ; Kalupur Railway Station,
Area Manager's Office,
Ahmedabad.
 4. Divisional Railway Manager (E)
Divisional Office,
Pratapnagar,
Baroda.

MAY IT PLEASE BEFORE THIS HON'BLE TRIBUNAL.

1. The applicant hereby state that the applicant
has challenged the charge-sheet dt. 10.6.89, the order
passed by the Disciplinary Authority dt. 3.8.89 and the

Filed by Mr. K.K. Shah
Learned Advocate for Petitioner
with second set &
copies copy served, not served to
other side

11/8/94 Dy. Registrar C.A.T.(I)
Ahmedabad

order passed by the Appellate authority dt. 6.12.90 before this Hon'ble Tribunal. The applicant hereby states that the applicant was awarded the penalty of reversion two scale below and at lowest pay for 3 years. The said penalty is over on 14.12.93. The applicant is requires to be restored to his original pay on completion of the said penalty and his pay is also to be required to be fixed in the scale of Rs.1600-2660 But the respondents failed to restore pay of the applicant on completion of the said penalty. This amounts the penalty not for 3 years with future effect and to be considered as double penalty. The applicant will be facing great economic and monetary loss and therefore the applicant preferred an application on 14.3.1994 to the respondents but till date he did not get any reply from the respondents. A copy of the same is annexed hereby and marked Annexure A-10.

Ann.A-10

2. Since the applicant is facing the monetary loss as well as the financial problem every month, he has constrained to file this application for seeking interim order from this Hon'ble Tribunal by directing the respondents to restore pay of the applicant in the scale of Rs.1600-2660 and from 14.12.93 the arrears may also be paid immediately. Failing which the Hon'ble Tribunal may kindly held that this amounts double penalty and the Original application may kindly be allowed on this point in the interest of justice.

3. Prayer:

(A) This Hon'ble Tribunal may be pleased to direct, the respondents to release, re-fix and restore the pay of the applicant in the scale of Rs.1600-2660

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at the stage of Rs.1750/- and/or any further increment as and when due in the interest of justice and in the alternative by holding it as double penalty in the O.A. may kindly be allowed.

- (B) This application may kindly be allowed with cost.
- (C) Any other order or direction as may be deemed just and proper in the facts and circumstances of the case may kindly be passed.

Shri

VERIFICATION

I, Shri Anil A. Makwana, Senior T.E. ADI, aged adult, residing at Anand do hereby state that what is stated hereinabove in paragraphs 1 to 3 is true to the best of my knowledge and information which I believe to be true. I further declare that I have not suppressed any material fact.

Identified by me

Shri
(Kiran K Shah)
Advocate for the applicant

** K. K. Shah*

Submitted,

Application has been scrutinized and found to be in order. May be placed before Hon'ble Bench for necessary order.

cc/cclap
19.09.94

may be placed for
orders on 3.10.94.

Chafar
21.9.94
21/9/94

sg/cj

sg/cj