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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION .NO.780 OF 2005

Cuttack this the 6th day of March, 2009

Shri K.H.S.Rao

.....

Applicant

Vrs.

Union of India and others


.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be circulated to the P.B. of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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CUTTACK BENCH: CUTTACK**

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CORAM:

THE HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL
MEMBER

AND

THE HON'BLE SHRI C.R. MOHAPATRA, ADMINISTRATIVE
MEMBER

...

Shri K.H.S.Rao, aged about 45 years, son of late K.S.Narayana,
Ex.Sr.Travelling Ticket Examiner under Sr.Divisional Commercial
Manager, Visakhapatnam, at present residing at Door No.26-11-5, Perikei
Street, P.O. Vellempetta, Dist-Visakhapatnam, PIN 530 001

...Applicant

By the Advocates: Mr.Achintya Das

-VERSUS-

1. Union of India service through General Manager,
E.Co.Railway, Chandrasekharpur, Bhubaneswar, PIN 751 023
2. Divisional Railway Manager, E.Co.Railway, Waltair Division,
Dondaparthi, Visakhapatnam, PIN 530 004
3. Additional Divisional Commercial Manager, E.Co.Railway,
Waltair Division, Dondaparthi, Visakhapatnam, PIN 530 004
4. Sr. Divisional Commercial Manager, E.Co.Railway, Waltair
Division, Dondaparthi, Visakhapatnam, PIN 530 004
5. Divisional Commercial Manager, E.Co.Railway, Waltair
Division, Dondaparthi, Visakhapatnam, PIN 530 004

... Respondents

By the Advocates: Mr.R.C.Rath (Res.5)

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ORDER

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The applicant has filed this Original Application under Section 19
of the Administrative Tribunals Act, 1985, seeking the following relief:



"To quash and set aside the charge sheet dated 21.3.2000 (Annexure-A/1), punishment notice dated 14.6.2004 issued by the Disciplinary Authority, Respondent No.5 (Annexure-A/5), order dated 17.3.2005 issued by the Appellate Authority, Respondent No.4 (Annexure-A/7) and order dated 21.6.2005 issued by the Revisionary Authority, Respondent No.3 (Annexure-A/9).

To direct the Respondents to reinstate the applicant on the date he was compulsorily retired with all consequential benefits to him within a target date.

To grant any other relief including cost as deem fit by the Hon'ble Tribunal".

2. The brief facts of the case are as follows:

The applicant, while working as Senior Travelling Ticket Examiner, the CBI, Bhubaneswar Branch, conducted a decoy check in Train No.2703 leaving Howrah on 14.5.1998 and in the process, detected the misconduct on the part of the applicant having demanded and accepted Rs.130/- from one passenger, namely, Shri R.Badenkal in between Bhubaneswar and Berhampur Railway Stations and thereby he failed to maintain absolute integrity and devotion to duty under the provisions of Railway Service(Conduct) Rules, 1966. On the above allegations the applicant was issued with a Memorandum of charge dated 21.3.2000 (Annexure-1). The Inquiry Officer submitted the report as per Annexure-A/2 dated 19.5.2003 holding the charge proved against the applicant. The applicant as per Annexure-A/4 dated 21.7.2003 submitted his representation with reference to the report of the I.O. In consideration of the written statement submitted by the applicant, the Disciplinary Authority, as per order dated 14.6.2004(Annexure-A/5),



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imposed on the applicant penalty of compulsory retirement from service.

The applicant, against the punishment imposed by the Disciplinary Authority, preferred an appeal, the result of which having not been palatable as per Annexure-A/7 dated 17.3.2005, he filed a petition before the Revisional Authority, who ultimately confirmed the order passed by the order Disciplinary Authority as per order dated 21.6.2005 (Annexure-A/9). Hence, the impugned orders under Annexures-A/5, A/7 and A/9 are under challenge in this Original Application.

3. The Respondent-Railways, in pursuance of the notices of this Tribunal, have filed their counter, to which the applicant has also filed a rejoinder.

4. We have heard Shri A.Das, learned counsel for the applicant and Shri R.C.Rath, learned counsel for the Respondents and perused the materials on record.

5. Shri Das, learned counsel for the applicant, mainly advanced the following arguments in support of his case. Firstly, the Inquiry Officer had not followed the rules or procedures while conducting the inquiry inasmuch as the applicant having started his duties at Khurda and the alleged demand and acceptance of bribe having taken place at Bhubaneswar as per the charge framed against the applicant based on decoy witness giving a written complaint to the CBI Inspector at Bhubaneswar, the FIR lodged against the applicant is false and concocted one. Secondly, the I.O. should not have appreciated the evidence of the



13 only decoy witness, one Shri Parichha, who was the stock witness of the CBI as he had given evidence in not more than seven cases ^{dictated} conducted by the same officer of the CBI. Thirdly, the I.O. had violated the provisions set out in Paragraphs 704 and 705 of the Railway Vigilance Manual in the matter of investigation to the effect that at least two independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification. But in the instant case, one Shri Parichha, a stock witness of CBI alone was examined by the Inquiry Officer. Besides, Shri S.K. Patnaik, the Inspector of CBI, Bhubaneswar, who led the trap, had not been examined nor did he ever present himself for examination by the I.O. Fourthly, the I.O. did not appreciate the evidence adduced before him inasmuch as there was no legally admissible evidence before him to come to a conclusion that the charge levelled against the applicant had been proved. Coupled with the above, the Appellate Authority and the Revisional Authority have not given any reason while confirming the order passed by the Disciplinary Authority. Lastly, the Respondents have failed to prove the charge of receipt of Rs.130/- which the applicant had demanded in Bhubaneswar for reserving two tickets in as much as in the evidence it is only elicited that Shri Badenkal asked for only one ticket, which is fatal to the prosecution case. To substantiate the above contentions, the learned counsel for the applicant relied on the judgments of the Apex Court reported in AIR 1970 SC 1302 (Mahavir Prasad vs. state of U.P.),

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2003(4) SCC 364 (Chairman & M.D. United Commercial Bank and Ors. vs. P.C.Kakkar); AIR 1986 SC 1173 (Ram Chander vs. Union of India & Ors.) and (2008) 1 SCC (L&S) 819 (Moni Sankar vs. Union of India and Ors.). Apart from the above, the learned counsel for the applicant also placed reliance on the decision of the C.A.T., Hyderabad in O.A. 301 of 2001 decided on 25.3.2003 (Sk. Adbul Samal Vs. Divisional Railway Manager, SC Railway, Guntakal & Ors. reported in 2003(2) ATJ 118.

6. Resisting the above arguments, Shri R.C.Rath, the learned counsel, relying on the counter/reply statement filed for and on behalf of the Respondents, submitted that the entire action taken against the applicant was based on facts and evidence produced before the Inquiry Officer and on the findings entered by it. The Disciplinary Authority had considered the entire defence of the applicant as well as the conclusions arrived at by the I.O. and agreeing with the findings recorded by the I.O. and applying its mind to the facts and circumstances of the case as well as rules governing the field, imposed on the applicant the punishment of compulsory retirement from service. Further, the learned counsel submitted that the contention of the applicant that the I.O. had not followed the rules or procedure while conducting the inquiry is not true as the applicant has not been able to prove violation of any such rules or procedures and/or any irregularity committed in that behalf. The counsel for the Respondents further submitted that non-examination of the CBI Inspector, who conducted the trap, would not vitiate the inquiry

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15 as there were sufficient materials before the I.O. to hold that the alleged misconduct against the applicant had been proved. Apart from the above, the Disciplinary Authority, after considering the representation of the applicant against the inquiry report and giving due regard to the contentions of the applicant or his defence statement, imposed the penalty. Further, Shri Rath to the point that the matter having been trapped by the CBI ought to have been dealt by the CBI Court and should not be left to the discretion of the authorities in the Department causing deviation of rules, besides being prejudicial to the applicant, replied that it is the CBI, which after having decided the facts and circumstances of the case as well as the evidence of investigation made by them referred the matter to the departmental authorities without filing a case before the Court of Law. Lastly, the counsel for the Respondents submitted that the non-compliance of the provisions of the Railway Vigilance Manual is not a reason to reject the charge against the applicant and similarly, the non-examination of the detecting officer cannot be the sole reason to discard the evidence adduced before the I.O. Hence, the learned counsel for the Respondents submitted that as the punishment awarded by the Disciplinary Authority having been appropriately considered and upheld by the Appellate Authority as well as the Revisional Authority, this Tribunal should not interfere with the orders under challenge.



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7 In the light of the contentions raised by both the parties and having perused the records produced, this Tribunal has to decide whether the orders under challenge could be interfered with or not ?

8. The fact that the applicant was on duty in Train No.2703 U.P. Phalaknama Express on 14.5.1998, leaving Howrach is not disputed. It is also not in dispute that an amount of Rs.130/- had been recovered by the detecting Inspector from the applicant between Bhubaneswar and Berhampur Railway Station in the presence of Shri R.Badenkal and one Parichha, decoy witness on the date of the incident. It is the case of the applicant that as per the evidence adduced before the I.O., the Inspector of CBI, one Santosh Kumar Patnaik had received a complaint from one Shri R.Badenkal at Bhubaneswar regarding demand of Rs.150/- for reservation of two tickets in the train and on receipt of such complaint, the Inspector of CBI, the decoy witness Shri Badenkal and other witness Shri Parichha entered into coach No.A/6 and recovered an amount of Rs.130/- from the applicant, while the applicant demanded and received the amount from Shri R.K.Badenkal. But at the same time, there was no evidence before the I.O. showing that the applicant met Shri Badenkal at Bhubaneswar as the records would show that the applicant entered into the train at Khurda. Considering this aspect it has to be noted that there is no explanation forthcoming from the Respondents as to why the I.O. failed to examine the detecting Inspector, namely, Santosh Kumar Patnaik. Though this Tribunal is not expected to re-appreciate the



evidence, but it is to be noted that the records produced before the Inquiry Officer would show that the applicant, on the relevant date, had started his duties at Bhubaneswar. Apart from this, non-examination of the detecting Inspector who received the complaint or FIR from Shri Badenkal has impelled this Tribunal to entertain a doubt regarding acceptance of the complaint and/or his anxieties for putting a trap against the applicant by the C.B.I. This question was also raised by the applicant before the I.O. as well as the Disciplinary Authority, but that lacuna was not clarified either by the IO or the D.A. on the basis of evidence adduced during the enquiry. The contention of the learned counsel for the applicant that the CBI officer/officers having violated the provisions of the Railway Vigilance Manual when they made the trap especially by citing Shri Parichha, the only witness of the CBI, who had admitted before the I.O. that he used to give evidence in similar cases conducted by the same CBI officer, the inquiry is vitiated, has much force. In this context, it is also to be noted that the evidence of Shri Parichha would not show that any demand was made by the applicant in the train especially in Coach No.A/6 in the presence of the detecting Inspector or in the presence of the decoy witness Shri Badenkal, as illegal gratification. Even though in the domestic enquiry degree of proof is not the same as in a criminal case, yet the Department has to prove the origination of the complaint, demand made, acceptance of bribe, and recovery thereof. In the instant case, Shri Patnaik, who has played a vital role, has not been



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examined by the I.O. Besides the above, the mandatory provisions contained in Paragraphs 704 and 705 of the Railway Vigilance Manual requiring at least two independent witnesses to the trap have not been scrupulously followed. In this context, the judgment of the Apex Court reported in 2008(1) SSC (L&S) 19 in *Moni Sankar vs. Union of India and Ors.* In the above judgment, the Apex Court held in Paragraph 23 as under:

“23. Dr.Padia would submit that the jurisdiction of the Tribunal was limited and some evidence was adduced, the tribunal should not have interfered with the order of punishment imposed upon the applicant. The Tribunal was entitled to consider the question as to whether the evidence led by the Department was sufficient to arrive at a conclusion of guilt or otherwise of the delinquent officer. While reappreciation of evidence is not within the domain of the Tribunal, an absurd situation emanating from the statement of a witness can certainly be taken note of. The manner in which the trap was laid, the witnessed by the Head Constable and the legality of enquiry proceeding were part of decision-making process and, thus, the purpose that Paras 704 and 705 of the Manual have been invoked. It may be that the said instructions were for compliance of the Vigilance Department, but substantial compliance therewith was necessary, even if the same were not imperative in character. A departmental instructions cannot totally be ignored. The Tribunal was entitled to take the same into consideration along with other materials brought on record for the purpose of arriving at a decision as to whether normal rules of natural justice had been complied with or not”.

On this point also, a Division Bench judgment of the A.P.High Court in W.P.No.1498/02 and connected petition has been brought to the notice of this Tribunal. The A.P.High Court while considering the provisions of Paragraph 704 and 705 of Indian Railway Vigilance Manual, held that the

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provisions of paragraphs 704 and 705 of the Indian Railway Vigilance Manual are mandatory in nature and non-observance of the said mandatory guidelines vitiates the trap conducted and the penalty imposed by the disciplinary authority is liable to be set aside. The relevant provisions of Paras 704 and 705 are extracted hereunder:

“Para 704

When laying a trap the following important points have to be kept in view:

- (a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.
- (b) The transaction should be within the sight and hearing of two independent witnesses.
- (c) There should be an opportunity to catch the culprit red handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.
- (d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are man of status considering the status of the accused. It is safer to take witnesses who are Government employees and of other Department.
- (e) XXXXXXXXXXXXXXXX

Para 705:

For Departmental traps, the following instructions in addition to those contained under Paragraph 704 are to be followed:

- (a) The Investigating Officer/Inspector should arrange two Gazetted Officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two Gazetted officers are not available immediately, the services of non-Gazetted staff can be utilized.
- (b) The decoy will present the money which he will give to the defaulting officer/employees as bribe money on demand. A memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions. The memo, thus prepared should bear the signature



of decoy, independent witnesses and the Investigating Officer/Inspector. Another memo, for returning the G.C. notes to be decay will be prepared for making over the G.C. notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witness will take up position at such a place where from they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe - a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed, on the Investigating Officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private. Railway and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo and sealing of the notes in the envelope.....”

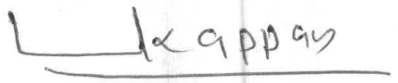
Further, the Andhra Pradesh High Court held that since the evidence adduced during inquiry is based on the said illegal trap conducted by the Vigilance Inspector, the I.O. and the Disciplinary Authority were not justified in acting upon the said evidence adduced during the inquiry and in holding the said charges proved. In our considered view, the factual position considered by the Andhra Pradesh High Court is same as in the instant O.A. In this view of the matter, the conclusion is inescapable that due to non-examination of the detecting Inspector and in the absence of corroboration of the evidence of the so called independent witness and decoy witness by any other independent witness, especially when the origination of the complaint



has not been proved, the findings arrived at by the I.O and D.A. become vulnerable. We are also of the view that though the Appellate Authority and the Revisional Authority have considered the grounds urged by the applicant, they have not considered the lacunae appeared in the prosecution case. The departmental proceeding is a quasi-judicial one although the provisions of Evidence Act are not strictly applicable, but the principles of natural justice are to be complied with. The Tribunals or Courts exercising the powers of judicial review are entitled to consider whether on the evidence adduced before the I.O. and findings thereon entered by it, the charge levelled against the delinquent has been proved beyond all reasonable doubt. In the above circumstances and on the principles laid down by the Apex Court, we are of the view that the charge levelled against the applicant has not been proved and consequently, the impugned orders under Annexures-A/5, A/7 and A/9 are set aside and the applicant is entitled to re-instatement in service forthwith with consequential benefits. Ordered accordingly.

9. In the result, the O.A. is allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER