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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 06.03.2002

O.A. No. 69/2001

Dr. Bhagwat Singh son of Shri Ganga Das Ji Jatav aged about 43 years by caste Jatav, resident of Railway Bungalow No. D/86, Residency Road, Jodhpur, and at present Ex-Senior Divisional Medical Officer, Northern Railway, Jodhpur.

... Applicant.

versus

1. The Union of India through the General Manager, Northern Railway, Baroda House, Headquarter Building, New Delhi.
2. The Railway Board through the Secretary to the Government of India, Ministry of Railways (Railway Board), Rail Bhawan, New Delhi.
3. The Member Staff, Railway Board, Rail Bhawan, New Delhi.
4. The Director General (Health), Railway Board, Rail Bhawan, New Delhi.
5. Shri Geeta Ram, Inquiry Officer, Commission of Department Enquiry, Central Vigilance Commission, Government of India, New Delhi, Block No. 10, Jamnagar House, Akbar Road, New Delhi.
6. The Union Public Service Commission thorugh the Chairman, New Delhi.

... Respondents.

Mr. S.N. Trivedi, Counsel for the applicant
Mr. Salil Trivedi, Counsel for the respondents Nos. 1 to 5.
None is present for respondent No. 6.

CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman
Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)

The applicant, Dr. Bhagwat Singh, while he was posted as Senior Divisional Medical officer at Amritsar was caught red handed on 16.02.93 in a trap which was laid by a team of CBI officers while demanding and accepting a sum of Rs. 100/- as illegal gratification from one Shri Ravi Bhushan, who was at that time working as Highly Skilled Fitter Grade II, Loco Workshok, Amritsar. A criminal case under the Prevention of Corruption Act, 1947, was registered against the applicant. After investigation, a final report was submitted. It was, however, decided to initiate departemntal proceedings against the applicant. The competent authority while ordering the initiation of departmental enquiry against the applicant appointed Shri Geeta Ram, CDI/CVC by invoking provisions of the Public Servants (Inquiries) Act, 1850, as contemplated under Rule 9(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 - for short, the Rules of 1968, by order dated 31.10.97 (Annexure A/4).

2. The statement of imputation of misconduct and misbehaviour on the part of the applicant on which the enquiry was proceeded, runs as follows:-

" 1. Dr. Bhagwat Singh was posted as Sr. Divisional Medical Officer during the period from December, 1992 to March, 1993.

2. Shri Ravi Bhushan who was working as High Skilled Fitter Grade II, Loco Workshop, Amritsar, sustained injury on the Index Finger of his right hand while on duty on 08.02.93 and was kept on "Hurt on duty" (HOD) by Dr. Bhagwat Singh w.e.f. 08.02.93 for a consideration amount of Rs. 15/- per day.

3. Dr. Bhagwat Singh had earlier demanded and accepted a sum of Rs. 50/- from Shri Ravi Bhushan on 10.02.93 and further demanded the balance of Rs. 100/- from him saying that the fitness certificate would not be issued unless the balance is paid to him.

4. On the complaint of Shri Ravi Bhushan that Dr. Bhagwat Singh is demanding a sum of Rs. 100/- from him for issuing a fitness certificate, a trap was laid on 16.02.93 by the team of CBI officers headed by inspr. V.K. Bindal and Dr. Bhagwat Singh was caught red handed while demanding and accepting a sum of Rs. 100/- as bribe from Shri Ravi Bhushan.

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5. Thus, by his above acts of omission and commission the said Dr. Bhagwat Singh has failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Railway servant and thereby contravened Rule 3(1), (i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

The enquiry officer submited a report on 03.03.98 (/annexure A/12) holding the applicant guilty of the charges levelled against him. The disciplinary authority, i.e., the General Manager, Northern Railway, made a copy of the enquiry report available to the applicant and required him to make a representation, if any. The applicant submitted a detailed representation dated 28.04.98. The disciplinary authority taking into consideration of the charge referred the matter to the Railway Board as the penalty intended to be imposed by him on the applicant was not within his competence. After taking advice of the Union Public Service Commission dated 15.11.99 (Annexure A/14) and keeping in view of the gravity of the charge established against the applicant, the penalty of dismissal from service was inflicted on the applicant by the order issued in the name of the President of India and communicated to the applicant on 30.01.2001 (Annexure A/1) signed by the Joint Secretary (Establishment), Railway Board, New Delhi.

3. The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, by filing the present OA and has challenged the legality and validity of the order of dismissal on a variety of grounds. The relief claimed by him is founded on the pleas, viz., (i) that the allegations levelled against him do not come within the purview of 'misconduct' and since the alleged facts constitute a criminal act, he could be proceeded against under the appropriate law prescribing punishment for the offence, and, in any case, he could not be dealt with departmentally on the same allegations which constituted a criminal act; (ii) that the departmental enquiry is vitiated as preliminary enquiry was not

held for the purpose of enquiring the truth of any imputation of misconduct or misbehaviour and consequently, framing of the charges was not in accordance with the procedure prescribed under the proviso of Rule 9 of the Rules of 1968; (iii) that the finding of the enquiry officer is not sustainable in the eye of law as the enquiry officer has not given the finding on each article of the charge and reasons therefor as per the proviso of sub-rule (25) of Rule 9 of the Rules of 1968; (iv) that there had been clear violation of principles of natural justice in holding the enquiry as the applicant was not given full opportunity of being heard and by way of refusing to record the statement of defence witnesses as well as without providing to give an exhaustive reply on the basis of the relied upon documents which were provided to him on the date of hearing; (v) that no opportunity for cross-examination of Smt. Sharanjeet Kaur was provided; (vi) that the applicant was not examined and questioned on the circumstances which appeared against him in the evidence adduced during the course of enquiry; (vii) that though the General Manager can be said to be disciplinary authority upto the extent of issuance of the charge sheet, but he was not competent to take disciplinary proceedings for imposing major penalty as an appointing authority alone could inflict such a penalty; (viii) that while forwarding the enquiry report and the representation of the applicant, the General Manager had tried to influence the opinion of the appointing authority and, therefore, the imposition of punishment of dismissal is unjustified, illegal and unconstitutional and against the letter and spirit of the Rule 10 of the Rules of 1968, and (ix) that the concurrence given by the UPSC was without application of mind and was based on mere conjectures and surmises.

4. On the basis of the above averments, the applicant has prayed that the order of dismissal dated 30.01.2001 (Annexure A/1) be

quashed and set aside and he may be deemed to be in service throughout and the consequential benefits flowing from the quashing of dismissal order be also granted.

5. Repelling all the above averments, the respondents Nos. 1 to 5 have filed a joint reply. They have maintained that the order of punishment has been passed in accordance with law and in conformity with the procedure prescribed; that the applicant was afforded due and reasonable opportunity at all the relevant stages of the enquiry and now he cannot be heard to say that the report of enquiry was vitiated on account of violation of principles of natural justice.

6. The applicant had further filed a rejoinder to the reply filed by the contesting respondents.

7. We have heard Shri S.N. Trivedi, learned counsel for the applicant as well as Shri Salil Trivedi, learned counsel appearing on behalf of the contesting respondents at considerable length and scanned and considered the respective submissions made on behalf of the parties.

8. To begin with, we would do better to dispel certain doubts entertained by the applicant with regard to the initiation of the disciplinary proceedings and the cobwebs spun around the submission of the final report after investigation in the criminal case. The learned counsel for the applicant urged that in the teeth of the provisions of clause (d) of Rule 3 of the Rules of 1968, the applicant could be proceeded against under the general criminal law of the land, but certainly not by initiating departmental proceedings. To appreciate the submission of the learned counsel for the applicant and for ready reference, the provisions of Rule 3

clasue (d) are quoted below:-

"3. **Application**

(1) These rules shall apply to every Railway servant but shall not apply to -

(a) ....
(b) ....
(c) ....

(d) any person for whom special provision is made, in respect of matters covered by these rules by or under any law for the time being in force or by or under any agreemnt entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions."

What the learned counsel for the applicant intended to suggest was that since the applicant was prosecuted under the provisions of Prevention of Corruption Act for allegedly accepting illegal gratification, he could not be dealt with departmentally in view of the above clause. A bare reading of the above clause would indicate that this provision does not prohibit the departmental enquiry against an employee, who may also be liable to be prosecuted on a criminal charge under the law of the land. The object and purpose of prosecuting, trying and punishing a public servant charged of the offence of demanding and accepting illegal gratification is to curb rampant evil of surging corruption in the society. The provisions of the Prevention of Corruption Act are intended to maintain purity in service and to effectively deal with the offending public servants who are out to pollute the service on account of their unwarranted greed for money. Though the Rules of 1968 apply to every Railway servant, they do not apply to the specified classes of employees mentioned in clauses (a), (b) and (c) of Rule 3(1). Clause (d) would apply only to that Railway servant, for whom a special provision is made "in respect of matters" covered by the Rules of 1968 or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before

or after the commencement of the Rules in regard to the matters covered by such special provisions. The learned counsel for the applicant could not point out any law in which special provision has been made to deal with the Railway servant who has been guilty of demanding and accepting bribe otherwise than the provisions of the Rules of 1968. The provision of clause (d) of Rule 3 is not intended to exempt a Railway servant from the operation of the Rules of 1968 in the absence of the special provisions to deal him departmentally specifically in certain circumstances. If the interpretation putforth on behalf of the applicant is accepted, its effect would be that a Railway servant would turn out to be unbriddled and unshackled, with all impugnity in indulging corrupt practices and the department, in such a situation, would become a silent spectator. Such absurd result has to be countenanced. We are of the firm view that the clause (d) of Rule 3 of the Rule of 1968 does not embrace within its ambit the provisions of Prevention of Corruption Act particularly within the connotation of "special provisions" or "under any law for the time being in force". In our opinion, therefore, in an enquiry under the Public Servants (Inquiries) Act of 1850, or for that matter under the Rules of 1968, there is neither any question of investigating an offence in the sense of an Act or omission punishable by any law for the time being in force, nor is there any question of imposing punishment prescribed by the law which makes that act or omission an offence. In view of the provisions of Rule 9 of the Rules 1968 which provides for procedure for imposing major penalty, the competent authority is empowered to hold an enquiry either (i) in the manner provided under Rules 9 and 10 of the Rules 1968; or (ii) in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850). The Public Servants (Inquiries) Act is not a Penal Act and its object is not to provide punishment for an officer guilty of misconduct. The Act merely provides for an

inquiry into the conduct of a Government servant and the only thing that can be done as a consequence of the enquiry is the dismissal or removal of the Government servant. In Kapur Singh vs. Union of India, AIR 1956 Punj page 58, it was ruled that the Public Servants (Inquiries) Act and the Prevention of Corruption Act lie in entirely different fields and there is no question of either Act being repealed pro tanto by the other. In view of the said decision, there can be no quarrel about the operation of the above mentioned two cases in separate fields. Independent of the provisions of Prevention of Corruption Act, the competent disciplinary authority has unfettered power to proceed against the delinquent Railway employee departmentally by invoking the provisions of Rules of 1968.

9. A very strange submission came to be made on behalf of the applicant that the Public Servants (Inquiries) Act is intended for regulating inquiries into behaviour of public servants. The argument which was developed and convassed was that since the Act aforesaid is intended to regulate inquiries into the "behaviour" of the public servants, it cannot be made operative in respect of the misbehaviour or the misconduct of a Government servant, or for that matter a Railway servant. As said above, the disciplinary authority was competent to proceed with the enquiry in the manner provided by the Rules 9 and 10 or to order for an enquiry to be conducted in the manner prescribed by the Public Servants (Inquiries) Act. This Act is an empowering statute and it vests the disciplinary authority with the power to proceed against a Government servant who has been guilty of misconduct. Section 2 of the said Act reads as follows:-

> " 2. **Articles of charge to be drawn out for public inquiry into conduct of certain public servants.**- Whenever the Government shall be of the opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the Government, not removable from his appointment without the sanction of the

> Government, it may cause the substance of the imputations to be drawn into distinct articles of charge, and may order a formal and public inquiry to be made into the truth thereof."

As the law as of date, the only purpose for which an inquiry under the Act can be made is to help the Government to come to a definite conclusion regarding "misbehaviour" of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him prior to giving him a reasonable opportunity of showing cause as required under Article 311(2) of the Constitution of India or the law governing the enquiry. According to the learned counsel for the applicant, the expression "misbehaviour" cannot be equated with "misconduct". This submission has been stated simply to be rejected. The term "behaviour" means, the way one conducts oneself; manner of behaving - whether good or bad - conduct; manners; mode of acting; deportment, as good behaviour. As long as one remains blameless in the discharge of one's duties or the conduct of one's life, that person would be said to be possessing good behaviour. The behaviour may be good, bad, wise, foolish, modest, conceited and embrace within its ambit exemplary conduct, grand, modest, correct, deportment and quiet behaviour. The term "misbehaviour" takes the colour from the expression "behaviour". If a person goes contrary to the established principles of behaviour, he would be guilty of misbehaviour, which means an improper and inappropriate conduct. The genesis of "misconduct" is to be found in misbehaviour. "Misconduct" in office may be defined as improper conduct; wrong behaviour; unlawful conduct by an officer in regard to his office. Viewed from any angle, allegations of accepting illegal gratification would be a misconduct inasmuch as the concerned employee has failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant. Without overworking on the hypertechnical submission aimed at hair-splitting, we feel contented by observing that the disciplinary

authority was justified in the instant case to order for an enquiry in the manner as provided by the Public Servants (Inquiries) Act, 1850, the provisions of which take within their sweep the misconduct alleged to have been committed by the applicant.

10. Sequel to the above submissions, there is yet another limb of the arguments advanced on behalf of the applicant. It was urged that since a final report after investigation has been submitted in favour of the applicant, the departmental proceedings cannot be initiated on the identical allegations. In support of his contention, the learned counsel placed reliance on the decision of the Apex Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC page 1416 in which earlier decisions were discussed. In some of the cases, the view taken in favour of the employee is that if he is prosecuted, tried and acquitted on a criminal charge, he cannot be proceeded against departmentally on the same facts, charges and evidence. In the instant case, the applicant was never put up for trial before a criminal Court. A final report was submitted after investigation. The learned counsel for the applicant could not fortify his submission by any precedent that if a final report is submitted in a criminal case, the employee cannot be proceeded against departmentally on the same allegations. On the other hand, Shri Salil Trivedi appearing on behalf of the respondents cited a direct decision of Rajasthan High Court in the case of R.S. Tanwar vs. Marwar Gramin Bank , Head Office, Pali and Ors., 2001 WLC (Raj.) UC page 154, in which after surveying the entire law on the point, it has been held that submission of a final report in a criminal case has no effect on departmental enquiry. The nature and scope of a criminal case are distinct and different from those of a departmental disciplinary proceeding to and an order of acquittal, therefore, cannot conclude the departmental proceeding (Nelson Motis

vs. Union of India and Anr., AIR 1992 SC 1981). In the State of Karnataka & Anr. vs. T. Venkataramanappa, (1996) 6 SCC 455, the Apex Court has held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same offence for the reason that in a criminal trial, standard of proof is different and the case is to be proved beyond reasonable doubt but the same is not true in a departmental proceeding as such a strict proof of misconduct is not required therein. Similarly, in Senior Superintendent of Post Offices vs. A. Gopalan, (1997) 11 SCC 239, the Supreme Court held that in a criminal case the charge has to be proved by standard of proof "beyond reasonable doubt" while in departmental proceeding, the standard of proof for proving the charge is "preponderance of probabilities". There can be no doubt about the well embedded legal position that as the standard of proof in a criminal case and in the departmental enquiry is quite different, the acquittal or submission of a final report after investigation in favour of the employee in a criminal case cannot be a basis of taking away the right of the employer to deal with the erring employee departmentally.

11. The next submission made on behalf of the applicant is that the enquiry against the applicant was ordered without making a preliminary enquiry about the truthfulness of the allegations as contemplated by sub-rule (2) of the Rules of 1968. Before ordering a regular enquiry, it is not in all cases necessary to hold a preliminary enquiry, particularly when the material available with the disciplinary authority is sufficient to initiate the departmental enquiry. In the instant case, the raid was organised by a team of CBI Officers. They have recorded the statements of various witnesses including that of Ravi Bhushan from whom the applicant is alleged to have demanded and accepted illegal gratification. The applicant was

caught red handed while accepting Rs. 100/- as bribe. In these circumstances, there was hardly any occasion for the disciplinary authority to order for the fact finding enquiry. The disciplinary authority had enough material before him to form an opinion that a full-fledged departmental enquiry in the manner as provided by the Public Servant (Inquiries) Act, was not only warranted but necessitated. The submission that the entire disciplinary proceedings stood vitiated on account of non-holding of the preliminary enquiry is otiose.

12. Shri S.N.Trivedi, learned counsel for the applicant, strenuously argued that it is a singularly singular case were the doctrine of natural justice which has now turned out to be an integral part of the administrative jurisprudence of the country, has been thrown to winds in asmuch as the relevant documents and the statements of witnesses which were in the custody of the CBI, were not given to the applicant and in any case, the statements which were recorded during the course of investigation, were taken into consideration and relied upon by the enquiry officer without the previous statements having been read over to the witnesses. It was also argued that atleast, the two key material witnesses, namely, S/shri S.K. Kapoor and Malkiat Singh were not examined and the defence of the applicant was virtually gagged and throttled. On the strength of above facts, the learned counsel for the applicant founded the plea that the enquiry officer had, from the very begining entertained bias against the applicant. To fortify his submissions, the applicant's learned counsel placed reliance on certain decisions, which shall be considered in the discussion to follow.

13. There can be no doubt about the well established proposition of law that the enquiry officer has to observe the fundamental rules

of a fair and impartial trial even though, he does not comply with the technical rules of evidence and procedure. The expression 'reasonable' in relation to "opportunity" is not susceptible of a clear and precise definition. What is reasonable in one case, may not be reasonable in another. What is reasonable is, not necessirily what is best, but, what is fairly appropriate to the purpose under all the circumstances. The dismissal or removal proceedings which are quasi judicial in character must be such as would be giving the delinquent employee a reasonable opportunity of being heard and to present his claim or defence. To put in a slightly different language, dismissal/removal proceedings should ensure a fair hearing to the person sought to be removed. The essentials of a fair hearing are that the course of proceedings should be appropriate to the case and just to the delinquent employee; that the said employee should be notified of the nature of the charge against him in time to meet it; that he should have such opportunity, after all, the evidence against him is introduced and known to him; to produce witnesses to refute it; and that the decision should be governed by and weighed upon the evidence produced at the hearing. The requirement of natural justice, it has been held, in a series of cases depend on the circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting; the subject matter, that is being dealt with and so forth. Even the application of the concept of 'fair play' requires real flexibility. Everything will depend on the actual facts and circumstances of a case. Certainly, the Courts would not shirk in their duty to set right the wrong inflicted upon the charged employee, if the administrative action suffers from the vice of non compliance of the doctrine of natural justice. With these prefatory observations, now, we proceed to consider the assertions made on behalf of the applicant.

14. The applicant himself has filed a copy of the letter dated 24th May, 1985 (Annex.A/3), addressed to the disciplinary authority, mentioning therein that he attended the office of the Superintendent of Police, SPE/CBI, Chandigarh, and was allowed to take the extracts of some of the documents, though copies of the documents relied upon have not been supplied to him. The order sheet dated 3.12.1997 maintained by the enquiry officer (Annex.A/6), clarifies the whole position with regard to the supply of the documents to the applicant. It mentions that original listed documents were brought for investigation by the applicant in the office of the enquiry officer. The documents were duly inspected by the applicants and, therefore, the hearing was resumed. The applicant submitted a certificate showing that the listed documents have been inspected and genuineness has been accepted, except document No. 6. The enquiry officer issued certain instructions to the Presenting Officer with regard to the supply of the documents to the applicant which were duly complied with. The ordersheet dated 29.1.1998 (Annex.A/7), indicates that the original listed documents were inspected by the applicant on 3.12.1997. There is, thus, enough material on record to establish that the applicant was allowed full opportunity to inspect the listed original documents. As a matter of fact, he not only inspected the documents but took their extracts and also admitted their genuineness. The documents which were required by the applicant to be delivered were received by him on 19.1.1998 as is evident from the applicant's written brief/representation (Annex.A/13), dated 28.4.1998. Now, it does not lie in the mouth of the applicant to assert that the relevant documents were not supplied to him.

15. A subsidiary submission which is wholly unmerited, advanced on behalf of the applicant, is that the previous statements of the witnesses recorded during the course of investigation were not read

over to them and, therefore, no reliance could be placed on the statements examined by the enquiry officer. A reference was made to the decision of a Division Bench of Madhya Pradesh High Court in the case of Rajkishore Pandey vs. Rewa Sidhi Gramin Bank and Another, 1989 (4) SLR page 506. In that case, it was held that the statements of witnesses which were recorded by the CBI and were not read over to the delinquent employee in the departmental enquiry, the termination of service would be in violation of the rules of natural justice. That was the case where the previously recorded statements were neither read over to the most of the witnesses nor the witnesses read the same by themselves before saying that those statements to be treated as their statements in the enquiry proceedings. In another decision of the Division Bench of Calcutta High Court in the case of Basak vs. Industrial Development Bank of India and Others, 1989 (1) SLR page 71, it was held that though the pre-recorded statements behind the back of delinquent official can be read in evidence and can be treated as evidence in-chief. However, if the makers of those statements are not examined and no opportunity is given to the delinquent official to cross examine such witnesses, the procedure is vitiated being in violation of principles of natural justice. It was further observed that the rigours of Evidence Act are not applicable to the departmental proceedings. A close reading of these two decisions would indicate that they instead of supporting the applicant go against him. In the instant case, the witnesses, whose pre-recorded statements were relied upon, have specifically stated that they had been shown their earlier statements and that they confirmed the statements having made by them. Not only this, they had appended their signatures before the enquiry officer in confirmation of the above fact. After taking all these precautions, then only the witness was put at the disposal of the applicant for cross examination. It is admitted on behalf of the applicant that

all the witnesses whose pre-recorded statements were taken into consideration, were cross examined by him. The thrust of the learned counsel, in vain, was that the pre-recorded statement was not read over to the witnesses. This lame submission loses significance the moment the witness has asserted before the enquiry officer that he has read his pre-recorded statement and verified its correctness. If the pre-recorded statements have been read and confirmed, there was hardly any occasion for "reading over" the statements to the witnesses concerned. Therefore, the enquiry officer was justified in placing reliance on the pre-recorded statements of the witnesses who after reading the statements, verified their correctness and then were also subjected to cross examination at the hands of the applicant.

16. It was also submitted that non-examination of two key witnesses, namely, S/Shri S.K. Kapoor and Malkiat Singh, has resulted in non-observance of the principles of natural justice. This submission again, is neither here nor there. It is nothing, but a subterfuge. The recovery memo is witnessed by about one dozen persons, including the complainant, the head of the raiding party and other inspectors of CBI etc. It is not a number of witnesses which is material but the quality of the evidence. No useful purpose was likely to be served by multiplying examination of witnesses on the same point. Shri V.K.Bindal, who was heading the trap, Smt. Sharanjit Kaur, Inspector, Central Excise Division (shadow witness of trap and conversation), Shri Ravi Bhushan, the complainant, from whom the money has demanded and accepted and a number of other witnesses were cross- examined and re-examined. It was not necessary to exhaust the entire list of the witnesses who were associated with the trap. A faint suggestion was made that Smt. Sharanjit Kaur, was not

allowed to be properly cross examined. The ordersheet maintained by the enquiry officer dated 2.2.1998 (Annex.A/8), indicates that sufficient opportunity was afforded to cross examine Smt. Kaur and the statement was completed by 7.40 PM. Since Shri Kapoor, who did not appear before the enquiry officer, his pre-recorded statement was exhibited with the consent of the applicant and taken on record of the enquiry. A reference was also made to the decision of the Apex Court in Hardwarilal vs. State of UP and others, AIR 2000 SC 277, in which the order of dismissal was quashed and reinstatement of the charged officer was ordered primarily on the ground of non-examination of the material witnesses. We have considered the various observations made in the aforesaid case which came into being under the peculiar set of facts of that case. A police constable was charged for hurling abuses at another police officer under the influence of liquor. The complainant and the witnesses who had accompanied the delinquent police constable to the hospital for medical examination, were not examined. It was, therefore, held that since they were material witnesses their non-examination resulted in non-observance of principles of natural justice. It was found that the examination of the two witnesses would have revealed as to whether the complaint was correct or not and to establish the state of inebriation, if any, of the delinquent police constable. In the instant case, the complainant and all other relevant witnesses in whose presence converstation has taken place and the money was demanded and accepted by the applicant as illegal gratification, have been examined. The observation made in Hardwarilal's case (supra) are of no avail to the applicant.

17. A faint suggestion was also made that the applicant was deprived of his right to lead the defence inasmuch as his witnesses were not examined and certain documents were not taken on record. This submission is not well founded. If the material on record is sifted, it would be apparent that the documents filed by the

applicant were marked as Exihibits D-1 to D-6. He had at no point of time raised any objection that his documents have not been accepted. As regards the defence witnesses, it may be pointed out that the applicant was directed to submit their lists, but he failed to do so by the target date despite reminders. This fact is clear from the order sheet dated 29.1.1998 (Annex.A/7). It was only on 2.2.1998, as would be apparent from the order sheet (Annex.A/8), that the applicant submitted the list of defence witnesses during the hearing. The said list was rejected by the enquiry officer as it was not submitted by the target date, i.e., 31.12.1997. As a matter of fact, the applicant was expected to call his witnesses for examination during the course of hearing as the enquiry officer had shown indulgence to him to do so. It appears that the applicant was not interested in producing witnesses as he was deliberately whiling away the time. In the departmental enquiry, the responsibility for excluding evidence which is irrelevent or in-admissable or which is sought to be produced at a late stage of the proceedings, devolves on the enquiry officer and it is for him to decide, in exercise of his discretion, whether it should or should not be called. In the instant case, the enquiry officer has rightly rejected the list of the witnesses submitted by the applicant during the course of hearing as he had deliberately failed to furnish the list by the target date or to produce the witnesses during the course of hearing. It was on account of the failure of the applicant that his witnesses in defence, if any, could not be examined. The applicant has to thank himself to bring about such a situation (See Director General Indian Council of medical Research & Ors. vs. Dr. Anil Kumar Ghosh, AIR 1998 SC 2592).

18. A passing reference may also be made to the submission of the learned counsel for the applicant that the enquiry proceedings stood vitiated as the Presenting Officer was an officer of C.B.I. Reliance

was placed on the decision of B.C.Basak's case (supra), in which it was held that the presence and participation of the senior officers of the C.B.I., Calcutta, in the enquiry vitiated the entire proceedings of the enquiry. This observation came to be made by the Division Bench of the Calcutta High Court in an entirely different context as it was found that the senior officers of the C.B.I. had a role to play in influencing the witnesses by their presence during the course of enquiry. In the case in hand, the Presenting Officer had nothing to do with the trap laid by the officers of the team of C.B.I. He was not in any manner associated with the trap-proceedings. Not only this, it is not established that the Presenting Officer was an officer superior in rank to the witnesses who were examined during the course of enquiry.

19. Now, we come to the plea of bias alleged to have been entertained by the enquiry officer against the applicant. The sweeping remarks came to be made on behalf of the applicant that the conduct of the enquiry officer exhibited bias and consequently, he was, from the very begining, bent upon to arrive at the finding that the charge against the applicant has been established. This submission appears to have been founded on the plank of the decision of the Apex Court in the case of Kumaon Mandal Vikas Nigam Limited Vs. Girija Shanker Pant, 2000 (8) SLR Page 769. In that case, Hon'ble the Supreme Court found that the entire chain of events smacked of some personal clash and adaptation of a method unknown to law in hottest of haste and bias on the part of the authorities to weed out the charged employee. The Apex Court ruled that, if there was existing a real danger of bias, and not mere apprehension of bias, administrative action cannot be sustained. The decision aforesaid is, hardly of any help and assistance to the applicant. The learned counsel for the applicant could not point out even a

single patent or latent fact which may suggest even faintly or remotely that Shri Geeta Ram, enquiry officer had entertained the feeling of grudge or bias against the applicant. The bald submission made on behalf of the applicant with regard to the fact that there was a total mind-set from the begining to punish the applicant, is wholly baseless.

20. Finding himself in deep waters, the applicant has raised the plea that the disciplinary authority without taking into consideration his detailed representation passed a mechanical order thereby passing the buck to the Railway Board and made the recommendation couched in such words which had influenced the Railway Board/President in passing the order of dismissal. It was also argued that the matter was referred to the Union Public Service Commission and its advice which was non speaking in nature, had also influenced the punishing authority to inflict the extreme penalty of dismissal. It was also somewhat vaguely suggested that the order was not passed by the President of India but by the Railway Board and in any case, even the order of punishment of dismissal is without any reasons. We have given our thoughtful consideration to all the submissions and are constrained, at the outset, to reject them all, as they are totally unfounded, unmerited and hyper-technical. There can be no dispute about the fact that under the Rules, if the disciplinary authority having regard to its own findings where it is itself the inquiring authority or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the enquiry to the appropriate authority to act in the manner as provided under the rules. The General Manager, Northern Railway, though, was admittedly the disciplinary authority in relation to the applicant

but, it was not within its competence to inflict major penalty. The disciplinary authority found that the penalty intended to be imposed by him on the applicant in the circumstances, was not within its competence to impose and consequently, he forwarded the records to the Railway Board's office for further appropriate action. Under the Rules of 1968, the disciplinary authority which is empowered to impose only minor penalties, may initiate enquiry even where the proceedings culminated in major penalty. The major penalty, however, can be imposed only by an authority competent to do so. Since the General Manager, Northern Railway, after taking into consideration the seriousness of the charge established against the applicant came to the conclusion that in the circumstances, major penalty was warranted which he himself could not impose, he had no option but to forward the case to the authority which was competent to impose the major penalty. His forwarding note cannot be said to have influenced the competent authority to inflict major penalty. He did not suggest any punishment. The matter was referred for advice of the U.P.S.C. By virtue of Article 320 (3) (c) of the Constitution of India, read with proviso thereto, and further, read with U.P.S.C. (Consultation) Regulations, 1958, it was mandatory for the President acting as a punishing authority to consult the U.P.S.C. in all disciplinary matters affecting a person serving the Union of India before passing of an order of imposition of the penalty of dismissal from service. The advice of the U.P.S.C. which tantamounts to consultation under the aforesaid Article of the Constitution is dated 15.11.1999 (Annex.A/14). The advice has been given by the U.P.S.C. after due application of mind and taking into consideration of the evidence led before the enquiry officer and other circumstances attending the case. Acting on the advice of the U.P.S.C. and after full consideration of the report of the enquiry officer, proceedings of the enquiry, and all other relevant records including the

defence/representations of the applicant and all other aspects of the case, the President has come to the conclusion that the article of charge against the applicant stood fully proved for the detailed reasons given in U.P.S.C's advice. The President accepting the advice of the U.P.S.C. took a conscious decision to impose the penalty of dismissal from service of the applicant, keeping in view of the gravity of the charge proved against him. A copy of the advice formed part of the order passed by the President. The order was passed in the name of the President and was communicated to the applicant by Shri A.K. Basu, Joint Secretary (Estt.), Railway Board. It is dated 30.1.2001 (Annex.A/1). A perusal of the said order coupled with the advice of the U.P.S.C. leaves no doubt that the punishing authority has discretely weighed all the aspects of the case and the attending circumstances with reference to the conclusions arrived at by the enquiry officer and the detailed representation made by the applicant. It is true that the reasoned analysis of the evidence, is the bed-rock of the ultimate conclusions. The conclusions are to be found in the report of enquiry which has been affirmed by the punishing authority on the advice of the U.P.S.C. which also scanned the report of the enquiry. The applicant was supplied the copy of report of enquiry in the context of which he made a detailed representation. All documents taken together, would indicate that it was a case where there has been application of mind at all the stages. There was no attempt, in any manner, to influence the punishing authority. The order of punishment cannot be said to be a non speaking one. It is to be read in conjunction with the advice of the U.P.S.C. (Annex.A/14), and the report of enquiry (Annex.A/12).

21. Now it is time to consider the jurisdiction of the Tribunal to interfere by invoking its power of judicial review in the matter of

judicial proceedings. Undoubtedly, this Tribunal can scrutinise the procedure adopted by the disciplinary authority and if it is satisfied that it is not consistent with the essentials of a fair trial, it can review the orders passed by the disciplinary authority. Further if the Tribunal is statisfied that the person charged was seriously prejudiced on account of having been deprived of a reasonable opportunity of being heard, it shall not shirk in its duty to rectify the mistake or the injustice committed by the disciplinary authority. In any view of the matter, the constitutional guarantee of reasonable opportunity does not require that every request made by the charged employee, whether reasonable or otherwise, must be acceded to.

22. The recent trend of the decisions of the Apex Court is that even if certain formalities or legal requirements have not been followed, the "test of prejudice" is to be satisfied by the delinquent employee, who has approached the Tribunal to assail the departmental proceedings. Earlier, the law was that the non-furnishing of enquiry report to the delinquent employee would vitiate the departmental proceedings. Now it has been held in Oriental Insurance Co. Ltd. vs. S. Balakrishnan, 2001 AIR SCW 2450, that if no prejudice is caused to the delinquent employee on account of non-furnishing of enquiry report, the disciplinary proceedings shall not stand vitiated. The above view has been further reiterated in a later decision of the Apex Court in the case of State of U.P. vs. Harendra Arora and Another, 2001 AIR SCW 2029. It was held that the delinquent employee is obliged to show that by non-furnishing of the report of enquiry he has been prejudiced. The test of prejudice now would apply even to cases where there is requirement of furnishing copy of enquiry report under the statutory provisions and/or service rules.

23. In a spate of decisions, the Apex Court has expressed its displeasure for the re- appraisal of evidence and substituting its own findings by the Tribunal in the matters of departmental enquiry. The law is well settled that this Tribunal can not reappreciate, create evidence and substitute its finding to arrive at the conclusion that the charge has not been proved. The oft-quoted observations made in the case of Tamil Nadu and Another Vs. S.Subramaniam, AIR 1996 SC Page 1232 in Paragraph 4 of the report, may profitably be quoted :-

> "4. The only question is whether the Tribuanl was right in its conclusion to appreciate its evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same on the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power to judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal had no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is consistent view of this Court vide B.C.Chaturvedi Vs. Union of India (1995) 8 JT (SC) 65, State of Tamilnadu Vs. T.V.Venugopalan, (1994) 6 SCC 302, Union of India Vs. Upendra Singh, (1994) 3 SCC 357, Government of Tamilnadu Vs. A. Rajapandian, (1995) 1 SCC 216 and Union of India Vs. B.S.Chaturvedi, (1995) 6 SCC 749. In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of evidence and in coming to its own conclusion that the charge had not been proved. Thus, we hold that the view of the Tribunal is ex facie illegal."

The above observation have been approved and followed by the Apex Court in the case of Director General of Police and Ors. Vs. Jani Basha, 1999 AIR SCW 4802 as well as Syed Rahimuddin vs. Director General, C.S.I.R. and others, 2001 AIR SCW 2388.

24. This Tribunal cannot therefore, sift the evidence as if it was an appelate authority and then come to its own conclusion upsetting the findings of the disciplinary authority. It would, however, not be out of place to mention that the enquiry officer has conducted very fair, just and impartial enquiry and his elaborate report of enquiry clinches the whole issue. The applicant cannot and is not in a position to fault it in any manner. Adverting to the factual aspect of the matter at this juncture, we have no doubt in our mind that the charge against the applicant that he had demanded and accepted tainted money from a Railway employee, Shri Ravi Bhushan, for keeping him on 'hurt on duty' (HOD) stands fully proved. The seriousness of the charge established against the applicant justifies the ultimate penalty of dismissal from service. In the wake of the aforesaid conclusions, we are unable to record our concurrence with any one of the submissions made on behalf of the applicant. The order of dismissal of the applicant from service is beyond the pale of any legal flaw or fault.

25. In the result, the O.A. filed by the applicant challenging the order of dismissal turns out to be devoid of any merit and substance. The O.A. is accordingly dismissed with no order as to costs.

(A.P. NAGRATH)
Adm. Member

(JUSTICE O.P. GARG)
Vice Chairman

cvr.

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Part II and III destroyed
In my presence on 9-7-07
under the supervision of
section officer (J) as per
order dated 4.5.07

Section officer (Record)