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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATION NO. 168/2004
JODHPUR THIS IS THE 16th January, 2009

CORAM :

HON'BLE MR. N.D.RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER [A]

Ilyas S/o Shri Sadique Khan aged about 42 years, working as Pointsman 'A', North West Railway, Raisingh Nagar (Rajasthan), Resident of Ward No. 4, House No. 47, Thore Colony, Near Namdeo Gurdwara, Rai Singh Nagar, District Sri Ganganagar (Rajasthan).

.....Applicant

For Applicant : Mr. L.K. Ramdhari, Advocate.

Vs.

1-Union of India through the General Manager, North West Railway, Jaipur.

2-The Senior Divisional Operating Manager, North West Railway, Bikaner.

3-The Additional Divisional Railway Manager, North West Railway, Bikaner.

.....Respondents.

For Respondents : Manoj Bhandari, Advocate.

.....

ORDER
[PER SHANKAR PRASAD, MEMBER(A)]

Aggrieved by the order dated 10.3.2003 of the disciplinary authority imposing the punishment of reduction to a lower stage in the same pay scale for a period of three years without postponing future increments and that of appellate authority up-holding the same, the applicant has preferred the present O.A. He seeks the relief of quashing of both these orders.

2- The applicant was served with a minor penalty chargesheet dated 22.10.2002 on the imputation of misconduct enclosed with the said memorandum. A perusal of the same shows that no relied-upon

documents in support of the charge is referred to. It refers to his letter dated 10.9.2002 admitting facts regarding his signing as guarantor on documents regarding sanction of loan to Shri Madhu Sudan Joshi, Assistant Station Master (ASM) and being aware that the said ASM had forged the signature of Divisional Personnel Officer (DPO), Bikaner and put forged rubber stamp of DPO, Bikaner. The applicant submitted an interim reply dated 26.2.2003 asking for seven documents mentioned therein to give an effective reply to the chargesheet. This included the copy of his previous statement dated 10.9.2002 in which he has allegedly accepted the charge. It was also stated that the charges were not specific, incomplete and too vague. After perusal of this reply, the disciplinary authority has passed the following order :

> ***"Employee is guilty of forging the signature of accounts officer to take a loan, therefore a punishment of reduction to the lowest stage in time scale of pay for 3 years without cumulative effect is imposed. The fact that employee states that he is illiterate is also not tenable".***

The applicant thereafter preferred an appeal stating therein that he has been punished on a charge which was levelled against the ASM Shri Madhusudan Joshi. It was reiterated that he only gave guarantee to the Bank and that he was not aware that the signature and rubber stamp of DPO/BKN were forged. The appellate authority has dismissed the appeal. The appellate authority has held that it cannot be believed that he was unaware of the activities of ASM. To help another person is a serious issue.

3- The case of the applicant in brief is that he had requested the

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disciplinary authority to supply him the relied-upon documents and/or to provide inspection of the documents along with Shri Har Bhanjan Das, S.S. The disciplinary authority has not considered the said prayer and without supplying the documents has punished the applicant. The appellate authority has also not considered the grounds given in appeal. Hence the present O.A.

The further case of the applicant is that non-supply of documents or not permitting him to inspect the relevant documents, is against the service rules and against the principles of natural justice. There is a violation of Printed Serial No. 8025 by the disciplinary authority. The appellate authority has failed to comply with the provisions of Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules.

4- The respondents in their reply have stated that the applicant in his letter dated 10.9.2002 to the officers had confessed that he was a guarantor to the loan sanctioned to ASM Shri Madhu Sudan Joshi. He had acted in connivance with the ASM Shri Joshi as per this letter (Annex.R/1 refers). As the applicant had admitted his guilt, the charges stood proved. The act of signing the deed form as well as the Stamp Papers as a guarantor of Sh. Madhu Sudan Joshi reflects the doubtful integrity of the applicant as he was very much aware of this forged case. He had himself stated that Shri Madhu Sudan Joshi had managed to arrange Rubber Stamps of the authorities. The applicant was aware that Sh. Madhu Sudan Joshi was adopting unfair, foul and forged manners (as mentioned in reply) to obtain loan from the S.B.I. did not bring these details to the notice of administration. It is not mandatory in a minor penalty case to make available the documents. In the instant case,

there was no such requirement as applicant has admitted his guilt and no prejudice was caused to the applicant. The appellate authority in turn, has considered the appeal in proper perspective. The O.A. is fit to be dismissed.

It is further stated that the said ASM has also been punished by reduction to a lower time scale for three years without cumulative effect.

5- Mr. Manoj Bhandari, learned counsel for the respondents during the course of arguments, has advanced the following arguments :-

(a) As per Section 24 of Indian Penal Code a co-accused has to be treated in the same manner as the main accused.

(b) The Apex Court has, in a number of cases upheld the doctrine of merger. Thus, even if for argument sake it is accepted that the orders of the disciplinary authority are not happily worded, the said order has merged in the order of appellate authority. The order of appellate authority is a speaking order. He has referred to the following decisions in this regard :

(i) The decision of Apex Court in ***N.M. Arya Versus United India Insurance*** [2006 (4) SCC 713].

(ii) **Gurswaroop Joshi Vs. Beena Sharma & Others** [AIR 2006 1999]

(iii) ***Collector, Central Excise, Indore Versus Hindustan Lever*** [2006 (6) SCC 614]

It is well settled that the Tribunal does not act as an appellate authority and reappraise the evidence as there was already an evidence on record in the nature of admission by the applicant. It is also contended that once the inquiry has proceeded, the matters relating to deficiencies in the chargesheet etc. cannot be raised. Reliance is placed on the following decisions :-

(i) State of Tamil Nadu and Another Vs. S. Subramanian [1996 (7) SCC 509].
(ii) Union of India Versus Upendra Singh [1994 (3) SCC 356].

(d) As the enquiry has concluded, the question of charges being vague, inspecific cannot be raised now.

6- We have heard the learned counsels.

7- The learned counsel for the respondents has placed reliance on the decision in Upendra Singh (supra). Relevant part of Para 6 reads as under :-

> ***"6. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court / Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. ..... "***

8- Reliance has also been placed on the decision in ***S. Subramanian (supra) Reliance is placed on para 5*** which is reproduced as under :-

> ***"5. The only question is : Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not bee 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 in the Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of 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 have 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 has 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 the view of the Court or the Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) 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 the consistent view of this Court vide B.C. Chaturvedi v. Union of India, State of T.N. v. T.V. Venugopalan (SCC para 7), Union of India v. Upendra Singh (SCC at para 6), Govt. of T.N. v. A. Rajapandian (SCC para 4) and B.C. Chaturvedi v. Union of India (SCC at pp. 759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the 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 order is accordingly set aside. OA/TP/WP stands dismissed".

9- These decisions show that (a) the Tribunal should be slow to interfere at the initial stage of proceedings. The Tribunal can, however, interfere even at the initial stages if (a) the chargesheet is issued by a incompetent authority; (b) the facts if proven do not disclose any misconduct and (c) the charge is not sustained on the basis of the documents enclosed with the chargesheet. The Tribunal can exercise the powers of judicial review, (b) that the disciplinary authority is the sole judge of facts and (c) that the Tribunal does not act as an appellate authority.

10 (a) Part IV of Railway Servants (Discipline & Appeal) Rules is titled 'Procedure for imposing penalties'. Rule 9 contains provisions relating to major penalties. Sub Rule (7) provides that the disciplinary

authority shall deliver or cause to be delivered a copy of the articles of charge, the statement of mis-conduct or mis-behaviour and a list of documents and witnesses by which charges are to be sustained. Sub Rule (21) provides that in case Government servant does not examine himself, he shall be questioned on the circumstances appearing against him. Rule 11 contains provisions relating to minor penalties. It provides that the employee shall be informed of imputations of misconduct. Sub Rule 1 (b) provides for holding of an enquiry in the manner of major proceedings. Rule 13 provides for common proceedings. Rule 14 provides for special procedures notwithstanding the provisions contained in Rule 9 to 13.

(b) Rule 22 (2) of Railway Servants (Discipline & Appeal) Rules, is as under :-

> ***"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider –***
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> ***(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;***
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> ***(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and***
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> ***(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders –***
>
> ***(i) confirming, enhancing, reducing or setting aside the penalty; or***
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> ***(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."***

11- The Constitution Bench in ***Khem Chand Vs. Union of India,*** AIR 1958 SC 300 explained the scope of reasonable opportunity under

Article 311 of the Constitution. It included an opportunity to represent against findings of Enquiry Officer at the time of representation against proposed quantum of punishment. The Apex Court also held :

> ***"21..... There is as the Solicitor General fairly concedes, no practical difficulty in following this procedure of giving two notices at the two stages. This procedure also has the merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject-matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done."***

12- The 42nd amendment of the Constitution took away the opportunity to show cause against the proposed quantum of punishment. The validity of the amendment was upheld in ***Union of India and anr. Vs. Tulsiram Patel and Ors.*** AIR 1985 SC 1416. It also considered the question regarding second proviso ..... of Article 311 (2). It held :-

> ***"133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."***
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> ***135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the***

government servant. At clause (3) of Article 311 marks the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the no-production of the written reasons."

13. The Apex Court in ***R.P. Bhatt Vs. Union of India and Ors.*** 1986 LAB IC 790 has held :-

"The word 'consider' in R. 27(2) implies 'due application of mind'. Rule casts a duty on the appellate authority to consider the relevant factors set forth in Cls. (a), (b) and (c) thereof.

There was no indication in the impugned order dismissing an appeal against the order of removal from service, preferred by the employee of Border Road Organisation, that the Director-General, the appellate authority, was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice.

Further, there was also no finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record and the Director-General only applied his mind to the requirement of Cl.(c) of R. 27(2), viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the case. Held that, there being non-compliance with the requirements of R. 27(20, the impugned order was liable to be set aside. AIR 1966

SC 1827, AIR 1969 SC 414 and AIR 1977 SC 567, Ref. to judgement of Delhi High Court, ~~Reserved.~~" Reversed"

14- The Apex Court in ***Ram Chander Vs. Union of India and Ors.,*** AIR 1986 SC 1173 was considering the provisions of Rule 22 (2) of Railway Servants (Discipline & Appeal) Rules. It took note of the situation arising out of 42nd amendment and the decision in ***Tulsiram Patel***. It took note of the decision in ***R.P. Bhatt*** (supra) in respect of pari material provisions of CCS (CCA) Rules. It held :

> ***"In the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. But, R. 22 (2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. R 22 (2) provides that in the case of an appeal against an order imposing any of the penalties specified in R. 6 or enhancing any penalty imposed under the said rule, the appellate authority shall "consider as to the matters indicated therein. The word "consider" has different shades of meaning and must in R. 22 (2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.***
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> ***It is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case (1985) 3 SCC 398) 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. Reasoned decisions by tribunals, such as the 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 on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."***

15- The Constitution Bench in ***State of Mysore and Ors. Vs. Shivbasappa Shivappa Makapur,*** AIR 1963 SC 375 has held :

> ***"Domestic Tribunals exercising quasi judicial functions are not Courts and therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts,obtain all information material for the points under enquiry from all sources, and through all***

channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts. "

16- The Three Judge Bench of Apex Court in ***Surath Chandra Chakravarty Vs.The State of West Bengal,*** AIR 1971 SC 752, has held :

"4..... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

17- The Apex Court in ***Kashinath Dikshita Vs. Union of India & Ors.,*** AIR 1986 SC 2118 has held:-

"Where the Govt. refused to its employee who was dismissed, the copies of the statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Govt. failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Art. 311 (2) inasmuch as the employee has been denied reasonable opportunity of defending himself. Decision of Allahabad High Court, Reserved.

18- The Apex Court in ***Committee of Management, Kishan Degree College Vs. Shambhu Sharan Pandey and Ors.,*** 1995 (1) SLR 31, has held –

> ***"... It is settled law that after the chargesheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural justice."***

19- The Apex Court in ***N.M. Arya*** (supra) has also held :-

> ***"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (I) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand vs. Union of India and State of UP. v. Om Prakash Gupta). (3) Exercise of discretionary power involves two elements – (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element.(See. K.L.. Tripathi v. State Bank of India). (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan). (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal.(See Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra.] (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact***

of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain, Kuldeep Singh v. Commr. of Police.]."

20- The Apex Court in ***State of Uttaranchal and Ors. Vs. Kharak Singh***, 2008 (2) SCC (L&S) 698 has held :-

"The following are some of the basic principles regarding conducting of departmental enquiries : (i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities; (ii) If an officer is a witness to any of the incidents which is the subject-matter of enquiry or if enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after appointment of enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer; (iii) In an enquiry, the employer / department should take steps first to lead evidence against workman / delinquent charged and give an opportunity to him to cross-examine witnesses of the employer. Only thereafter, the workman / delinquent be asked whether he wants to lead any evidence and asked to give an explanation about the evidence led against him; iv) On receipt of enquiry report, before proceeding further, it is incumbent on the part of disciplinary / punishing authority to supply a copy of enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

21- The Apex Court in ***Balbir Chand Vs. Food Corporation of India Ltd. and Ors.*** AIR 1997 SC 2229, has held :-

"When more than one delinquent officer are involved, then with a view to avoid multiplicity of the proceedings, needless delay resulting from conducting the same and overlapping adducing of evidence or omission thereof and conflict of decision in that behalf, it is always necessary and salutary that common enquiry should be conducted against all the delinquent officers. The competent authority would objectively consider their cases according to Rules and decide the matter expeditiously after considering the evidence on record findings on proof of misconduct and proper penalty on proved charge and impose appropriate punishment on the delinquent. If one charged officer cites another charged officer as a witness, in proof of his defence, the enquiry need not per se be split up even when

the charged officers would like to claim an independent enquiry in that behalf. If that procedure is adopted, normally all the delinquents would be prone to seek split up of proceedings in their/ his bid to delay the proceedings, and to see that there is conflict of decisions taken at different levels. Obviously, disciplinary enquiry should not be equated as a prosecution for an offence in a Criminal Court where the delinquents are arrayed as co-accused. In disciplinary proceedings, the concept of co-accused does not arise. ***Therefore, each of the delinquents would be entitled to summon the other person and examine on his behalf as a defence witness in the enquiry or summon to cross-examine any other delinquent officer if he finds him to be hostile and have his version placed on record for consideration by the disciplinary authority. Under these circumstances, the need to split up the cases is obviously redundant, time consuming and dilatory. It should not be encouraged."***

22- The Apex Court in ***O.K. Bhardwaj Vs. Union of India and Ors.***, 2002 SCC (L&S) 188, has held :-

"3..... Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

23- The Apex Court in ***Sher Bahadur Vs. Union of India and Ors,.*** 2002 SCC (L&S) 1028, has held :-

"The expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. The findings of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter was proved, is erroneous. It is clearly a case of finding the appellant guilty of the charge without having any evidence to link the appellant with the alleged

misconduct. Therefore, the order of the disciplinary authority, under challenge, cannot be sustained."

24- The Apex Court in the case of ***Institute of Chartered Accountants of India Versus L.K. Ratna and Others*** [AIR 1987 SC 71].

> ***"17.It is then urged by learned counsel for the appellant that the provision of an appeal under S. 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under S. 21 (4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases are mentioned in Sir William Wades erudite and classic work on "Administrative Law". But as that learned author observes, "in principle there ought to be an observance of natural justice equally at both stages", and***
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> ***"If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing : instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.***
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> ***And he makes reference to the observations of Megarry J. in Leary v. National Union of Vehicle Builders (1971) 1 Ch. 34. Treating with another aspect of the point, that learned Judge said :***
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> > ***"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made.***

Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity, and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

The view taken by Megarry J. was followed by the Ontario High Court in Canada in Re Cardinal and Board of Commissioners of Police of City of Cornwall (1974) 42 DLR (3d) 323. The Supreme Court of New Zealand was similarly inclined in Wislang v. Medical Practitioners Disciplinary Committee, (1974) 1 NZLR 29 and so was the Court of Appeal of New Zealand in Reid v. Rowley (1977) 2 NZLR 472.

18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected and publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blasé attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

25- We note that the said statement dated 10.09.2002 admitting the guilt is prior to the issue of chargesheet. It is perhaps recorded during

preliminary enquiry. Even without making available ~~any of~~ this document, he is held guilty. He is held guilty of forging signature of Accounts Officer though, he had not been charged with it. The order of appellate authority shows that he has perused records. Are these documents beyond this letter? The appellate authority holds that this cannot be accepted that he was unaware of the activities. He assisted ASM and is guilty.

26- The reply of the respondents suggests that the applicant was aware of the forgery being made by the said ASM and that on one hand, took no steps to inform the higher Railway Authorities about the same and, on the other, signed the documents/stood as a guarantor of the loan to the said ASM. AT the time of hearing, learned counsel for the respondents has placed reliance on Section 24 of IPC to assert that similar principles apply in the case of co-delinquents.

27- We fail to understand that if the applicant was guilty of charges of forging signature of DPO/DAO and of using false rubber stamps of their designation, why was it that he was issued only a minor penalty chargesheet?

28- The decision in **Balbir Chand** (supra) makes it clear that the concept of combined trial of co-accused does not apply in the case of departmental proceedings.

It is thus clear that the administration is alleging that the applicant is guilty of a grave charge and yet issues a minor penalty chargesheet. It is well settled that there has to be some proof in support of the charges and that the same cannot be sustained by conjectures and surmises. In the case of major penalty chargesheet,

the charged official is given an opportunity of explaining the statements made during the preliminary inquiry. Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, makes it clear that if an employee does not examine himself as a witness then, there is an obligation on the inquiry officer to examine the delinquent on the evidence appearing against him. The statement recorded, if any, during the preliminary inquiry is not an admission made after the commencement of the inquiry. It is only in respect of admission made in reply to the chargesheet that the disciplinary authority / inquiry officer can ~~written~~ a finding of guilt however, such is not the case here. The applicant had sought for certain documents and without supplying them, the disciplinary authority has imposed the punishment. He has not even considered the request for supply of documents or as to whether having regard to the circumstances of the case, a full fledged inquiry was required to be held.

29- (a) The decision in ***Khem Cand*** (supra) makes it clear that if something is in the mind of disciplinary authority and the same is not disclosed, it vitiates the proceedings. The decision in ***S.S. Makapur*** (supra) shows that delinquent is required to be put to notice of relied upon document. The Apex Court in ***Kashinath Dikshita*** (supra) and ***S.S. Pandey*** (supra) quashed the proceedings as relied upon document was not given.

(b) The decision in ***O.K. Bhardwaj*** (supra) shows that if somebody denies the charges, full fledged enquiry has to be held. No decision is recorded as required under Rule 11 (1)(b).

(c) The statement recorded, if any, during the preliminary inquiry is not an admission made after the commencement of the inquiry. It is only in respect of admission made in reply to the chargesheet that the disciplinary authority/inquiry officer can return a finding of guilt.

(d) The applicant had sought for certain documents and without supplying them, the disciplinary authority has imposed the punishment. He has not even considered the request for supply of these documents. Some of these documents namely – Loan Agreement, Stamped Paper regarding guarantee ~~after~~ are referred to in the reply.

(e) In the case of major penalty chargesheet, the charged official is given an opportunity of explaining the statements made during the preliminary inquiry. Rule 9 (21) of the Railway Servants (Discipline & Appeal) Rules, makes it clear that if an employee does not examine himself as a witness then, there is an obligation on the inquiry officer to examine the delinquent on the evidence appearing against him. The Apex Court decision in ***Mani Shankar*** ~~referred~~. Vs UOI 2008(1) SCC (L&S) 819 has held that this rule is imperative.

(f) Nothing is indicated as to why joint enquiry was not resorted to.

(g) The manner of passing of order is like the exception given in Rule 14 (2) of Railway Servants (Discipline & Appeal) Rules, However, no reasons are forthcoming for the same.

30- The learned counsel for the respondents has vehemently argued that even if there was some deficiencies in the orders passed by the disciplinary authority, those deficiencies have been cured by the orders

of the appellate authority. The orders of disciplinary authority have merged in the orders of appellate authority.

31- Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules, casts an obligation on the appellate authority to consider the aspects mentioned therein. One of the aspects is that as to whether, the inquiry has been conducted in accordance with the rules? The words "consider" appearing in this rule were considered by the Apex Court in its decision in ***Ram Chander (supra).*** The order of appellate authority do not disclose such consideration. The appellate authority has in his reasoning traveled beyond the orders of disciplinary authority/chargesheet without putting the applicant to notice.

32- The issue involved is the deficiencies in the conduct of the proceedings. It is the decision in ***L.K. Ratna*** (supra) and not the decision regarding the doctrine of merger which will apply to the facts of the present case.

33- In view of the foregoing discussions, the orders of the disciplinary authority and the appellate authority cannot be sustained. Both the orders are quashed and set aside. The matter is remitted back to the disciplinary authority to proceed from the stage of considering the request of the applicant for making available all the documents. This exercise should be completed within four months of the receipt of this order.

34- The applicant will be entitled to the arrears of salary which have been with-held because of the punishment. It should be re-paid to him within a period of three months from the date of receipt of this order along with 9% interest. In case the same is not paid in three months, interest at 10% on arrears together with accrued interest will be payable beyond the three month period till the date of payment. The applicant will be entitled to consequential benefits of promotion / advancement to higher grades strictly in accordance with Railway Board Circulars governing the field. Costs payable by the respondents quantified at Rupees One thousand only.

(Shankar Prasad)
Member (A)

(N.D.Raghavan)
VC

jr

NO. 16
Dt. 13.2.09

R/c
Copy Clerk
20.01.09

Part II and III destroyed
in my presence on 7/7/15
under the supervision of
section officer ( ) as per
order dated 07/07/2015

Section officer (Record