

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 54 / 2008

Wednesday, this the 1st day of April, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

K.V.Unnikrishnan Namboothiri,
S/o Vasudeva Sharma,
Retired Pointsman/II/Ernakulam Jn.
Southern Railway,
Residing at "Ambadi"
Kanjirakkattil, Kothala.P.O.
Kottayam.Applicant

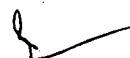
(By Advocate Mr M.P.Varkey)

v.

1. Union of India represented by
General Manager,
Southern Railway,
Chennai-600 003.
2. Additional Divisional Railway Manager,
Southern Railway,
Trivandrum-695 014.
3. Senior Divisional Operation Manager,
Southern Railway,
Trivandrum-695 014.
4. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.Respondents

(By Advocate Mr P Haridas)

This application having been finally heard on 29.1.2009, the Tribunal on 1.4.2009
delivered the following:



ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant is aggrieved by (i) the Annexure A-5 letter of the disciplinary authority withdrawing the inquiry report already sent to him vide letter No.V/VO/PC/T/2004/08/013/TVC/25 dated 12.12.2006, (ii) Annexure A-7 letter of the disciplinary authority dated 2.2.2007 stating that it was not agreeing with the findings of the inquiry officer and enclosing with disagreement memorandum and the very same inquiry report again with the for (iii) Annexure A-9 penalty advice dated 12.2.2007 imposing a penalty of reduction of his salary by 2 stages to Rs.3790/- from Rs.3930/- in the scale of Rs.2650-4000 with effect from 14.2.2007 with cumulative effect, (iv) Annexure A-11 letter of the appellate authority dated 13.8.2007 rejecting his appeal and confirming the penalty order and (v) the Annexure A-12 letter dated 1.3.2007 wishing him a prosperous and peaceful retired life and enclosing with a cheque/DD for Rs.3,08,137/- towards his retirement gratuity, commutation of pension, leave encashment etc. calculated on the basis of reduced pay.

2. The brief facts of the case are that, while the applicant was working as Parcel Porter at Nagercoil, he was served with Annexure A-1 memorandum proposing to hold an inquiry against him under Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968. The article of charge against him was as under:

"Shri K.V.Unnikrishnan Namboothiri, GK/ERS while working as Parcel Porter/NCJ on 24.7.2004 had failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant, in that,

"He had an excess cash of Rs.2590/- which was concealed while giving initial cash statement."

Thus he had violated Rule 3(1)(i) and (iii) of the Railway Services (Conduit) Rules 1966."



The Statement of imputations of misconduct in support of Articles of charges framed against him was as under:

"A preventive check was conducted in Parcel Office/NCJ on 24.7.2004, Shri K.V.Unnikrishnan Namboothiri, Parcel Porter/NCJ who was on duty as asked to produce his personal cash. He produced Rs.34/- as his personal cash as against the declared private cash of Rs.40/-. He gave a cash statement.

He was asked to produce any other cash available with him. He stated that he was not having any other cash. On further questioning, he produced Rs.2590/- from his line box kept in the record room, inside the Parcel Office. He produced this amount from a purse kept inside the blanket in the line box. When questioned he stated that this money was handed over to him by one Mr Vasupillai, Flower Merchant from Kottayam to hand over the same to one Mr Jeeva, Flower Merchant at Nagercoil.

He was asked to give a second cash statement. Accordingly, he gave a second cash statement. Shri C sundaram, CPG/NCJ was asked to enquire Shri K.V.Unnikrishnan Namboothri regarding the subsequently produced cash of Rs.2590/-. He enquired him and made an endorsement in the cash statement to that effect. He was asked to remit the Rs.2590/- to Railway which was subsequently produced. Accordingly, he remitted the same vide MR No.457115 dated 24.07.2004.

Thus, by producing Rs.2590/- subsequently which was concealed while giving first cash statement, Shri K.V.Unnikrishnan Namboothri, Parcel Porter/NCJ had failed to maintain absolute integrity and unbecoming of a Railway Servant. He contravened Rule 3(1)(i) and (iii) of the Railway Services (Conduct) Rules 1966."

3. The applicant submitted the Annexure A-2 written statement of his defence stating that when the vigilance check was held on 24.7.2004, he declared Rs.34/- as personal cash and submitted cash statement accordingly. However, on further questioning by the vigilance, he informed them that he had another Rs.2590/- which was kept under his bed and it was handed over to him by one Shri Vasupillai, Flower Merchant at Kottayam to be further handed over to one Shri Jeeva, Flower Merchant at Nagercoil. Later, the departmental inquiry which was being initiated against him culminated in the Annexure A-4(2) to 14 report of the inquiring authority dated 31.8.2006 and a copy of the same was forwarded to him by the disciplinary authority vide the Annexure A-4(1) letter



dated 13.10.2006. The findings of the inquiry authority was that the charge framed against the applicant was not proved. In the said report, the inquiring authority has stated that the applicant was in the habit of staying in the station premises itself even after duty hours since his family was away at Kottayam to which place he used to visit only during weekly rest or on leave when he was on leave. There was no official line box provided to the parcel porter to keep his personal belongings like dress, bed sheets, blankets, brush etc. but he used a box which was kept in the store room for safety. In other words, this box and the Parcel Office premises was a substitute home for him while at Nagercoil. It was also stated that there was no evidence to prove the contention of the prosecution side that the applicant had declared the cash in his box kept in the store room only after repeated questioning. Moreover, the team which conducted the check did not utilise the presence of any independent witnesses who were available at the location to prove the allegation. The inquiry report further says that it was not incumbent on the applicant to reveal the presence of the cash in his box and if he had not revealed it, the vigilance team had no power whatsoever to raid the premises including store room when it was already established that all the Railway transactions were checked and found correct upto the time of check and the applicant who was subjected to check had already produced his personal cash. It was not also a case that vigilance check conducted on source information regarding any irregularity but it was only a preventive check and the Railway transactions including the personal cash declared by the applicant were found to be correct. In those circumstances, there was no reason for the vigilance team to question the applicant repeatedly whether he possess any other cash after he has given his cash statement. With regard to the concealment aspect of the cash projected in the charge, the inquiry officer submitted that the applicant had reported for duty on the date of the check after 2 days of unauthorised leave. He had kept some cash said to have



been given to him by one merchant at Kottayam to be handed over to another merchant at Nagercoil and the said information was revealed to the checking officials. As regards the source of the cash and the name of the person to whom it was to be given was revealed by the applicant during the check itself. The independent witness Shri C Sundaram had deposed later on, on the same day that Shri Jeeva came to the Parcel Office and he verified the version of the applicant with him and it was found to be true. After obtaining a cash statement from the applicant during the process of check and after gaining knowledge that he had some cash in the said box seizing the money kept in such a place and forcing a second cash statement and making the applicant to remit the cash to the Railways, without even giving him a copy of the money receipt and purposefully avoiding a factual investigation despite having a scope for it, are all considered as unfair acts, totally denying the applicant any fair opportunity, thus dragging him into an apparently incriminating atmosphere. The inquiry authority categorically stated that there was no evidence to substantiate that the money found in the private box was acquired through any unfair means and no motive was also established. Therefore, the inquiry officer held that the money found in the private box of the applicant, need not have been declared by him and he did not require anyone's permission to keep some cash in his private box especially in view of the kind of living he was having at Nagercoil. The relevant part of the said inquiry report was as under:

"There is another angle also to this situation. The CO is in the habit of staying in the station premises itself even after duty hours since his family is away at Kottayam to which place he visits only during weekly rest or on leave. There is no official line box for a Parcel Porter but to keep his personal belongings like dress, bed sheets, blankets, brush etc., he used a box which was kept in the store room for safety. In other words, this box and the Parcel Office premises was a substitute home for him while at NCJ and like any one who kept their personal belongings in their home, the CO also kept such things in his adopted home. There is no evidence to prove the contention of the prosecution side that the CO declared about the presence of some cash in his box in the store room only after repeated questioning, as discussed by me earlier. The team which conducted the check did not utilize the presence of independent witnesses who were available at the location to



prove this point and only their own words are available to back the allegation. Under the circumstances, though it may sound hypothetical, I would like to raise one question, purely in the interest of delivery of Natural Justice, that if the CO had not at all revealed about the presence of the cash in his box, what would have been the approach and stance of the vigilance team? Do they have powers to raid the entire premises including the store room when it is already established that all the Railway transactions were checked and found correct upto the time of check and the CO who was subjected to check has already produced his personal cash reasonably in the line with his declared cash. Nowhere, it has been mentioned that it is a check conducted on source information regarding any irregularity and this check was only a preventive check. During the check the Railway transactions were found correct. One of the employees, the CO, was subjected to check and he declared his personal cash which was also found in order. It is not clear as to the motive behind questioning the said employee repeatedly whether he possessed any other cash after he has given his cash statement.

With regard to the concealment aspect of the cash projected in the charge, while on the one side, the aspects discussed above are very much conspicuous by their existence, on the other hand, the dissection will not be complete unless the motive, if any existed, on the part of the CO is also probed. The CO had reported for duty on the day of the check only after two days of authorised absence. He had kept some cash said to have been given to him by one merchant at Kottayam to be handed over to another merchant at NCJ. That this information was revealed to the checking officials also is evident from the remarks written by the CO himself in Ext.S.3, besides his contention that it was revealed to the checking officials unhesitatingly at the first questioning itself. The prosecution side has failed to produce any evidence to the effect that the revelation was made by the CO only after repeated questioning as these aspects are silent in Ext.S.1 or Ext.S.3. No documents or no witnesses other than the checking officials themselves are produced to back or corroborate this claim. Under the circumstances, the claim of the CO that he unhesitatingly revealed the information, gains ground. Faced with all the above aspects, the concealment theory is not capable of standing in its own legs. Further, the details regarding the source of the cash and the name of the person to whom it is to be given (who was at NCJ itself) was revealed by the CO during the check itself. Since this piece of information is the immediate reaction of the CO, and since the persons involved are also available in the place itself, it naturally and logically deserves to be accorded with the importance and relevance for conducting a factual spot investigation, which was possible at that time, to verify the version of the CO. The independent witness Shri C Sundaram has deposed that later on, on the same day (the CO had remarked in Ext.S.3 that Shri Jeeva is expected around 05.00 hours in the evening), Shri Jeeva came to the Parcel Office and when he verified the version of the CO with him, it was found out that it was true (Q.18). This lends credence to the version of the CO, in his Defence Brief, that such a factual verification was purposefully avoided.

The private box is the place where the CO had kept all his personal belongings in the absence of a permanent residence for him at NCJ. After obtaining a cash statement from the CO during the process of check and after gaining knowledge that he had kept some cash in the

said box, seizing the money kept in such a place and forcing a second cash statement and making the CO to remit this cash to the Railways, without even giving him a copy of the Money Receipt (Q.19) and purposefully avoiding a factual investigation despite having a scope for it, are all considered as unfair acts, totally denying the CO any fair opportunity, thus dragging him into an apparently incriminating atmosphere.

No evidence exists to substantiate that the money kept in the box was acquired through any unfair means. No motive is also established. It is my considered opinion, after going through all the available oral and documentary evidences, that the money found in the private box of the CO, need not be declared by him as his private cash and as such he does not require anyone's permission to keep some cash in his private box, especially in view of the kind of living of the CO was having at NCJ. Attaching the nomenclature of 'excess cash' found as 'undeclared', to this cash, under the circumstances, is also considered as not fair in law.

6.5 On the basis of all the oral and documentary evidences, assessed and discussed by me in the above paragraphs, I am of the opinion that the charge is not established.

7.0 Findings

Taking into account all oral and documentary evidences, the Brief of the Presenting Officer and the written Defence Brief of the charged official, I hold that the charge framed against Shri K.V.Unnikrishnan Namboothiri, GK/II/ERS vide SF 5 charge memorandum No.V/VO/PC/T/2004/08/013/TVC-25 dated 06.05.2005 issued by DOM/TVC stands NOT PROVED."

4. After two months of forwarding the copy of the said report to the applicant, the disciplinary authority vide the impugned Annexure A-5 letter dated 12.12.2006 withdrew the same from the applicant, without prejudice to initiate further proceedings in the matter. Vide Annexure A-6 letter dated 30.12.2006 the applicant requested the disciplinary authority to inform him under what provision of law the said proceedings could be withdrawn from him. However, the disciplinary authority after another 2 months, vide Annexure A-7 impugned letter dated 2.2.2007 furnished another copy of the very same inquiry report with his disagreement note. He had stated that the charge was proved as the cash produced was personal and he had no railway transactions as was clearly written by him in the 1st cash statement and he cannot produce any Railway cash. The applicant submitted a detailed Annexure A-8 representation dated 4.2.2007

against the aforesaid disagreement note. However, by the Annexure A-9 impugned penalty advice, the disciplinary authority imposed the punishment of reduction of his salary by 2 stages from 3939/- to 3790/- in the scale Rs.2650-4000 with effect from 14.2.2007 with cumulative effect. As the applicant was to retire on 28.2.2007, the aforesaid punishment was to last till his retirement date. The applicant made the Annexure A-10 appeal but the same was also rejected by the appellate authority vide the Annexure A-11 impugned order dated 13.8.2007.

5. Challenging the aforesaid impugned orders, the applicant has filed this O.A seeking the following reliefs:

- (i) Declare that the action taken against the applicant by the Vigilance team on 24.7.2004 was illegal and without jurisdiction, that the disciplinary action pursuant to it was unjust, illegal and unconstitutional and; direct the respondents to refund Rs.2590/- to the applicant, with interest.
- (ii) Quash A-5, A-7, A-9 and A-11 and; set aside A-12 to the extent sought for under sub para (iv) below.
- (iii) Declare that the applicant is entitled to be promoted as Pointsman/Gate Keeper in scale Rs.3050-4590 (Group C) on par with those so promoted under Para iv of A-3 office order with all consequential pre/post retiral benefits (including post retirement passes) and direct the respondents accordingly.
- (iv) Declare that the applicant is entitled to have his retiral benefits at A-12 revised based on his pay to be fixed in scale Rs.3050-4590 (Group C) with consequential arrears and direct the respondents accordingly.

6. In support of the aforesaid relief, the applicant has submitted that the Vigilance Inspector has no statutory power to act as they did in Parcel Office on 24.7.2004. According to the Annexure A-13 instructions published in Southern Railway Gazette dated 1.2.1992, Vigilance Inspectors attached to the office of the General Manager, Southern Railway are authorised to enter any Railway

Office, Station, Workshop, Stores Depot, or any other Railway premises to inspect Railway records documents and or materials, take possession of or seize Railway records, documents and/or materials etc. whenever required for investigations. They are also authorised to record statements of all categories of Railway Officials, if and when required. He has also stated that the charges against him were not definite and distinct as mandated by Rule 9(6)(i) of the Railway Servants (Discipline & Appeal) Rules, 1968. He has specifically stated that the Rs.2590/- was not found in any Railway cash chest, drawers, ticket tubes, cash safes etc. as per para 2429(a) and hence the question of remitting it to cash office does not arise and vigilance team acted in forcing him to remit the said amount to the Railways was without jurisdiction. He also relied upon the Rule 2429 of the Indian Railway Commercial Manual Vol.II which reads as under:

"2429. Keeping of private cash in station safe, etc. forbidden (a) Private cash should not be kept in the railway cash chest, drawers, ticket tubes, cash safes, etc. If any such amount or extra cash, whether stated to be private or otherwise, is found by the supervisory staff or inspecting officials, it should be remitted to the cash office.

(b) The staff working in booking offices, parcels offices and goods sheds, whose duties actually involve cash transactions with the public, must declare in writing their private cash daily before they take up their duties in the station diary or in the cash categories of staff to whom these instructions apply, will be notified by the railway administrations concerned."

He has further submitted that the disciplinary authority has issued the penalty order without any application of mind and under the dictation of the vigilance organisation. The appellate authority has also not considered the points raised by him in his appeal and disposed it of in a routine manner.

7. The applicant has also submitted that due to the high handed action of the vigilance team and the disciplinary action that followed, he was denied his due promotion and the consequential retiral benefits. When his turn for promotion to the post of Pointsman Gr.I/Gate Keeper I in the scale of Rs.3050-4590

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(Group'C') came, vide Annexure A-3 office order dated 26.9.2006 he was informed that because of the pending vigilance case, he cannot be given the promotion.

8. In the reply statement, the respondents have submitted that the Vigilance Inspectors are authorised to conduct checks at Parcel Offices. The applicant himself had produced Rs.2,590/- from the Line Box kept in the record room of the Parcel Office. Rule No.2429 says that private cash should not be kept in the Railway cash chest, drawers, ticket tube, cash safe etc. The term 'etc' can include similar places and 'a box kept in the record room' can be treated as one such. They have further contended that taking disciplinary action for concealing the private cash of Rs.2590/- kept in a box in the record room of the Parcel Office, while giving initial cash statement, cannot be treated as 'unjust', 'illegal' or 'unconstitutional' as alleged by the applicant. The disciplinary authority being the Branch Officer controlling the cadre has got power and jurisdiction to issue charge memorandum and impose major penalties. The disciplinary authority had only forwarded the inquiry report to the applicant vide Annexure A-5 letter. Annexure A-7 was issued to render an opportunity for the applicant, to put forward any defence against the Order of Disagreement. They reiterated that the Annexure A-9 penalty advice was issued by the disciplinary authority based on evidence on record and not based on any external interference and not based on surmises and conjectures as alleged by the applicant. The applicant was denied promotion since a vigilance case was pending against him.

9. The applicant has also filed a rejoinder and submitted that the action of the disciplinary authority on the inquiry report was not governed by Rule 10 of Railway Servant (Discipline & Appeal) Rules, 1968, but also by Railway Board's letter No.E(D&A) 87 RG 6-15 dated 4.4.1996 (Annexure A-17) relevant portion of



which is extracted below:

"2. It was also prescribed that in cases where the disciplinary authority proposes to disagree with the findings of the Inquiry Officer, it would not be necessary for the disciplinary authority to come to any tentative conclusions about its findings before forwarding a copy of the inquiry report, and that, the reasons of disagreement with the findings of the Inquiry Officer may be communicated in the final order of punishment.

Xxxxxx xxxxxx xxxx

5. It has also been decided that where the Inquiring Authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement must be communicated, in brief, to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. This procedure would require the disciplinary authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the report of Inquiry to the charged officer."

10. We have heard Shri M.P.Varkey, counsel for applicant and Shri P Haridas, counsel for respondents. We have also perused the disciplinary proceedings records in respect of the applicant.

11. The charge against the applicant was that he had an excess cash of Rs.2590/- and he had concealed the same while giving his initial cash statement. In the statement of imputation, it was clarified that the said amount of Rs.2590/- was produced by the applicant from his tin box kept in the record room. The inquiry authority has gone into the entire aspects of the charge and held that it was not proved. According to the said authority, there is no evidence to substantiate that the money kept in the box was acquired by the applicant through any unfair manner and it was not even to be declared by him as his private cash as he did not require anybody's permission to keep some cash in his private box. Therefore, it is clear that the charge that he had an excess cash of Rs.2590/- which was concealed while giving initial cash statement itself was unfounded. In order that an act of commission or omission on the part of a delinquent employee to come within the ambit of "misconduct" there shall be



some transgression of some established and definite rule or on any unlawful behaviour on his part. In **State of Punjab and others v. Ram Singh Ex-Constable** [(1992) 4 SCC 54] the Apex Court has considered the following definitions of "Misconduct" and "Misconduct in Office" as given in Black's Law Dictionary, Sixth Edition at page 999:

"Misconduct"

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mis-management, offense, but not negligence or carelessness."

"Misconduct in office":

Any unlawful behaviour by a public officer in relation to the duties of his office, wilfull in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

Further, the Inquiring Authority has clearly pointed out in his report that there was not a single independent witness when the preventive check was carried out by the vigilance. Moreover, the source of Rs.2590/- kept in the line box was adequately explained by the charged official and it was confirmed during the enquiry. The Inquiry Authority has also explained the ground reality of the case in his report. According to the said authority, the "*box and the Parcel Office premises was a substitute home for him while at NCJ and like any one who kept their personal belongings in their home, the CO also kept such things in his adopted home.*" It concluded that there was no evidence to substantiate the charge and calling the "undclared" cash as "excess cash" in the charge was an unfair action. The disciplinary authority had, in fact, accepted the report of the Inquiring Authority and forwarded a copy of the same to the applicant vide Annexure A-4 letter dated 13.10.2006 to enable him to make any submission or representation within 15 days. As the report was not against him, the applicant did not make any representation. But strangely, the Disciplinary Authority after



two months, withdrew the enquiry report from the applicant vide Annexure A-5 letter dated 12.12.2006 "without prejudice to further course of action being initiated". Nearly one and half months thereafter, the Disciplinary Authority issued the Annexure A-7 impugned letter dated 2.2.2007 to the applicant with a copy to the Chief Vigilance Officer, Madras forwarding therewith a copy of the same enquiry report once again but stating that it did not agree with the findings of the inquiry officer. The reason for disagreement was also given. Obviously the disciplinary authority's action in withdrawing the enquiry report from applicant and re-furnishing the same to him with a disagreement note is nothing but an after thought. The said action of the Disciplinary Authority was also in violation of the procedure in dealing with the enquiry report prescribed in sub rule (2) of Rule 15 of the CCS(CCA) Rules, 1965 which reads as under:

"(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

The Disciplinary authority's decision to disagree with the findings of the Enquiry Officer should be independent and not based on any dictation of any extraneous authority. However, it is clear from the records that the belated decision of the Disciplinary Authority to disagree with the findings of the enquiry was influenced by the Chief Vigilance Officer as is evident from the Annexure A-7 letter itself in as much as a copy of the same has been forwarded to him. It is also seen from the records that when the Enquiry Report was received by the Disciplinary Authority, it informed the Chief Vigilance Officer vide letter No.V/VO/PC/T/2004/08/013/TVC-25 dated 12.12.2006 as under:



"From the oral and documentary evidences tendered in the inquiry, the E.O has arrived at the findings "NOT PROVED" as he had no evidence to substantiate that the money kept in the box was acquired through any unfair means. Also no motive was established. As such I hold the charged employee Shri K.V.Unnkrishnan Namboothiri, GK/II/ERS 'not guilty' and the charges dropped."

It is only thereafter that the disciplinary authority has withdrawn the enquiry report from the applicant vide its letter dated 12.12.2006. It is obvious, that the disciplinary authority has acted under the influence of the Chief Vigilance Officer even after he held that the applicant was "not guilty" and decided to drop the charges. Moreover, the aforesaid sub rule says that the reasons for disagreement shall be "tentative". However, the Disciplinary Authority in his disagreement note has given certain reasons and "disagreed" with the findings of Enquiry Officer. Once the Disciplinary Authority has straight away disagreed with the findings of the enquiry officer, it is only an empty formality for the applicant to make any representation. This aspect has already been considered by the Apex in the following cases:

- i) **Punjab National Bank and others v. Kunj Behari Misra [(1998) 7 SCC 84].**
- ii) **Yoginath D Bagde v. State of Maharashtra and another [(1999) 7 SCC 739].**
- iii) **Ranjit Singh v. Union of India & others [2006 SCC(L&S) 631]**

In all the above judgments, the Apex Court has held that the reasons for disagreement shall be tentative and the principles of natural justice has to be read to the relevant rule which prescribed such provision for disagreement. It is worthwhile to quote the relevant part of the judgment in Kunj Behari Misra's case(supra) which is as under:

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings



on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

12. The action of the disciplinary authority in this case is also quite unfair. The Apex Court in the case of **A.K.Kraipak and others v. Union of India and others** [1969 (2) SCC 262] held as under:

"The concept of a rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision."

13. The appellate authority has also not applied its mind and did not bother to examine whether the disciplinary authority has followed the prescribed procedure. On the other hand, without any application of mind, it has stated in its Annexure A-11 impugned order dated 13.18.2007 that he was "*satisfied that the procedure laid down under the Rly. Servants D&A rules, 1968 have been correctly followed.*"

14. In the above facts and circumstances of the case, we find that the decision of the disciplinary authority to withdraw the enquiry report from the applicant and all other subsequent actions are unfair and lacking bonafide as they were influenced by extraneous considerations. The action of the Disciplinary Authority was in clear violation of the provisions contained in sub rule



(2) of Rule 15 of the CCS(CCA) Rules, 1965 extracted above. We, therefore, quash and set aside the Annexure A-5 letter dated 12.12.2006, withdrawing the enquiry report already furnished to the applicant, Annexure A-7 letter dated sending therewith the disagreement note, Annexure A-9 penalty order dated 12.12.2007 reducing the applicant's pay to Rs.3790/- from Rs.3930/- (by two stages) in scale Rs.2650-4000 with effect from 14.2.2007 with cumulative effect and the Annexure A-11 appellate order dated 13.8.2007 rejecting the applicant's appeal dated 7.3.007 and confirming the Annexure A-9 penalty advice. It is seen that but for the pending of the inquiry proceedings the applicant would have been promoted as Pointsman/Gate Keeper in the scale of Rs.3050-4590 (Group'C') at par with his juniors as he was passed over for promotion vide Annexure A-3 office order dated 26.9.2006. He shall, therefore, deemed to have been promoted vide the said Annexure A-3 order and he shall be granted all consequential benefits including arrears of pay and allowances. The said promotion shall also be reckoned for determining his retirement benefits.

15. In terms of the aforesaid directions, the respondent shall pass appropriate orders within two months from the date of receipt of a copy of this order and the monetary benefits including arrears of pay and pension shall made available to the applicant within one month thereafter. There shall be no order as to costs.



K NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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