

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**



O.A.850/02 and O.A.155/03

THURSDAY.....THIS THE 16th DAY OF FEBRUARY, 2006
(16.2.2006)

CORAM

HONBLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PRACKEN, JUDICIAL MEMBER

O.A. 850/02:

K.Satheesh Kumar, S/o K.Krishnan,
Travelling Ticket Examiner
Southern Railway, Trivandrum Central,
residing at "Kalabhavan, Pongummoodu,
Medical College PO, Trivandrum.11.Applicant

(By Advocate Mr.TCG Swamy)

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- 1 Union of India, represented by
the General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Chennai.3.
- 2 The Additional Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum.
- 3 The Senior Divisional Commercial Manager,
Southern Railway, Trivandrum Division,
Trivandrum.Respondents

(By Advocate Mr.P.Haridas)

OA 155/03:

K.J.Gandhi, S/o G.Koil Pillai,
Booking Supervisor,
Southern Railway, Tirunelveli,
residing at Alavandan Kulam,
Pallikkottai Post, Sankar Nagar,
Tirunelveli District.Applicant

(By Advocate Mr.T.C.G. Swamy)

V.

- 1 Union of India, represented by
the General Manager,

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1. The Secretary, Headquarters Office,
 Southern Railway, Chennai.
 2. The Senior Divisional Commercial Manager,
 Headquarters Office,
 Southern Railway, Chennai.
 3. The Divisional Railway Manager,
 Southern Railway, Palghat Division,
 Palghat.
 4. The Senior Divisional Commercial Manager,
 Southern Railway, Palghat Division, Palghat. ...Respondents

(By Advocate Mr.P.Haridas)

Both these applications having been heard on 31.1.2006 the Tribunal on 1.2.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Both these O.As raise the same issue of non-observance of the instructions laid down in paragraph 705 of the Indian Railway Vigilance Manual for departmental traps.

OA 850/02:

2 The applicant in O.A.850/02 is a Travelling Ticket Examiner(TTE for short) in the Southern Railway, Trivandrum Division. He is aggrieved by an order dated 29.12.1999(A1) issued by the 3rd respondent reducing his pay from Rs.4600/- to 4500/- in the scale of pay of Rs.4000-6000 for a period of forty months (Non-recurring) w.e.f.11.1.2000. He is also aggrieved by the Appellate order dated 28.2.2001(A2) rejecting his appeal against the A-1 order.

3 The applicant, while working as TTE in Train No.6306 Express Express Nagercoil Junction to Guruvayur, was manning three sleeper coaches namely, S-4, S-5 and S-6. When the train reached Alleppey, there was a decoy-check by a team of Southern Railway Vigilance Organization. Before

starting the check at Alleppey, the applicant had collected Rs.730/- being the charges for conversion of tickets to sleeper class from various passengers for whom receipts were issued. The applicant had also Rs.185/- against Rs.200/- as Private Cash as declared by him. During the check, the vigilance team detected certain misconduct on the part of the applicant and issued the following Article of Charge:-

"Shri K.Satheesh Kumar, TTE/s/NCJ while working as such in S3, S4 and S5 coaches ex. NCJ – GUV in T.No.6306 of 20/21.8.98 had failed to main absolute integrity, show devotion to duty and acted in a manner unbecoming of a railway servant in that :

He had demanded and accepted Rs.100/- from S.Mohd.Rafeeq, Vigilance Watcher, holding II M/E ticket No.75470278 Ex.QLN – GUV while allotting berth No.69 in S5 coach, issued EFT 657900 for Rs.50/- only and had retained the balance amount of Rs.50/- for his personal gain.

Thus, he had contravened Rule No.3.1 (i), (ii) 7 (iii) of Railway Services (Conduct) Rules, 1966."

4 In support of the aforementioned Article of Charge framed against the applicant, the following statement of imputations was also issued:

"Based on the source information that some of th TTEs working in T.No.6306 in SL class are in the habit of demanding and accepting more money than the railway dues while allotting berth in sleeper class, a check was conducted on 20.21.8.98. Sri.Winstan Clements, in charge/ICV Depo/TPJ was instructed to purchase a II M/E. Ticket ex.QLN-GUV for one adult at BO/QLN and to handover the same to S.Mohd. Rafeeq, Vigilance Watcher /MAS. Sri. S.Mohd.Rafeeq was asked to act as a passenger and was instructed to approach any one of the TTEs working in SL class for accommodation in SL class on the strength of the ticket handed over to him by Sri Winstan Clements. After taking over the identity card, DCP and personal cash of Sri S.Mohd. Rafeeq, the Vigilance handed over the following currencies in denomination of:

Rs. 50x1 =	9DS	823908
20x1 =	53N	730253
10x3 =	02W	230916
	89Q	206671
	84C	890185

(Total Rs.100/0.)

for meeting the conversion charges in case of any specific demand by the TTE for more money than the railway dues while allotting berth to him. Sri Winstan Clements was asked to go along with Sri S. Mohd. Rafeeq and

he was asked to observe the transaction and to overhear the conversation between the TTE and Sri. S. Mohd. Rafeeq and to inform the vigilance team at ALLP in case of any specific demand by the TTE for more money than the railway dues while allotting berth SL class from S.Mohd. Rafeeq. A proceeding incorporating the above details was drawn in VRR/SRR at 14.00 hrs. on 20.8.98.

Sri Winstan Clements, in charge/ICV depo/TPJ at ALLP informed that he had purchased and handed over II M/E. Ticket 754720278 ex.QLN - GUV to S.Mohd. Rafeeq, Vigilance Watcher/MAS. Sri Winstan Clements further stated that S.Mohd. Rafeeq on arrival of the T.No.6306 at QLN had approached S5 coach TTE for accommodation and the TTE allotted berth No.69 in S5 coach to S.Mohd.Rafeeq and demanded and accepted Rs.100/- from S.Mohd. Rafeeq and issued conversion EFT for Rs.50/- only. The vigilance entered S5 coach at ALLP. Sri.KSatheesh Kumar TTE/S/NCJ manning S4, S5 & S6 coaches [which were vestibuled and doors kept opened] was subjected to check. He was asked to produce the personal and railway cash available with him after closing his railway transaction. The EFT No.657801 was blocked and the rough journal pertaining to the working in T.No.6306 of 20/21.8.98 of K.Satheesh Kumar produced Rs.185/- as the personal cash as against the declared amount of personal cash of Rs.200/. Further he produced rs.730/- as the railway cash which tallied with his railway transaction. A cash statement to this effect was recorded from K.Satheesh Kumar, TTE/S/NCJ with individual currency nos. of the cash produced by him. When questioned regarding the transaction with S.Mohd.Rafeeq the TTE Sri Satheesh Kumar stated that he had collected only the due of Rs.50/- from S.mohd.Rafeeq and issued the EFT for the same amount. At this stage the vigilance called Sri.S.Mohd. Rafeeq from berth No.69 and he was asked to narrate his transaction with the TTE. Sri S.Mohd.Rafeeq VW/MAS stated that the TTE of S5 coach had demanded and accepted Rs.100/- from him while allotting berth No.69 to him and issued conversion receipt for Rs.50/- only and retained the balance amount. SriS.Mohd Rafeeq, VW/MAS also identified Sri K.Satheesh Kumar was the TTE with whom he had transacted. The vigilance now called Sri Winston Clements {from berth No.} and he was asked to narrate the transaction between the TTE & Sri.S.Mohd. Rafeeq. Sri Winstan Clements stated that the TTE Sri K.Satheesh Kumar demanded and accepted Rs.100/- from S.Mohd.Rafeeq and issued receipt for Rs.50/- only. At this stage the vigilance asked Sri.Satheesh Kumar about the above transaction with S.Mohd Rafeeq. Sri.K.Satheesh Kumar then admitted that he had collected Rs.100/- from S.Mohd.Rafeeq while allotting berth No.69 in S5 coach and issued conversion receipt for Rs.50/- only. Further he stated that he threw away the excess amount in railway cash on seeking the vigilance. He made the above confrontation in the presence of S.Madhava Doss, CTTI/I/NCJ who was called from FC class at Ers. At this stage, the vigilance showed the first proceeding drawn at 14.00 hrs. at VRR/SRR on 20.8.98 to Sri K Madhavadoss, CTTI/S/NCJ and K Satheesh Kumar TTE/S/NCJ and both of them acknowledged in the proceeding as having seen. The vigilance now handed over the proceeding drawn at 14.00 hrs. on 20.8.98, the cash statement of Sri.K.Satheesh Kumar with individual currency Nos. and the cash produced by him to Sri.K.Madhavadoss. He was asked to compare and pick out if any currency shown in the first proceedings were found available in the cash produced by K.Satheesh Kumar. Accordingly Sri K.Madhavadoss, CTTI/I/NCJ had picked out one fifty rupee note bearing No.9 DS 823908, one twenty rupee note bearing No.53 N 730253 and

three ten rupee notes bearing Nos.02 W 230916, 890 206671 and 84 C 890185 and handed over the same to vigilance who replaced the same. The vigilance instructed Sri S.Mohd. Rafeeq to produce the ticket and the conversion EFT to the vigilance and accordingly the II M/E 75470278 and EFT No.687800 were produced by him and the same were taken over by vigilance.

Sri. S. Madhavadoss, CTTI/S/NCJ gave a statement to the vigilance in which he had clearly stated that the vigilance had shown to him the proceeding drawn at 14.00 hrs. at SRR. Sri Madhavadoss further stated that he had compared and picked out the currencies from the cash produced by Satheesh Kumar TTE/S/NCJ which were tallied with the proceedings. He had further stated that Sri.Satheeshkumar accepted in his presence that he had demanded and accepted Rs.100/- from S.Mohd.Rafeeq and issued receipt for Rs.50/- only Sri Madhavadoss further stated that Sri.Satheeshkumar further stated that Sri Satheeshkumar further accepted in his presence that he had thrown away the excess cash, in his railway cash on seeking vigilance. A final proceeding incorporating all the above details was drawn in S5 coach are signed by all, Except Sri Satheeshkumar, since he stated that he was not well and had before signing in the final proceeding. Hence, Sri Satheeshkumar was called to vigilance office/MAS on 21.9.98 and a statement was recorded from his in which he had accepted the facts of the check. A statement was also recorded from Sri Winston Clements who witnessed the check.

Thus, the check confirms that Sri Satheesh Kumar TTE/S/NCJ while working in T.No.6306 of 20/21.8.98 had demanded and accepted Rs.100/- from S.Mohd.Rafeeq and issued conversion receipt for Rs.50/- only while allotting berth No.69 in S5 coach and retained the balance for his personal gain. By this the source information is sustained."

O.A.155/03:

5 The applicant in O.A. 155/2003 is presently working as a Booking Supervisor, in the scale of pay of Rs.5500-9000 in the Booking Office at Tirunelveli Junction of Southern Railway. He is aggrieved by A-1 order dated 3.9.2001 issued by the 4th respondent by which he was imposed with the penalty of reducing his pay of one stage for a period of two years with recurring effect. He is further aggrieved by the appellate and revision orders by which the penalty has been affirmed vide A-2 and A-3 orders dated 28.11.2001 and 11.3.2002 respectively.

6 The applicant while working as Chief Parcel Clerk, Karur in Palghat Division was served with a major penalty charge memorandum (A4) which is as follows:

"Shri K.J.Gandhi, CPC/KRR while working as such at PD/KRR on 6.4.2000 had failed to maintain absolute integrity, show devotion to duty and acted in a manner unbecoming for a Railway servant in that:

He had booked three gunny bundles of netted fabrics Ex.KRR-CSTM which was tendered for booking Shri Mathialagan and booked the same under PWB No.736123 for Rs.520/- and demanded and accepted Rs. 580/- from Shri Mathialagan while issuing the receipt. He had an excess of Rs.60/- in Railway Cash.

Thus he has not maintained integrity, devotion to duty and behaved in a manner quite unbecoming of a Rly.Servant and Thereby violated rule No.3(1(i),(ii) and (iii) of Rly. Services Conduct Rules 1966."

7 The following is the statement of imputation of misconduct/misbehaviour in support of the Article of charges issued to him .

"Based on the source information that some of the staff working at PD/KRR are demanding and accepting more money than the Railway dues from the customers while booking parcels, a check was conducted on 6.4.2000.

Shri R.Mathialagan, con.130/RPF/TPJ was asked to act as the passenger and after taking over of his personal cash of Rs.620/- and ID card he was handed over with the following currencies in denominations of

Rs.100 x 8 = 5TA	588221, to 5TA	588224
6DF	956757, 7BN	205235, 40G 274003
and	3BV	287707.
Rs.50x2 =	3HB 972178	and 2KT 916471.

He was asked to approach the Parcel Office staff to book the three gunny bundles of netted fabrics handed over to him to CSTM. Further he was asked to fill the Forwarding Note in the name of 'Shri R.Mathialagan, c/o. V.R.C.Industries, Vadugapatti, and to utilise the currencies handed over to him for meeting the freight charges and in case any specific demand by the staff for more than the freight charges while booking the three gunny bundles netted fabrics. Shri S..Selvaraj, con.283/RPF/TPJ was asked to go along with Shri Mathialagan and to inform the vigilance team waiting outside the station area in case of any specific demand by the staff for more money then the Railway dues while booking the netted fabrics. A proceeding incorporating the above was drawn at Sri.Venkateswara Petrol Bunk/Puliyur at 12.20 hours on 6.4.2000 and signed by all.

On getting information from Shri S.Selvaraj that the Parcel clerk at PD/KRR had issued PWB 736123 for Rs.520/- Ex.KRR-CSTM and demanded and accepted Rs.5890/- from Shri Mathialagan while booking the three gunny bundles netted fabrics, the vigilance team

entered the Parcel Office. Shri K.J.Gandhi, CPC/KRR working at PD/KRR was subjected to check, he produced Rs.42/- as the personal cash as against the declared amount of Rs.100/-. Further he produced Rs.3346/- as the Railway cash which tallied with his transaction. He gave a cash statement to this effect in three pages with individual currency numbers of the cash produced by him at the time of check. Shri Mohan, Parcel porter/KRR who was on duty was asked to produce his personal cash available with him. He produced Rs.20/- as the personal cash as against the declared amount of Rs.50/- and further stated that he spent Rs.30/-. When the Parcel Porter was questioned whether he was having any other cash Shri Mohan produced Rs.60/- in denomination of Rs.50x1 and Rs.10x1 from his box and stated the same was given by Shri K.J Gandhi, CPC/KRR in the presence of the parties who booked three gunny bundles of netted fabrics to CSTM. He gave a statement identifying the parties as Mathialagan and Selvaraj. The cash statement of Shri Mohan and the statement given by him were written by Shri P.Jayagopal, HI/KRR as stated by Shri Mohan, Parcel Porter/KRR.

When the Parcel Clerk was questioned with regard to this, Shri K.J.Gandhi immediately admitted that he had booked three gunny bundles of netted fabrics Ex.KRR-CSTM under PWB No.736123 for Rs.520/- which was tendered for booking and for the same he had demanded and accepted Rs.580/- from the party. Shri K.J.Gandhi further admitted that he handed over the extra money collected Rs.60/- immediately to Shri Mohan, Parcel Porter. At this stage the vigilance called Shri Mathialagan, RPF/TPJ and he was asked to narrate his transaction with the parcel clerk. Shri Mathialagan stated that he approached the parcel clerk at PD/KRR and asked to book three gunny bundles of netted fabrics to CSTM and also tendered the F.Note duly filled up. Shri Mathialagan further stated that the Parcel Clerk prepared the PWB and issued the same to him and demanded and accepted Rs.580/- from him as against the freight amount of Rs.520/-. He also identified Shri K.J. Gandhi as the Parcel Clerk with whom he had transacted. Shri Mathialagan further stated that he gave Rs.600/- in the denomination of Rs.100/- x 5 and Rs.50x2 to meet the demand of the Parcel Clerk, and received the balance of Rs.20/- in the denomination of Rs.10x2. Sri Selvaraj, RPF who witnessed the above transaction between the Parcel Clerk and Shri Mathialagan also confirmed the statement of Shri Mathialagan. He also identified Shri K.J.Gandhi as the Parcel Clerk with whom he had transacted. Then the vigilance handed over the pre-drawn proceeding to Shri K.J.Gandhi who read over and signed in the same for having seen at the time of check. Then the vigilance handed over the pre-drawn proceeding, the cash statement of Shri K.J.Gandhi with individual currency numbers of the cash produced by him at the time of check and the cash produced by him to Sri Selvaraj and he was asked to compare and pick out if any currency shown in the pre-drawn proceeding were found available in the cash produced by Shri K.J.Gandhi. Accordingly, Shri Selvaraj after comparison picked out Rs.100 x5 5TA 588221 to 5TA 588224 and 6DF 956757 and Rs.50x1 2KT 916471 and handed over the same to the vigilance. The vigilance took over the same after replacement. Then the

vigilance handed over the statement of Sri Mohan, Parcel Porter/KRR alongwith the cash produced by him and the pre-drawn proceeding to Shri Selvaraj and he was asked to compare and pick out if any currency shown in the pre-drawn proceeding were found available in the cash produced by Shri Mohan. Accordingly, Shri Selvaraj after comparison picked out one fifty rupee note No.3HB 972178 which tallied with the pre-drawn proceeding and the vigilance took over the same after replacement. Then the vigilance asked Shri Mathialagan to produce the PWB and if any balance currency available with him. Accordingly he produced receipt foil of the PWB 736123 Ex.KRR-CSTM for Rs.520/- and the balance currency in denomination of Rs.100x3 3BV 287707, 4QG 274003 and BN 205235 and Rs.10x2 Nos.7IC 769167 and 29N 076019. The above currencies were taken over by the vigilance. Shri Mathialagan was asked to cancel the PWB No.736123 booked Ex.KRR-CSTM and get the refund amount. Accordingly the above way bill was cancelled and Parcel Clerk effected refund of Rs.515/- and the cancelled receipt and guard foil of PWB 736123 were taken over by vigilance. Shri K.J. Gandhi, CPC/KRR was asked to remit the extra amount of Rs.60/- which was demanded and accepted by him while issuing the PWB 736123 and accordingly he remitted the same vide MRNo.715786. A proceedings incorporating the above fact was drawn at Parcel Office/KRR and signed by all.

Thus the check reveals Shri K.J.Gandhi while working at PD/KRR had booked the three gunny bundles of netted fabrics Ex.KRR-CSTM and prepared the PWB for Rs.520/- as the freight but for the same he had demanded and collected Rs.580/- from Shri Mathialagan and retained the extra amount for his personal gain. By this the source information is sustained."

8 The applicants in both these O.As. have challenged the article of charge, statement of imputations, disciplinary authorities orders, and the appellate/revision authorities orders on the very same grounds. The main grounds advanced by the counsel for the applicants are that, the entire proceedings were stage managed by the Vigilance Organization of the Southern Railway, which were against the provisions contained in Rule 705 of the Indian Railway Vigilance Manual, which deals with Departmental Traps and provides as under:

"705 Departmental Traps:

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

(a) The Investigating Officer/Inspector should arrange two

gazetted officers from Railways to act as independent witnesses so far as possible. However, in certain exceptional cases when two gazetted officers are not available immediately, the services of non gazetted staff can be utilized.

All Railway employees particularly gazetted officers should assist and witness a trap whenever they are approached by any officer of vigilance branch. The Head of department/Officer, will, when requested by any officer of the vigilance branch, detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason, may be regarded a breach of duty, making him liable to disciplinary action."

9 According to the applicant in terms of the above paragraph, specific direction has been given to the Investigating Officer/Inspector to arrange two Gazetted Officers to act as independent witnesses. In the instant case, all the witnesses were non-gazetted officers. Only in exceptional cases where two gazetted officers are not available, the services of non-gazetted staff can be utilized and the present case is not an exceptional one. The trap in the instant case was a preplanned one and as such there was no difficulty for the respondents to take the assistance of gazetted officers to witness the same. Therefore, in the absence of any gazetted officers among the witnesses to witness the trap, the whole trap proceedings suffer from serious illegalities. He has also relied upon the order dated 31.8.2001 in O.A. 1339/2000 -M.Anjaneyulu Vs. Union of India rep by its General Manager, SC Railways, Rail Nilayam, Sec'bad and others of the Hyderabad Bench of this Tribunal wherein it was held that, in the absence of any independent and impartial witnesses of the status of a gazetted officer, the trap was not in accordance with law. The respondents have challenged the said order in O.A.1339/2000 before the Hon'ble High Court of Judicature at Andhra Pradesh in W.P.No.1489/2002 which was dismissed by order dated 4.9.2002.

10 The applicants had taken various other grounds also in these O.As.

to assail the impugned orders issued by the respondents which are not necessarily to be taken into consideration in view of the basic submission that the departmental traps conducted in the applicants was in violation of Rule 705 of the IRVM.

11 The respondents in their reply statement in O.A.850/02 denied the allegations that the operation of the entire proceedings were stage managed by the Vigilance Department. Apart from saying that there is nothing wrong in detecting the crime by the Vigilance Wing because they are empowered to do so, the respondents have not filed any reply to the allegation of the applicant that the provisions of Rule 705 of IRVM has not been complied with.

12 In reply to O.A.155/03 also apart from denying the grounds taken by the applicant, the counsel for respondents has not given any specific reply to the main allegation that the provisions of Rule 705 of IRVM has been violated.

13 We have heard Shri TC Govindaswamy, learned counsel for the applicant and Shri P. Haridas, learned counsel appearing for the respondents. In our considered opinion, the present O.As are covered in all fours by the order of the Hyderabad Bench of the Tribunal in OA 1339/2000 dated 31/8/2001 (supra). The relevant observations of the Hyderabad Bench in the aforesaid order is worth mentioning here, which is as under:

"The learned counsel for the applicant submits that the trap was not in accordance with the guidelines issued by the department as none of the witnesses examined is an independent witness to lend support to the case of trap, as to its truth or otherwise. Learned Standing Counsel Mr. Devaraj has produced the Indian Railways Vigilance Manual in which instructions have been given at Para 705 how the departmental traps should be conducted. Relevant portion of Para 705 is reproduced below for better appreciation of the contentions.

"705 Departmental Traps:

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

(a) The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses so far as possible. However, in certain exceptional cases when two gazetted officers are not available immediately, the services of non gazetted staff can be utilized.

All Railway employees particularly gazetted officers should assist and witness a trap whenever they are approached by any officer of vigilance branch. The Head of department/Officer, will, when requested by any officer of the vigilance branch, detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason, may be regarded a breach of duty, making him liable to disciplinary action."

It is therefore, seen that at one of the said terms/instructions for departmental traps which is always suspect in nature, a specific direction was given to the Investigating Officer/Inspector to arrange two gazetted officers to act as independent witnesses as far as possible. It was, however, stated that in exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilized. In the instant case, all the witnesses are non-gazetted officers. Instructions were also given to the Gazetted Officers of the railways to assist and witness a trap whenever they are approached by any officer of Vigilance Branch. So there are clear instructions in this regard. It is also stated in the said instructions that refusal to assist or witness a trap without a just cause/without sufficient reason, be regarded as a breach of duty. Learned Standing Counsel submits that in this case as no gazetted officer was available at the time of trap to assist the same, they could not procure any gazetted officer for the purpose of the trap. It is difficult to accept this argument. It is not shown in this case that trap was made on the spot without any prior intimation for securing the gazetted officers. If two gazetted officers were not available, at least one could have been secured to lend support to the evidence of trap. There cannot be any difficulty in procuring the Gazetted Officers from a department like Railways which is a vast Organization having a number of Gazetted Officers. It also appears that it is a pre-planning trap and there could not have been any difficulty to arrange the Gazetted Officers to assist and witness the trap. Further more, in OA No.1407/99, D.R.K.Rdeley V. Union of India and others, decided by a Division Bench of this Tribunal on 6.7.2000 where again on the basis of the witnesses being non-gazetted railway officers, mostly RPF constables out of whom, 3 RPF constable were regarded as trap witnesses, this

Tribunal found out of the three witnesses examined in that case, there was not a single independent witness to hold that the trap was valid in the eye of law. Learned Counsel for the applicant placed much reliance upon this judgment. We find that the observations made in the above OA are squarely applicable to the present case also. Thus, we cannot accept the contention of the learned counsel for the respondents that the Gazetted Officers could not be procured as they could not be made available at the relevant time. Hence we are of the view that in the absence of any independent and impartial witness of the status of Gazetted Officer in this case, as required under the guidelines/instructions and all the witnesses were from South Central Railways of the department, to prove the trap as valid, we hold that the trap was not in accordance with law. The penalty imposed by the Disciplinary Authority on the basis of the defective trap cannot be held to be valid."

14 The observations made by the Hon'ble High Court of Judicature at Andhra Pradesh while dismissing the Writ Petition No. 1489/2002 and connected Writ Petitions filed by the Railways against the aforesaid orders of the Hyderabad Bench are also worth mentioning herein below:

"In a judgment of the Apex Court reported in State Bank of India vs. S.K.Sharma, AIR 1996 SC 1669 certain basic principles of natural justice keeping in view the disciplinary inquiries, have been evolved by the Apex Court thus;

Supreme Court evolved certain basic principles of natural justice keeping in view the context of Disciplinary inquiries and orders of punishment imposed by an employer upon the employee:

- (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental inquiry in violation of the rules/regulations/statutory provisions governing such inquiries should not be set aside automatically. The court or the Tribunal should inquire whether (a) the provision violated is of a substantive nature, or (b) whether it is procedural in character.
- (2) A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
- (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the inquiry held or order

passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz. Whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the inquiry and/or the order of punishment, if so prejudice is established to have resulted therefrom. It is obvious, no interference is called for. In this connection it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The court may not insist on proof of prejudice in such cases. Take a case where there is a provision expressly providing that after the evidence of the employer/Government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the inquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) in the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the stand point of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or, in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived @page SC 1670 by him, then the court or Tribunal should make appropriate directions (including the setting aside of the order of punishment). The ultimate test is always the same viz., test of

prejudice or the test of fair hearing, as it may be called.

In the light of the principles laid down by the Apex Court in the instant case, it has to be tested whether there is any violation of any procedural provision and if so whether it is mandatory in character and whether it results in any prejudice to the delinquent."

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Keeping in view the principles laid down by the Apex Court in the above decision it has to be examined whether the provisions under Vigilance Manual are under the purview of guidelines, whether they have statutory force and whether the provisions of paragraphs 704 and 705 are mandate in nature.

Before going to appreciate the above questions, it is not out of place to have glance at the "FOREWORD" of the Manual, which reads as under:

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A perusal of the above makes it clear that for an effective administration of the Railway Board, a Manual to provide essential information for handling vigilance work in all the fields in the Railways was first published on 31st March, 1970 and the changed circumstances necessitated the revision of the Manual in the year 1980. It is also made clear that the Manual is intended to be a compendium of rules, procedures and practices and part from that the central Vigilance Commission has also issued some pamphlets in this regard for guidance of Vigilance Officers, Presenting Officers and inquiry officers and their reference would be useful as a supplementary material.

In this view of the matter, the assertion of the learned Senior Counsel appearing on behalf of the respondents that the provisions of paragraphs 704 and 705 of Indian railways Vigilance Manual are the internal guidelines, and merely they are administrative guidelines for the guidance of the Department, and as such they do not confer any legally enforceable right on the delinquent, holds no water. Therefore, we have no hesitation to hold that the chapters and the paragraphs contained therein can be construed as Rules to be followed for an effective administration of the railways in all its fields, and the Railway Administration is bound by the same.

Now it has to be tested as to whether the provisions of paragraphs 704 and 705 are mandatory in their nature. It is relevant to extract the said provisions hereunder:

Paragraph 704: When laying a trap the following important points have to be kept in view:

(a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed, as illegal gratification to meet the defence that

the money was actually received as loan or something else, if put up by the accused.

- (b) The transaction should be within the sight and hearing of two independent witnesses.
- (c) There should be an opportunity catch the culprit red handed, immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.
- (d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are men of status considering the status of the accused. It is safer to take witnesses who are Government employees and of other Departments.
- (e) After satisfying the above conditions, the investigating Officer should take the decoy tot he SP/SPE an pass on the information to him for necessary action. If the office of the SP/SPE is not near by and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted here that the trap can be laid only by an officer not below the rank of deputy Superintendent of local police. After the SPE or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

Paragaph 705 reads as under:

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

- (a) The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses so far as possible. However, in certain exceptional cases when two gazetted officers are not available immediately, the services of non gazetted staff can be utilized.
- (b) The decoy will present the money which he will give to the defaulting offices/employees as bribe money on demand. A memo should be prepared by the investigating officer/inspector in the presence of the independent witnesses and the decoy indicating the numbers of the GC notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the investigating officer/inspector. Another memo, for returning the GC notes to the decoy will be prepared for making over the GC notes tot he delinquent employee on demand. This memo should also contain signature of decoy, witnesses and investigating officer/inspector. The independent witnesses will take up position at such a place where from they can see the transaction and also hear the conversation between the decoy and the delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the

investigating officer/inspector should disclose the identify and demand, in the presence of the witnesses to produce all money including private Railway and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo and sealing of the notes in the envelope.

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As could be seen from the above provisions, an elaborate procedure has been adopted for laying a trap and they also make it clear that the instructions made thereunder should be followed. In this view of the matter, there is no other go for us except to hold that the Investigating Agency should adhere to the instructions made thereunder while laying a trap and the above provisions are mandatory in nature.

Coming to the case on hand, the Investigating Agency had failed to comply with the instructions contemplated under paragraphs 704(a) and as well as 705(a). The tribunal has rightly held that the conclusions arrived at in the inquiry reports without any independent witnesses to the departmental trap are found inadequate and where the departmental rules relating to such trap cases are not fully adhered to, the punishments imposed on the basis of such defective traps are not sustainable under law.

We have perused the record. On perusal, we have noted certain procedural defects. Some RPF constables and Railway staff are attached to the Vigilance Wing and their services are utilized as decoy passengers as well as the witnesses. Those witnesses had also admitted during the course of inquiry proceedings, as to their attaching to the Vigilance Wing and their participation in the trap according to their instructions.

The non-examination of the independent witnesses who must hear the conversation and the two gazetted officers/non-gazetted staff who should be arranged by the Investigating agency as contemplated under paragraphs 704(a) and 705(b) is fatal to the decoy proceedings in as much as the applicants are deprived of their right to cross examine them to elicit truth or otherwise of the proceedings. The provisions incorporated the facet of the principles of natural justice and it is designed to provide an adequate opportunity to the delinquent to cross examine the witness effectively and thereby defend himself properly. Therefore, non-examination of the independent witnesses amounts to causing prejudice to the rights of the applicants.

For the reasons in the foregoing paragraphs and in the light of

the principles laid down by the Apex Court, we are constrained to hold that the order of the Tribunal impugned in all the writ petitions does not warrant any interference by this court and accordingly, we see no merit in these writ petitions.

In the result, all the above writ petitions are dismissed. The order of the Tribunal in the three O.As, is hereby confirmed. However, there will be no order as to costs."

15 In the result, the O.As are allowed. The impugned orders in both the O.As are quashed and set aside. The Respondents are directed to pass appropriate orders granting the consequential benefits to the Applicants within a period of two months from the date of receipt of this order and the actual benefits shall be given to them within a period of one month thereafter. There shall be no order as to costs.

Dated this the 16th day of February, 2006

GEORGE PARACKEN
JUDICIAL MEMBER

S.

SATHI NAIR
VICE CHAIRMAN

CERTIFIED TRUE COPY
Date 2006

Section Officer (Judl)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 155 of 2003

THURSDAY, this the 23RD day of July, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.J. Gandhi,
S/o. Koil Pillai,
Booking Supervisor,
Southern Railway, Tirunelveli,
Residing at : Alavandan Kulam,
Pallikkottai Post, Sankar Nagar,
Tirunelveli District.

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Chennai – 3.
2. The Chief Commercial Manager,
Southern Railway, Headquarters Office,
Chennai – 3.
3. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Divisional Commercial Manager,
Southern Railway, Palghat Division,
Palghat. ... Respondents.

(By Advocate Mr. P. Haridas)

The Original Application having been heard on 16.07.09, this Tribunal
on 23-07-09 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER


This OA was earlier decided, vide order dated 16-02-2006
allowing the same by quashing the penalty orders impugned therein.

and directing the respondents to pass appropriate orders granting consequential benefits to the applicants. On the said order having been challenged before the High Court, the High Court has held as under:-

"2. The brief facts of the case are the following: The respondent was charge-sheeted for having received extra amount for booking a consignment. The respondent was trapped on 6.4.2000. An R.P.F. Constable pretending himself to be a passenger, booked a parcel. Though the booking charge was only Rs. 520/-, the respondent allegedly received Rs. 580/-. The notes paid were previously marked under a mahazar. The respondent was served with Annexure-A4 charge memo dated 23.06.2000. Since he denied the charges, an enquiry officer was appointed, who submitted Annexure-A7 report dated 31.5.2001. After following the due procedure, by Annexure-A1 dated 3.9.2001, a penalty of reduction of pay by one stage for a period of two years with recurring effect was imposed on him. He filed Annexure-A9 appeal. The appeal was dismissed by Annexure-A2 order. He filed Annexure-A10 revision, which was dismissed by Annexure-A3 order. Challenging Annexures-A1 to A3, the OA was filed. The C.A.T., by Ext. P5 order dated 16.02.2006, allowed the O.A. And quashed Annexures-A1 to A3 orders. Hence this Writ Petition.

3. Before the C.A.T., the main point canvassed was that the trap was laid and executed not as provided under the Manual governing vigilance proceedings. According to the relevant provisions in the Manual, as far as possible, two gazetted officers should be asked to be present as witnesses. Only in exceptional cases, the services of non-gazetted officers could be utilized. Admittedly, in this case, gazetted officers were not present as witnesses. The Tribunal found that it is a serious irregularity, which goes to the root of the matter. Relying on a decision of the C.A.T., Hyderabad bench, which was affirmed by the High Court of Andhra Pradesh, the Tribunal allowed the O.A. and quashed the impugned orders.

4. Now, it is common case that the decision of the Hyderabad Bench, relied on by the Ernakulam Bench of the C.A.T. in the present impugned order has been reversed by the Apex Court by the decision in Chief



Commercial manager & Ors. v. G. Ratnam, (2007) 8 SCC 212).

5. Anyone, who has anything to do with the appreciation of evidence must know that there cannot be any hard and fast rule concerning reliability of witnesses. Non-gazetted officers, who are witnesses, may be, in some cases, more reliable than gazetted officers. That will depend upon the facts of each case. So, there is no reason or justification to reject the evidence of non-gazetted officers at the threshold. Further, the guidelines in the Manual are generally meant to guide and not to govern. Unless prejudice is shown, violation of the provisions in the Manual does not ipso facto nullify the entire proceedings. In this case, we notice that the Tribunal did not venture to consider the case on merits. But, it is simply followed the decision of the Hyderabad Bench. We also notice that the respondent has got other grounds also to impugn the orders, Annexures A1 to A3. In view of the above position, the impugned order of the C.A.T. is set aside and O.A. No. 155/2003 is remitted for fresh disposal in accordance with law after affording an opportunity of being heard to both sides. The Tribunal shall endeavour to dispose of the matter as expeditiously as possible. The Tribunal shall examine the records of the enquiry and find out whether any prejudice has been caused by the violation of provisions in the Manual and whether the evidence on record could be acted upon, even if the witnesses are non-gazetted officers. Needless to say, the Tribunal shall also consider the other contentions raised on behalf of the respondent/applicant.

The Writ Petition is allowed as above."

Thus, the case has been heard again.

2. The challenge is against the order of penalty (Annexure Annexure A-1), order of the Appellate Authority, (Annexure A-2) and order of the Revision Authority (Annexure A-3). Charge sheet containing the charges is at Annexure A-4. Annexure A-5 is the entire proceedings in the disciplinary matter, while Annexure A-6 is the defence statement of the applicant. The inquiry report is at Annexure A-7 and Annexure A-8 is the representation against

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Annexure A-7 inquiry report. While Annexure A-9 is an appeal before the Appellate Authority, Annexure A-10 is revision petition. Annexure A-11 is a copy of the Hyderabad Bench order dated 31st August, 2001.

3. Counsel for the applicant submitted that the rules provide for the prescribed procedure in respect of trap cases vide Para 705 of the Railway Vigilance Manual, which reads as under:-

"705 - Departmental Traps :

For Departmental Traps, the following instructions in addition to those contained under Para 704 are to be followed.

(a) The Investigating Officer / Inspector should arrange two Gazetted Officers from Railways to act as independent witnesses so far as possible. However, in certain exceptional cases when two gazetted officers are not available immediately, the services of non-gazetted staff can be utilized.

All Railway employees, particularly gazetted officers should assist the witness a trap whenever they are approached by any officer of vigilance branch. The Head of Department/Office, will, when requested by any officer of the vigilance branch, detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason, may be regarded a breach of duty, making him liable to disciplinary action."

4. In the instant case, there are no two independent witnesses, much less gazetted officer. The list of witnesses as furnished with the charge sheet (Annexure A-4) contains the names of (a) Mathialagan (the decoy), Shri S. Selvaraj (stated to be independent witness), and others who belonged to the trapping team. Save Selvaraj none other is stated to be the independent witness. The

counsel argued that, if the depositions are scanned it would reflect that even this so called independent witness (Selvaraj) cannot be termed as an independent witness but is a part of decoy. He had taken us through the said depositions and the same are as under:-

**(a) Deposition of Shri Mathialagan, Con/130/RPF/TPJ..
SW 3:**

"Q.52. : Can you recollect and say on 6.4.2000 did you participate in a departmental vigilance check at PO/KKR, if so, narrate the details in brief ?

Ans. : I was asked We furnished the PWB to Shri Gandhi, the duty parcel clerk, the consignment was weighed and we have been told to pay Rs. 580/-. I gave him Rs. 500x1 and Rs. 50x2, he gave me balance Rs. 20/- but the receipt was made for Rs. 520/-, the balance Rs. 60/- was kept with him and he told me that it was for him. When we are go to move out he gave the money to a person in Khaki Uniform, the porter. Then Shri Selvaraj had been to the VIs at the portigue and the VIs came to the scene and proceeded with the check."

**(b) Deposition of Shri S. Selvaraj, Cons. 283/RPF/TPJ
SW 5:**

Q. 97. : Can you recollect and say did you participate in a vigilance check on 6.4.2000, if so, narrate the details in brief ?

Ans. : Yes. I had participated They have been loaded in a mini van and we proceeded KRR. Myself and Mathialagan had accompanied the van. After reaching PO/KRR, as directed, application to book the consignment was preferred by Shri Mathialagan, C/o. VRC Industries, Vadugapatti, consignee was mentioned as self, CSTM. Totally we have paid 580/- towards 520.00. While paying Rs. 600/0, Rs. 20/- was returned to us. The amount paid was in the denomination of Rs. 100x5 and Rs. 50x2. Chief Parcel Clerk/KRR gave a receipt wherein it was found that Rs. 520/- alone mentioned against Rs. + 60 collected. He gave part of money to the porter available on that day. Porter kept the money in his pocket. We came out and reported the matter to CVIs who were waiting for us. Mr. Subramanian and Venkateswaran entered in to PO/KRR. After that, myself and Shri Chandrasekharan, CVI came to parcel office



via PF1. When we entered there was argument between VIs and CPC. The CPC stating that he did not collect any money. Afterwards, the Porter Shri Mohan accepted and said that it was the fact that money was collected and part of it was given to him also. He also said that collection of money was seen by us."

5. The counsel further argued that procedure for asking the mandatory question has not been followed. In this regard, attention was invited to the relevant portion of the deposition and the same is as under:-

"Mandatory Questions to CO:

Q.146. : With the examination of SW.6 the witnesses on behalf of administrative witness is over.
Would you like to produce any defence documents / witnesses to be examined/produced on your behalf?

Ans. : No.

Q.147. : Do you admit the charges now?

Ans. : No. I still deny charges.

Q.148. : Do you wish to be examined as a witness in your case. If not, what is your way of defence?

Ans. : I do not want to be examined. I may be permitted to submit as a way of defence."

6. The counsel further submitted that the decision in the case of Chief Commercial Manager & Others vs G. Ratnam, (2007) 8 SCC 212, relied upon by the respondents before the High Court, and referred to in the High Court judgment, has been referred to in a subsequent judgment of Moni Shankar vs Union of India, (2008) 3



AISLJ 325, and in this judgment, the Apex Court has explained comprehensively as to the procedure to be adopted in matters of trap cases. This judgment holds the fort and the same is in favour of the applicant.

7. Counsel for the respondents submitted the fact that the receipt of the amount of Rs 60 having been accepted by the Parcel Porter would go to show that the applicant is guilty of having accepted the bribe.

8. Arguments were heard and documents perused. As reflected in the High Court judgment, the case has been remitted back to the Tribunal for fresh consideration as the earlier decision relied upon the Hyderabad Bench Judgment, which stood upset by the Apex Court in the case of Chief Commercial Manager & Others vs G. Ratnam (supra). If the above said judgment has been clarified by the later decision of the Apex Court and the said decision goes in favour of the applicant, then the applicant would become entitled to the relief sought for.

9. In the case of Moni Shankar, (2008) 3 SCC 484, the Apex Court has first discussed the trap cases in general and the case of G. Ratnam as under:-

10. We may at the outset notice that with a view to protect innocent employees from such traps, appropriate safeguards have been provided in the Railway Manual. Paras 704 and 705 thereof read thus:

*"704. Traps.—(i)-(iv) * * **

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(v) When laying a trap, the following important points have to be kept in view:

(a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.

(b) The transaction should be within the sight and hearing of two independent witnesses.

(c) There should be an opportunity to catch the culprit red-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.

(d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the Department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are government employees and of other departments.

(e) After satisfying the above conditions, the investigating officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the SP, SPE, is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the SPE or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

(vi)-(vii) * * *

705. Departmental traps.—For departmental traps, the following instructions in addition to those contained under Para 704 are to be followed:

(a) The investigating officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two



gazetted officers are not available immediately, the services of non-gazetted staff can be utilised. All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch should detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand. A memo should be prepared by the investigating officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the GC notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the investigating officer/Inspector. Another memo, for returning the GD notes to the decoy will be prepared for making over the GC notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and investigating officer/Inspector. The independent witnesses will take up position at such a place wherefrom they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the investigating officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.

(c)-(d) * * * "

11. The trap was laid by the members of the Railway Protection Force (RPF). It was a pre-arranged trap. It was, therefore, not a case which can be said to be an exceptional one where two gazetted officers as independent witnesses were not available.

12. Indisputably the decoy passenger was a constable of RPF. Only one Head Constable from the said organisation was deputed to witness the operation. The number of witnesses was, thus, not only one, in place of two but also was a non-gazetted officer. It was a pre-planned trap and thus even independent witnesses could have also been made available.

13. When the decoy passenger purchased the ticket, the Head Constable was at a distance of 30 metres. The booking counter was a busy one. It normally remains crowded. Before the enquiry officer, the said decoy passenger accepted that he had not counted the balance amount received from the appellant after buying the ticket. It was only half an hour later that the vigilance team arrived and searched the appellant.

14. While we say so we must place on record that this Court in Chief Commercial Manager, South Central Railway v. G. Ratnam¹ opined that non-adherence to the instructions laid down in Paras 704 and 705 of the Vigilance Manual would not invalidate a departmental proceeding, stating:

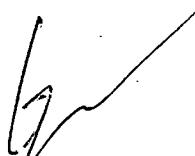
"17. We shall now examine whether on the facts and the material available on record, non-adherence of the instructions as laid down in ^{para} Paras 704 and 705 of the Manual would invalidate the departmental proceedings initiated against the respondents and rendering the consequential orders of penalty imposed upon the respondents by the authorities, as held by the High Court in the impugned order. It is not in dispute that the departmental traps were conducted by the investigating officers when the respondents were on official duty undertaking journey on trains going from one destination to another destination. The Tribunal in its order noticed that the decoy passengers deployed by the investigating officers were RPF constables in whose presence the respondents allegedly collected excess amount for arranging sleeper class reservation accommodation, etc. to the passengers. The transaction between the decoy passengers and the respondents was reported to have been



witnessed by the RPF constables. In the facts and circumstances of the matters, the Tribunal held that the investigations were conducted by the investigating officers in violation of the mandatory instructions contained in Paras 704 and 705 of the Vigilance Manual, 1996, on the basis of which inquiries were held by the enquiry officer which finally resulted in the imposition of penalty upon the respondents by the Railway Authority. The High Court in its impugned judgment has come to the conclusion that the inquiry reports in the absence of joining any independent witnesses in the departmental traps, are found inadequate and where the instructions relating to such departmental trap cases are not fully adhered to, the punishment imposed upon the basis of such defective traps are not sustainable under law. The High Court has observed that in the present cases the service of some RPF constables and railway staff attached to the Vigilance Wing were utilised as decoy passengers and they were also associated as witnesses in the traps. The RPF constables, in no terms, can be said to be independent witnesses and non-association of independent witnesses by the investigating officers in the investigation of the departmental trap cases has caused prejudice to the rights of the respondents in their defence before the enquiry officers.

18. We are not inclined to agree that the non-adherence of the mandatory instructions and guidelines contained in Paras 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained."

15. It has been noticed in that judgment that Paras 704 and 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. This Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued.



16. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the Department has been able to prove the charges against the delinquent official.

17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See State of U.P. v. Sheo Shanker Lal Srivastava and Coimbatore District Central Coop.

Bank v. Employees Assn.)

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20. The enquiry officer had put the following questions to the appellant:

"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence ^{Q49} brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?"

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.

10. The above decision when applied upon the facts of the case, the same fits in all the four squares. Just as in the other case there

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was only one independent witness instead of two and that too a non gazetted official, in the instant case also, there has been only one and that too non gazetted official. In fact, the sequence of events would even go to show that this witness is also a party of decoy and not exactly a witness. Similarly, the mandatory question asked also is not in the manner as required by the rules. Thus, the inquiry has been vitiated for non following of the stipulated procedure.

11. The appellate authority's order is too cryptic and without any discussion on the grounds raised. The manner in which an appeal has to be dealt with and decided has been given in the following decisions of the Apex Court :-

1) *Ram Chander v. Union of India, (1986) 3 SCC 103 :*

"4. The duty to give reasons is an incident of the judicial process. So, in *R.P. Bhatt v. Union of India (1986) 2 SCC 651* this Court, in somewhat similar circumstances, interpreting Rule 27 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed:

It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit the case to the authority which imposed the same.

It was held that the word consider in Rule 27(2) of the Rules implied due application of mind. The Court emphasized that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director General, Border Road



Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record."

(2) *Narinder Mohan Arya v. United India Insurance Co. Ltd.*, (2006) 4 SCC 713 :

"31. We may for the aforementioned purpose take note of the extant rules operating in the field. Requirements of consideration in an appeal from an order of the disciplinary authority by the appellate authority is contained in Rule 37 whereas the provisions as regards filing of a memorial are contained in Rule 40 thereof, which read as under:

"37. Consideration of appeals . (1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

34. In *Apparel Export Promotion Council v. A.K. Chopra* which has heavily been relied upon by Mr Gupta, this Court stated:

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities." (emphasis supplied)

35. The Appellate Authority, therefore, could not ignore to exercise the said power.

36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

12. Of course, it could be argued that the deficiency of the appellate authority has been rectified by the comprehensive decision by the Revision authority. But the Apex Court has held in the case of *Union of India v. Naman Singh Shekhawat*, (2008) 4 SCC 1, wherein the Apex Court has held as under:-


"32. We may notice that in *Ajit Kumar Nag* (2005) 2 SCC 764 the order of dismissal was found to have been legally proved despite the fact that the delinquent was acquitted by the court

of law. If the inquiry officer is biased, no action could have been taken on the basis thereof. It renders the proceeding a nullity. Such an inherent defect in the disciplinary proceeding cannot be cured by an order of the appellate authority. An order which is void cannot be validated by the appellate authority as the materials which were not brought on record could not be taken into consideration by it."

13. Thus, in view of the fact that the provisions of Rule 702 of the Vigilance Manual have not been complied with coupled with the fact that the mandatory question has also not been dealt with properly, as held in the case of Moni Shankar (supra) the impugned orders at Annexure A1 to A-3 are hereby quashed and set aside. The applicant is entitled restoration of his reduced pay to the pay drawn by him at the time of imposition of penalty and arrears thereof shall be payable to him. In addition, he is entitled to other consequential benefits, such as if his promotion was due, the same should also be considered as if no proceedings were pending at the relevant point of time. Suitable orders be passed in this regard and the arrears paid to the applicant within a period of four months from the date of communication of this order. O.A. is disposed of on the above terms. Under the circumstances, there shall be no orders as to costs.

(Dated, the 23RD July, 2009)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER