

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 270/2006

This the 26 day of April, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)
Hon'ble Sri S.P.Singh, Member (A),

Uma Shanker Bajpai aged about 61 years son of Banwari Lal Bajpai r/o E-3427, Rajajipuram, Lucknow (deceased represented through below noted legal heirs of deceased)

1/2. Smt. Kanti Bajpai aged about 53 years widow of Uma Shankar Bajpai E-3427, Rajajipuram, Lucknow.

1/3. Rajesh Kumar Bajpai aged about 33 years son of deceased Uma Shankar Bajpai r/o E-3427, Rajajipuram, Lucknow.

1/4. Kumar Suman Bajpai aged about 28 years unmarried daughter of deceased Uma Shankar Bajpai, E-3427, Rajajipuram, Lucknow.

Applicants

By Advocate: R.C. Saxena

Versus

1. Union of India through the Divisional Railway Manager, Central Railway, Jhansi.
2. Senior Divisional Mechanical Engineer, Central Railway, Jhansi.
3. Additional Divisional Railway Manager, Central Railway, Jhansi.
4. Chief Mechanical Engineer, North Central Railway, Allahabad.
5. Sri Rishi Raj Verma, Crew Controller, North Central Zone, Juhi, Kanpur.

Opposite Parties

By Advocate: Sri B.B.Tripathi

(Reserved on 9.4.2012)

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for quashing the punishment order dated 23.7.2004, appellate order dated 8.10.2004 and the revisional order dated 20.5.2005 (Annexure No. 1,2 and 3) and for directing the respondents to treat the applicant in continuous service upto 31.7.2005, the date of superannuation and pay arrears to the applicant.

The respondents may be further directed to make full payment of gratuity without any deduction.

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2. The case of late applicant (now in his place his family members have been substituted) is that he was appointed in 2000 as Office Superintendent -II under the Crew Controller, Central Railway, Juhi, Kanpur. His Crew Controller Sri Rishi Raj Verma , on account of personal reason, became annoyed with him and wrote a letter regarding preparation of certain passes and issuing them in illegal manner. In this regard, the letter dated 13.12.2000 was issued requiring him to submit his explanation within 7 days. The second allegation was in respect of issuing passes in excess to the number of passes admissible. The third alleged irregularity was that the applicant issued passes under his own signature without obtaining permission from respondent No.5.

3. In response to the above letter, the applicant, however, submitted his reply dated 29.12.2000 denying the allegations and also requesting that departmental enquiry may be held in which he would explain his position (Annexure 6). Thereafter, he was issued charge sheet dated 9.2.2001 served on 14.3.2001, annexing the report of respondent No.5. The applicant nominated Sri K.K.Bajpai, Guard, Kanpur as his defence Assistant in his disciplinary proceedings but his request was denied. Therefore, he filed O.A. No.874/2001 at CAT, Allahabad which was dismissed. The writ petition filed against his O.A. was also dismissed on 16.4.2002. Then, he filed SLP before the Hon'ble Apex Court which was also dismissed on 24.9.2002 with an observation that it is open to the petitioner to bring to the notice of the authorities, the notification dated 14.6.2002, constituting new Railway zones and seek for any fresh relief as is permissible in law in respect of his grievance. Thereafter, he again requested in writing several times for providing Sri K.K. Bajpai as Defence Assistant on the ground that after formation of new zone i.e. North Central Railway, Sri Bajpai is now working as Guard in North Central Railway where the applicant is also working and — the zone is

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coming into effect w.e.f. 1.4.2003 and bar under Rule 13 (a) of Railway Servants (Disciplinary and Appeal) Rules, 1968 stood removed. But his request was not allowed because the enquiry officer G.K. More, who was acting at the instance and in collusion with respondent No.5. On the other hand, the enquiry officer on his own accord allowed one Sri C.K. Chaturvedi, Passenger Guard, Jhansi to act as Defence Assistant of the applicant. Thereafter, he fixed certain dates in the enquiry but no enquiry was held on those dates i.e. 1.6.2002 and 26.10.2002. Then the enquiry fixed on 8.2.2003. Unfortunately, the applicant fell ill and reported sick and remained under the treatment of CMO, Jhansi and as such could not attend the enquiry on 8.2.2003. But he sent due information regarding his sickness. Thereafter, the enquiry officer never fixed any date for enquiry. Suddenly, after about 15 months, he was served with a copy of enquiry report dated 11.6.2004 along with a covering letter dated 21.6.2004. After going through the report, the applicant came to know that behind his back, statements of Sri Rishi Raj Verma, respondent No.5 and several other employees not mentioned in the enquiry report were recorded. He also obtained written statements of Rakesh Babu, Box Boy, Uma Kant, Assistant Driver, Ranjan Kumar, Diesel Assistant, Shiv Kumar Dubey, Assistant Driver, Devesh Srivastava, Assistant Driver and Sri Afzal Hussain, ex- Electric Fitter. The applicant was completely denied the opportunity of cross examination of those witnesses. He therefore, submitted his representation dated 9.7.2004 against the enquiry report (Annexure -24). Thereafter, respondent No. 2 passed the impugned punishment order dated 23.7.2004 without applying his mind. He also omitted to take into account the other statements of the employees who were not mentioned as witnesses in the charge sheet but were also illegally taken into consideration. Then he preferred appeal dated 19.8.2004 which was rejected on 8.10.2004. He then submitted a representation

dated 24.11.2004 which was also rejected on 25.5.2005. It has been pleaded that the enquiry has been conducted violating provisions of Article 311 (2) of the Constitution and the principle of natural justice. Lastly, it has been also pleaded that the penalty prescribed under the Rule 1968 is for compulsory retirement but order for less payment of gratuity is against the rules.

4. In the Counter Affidavit filed on behalf of respondents No.1 to 4, the allegations have been refuted saying that after service of the charge sheet, the applicant nominated Sri K.K. Bajpai, Guard, N.R. as defence assistant. He also filed one O.A. at Allahabad and writ petition before the Hon'ble High Court in this regard which were dismissed saying that Sri Bajpai is working in different Railway, therefore, he cannot be permitted as Defence Assistant. The Hon'ble Supreme Court also dismissed the SLP on 24.9.2002 giving liberty to the petitioner to bring to the notice of the Railway authorities the notification dated 14.6.2002 constituting new Railway zones and seeking any fresh relief permissible under law. The various applications of the applicant in respect of appointing Sri Bajpai as Defence Assistant were treated as null and void because it has already been accepted during the course of enquiry on 1.6.2002 while answering the question No. 2 and 3 that Sri C.K. Chaturvedi, Passenger Guard, Jhansi is his defence Assistant. Before North Central Railway, the new zone coming into force w.e.f. 1.4.2003, Sri Chaturvedi had already been nominated as his Defence Assistant. The enquiry officer Mr. More, O.S. (M) was in the grade of Rs. 6500-10,500/-, while the applicant was in O.S. Grade II of Rs. 5500-9000. Therefore, it cannot be said that both were in equal rank and as such Sri More could not have been appointed as Enquiry Officer. It has also been denied that Sri More was man of respondent No.5. The enquiry was conducted from 17.4.2001 to 11.6.2004 which clearly proved that it was not conducted in a haste. It has been admitted that



a notice dated 21.6.2004 was submitted to the applicant to submit his explanation in the light of the enquiry report within 15 days of the receipt. During the course of enquiry , the written statement of Sri Rakesh Babu, Box Boy , Sri Uma Kant,Assistant Driver, Sri Ranjan Kumar, Diesel Assistant, Sri Shiv Kumar Dubey, Assistant Driver, Sri Devesh Srivastava, Assistant Driver and Sri Afzal Hussain, ex-Electric Fitter have already been obtained on record since the allegations regarding privilege passes of the above noted employees are also mentioned in Annexure II of the charge memorandum dated 9.2.2001.

After considering the representation of the applicant, respondent No. 2 passed order dated 23.7.2004 containing descriptive details and reasons. Similarly, the appellate authority also passed a reasoned and speaking order on 8.10.2004. The revisionary authority after considering the revision petition, modified the punishment order from compulsory retirement with full pension and 2/3rd gratuity to the punishment of compulsory retirement with full pension and 4/5th of gratuity.

5. A Rejoinder Affidavit has been filed against the above reiterating the pleadings contained in the O.A.

6. On behalf of the official respondents, a Supple. CA. has also been filed refuting the pleadings of O.A. and adverse contentions made in the R.A. It has been further submitted that a sealed bundle containing exhausted privilege passes/PTOs and other used materials were lost by Sri U.S. Bajpai in respect of which an FIR was lodged by Crew Controller, respondent No.5 on 21.9.2009 in Gonvindpuri Post Station , District- Kanpur Nagar against the applicant. The said bundle was handed over to the applicant on 19.9.2000 in presence of Sri Deepak Kumar Rajvanshi, Sri Hari Narain Trivedi , Assistant driver and Sri Brij Mohan , Box Boy.

7. Against the above, a Supple. R.A. has been filed.

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8. A Supple.C.A. on behalf of the official respondents has also been filed reiterating the same contentions.

9. We have heard the rival submissions and perused the material on record.

10. The enquiry report dated 11.6.2004 has been brought on record as Annexure No. 23. In the initial 3-1/2 pages, the details of charges and brief history of the case have been mentioned. The remaining part of the enquiry report is being extracted hereinbelow:-

“SF-7. No. JHS/M/183/CW/DAR/1 dated 17.4.2001 was issued and all concerned were advised accordingly. The date of enquiry was fixed on 18.4.2001. Sri S.K. Misra, Retired OS-1 was DE’s ARE. On 1.5.2001 was given to enquire into the case. DE changed his ARE from Sri Mishra to Sri K.K. Bajpai, Guard of GMC, Northern Railway but as per letter at page 62 nomination of Sri K.K. Bajpai was not accepted by the administration since the same was not within the rules. Against this act, Sri U.S. Bajpai (DE) went to the Court of Law (CAT ALD). Court of Law (CAT Ald) gave their decision in favour of the administration. DE remained under sick list from 5.6.2001 to 1.12.2001 and reported for duty on 1.12.2001. Accordingly, DE was asked to give another name of ARE vide letter at page 88 and the date of enquiry was fixed on 2.1.2002.

E.O. was changed as per letter at page 116 and enquiry was fixed on 27.2.2002. DE took leave from 28.12.2001 to 13.1.2002 and further reported sick and got fit on 16.1.2002. In the mean time DE was pressing hard to accept the name of Guard, Sri Bajpai as ARE (pages 125 and 126). Once again the date of enquiry was fixed on 22.5.2002 and 1.6.2002. CC JUI has informed to EO vide letter dated 4.5.2002 (page 184) that Sri Bajpai (DE) is under Sick list with ADMO JUI who has

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sent him for Spl. Medical to JHS from where he remained under Sick list and on his (DE) resumption EO's letter for enquiry will be served.

On 1.6.2002, Sri U.S. Bajpai attended the enquiry and gave his written consent of Sri C.K.Chaturvedi, Civil Secretary, cRMS/Pass, Guard, JHS to act as his ARE. DE's ARE Sri Chaturvedi desired that a suitable date of enquiry be fixed and desired some documents to be given to him in regard to this enquiry and the date of enquiry was fixed on 20.9.2002 and informed the decision in favour of the Administration. The enquiry was once again fixed on 18.7.2002 but DE reported sick as per SSE (C&W/Admkn.) JHS's letter dated 23.7.2002.

Once again the date of enquiry was fixed on 2.11.2002 and 3.11.2002 statements were recorded in the presence of ARE but DE, Sri Bajpai did not attended the enquiry though he (DE) was relieved for enquiry with Special Duty Pass ex- Jhansi to Kanpur and back. On 8.11.2002, Sri Bajpai (DE) submitted Hon'ble Supreme Court of India's dismissed Special Leave Petition and the Court's orders were honoured and DE was advised vide page 201. Again date of enquiry was fixed on 8.2.2003 but Sri Bajpai did not attend the same. Only his ARE, Sri C.K. Chaturvedi and Depot Incharge (CC JUI) Sri R.R.Verma was present. As such, the enquiry was put to an end since the party was deliberately intending to get the enquiry proceedings prolonged. Further, records as mentioned in the proceedings of enquiry was also cross checked and found that the enquiry was upto the mark.

3. Witnesses examined:-

Sri R.R. Verma, CC JUI (CNB) was examined very carefully on 18.7.2002, 26.10.2002 and 2.11.2002 in presence of the ARE of DE, the statements recorded vide Q.No. 1 to 08. All

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the answers given by the witness is against the DE which clearly proves that DE, Sri Bajpai has issued the passes in an unauthorized and in an illegal manner without obtaining the prior permission of the depot incharge and also without the signatures of the depot incharge on the passes issued by him (DE). As such, he (DE) is responsible for the charges as laid down in the SF-5 No. JHS/M/183/CW/DAR-1 dated 9.2.2001.

The written statement of Sri Uma Kant, Assistant Driver JUI working under CC JUI duly vetted by ARE of DE and CC JUI has clearly stated that he has availed passes as per pass Rules only.

The written statement of Sri Rakesh Babu, Box Boy, JUI working under CC JUI duly vetted by ARE of DE and CC, JUI has clearly stated that he has availed only three passes as per rule in the calendar year but the fourth pass issued has not been received by him during that year.

The written statement of Sri Ranjan Kumar Jaiswal, DSL/ Asst. T.No. 316 JUI working under CC, JUI duly vetted by ARE of DE and CCJUI has clearly stated that he has only availed one set of pass in a year, for which he is entitled and for the 2nd pass he has not given his application and also did not receive the same.

4. Reasons and Remarks:-

As per charges in Annexure II of SF-5 No. JHS/M/.183/CW/DAR/I dated 9.2.2001. As per statements recorded on 1.6.2002, in accordance to answer to question No. 02, DE has confessed that Sri C.K. Chaturvedi Pass. Guard JHS has been nominated to act as his ARE. Sri C.K. Chaturvedi vide answer to Q.No. 01 has agreed to act as ARE to Sri U.S. Bajpai.

Witness/CC , JUI Sri RR. Verma only attended the enquiry held on 18.7.2002, ARE, Sri Chaturvedi and DE, Sri Bajpai

did not attend the same in accordance to answer to Q.No. 3 and 4 documents related to enquiry i.e. counterfoils have been deposited by CC.JUI which are enclosed herewith.

On 26.10.2002, according to answer to Q.No. 1, DE Sri Bajpai has stated that without his ARE, he is unable to reply and attend. Vide answer to Q.No. 06, DE stated that the case is in the Court of Law and enquiry should be kept pending till such time the decision is given by the Hon'ble Supreme Court.

Witness/CC JUI, Sri RR. Verma vide answer to Q.No. 03 has stated that the personnel file of employees and copies of letter issued by DRM (P) for passes to be issued to retired employees is in CC's office. JUI and can be produced.

On 2.11.2002, enquiry was conducted but Sri U.S. Bajpai (DE) failed to attend the enquiry. As such, witness /CC JUI , Sri R.R. Verma was examined. Vide his answer to Q.No. 1, it is stated that the signatures on pass file does not tally with that of counterfoils . Vide answer to Q.No. 2, DE, Sri Bajpai has issued complimentary/ privilege passes without obtaining Depot Incharge prior orders/ instructions. Vide answer to Q.No. 04,DE Sri Bajpai has issued fraudulent passes and also did not follow the pas rules. Vide answer to Q.No. 5, Sri Bajpai did not obtain prior order of Depot Incharge on the application format also did not took any signatures of Depot Incharge on the privilege /complimentary passes issued by him (DE) to employees/ retired employees. Vide answer to Q.No.06, witness stated that he was mostly on duty and only in few cases he was on line. Vide answer to Q.No. 7, witness mentioned that in presence of Depot Incharge no body has right to pass order for issuing privilege /complimentary passes to employees/retired employees and to sign the same. Vide answer to Q.No. 08, it is stated that employees working under

CC, JUI S/Sri Uma Kant, Rakesh Babu and Ranjan Jaiswal has given written consent that they are not at fault and also innocent for this fraudulent use.

Further, it is added that a Joint proceedings of enquiry was also conducted in this case. The written statements of DSL Assts. Of JUI, S/Sri Anand Prakash Tripathi, Shiv Kumar Dubey, Divesh Srivastava, Uma Kant, Sathya Narayan, V.J. Pal, Ranjan Kumar Jaiswal, retired Electrical Fitter, Sri Afjal Hassan, H/ Khalasi (C&W) Sri Ram Krishan Srivastava and Goods Driver Sri Ram Kumar Dwivedi be perused. The signatures on written statement dated 2.11.2002 of S/Sri Uma Kant, Asst. Driver, Ranjan Kumar Jaiswal and Rakesh Babu when compared with that of counterfoils 108/109, 88/89, 98/99 does not tally with each other which clearly proves that false signatures of the employees have been made and issued to unauthorized persons for fraudulent use.

5. Findings:-

As per the statements of Prosecution witness/CC JUI, Sri R.R. Verma, the statement of the DE and all relevant papers and proceedings of enquiry papers. It is concluded that DE, Sri U.S. Bajpai OS II (M) JUI now at JHS has used the power of a Depot Incharge which are illegal and beyond his (DE) powers and also did not follow the pass rules which have been proved, vide answer to Q.No. 4 and 5 dated 2.11.2002. The signatures on written statement dated 2.11.2002 as regards privilege passes of S/Sri Uma Kant, Asst. Driver, Ranjan Kumar Jaiswal and Rakesh babu when compared with that of counterfoils 108/109, 88/89, 98/99 does not tally with each other which clearly proves that false signatures of the employees have been made and issued to unauthorized persons for fraudulent use. As regards, issue of complimentary passes

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to retired employees statement recorded on 26.10.2002 of witness/CC/ JUI, Sri R.R. Verma answer to Q.No. 03 and also going through the proceedings of enquiry report and other documents proves that he (DE) has issued complimentary passes in an unauthorized manner without obtaining the prior permission of Depot Incharge and did not follow the pass rules. As such, the charges as laid down in the SF-5 No. JHS/M/183/CW/ DAR/I dated 9.2.2001 are proved. Thus, this type of irregular and irresponsible working of DE, Sri U.S. Bajpai OS-II (M) JUI now at JHS has caused a heavy loss to Railway Administration.”

11. As said above, the enquiry report was served upon the applicant who submitted his representation on 9.7.2004 which is as under:-

“श्रीमान के उपरोक्त सन्दर्भित पत्र के सम्बन्ध में विनम्र निवेदन है कि उक्त पत्र के साथ सलंगन जॉच अधिकारी की सम्पूर्ण रिपोर्ट एवं निष्कर्ष पूरी तरह झूठ का पुलिंदा है तथा दुर्भावनावश जानबूझ कर बनाया गया है। यह रिपोर्ट निष्पक्ष तो है ही नहीं। इसलिए प्रार्थी का कर्तव्य स्वीकार नहीं है तथा प्रार्थी इसका समुचित विरोध करता है।

प्रार्थी को अपने बचाव का कोई अवसर ही नहीं दिया गया प्रार्थी जॉच हेतु बार-२ लिख-२ कर निवेदना करता रहा, जिसका कोई उत्तर श्रीमान् के द्वारा प्रार्थी को नहीं मिला। जांच कार्यवाही समाप्त करने व एक पक्षीय रिपोर्ट बनाये जाने की भी सूचना प्रार्थी को नहीं दी गयी। प्रार्थी को अपनी मर्जी का बचाव रखने का अधिकार भी नहीं दिया गया जिनकी श्री सी.के. चतुर्वेदी, गार्ड, झोसी को बचाव सहायक के तौर पर उल्लेख है इनके लिए प्रार्थी ने कभी लिखकर नहीं दिया।

सम्पूर्ण प्रकरण पर विचार करने से यह प्रमाणित होता है कि वास्तविक दोषी को बचाने के लिए प्रार्थी की बलि का बकरा बनाया गया तथा जॉच कार्यवाही आदि सभी कुछ पूर्व नियोजित नाटक मात्र था।

अतः श्रीमान जी से विनम्र अनुरोध है कि कृपया सम्पूर्ण प्रकरण की डी०ए०आर० नियमों के अन्तर्गत पुनः निष्पक्ष जॉच करानें व प्रार्थी को अपनी निर्दोषिता सिद्ध करने का पूर्ण अवसर देनें की कृपा करें। क्योंकि प्रार्थी वास्तव में निर्दोष है प्रार्थी श्रीमान् जी की कृपा कर सदा अभारी रहेगा।”

12. The disciplinary authority thereafter, passed the following punishment order:-

“1. I have carefully considered the enquiry report and the findings submitted by the enquiry officer appointed to enquire in the charges framed against you vide memorandum No. SF 5 No. JHS/M/183/CW/DAR/IO dated 9.2.2001 and your representation dated 9.7.2004 in reply to enquiry report sent to you vide letter of even number dated 21.6.2004. I hold you

guilty of the articles(s) or the charges/imputation of the conduct of his behaviour, viz., as shown in the charge memorandum dated 9.2.2001 for the reasons stated in the attached note.

2. I have decided to impose upon you the penalty of compulsory retirement from service. You are, therefore, compulsorily retired from service with immediate effect.

3. Under Rules (18) and (19) of the RS (D&A) Rules, 1968, an appeal against these order lies to ADRM, Jhansi.

4. The appeal shall be preferred in your own name and under your own signature and presented within 45 days from the date you receive the orders to the appellate authority sending a copy of the same to the undersigned.

5. The appeal shall be complete in itself and shall contain all material statements and arguments on which you rely and shall not contain any disrespectful or improper language.

6. Please acknowledge receipt."

Encls:-(DA speaking order in 03 pages)

“आरोपित कर्मचारी श्री उमा शंकर वाजपेई, कार्यालय अधीक्षक द्वितीय, जूही (कानपुर) में क्यू नियंत्रक कार्यालय में कार्यालय अधीक्षक द्वितीय के पद पर पदस्थ थे (अब कार्यालय अधीक्षक द्वितीय आधीन एस.एस.ई. कै.वै. प्रशा., झॉसी के अधीन है)। उसी दौरान श्री वाजपेई के द्वारा कार्यरत कर्मचारियों एवं सेवा निवृत्त कर्मचारियों का अवैध तरीके से सुविधा पास (स्वयं के हस्ताक्षर से) जारी किये, जो इनके अधिकार क्षेत्र में नहीं है एवं मानर्थ पास जारी करने की स्वीकृति श्री वाजपेई ने डिपो इंजार्च से नहीं ली। इस प्रकार जो पास कर्मचारियों को जारी किये गये हैं वह उनको नहीं दिये गये व अन्य उपयोग में लाकर रेल प्रशासन को आर्थिक क्षति पहुँचाई।

आरोपित कर्मचारी श्री वाजपेई ने अपने पत्र दिनांक ०६.०७.२००४ में कहा है कि उन्होंने श्री सी.के.चतुर्वेदी, गार्ड, झॉसी को बतौर बचाव सलाहकार के रूप में नोमीनेट नहीं किया है जबकि इसी संदर्भ में श्री वाजपेई ने दिनांक ०९.०६.२००२ की जॉच अधिकारी द्वारा लिये गये बयान के प्रश्न संख्या २ एवं ३ के उत्तर में कहा है कि श्री सी.के. चतुर्वेदी, गार्ड, झॉसी मेरे बचाव सलाहकार हैं एवं श्री चतुर्वेदी ने बचाव सलाहकार बनने की सहमति भी दिनांक ०९.०६.२००२ को प्रस्तुत की है। जॉच के दौरान जॉच अधिकारी द्वारा आरोपित कर्मचारी के बयान लिये गये जिस पर स्पष्ट रूप से आरोपित कर्मचारी, जॉच अधिकारी एवं बचाव सलाहकार श्री सी.के. चतुर्वेदी के हस्ताक्षर हैं जिससे साफ स्पष्ट है कि श्री वाजपेई द्वारा श्री सी.के. चतुर्वेदी, गार्ड, झॉसी को अपना बचाव सलाहकार नियुक्त करना मजूर किया है और आगे की तिथियों में भी श्री वाजपेई एवं बचाव सलाहकार श्री सी.के. चतुर्वेदी ने अपने हस्ताक्षर बयानों पर किये और किसी प्रकार की कोई आपत्ति नहीं उठाई किन्तु अब, जब जॉच पूर्ण होने के बाद आपत्ति उठाने का कोई औचित्य नहीं है।

जॉच प्रक्रिया के शुरुआती दौर में श्री वाजपेई द्वारा केस को विलम्बित करने की नीति अपनाई। कैट इलाहाबाद में दिनांक २५.०७.२००९ को श्री वाजपेई द्वारा अपने केस में Foreign Railway का बचाव सलाहकार श्री के.के० वाजपेई, गार्ड उत्तर रेलवे को नोमीनेट करने के लिये याचिका दायर की गई। माननीय, कैट इलाहाबाद ने अपने दिनांक ३१.०७.२००९ के निर्णय में स्पष्ट आदेश दिया है कि इस केस में Foreign Railway का कर्मचारी बतौर बचाव सलाहकार कार्य नहीं कर

AB

सकता एवं श्री वाजपेई अपने बचाव सलाहकार के लिये किसी दूसरे कर्मचारी का नामांकन Fortnight Time में करें जैसा की आदेश दिनांक ०३.०५.२००९ में है। Fortnight समय व्यतीत हो जाने के बाद भी श्री वाजपेई द्वारा कोई भी दूसरे बचाव सलाहकार का नाम प्रस्तावित नहीं किया गया इस कार्यालय के दिनांक ०३.०५.२००९, १६.१२.२००९, २१.१२.२००९ एवं २६.१२.२००९ के पत्र के माध्यम से कर्मचारी को सूचित किया गया है कि वह अनुशासन और अपील नियम १६६८ के नियम १३ (A,B) के अनुसार अपना बचाव सलाहकार, जो समान रेलवे से हो उसका नाम प्रस्तावित करें। परन्तु श्री वाजपेई ने पर्याप्त समय व्यतीत ही जाने के बाद भी कोई अन्य नाम प्रस्तावित नहीं किया।

पुनः दिनांक १६.०४.२००२ को श्री वाजपेई द्वारा उच्च न्यायालय इलाहाबाद में अपना बचाव सलाहकार श्री के.के. वाजपेई, गार्ड, उत्तर रेलवे को नोमीनेट करने के लिये चाचिका दायर की गई परन्तु माननीय उच्च न्यायालय, इलाहाबाद द्वारा उक्त याचिका दिनांक २२.०४.२००२ को खारिज कर दी गई और इसी आदेश में समान रेलवे से अपना बचाव सलाहकार नियुक्त करने का नियम दर्शाया गया है जो इस प्रकार है।

"The Railway servant may present his case with the assistance of any other Railway servant (including a railway servant on leave preparatory to retirement) employed in the same railway administration on which he is working."

तत्पश्चात जॉच अधिकारी द्वारा दिनांक २२.०५.२००२ एवं ०९.०६.२००२ जॉच की तारीख नियत की गई और श्री वाजपेई अपने बचाव सलाहकार श्री सी.के. चतुर्वेदी, गार्ड, झोसी मध्य रेल के साथ जॉच में शामिल हुए। जॉच अधिकारी द्वारा श्री वाजपेई को अपने सलाहकार के साथ दिनांक १८.०७.२००२, २६.९०.२००२, २७.९०.२००२, २.९९.२००२, ०३.९९.२००२, ०८.०२.२००३ को जॉच की तारीख नियत की गई कि वह अपने, श्री वाजपेई के ऊपर लगाये गये आरोपों के बारे में अपना पक्ष रखें। परन्तु श्री वाजपेई अपने पक्ष में अपने ए.आर.ई. के साथ पर्याप्त समय मिलने के बावजूद भी कोई ठोस सबूत प्रस्तुत नहीं कर सके। इस प्रकरण के गवाह श्री ऋषिराज वर्मा, क्रयु नियंत्रक जूही ने भी अपने स्टेटमेंट स्पष्ट किया है कि श्री वाजपेई द्वारा बगैर उनकी (ऋषिराज वर्मा, क्रयु नियंत्रक जूही) की अनुमति के कर्मचारियों एवं सेवानिवृत्त कर्मचारियों को अवैध रूप से व जानबूझ कर सुविधा पास निर्गत किये गये और कर्मचारियों को एक पास मिलने की जगह दो और तीन पास जारी किये गये। कर्मचारियों के हस्ताक्षर Counter Foil पर मौजूद हस्ताक्षर से मिलान नहीं करते हैं। इस प्रकार के अवैध मानार्थ पास निर्गत करने, जिसके लिये कर्मचारी पात्र ही नहीं हैं, से रेल प्रशासन को राजस्व की हानि हुई जिसके लिए श्री यू.एस. वाजपेई, कार्यालय अधीक्षक द्वितीय पूर्णरूप से जिम्मेदार है।

इसी क्रम में श्री राकेश बाबू, बाक्स बॉय, जूही, श्री उमाकान्त, सहायक चालक, जूही, श्री रंजन कुमार, डीजल सहायक, जूही टि. नं. ३१६, श्री शिवकुमार दूबे, सहायक चालक, जूही, श्री देवेश श्रीवास्तव, सहायक चालक, जूही श्री अफजाल हसन, एक्स विद्युत फिटर, जूही एवं अन्य कई कर्मचारियों ने अपने लिखित स्टेटमेंट में दिया है कि उन्होंने सिर्फ वही सुविधा पास लिये हैं जिसके लिये वह पात्र थे। इसके अतिरिक्त अन्य पास जो उनके नाम से जारी किये गये हैं वह ना तो उन्होंने लिये हैं और ना ही उसके लिये उन्होंने आवेदन किया। उपरोक्त कर्मचारियों एवं अन्य कई कर्मचारियों को जो सुविधा पास जारी किये गये हैं वह अवैध तरीके से व बिना डिपो इंजार्च की अनुमति के श्री वाजपेई द्वारा जारी किये गये। उपरोक्त कर्मचारियों के हस्ताक्षर Counter Foil पर मौजूद हस्ताक्षर से मिलान नहीं करते हैं।

चूंकि श्री वाजपेई स्वयं एक जिम्मेदार पद कार्यालय अधीक्षक द्वितीय पर जूही में पदस्थ थे इनके इस तरह के कृत्य से रेल प्रशासन को बड़ी आर्थिक क्षति हुई। श्री वाजपेई ने एक जिम्मेदार पद पर कार्यरत रहते हुये सत्यनिष्ठा से कार्य नहीं किया और रेल सेवा (आचरण) नियम १६६६ के उपनियम ३(i) (ii) (iii) का उल्लंघन किया।

जॉच अधिकारी की रिपोर्ट एवं गवाह के बयानों से यह प्रमाणित होता है कि श्री वाजपेई के ऊपर लगाये गये गंभीर आरोप पूरी तरह सिद्ध होते हैं और वह पूरी तरह से इस केस में जिम्मेदार है।

मैं इस प्रकरण में श्री वाजपेई को पूर्णरूप से जिम्मेदार मानते हुये उन्हें उनके वर्तमान पद कार्यालय अधीक्षक द्वितीय से 'अनिवार्य सेवा निवृत्त' (Compulsorily retired with full pension and 2/3rd gratuity) के देय लाभ, का दण्ड अधिरोपित करता हूँ जो तत्काल प्रभाव से लागू माना जायेगा।"

13. An appeal was filed against the above order. The appellate authority passed the following order on 8.10.2004:-

“Speaking Order-Case No. JHS/M-183/CW/DAR/I

I have gone through the appeal of Sri U.S. Bajpayee, report of E.O. Orders passed by D.A. and has also heard Sri U.S. Bajpayee, in person. I had also seen various orders passed by the Court and after perusing that following speaking order is being given.

In this case, it should be seen that if all the parameters of natural justice has been met and if charges levied in Charge sheet has been proved.

One important issue was about defence council in this case. During enquiry, Sri Bajpayee has admitted on 1.6.2002 that Sri C.K. Chaturvedi is my defence councilor. In statement, CE, Sri Chaturvedi as Defence counselor and EO have signed jointly. Therefore, there was no denial of opportunity to CE. However, at appeal stage again, he was further given a chance to present his case before the appellate authority and submit new evidence or records in support of his case. This order is being passed after listening to him and considering all the facts he has highlighted. Thus remedy, which is available to him in law and as part of natural justice has been provided to him.

CE has been charged with allegation that he has wrongly issued passes to number of employees in unauthorized manner. CE has given the defence that he was authorized by CC to issue passes in his absence and he has produced that letter as a part of his defence. However, on 13.1.2000 but CC was on duty. Similarly, on 14.2.99, pass was issued to Sri Sanjeev Kumar and again CC was present.

There was another charge that passes, which were issued to certain employees were not received by them giving possibility that they might have been misused. CE has not

rebuted statement of employees nor has given any specific defence on this issue, which was the core of charges. Employees have given statement in support of charges. There is nothing to suspect any bias or malice in the declaration given by employees. Therefore, after considering all the factors, it is decided to uphold the punishment given by DA."

14. A revision was also filed in this case. The order passed by the revisionary authority is as under:-

"Sub: Revision under Rule 25 of the RS (D&A) Rules, 1968.

Ref: Your revision appeal dated 24.11.2004 against punishment of compulsory retirement with full pension and 2/3rd gratuity imposed by Sr. DME/JHS and on appeal, upheld by ADRM/JHS, appellate authority.

The charges against the employee are that while functioning as OS -II (Mech)/Juhi/Kanpur, he committed irregularities in issue of complimentary and privilege passes including issuing of excess passes, issuing passes in the names of employees who did not receive them etc.

The employee was issued SF-5 (Major Penalty memorandum) by Sr. DME/JHS and were later imposed the punishment of 'compulsory retirement from service with full pension and 2/3rd gratuity' by Sr. DME/JHS. The employee made an appeal to the appellate authority, viz ADRM/JHS who has rejected the appeal.

The employee was heard at length in the personal hearing on 20.4.2005. The employee also submitted a representation during the hearing.

I have carefully considered the revision petition made by the employee and also the papers in the case, and further considered the points made by him during the personal hearing,

AS

and in the representation submitted by him during the personal hearing.

The main points brought out by the employee are that he was not allowed the ARE of his choice viz. Sri K.K. Bajpai and that charges framed against him are without substance.

On the issue of ARE, I find that the matter was gone through by the Hon'ble CAT, ALD Bench and Hon'ble High Court, ALD and Hon'ble Supreme Court but no relief could be obtained by the employee by way of direction for having Sri K.K. Bajpai as his ARE. The employee also has accepted Sri C.K. Chaturvedi as ARE during the enquiry on 1.6.2002. Therefore, the submission of the employee that he was unjustly denied the assistance of Sri K.K. Bajpai as ARE is not acceptable.

As to the charges, it is seen that the same have been proved during the enquiry. The issuing of excess no. of passes, issuing passes in the name of employees who have not received them, etc. are serious charges and speak poorly of the employee.

Considering all aspects of the case, I find that the employee has been correctly charged and has been justly punished. However, keeping in view your generally clean record of service in the past, the punishment is modified to "compulsory retirement with full pension and 4/5th of Gratuity".

15. The learned counsel for the applicant placed reliance on the following case laws:-

- i) **Asha Ram Verma and others Vs. State of U.P. and others 2003 (21) LCD 493-** In departmental proceedings, in case oral evidence is relied upon- opportunity to cross examination should be given.
- ii) **Radhey Kant Khare Vs. U.P. Cooperative Sugar Factories Federation Ltd. 2003 (21) LCD 610-** Ordinarily, the statement of

ABP

witnesses should be recorded in presence of the employee unless there are compelling reasons to act otherwise

iii) **Govind Lal Srivastava Vs. State of U.P. 2005 (23) LCD**

495- Charges have to be proved by the department itself from the material on record.

iv) **Samiullah Khan Vs. U.P. State Road Transport Corp. 2005**

(23) LCD 1435.- The enquiry would vitiate on the ground of denial of opportunity to cross examine.

v) **S.N. Pandey Vs. State of U.P. 1999(17) LCD 33** – Unless there is a specific finding that delinquent officer has been guilty of a specific misconduct, no punishment can be awarded.

vi) **Roop Singh Negi Vs. Punjab National Bank and others**

(2009) 1 Supreme Court cases (L&S) 398- Documentary evidence – mere production of documents is not enough- Contents of documentary evidence has to be proved by examining witnesses. In departmental enquiry, it is a duty to record reasons because the orders of disciplinary authority and appellate authority entail civil consequences.

16. There cannot be any dispute in respect of the prepositions of law which have been laid down in the above cases. We would be considering the merit of this O.A. in the back drop of the above case laws relied upon by the applicant.

17. Firstly, it was submitted that the ranks of the enquiry officer and the D.E. (Delinquent employee) i.e. the applicant were the same on account of which the enquiry was against law. This pleading has been specifically refuted by the respondents saying that the enquiry officer Sri More was O.S. (M) in the grade of Rs. 6500-10,500/-, while the applicant was in O.S. Grade II of Rs. 5500-9000/-. As against this, nothing otherwise could be shown from the side of the applicant, therefore, the above pleading of the applicant is not substantiated.

AR

18. Secondly, it was pleaded that the enquiry officer was the man of respondent No.5. But we do not find any material on record to prove this contention. On the other hand, it comes out from record that the enquiry was not completed in a haste. It rather took about three long years from 17.4.2001 to 11.6.2004 to complete. It also appears that from the very beginning, the D.E. was probably trying to delay the enquiry. Initially he filed O.A. at CAT, Allahabad in July, 2001 in respect of having a defence assistant of his choice (namely Sri K.K. Bajpai, Guard, Northern Railway (Foreign Railway), though this request was against the relevant rules. Therefore, the O.A. was dismissed within a week. Then a writ petition was filed which too was dismissed on 22.4.2002, in which the above rule was mentioned. Then SLP was filed before the Hon'ble Supreme Court which was also dismissed on 24.9.2002. We would make an elaborate discussion on this point in the next paragraph. As far as the above point is concerned, it is decided against the applicant.

19. Thirdly, it was submitted that reasonable opportunity was not given to the D.E.. As said above, the applicant was asking for appointment of Sri K.K.Bajpai, Guard, Northern Railway as his Defence Assistant who was not in the same Railway administration in which the applicant was working. This request being against the above rules, was not accepted. As already mentioned the applicant then filed an O.A.before CAT, Allahabad which was dismissed in a week's time. The Tribunal however directed the applicant to nominate within a fortnight some other official. But the applicant did not propose any other name. Not only that, the perusal of the record shows that as many as four letters (dated 3.5.2001, 19.12.2001, 21.12.2001 and 26.12.2001) were sent to him calling for giving any name of defence assistant in accordance with rule 13(AB) of Disciplinary and Appeal Rules, 1968. But even then he did not give any name. Instead he filed wirt petition before the Hon'ble High Court

on 16.4.2002, which was also summarily dismissed within a week on 22.4.2002, keeping in view the above relevant rule under which an Assistant of Foreign Railway cannot be appointed as defence assistant. Thereafter, the enquiry officer fixed 22.5.2002 and 1.6.2002. The DE appeared along with his defence assistant namely C.K.Chaturvedi, Passenger Guard of the same Railway. The enquiry officer took his statement and in reply to question No. 2 and 3, the DE accepted that Sri C.K.Chaturvedi, Guard, Jhansi, was his defence Assistant and Sri Chaturvedi also submitted his consent on the same date i.e. on 1.6.2002. During the enquiry, below this statement are the signatures of delinquent employee (DE), Enquiry Officer and the above Defence Assistant Sri Chaturvedi. From this, it becomes clear that the delinquent employee had accepted the appointment of Sri C.K.Chaturvedi, Passenger Guard, Jhansi as his defence assistant and his defence assistant Sri Chaturvedi had signed below the statements and did not raise any objection, as mentioned in the order of the disciplinary authority which has been extracted hereinbefore in this judgment. Though, it appears that in due course of time, some new Railway zones were created. But even then the Hon'ble Supreme Court dismissed the SLP on 24.9.2002, giving liberty to the petitioner to bring to the notice of the Railway authorities regarding notification and seek fresh relief permissible under the law. But it appears that subsequent applications were treated as meaning less because as said above, DE had already accepted in so many words in writing Sri C.K.Chaturvedi, Passenger Guard, Jhansi to be his defence assistant on 1.6.2002 while new zones took effect from 1.4.2003. That is why he did not raise any objection in this regard till completion of enquiry. After completion of enquiry, the DE in his letter dated 9.7.2004 raised this point that he has not nominated Sri C.K. Chaturvedi, Passenger Guard as defence Assistant. But this contention is against record as already discussed above. Moreover,

there is nothing on record at all to show as to what prejudice was caused to the applicant in this regard. The Central Administrative Tribunal ,Allahabad , the Hon'ble High Court and even Hon'ble Apex Court also did not find any merit in this point. Therefore, this point is also decided against the applicant.

20. Fourthly it was submitted that the enquiry was conducted ex parte and the statements recorded behind his back, were taken into consideration. Enquiry report dated 11.6.2004 has been brought on record as Annexure No. 23 and the relevant part has been extracted in para 10 of this judgment. Its perusal shows that initially, the delinquent employee (DE) had nominated one Sri S.K.Mishra, retired OS -I as his defence Assistant . But on 1.5.2001, he requested for nomination of above Sri K.K. Bajpai as his Defence Assistant in place of Sri S.K. Mishra. But the administration refused to nominate Sri Bajpai because the same was not within the rules. Then the DE reported sick from 5.6.2001 to 01.12.2001 i.e. for about six months. He was asked to give another name of Defense Assistant vide letter at page 88 and the date of enquiry was fixed on 2.1.2002. Then the enquiry officer was changed and as per letter at page 116, enquiry was fixed on 27.2.2002. Once again the date of enquiry was fixed on 22.5.2002 and 1.6.2002. On 1.6.2002, the DE attended the enquiry and gave his written consent for Sri C.K. Chaturvedi to act as his Defense Assistant. Sri Chaturvedi desired a suitable date of enquiry and also demanded some documents. The enquiry was then fixed on 20.9.2002 and then on 2.11.2002 and 3.11.2002, statement was recorded in presence of Defence Assistant but the DE did not attend though he was relieved for enquiry with special duty pass from Jhansi to Kanpur and back. On 8.11.2002, the DE submitted the dismissal order of the Supreme Court of Special Leave Petition. Then date of enquiry was fixed on 8.2.2003 but the DE did not attend. However, his defence assistant Sri Chaturvedi was present. Thereafter, the enquiry was

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closed. Earlier, the statement of sole witness Sri R.R. Verma , mentioned in the charge sheet was recorded on 18.7.2002 , 26.10.2002 and 2.11.2002 in presence of the above Defense Assistant. Thus, the DE participated in the enquiry either himself or through his Defense Assistant and had every knowledge of the dates and proceedings of the enquiry. The contention of ex-parte proceedings appears to be wrong and against record. It was also said that some written statements were also taken into consideration. The perusal of the enquiry report shows that during enquiry , written statements of some Railway officials were on record which were taken into consideration read with the detailed oral evidence of Sri R.R. Verma, consisting of eight (8) significant questions as specifically mentioned in the enquiry report and on that basis, the findings was recorded. Moreover, no such objection was ever raised earlier. It is also settled law that sufficiency or adequacy of evidence cannot be looked into by a court or Tribunal . It is only in the case of no evidence where a court or Tribunal can interfere. The case in hand is not a case of no evidence. It is also relevant to note that at appeal stage , again he was further given a chance to present his case before the appellate authority and submit new evidence ,if any on record in support of his case as mentioned in the appellate order. Therefore, the above points also appears to be totally baseless.

21. As laid down by the Hon'ble Supreme Court in the case of **Bank of India Vs. T. Jagram, AIR 2007 SC page 2793**, the scope of judicial review is very limited in such matters. We can only look into decision making process and not merit of the decision. In the present case, we do not find any flaw or lapse in the decision making process, either by the Disciplinary Authority or by the Appellate Authority or by the Revisionary Authority. All the above three authorities have passed detailed speaking and reasoned orders. Similarly, in the case of **Union of India Vs. Upendra Singh (1994) 3 SCC page**

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357, it was laid down that a Tribunal cannot take over the function of disciplinary authority. The court or Tribunal has no jurisdiction to look into the truth of charge or into correctness of the findings by enquiry officer, disciplinary authority or appellate authority. Most significant is the fact that in the present case, applicant could not prove any prejudice caused to him. In the absence of that, no interference can be made particularly when we have seen that all the procedural provisions laid down under the Rules have been duly followed at all stage and adequate opportunity was given to the D.E. Even violation of any or every procedural provision cannot automatically vitiate the enquiry or orders passed, if no prejudice is established to have resulted therefrom as laid down in the oft quoted case of **State Bank of Patiala and others Vs. S.K.Sharma 1996 (2) SLR page 631.** In the case of **Union of India and others Vs. Alok Kumar (2010) 5 SCC page 349**, also it has been laid down that merely apprehended prejudice is not sufficient. There is need to show de-facto prejudice for interference in the departmental enquiries.

22. Before parting with the case, the quantum of punishment is also required to be discussed in the light of the submissions made on behalf of the applicant. As already noted, it was found in the enquiry that DE did not follow pass rules and issued few complimentary passes to retired employee without obtaining the prior permission of Depot In-charge. Though, it is mentioned in the charge sheet that he caused heavy loss to the Railway Administration but that amount could not be quantified. Ultimately, the DA punished him with compulsory retirement with full pension and 2/3rd gratuity. However, the revisional authority, after considering his clean record of service in the past, modified the punishment to compulsory retirement with full pension and 4/5th of gratuity. During course of pendency of this OA, the DE unfortunately died but his legal representatives i.e. widow, one son and one un-married daughter have got themselves

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substituted in the hope that some sympathetic view will now be taken and the punishment shall be further reduced. It was also emphasised on behalf of the applicant that under the relevant Rules 1968, any cut in gratuity is not in the list of punishments. Even then it has been added as punishment alongwith punishment of compulsory retirement. Therefore, it is against law and therefore, that part of punishment is liable to be set aside. We find substance in this submission. Under Rule 6 of the above Rules, no such specific penalty has been provided in respect of any cut in the amount of gratuity. Therefore, this part of punishment is manifestly illegal and grossly unjust. But as per law settled on this point, even if a court /Tribunal reaches to a conclusion that some rectification is required in the quantum of punishment, normally, it should not be done by a court/ Tribunal itself. Instead it should be remitted to the authority concerned to do the needful. Therefore, we remit this matter to the respondents to pass appropriate orders in respect of rectifying the punishment order so far it relates to cut in the amount of gratuity as discussed above within a period of 4 months from today. The rest of the reliefs are declined. Accordingly, the O.A. stands finally disposed of. No order as to costs.

S.P. Singh
(S.P. Singh)
Member (A)

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J) *26.4.12*

HLS/-