Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No.114/2007 CW 389/2007

This the 16th day of April, 2012

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

O.A. No. 114/2007

Ashok Kumar Verma aged about 42 years son of Sri R.K.Verma C-48,Sarvodayanagar, Lucknow

Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India , General Manager, North Eastern Railway, Gorakhpur.
2. Senior Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
3. Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

Opposite Parties

By Advocate: Sri Narendra Nath

(Reserved on 9.4.2012)

O.A. No. 389/2007

Ajeet Kumar Srivastava aged about 44 years son of late Sri S.N.Srivastava resident of 9/288, Sector 9, Indira Nagar, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar and Sri R.C.Singh

Versus

1. Union of India , General Manager, North Eastern Railway, Gorakhpur.
2. The Additional Divisional Railway Manager, North Eastern Railway, Lucknow.
3. Senior Divisional Commercial Manager, North Eastern Railway, Lucknow.
4. Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

Opposite Parties

By Advocate: Sri S.Verma

(Reserved on 9.4.2012)

ORDER

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

By an order dated 29.8.2011, both the OAs have been clubbed together and therefore, are being disposed of by a common judgment.

Facts of O.A. No.114/2007:-

This O.A. has been filed for the following reliefs:

a) to quash the order dated 3.10.2006 passed by the Respondent No.3 as contained in Annexure A-2 to the O.A. with all consequential benefits including arrears of pay;

b) to quash the order dated 31.1.2007 passed by Respondent No.2 as contained in Annexure A-1 to the O.A. with all consequential benefits including arrears of pay;

c) to quash the Charge sheet dated 25.3.1998 issued by the Respondent No.3 as contained in Annexure A-8 to the O.A.

d) to direct the respondents to allow the applicant to continue to as Mobile Booking Clerk with all consequential benefits including arrears of pay;

e) to direct the respondents to pay the cost of this application;

f) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The applicant was initially engaged as Mobile Booking Clerk (MBC) vide order dated 5.3.84 passed by Divisional Commercial Inspector , Sitapur (Annexure A-3) in the NER, in pursuance of a scheme formulated by Railway Board for Coping with the increasing rush of passengers on the Railway Ticket Booking Windows. In terms of the scheme, sons/ daughters and the dependents of the Railway employees were to be engaged to perform the above work at peak hours. He worked there from 8.3.84 to 31.7.86 for a total period of 277 days. A certificate in this regard was duly issued by the Station authorities Hargaon (Sitapur) certifying the work of 251 days of the applicant (Annexure A-4). Thereafter, this scheme was withdrawn w.e.f. 17.11.86. However, on behalf of the respondent No.1, an order was issued on 6.2.90 for reinstatement by regular absorption of those MBCs who had worked prior to 17.11.86. Consequently the applicant was reengaged by an order dated 29.8.90 (Annexure A-5). In this list, the name of the applicant finds place at Sl. No. 8. The applicant joined at

Badshahnagar on 3.9.90. With effect from 1.1.91, he was conferred with temporary status also. But thereafter, on 3.12.93, he was served with a charge sheet alleging that he had obtained appointment on the basis of fake working certificate. Subsequently, the above charge sheet was withdrawn and another charge sheet was issued on 25.3.98 containing the same charges (Annexure A-8). He thereafter preferred O.A. No. 402/98 at CAT, Allahabad Bench which was dismissed on 16.5.2001. The applicant then preferred writ petition No.28346/2001 (SB) which too was dismissed on 1.3.2005. The applicant then, participated in the enquiry proceedings. In support of the charges, four prosecution witnesses were named. This charge sheet was highly belated having been issued after a period of about 8 years as matter pertained to re-engagement from 29.8.90. During the course of enquiry, the applicant submitted a list for supply of 11 additional documents in order to enable him to defend himself properly duly indicating their relevancy by means of letter dated 18.12.2001 (Annexure A-12). From the side of the respondents, documents under Sl. No.5 was made available and in respect of documents at Sl. No.4,10 and 11, it was said that the same had already been made available. The rest of the documents were not given at all. But, the enquiry continued and culminated in an enquiry report which was made available to the applicant along with show cause notice dated 26.9.2005 (Annexure A-15). Sri Yamuna Prasad, the then Station Superintendent and another Station Superintendent were not produced for examination/ cross examination by the applicant. Similarly, witness Ram Das also failed to turn up. Out of the above, Sri Yamuna Prasad died during the course of enquiry. As such, the prosecution should not have placed reliance on those statements which were made behind the back of the applicant. Thus, the mandatory provision of Rule 9(17) of the Railway Servants (D&A) Rules, 1963 were violated. The statement of Sri P.P. Pathak, Goods Superintendent, Hargaon was recorded as his defence witness but his statement was not relied upon on the ground that as he has been called as a defence witness, and therefore, would speak in favour of

the applicant. Similarly, the statement of another defence witness Sri V.N.Singh , the then Office Superintendent (Commercial) who has stated that on 5.8.85, the orders were issued for payment to the applicant and that the applicant had worked for 120 days in March 1994 was not relied upon and the certificate given by Mohd. Amin was sought to be held against the applicant despite not having been verified by Mohd. Amin himself, as he himself had not turned up during the course of enquiry (Annexure 16A). In reply to his show cause notice , the applicant submitted a detailed reply on 30.10.2005 highlighting all the above irregularities. But the impugned removal order dated 3.10.2006 was passed by the respondents against the applicant.

4. The claim has been contested by filing a detailed C.A. saying that Annexure A-4 i.e. a certificate claimed to have been issued by Hargaon Station authorities certifying 251 working days for the applicant is a forged document. The applicant was not a Railway Servant at any point of time. As per the enquiry Rules, the applicant could have been subjected only after getting temporary status. Because of this reason, the earlier chargesheet was withdrawn and he was given a temporary status. Thereafter, another charge sheet was given which has been impugned. In respect of non-supply of some documents sought by the applicant (for the purpose of his defence), it has been said in para 19 of C.A. that documents at Sl. No.1,2 ,4 to 10 were admitted by the enquiry officer on the ground of relevancy. In respect of the file mentioned at Sl.No.3 and 11 , it has been said that both were the same and no relevancy was shown in respect of the above file. Copies of documents at Sl.No. 4,10 and 11 had already been supplied. Out of cited witness, one Ram Das retired at the time of enquiry and even after 8 dates, he did not appear, It has been pleaded in the C.A.

5. Rejoinder Reply has also been filed.

6. A Supplementary Affidavit dated 17.9.2007/21.9.2007 was also filed saying that retired person has been appointed as a Enquiry Officer in gross violation of the Rules.

7. A Supplementary C.A. was filed from the side of the respondents saying that as per decision taken by the Ministry of Railways vide order dated 29.7.98, a retired Railway Officer /employee can be appointed as an Enquiry Officer in a belated enquiry.

8. A Supplementary RA. was also filed saying that the said order is not applicable in the instant case in as much as the above order dated 29.7.98 pertains to forming a panel of retired Railway employees for appointment as Enquiry Officer. Moreover, while issuing the said letter, the statutory enquiry rules 1968 had not been amended.

9. After hearing both the sides, this O.A. was decided on 22.7.2008. It was however, challenged by the other side by filing writ petition No. 1549/2008 which was finally disposed of on 20.12.2010 setting aside the above judgment and remitting the matter back with a direction to decide the O.A. as afresh on all the points as raised therein at the earliest. The Hon'ble High Court also mentioned in its judgment that one judgment rendered by CAT in OA. No. 458/2006 decided on 26.11.2007 has been set aside by the Hon'ble Apex Court vide judgment dated 16.4.2010 passed in Civil Appeal NO. 3369 of 2010 . Para 62 of the said judgment was also reproduced as under:-

> "62. In the light of the above enunciated rudiments of law, let us revert to the two points argued before us. Firstly the contention of the respondents that Rule 9(2) necessarily debars appointment of former railway employees as inquiry officers (other authority) is without any merit. Secondly, they have suffered no prejudice at least none has brought to our notice from the record before us or even during arguments. The contention was that this bring violation of the statutory rule there shall be prejudice ipso facto. We may also notice that the circulars issued by the Department of Railways cannot be ignored in their entirety. They have only furthered the cause contemplated under Rule 9(2) of the Rules and in terms of judgment of Virpal Singh Chauhan (supra) the Court had taken the

view that circulars should be read harmoniously and in given circumstances, may even prevail over the executive directions or Rules."

10. From the side of the applicant , a Supplementary Affidavit dated 17.2.2011 has also been field in order to bring certain new facts. It has been said in this affidavit that the applicant applied for some information under Right to Information Act regarding 85 MBCs. The General Manager, NER, Gorakhpur has sent the certified copy of 85 MBCs in which the applicant's name finds place at Sl. No. 68 (Annexure SA-1). Another application was moved by one Sri Subodh regarding list of 43 MBCs and the aforesaid list was also sent by GM, NER, Gorakhpur to Sri Subodh and in that list also, the applicant's name finds place at Sl.No. 43 (Annexure SA-2). Both the above lists indicate the working of the applicant during the period in question. Moreover, the Hon'ble High Court, New Delhi vide order dated 6.8.2010 also certified the authenticity of the lists which has come from the custody of its custodian. Earlier in similar matter, some other MBCs preferred four O.As. before the CAT, Principal Bench, New Delhi and all those OAs were allowed on 19.9.2008, 23.3.2009 , 25.3.2009 and 28.5.2009 in OA Nos. 2186/2007, 11235/2007, 2282/2007 and 2103/2007 (SA-3). The Railway Administration preferred writ Petition No. 307/2009 before the Hon'ble High Court, New Delhi which was dismissed on 6.8.2010 along with other writ petitions. The Hon'ble High Court affirmed the orders passed by CAT, Principal Bench, New Delhi (SA-4). After dismissal of the writ petition, other applicants preferred application before the competent authority , NER, Gorakhpur and G.M., NER, Gorakhpur issued a letter dated 10.11.2010 with a direction to the DRM, NER, Lucknow to comply with the order /judgment of the CAT, P.B., New Delhi (SA-5). In pursuance of the above, the DRM (Personnel) issued the office letter dated 28.12.2010 with a direction to reinstate those applicants/MBCs with immediate effect (SA-6). In pursuance of the above, the DRM (P) issued letter dated 4.1.2011 to such MBCs in order to

reinstate them. Consequently, 4 MBCs were reinstated at Gonda, Basti and Lakhimpur Railway Stations and are getting regular salary every month. It is said that the applicant is also similarly situated person.

11. Vide M.P. No. 1658/2011, a reply to the above Supplementary affidavit has been filed by the respondents saying that observations made by the Hon'ble High Court of Delhi are in respect of those respondents/ applicants only . On the other hand, this Tribunal has not agreed with the findings of the Principal Bench delivered in O.A. No. 2186/2007 decided on 10.9.2008 and has distinguished the same in O.A. No. 367/2007 (Pramod Kumar Pandey Vs. UOI decided on 18.9.2009 , Annexure R-1).

12. A supplementary C.A. has also been filed to the R.A. dated 17.9.2007.

13. Again a Supplementary R.A. against the aforesaid Supplementary C.A. has been filed saying that the respondents have indicated the reasons for filing a Supplementary Affidavit that the earlier C.A. was lacking on certain points. But the perusal of the above Supple. C.A. would show that in it, a parawise reply to the R.A. filed on behalf of the applicant around 4 years back has been given instead of indicating the points left over in the earlier C.A. Thus, this Hon'ble Tribunal has been mislead by the respondents. It has also been averred in this affidavit that despite the documents from Sl. No. 1 to 10 have been admitted by the Enquiry Officer as being relevant, yet documents at Sl. No.1,2,3,6,7,8 and 9 were not made available, which has caused great prejudice to the applicant. Similarly, file No. C/431/MBC/LJN/79 is a list containing the names of 85 MBCs including the name of the applicant at Sl. No.68, which has now been made available under the RTI and which has been brought on record. This list has been supplied from the custody of G.M. (Vigilance) ,Gorakhpur which itself indicates genuineness of the list. It has been further said that the Station Master , Hargaon gave a statement in the Vigilance enquiry but thereafter he failed to turn up in the departmental enquiry for being

examined and cross examined and as such no credence has to be given to his statement.

14. A preliminary objection to the above Supple. C.A. has also been filed on behalf of the applicant on 23.8.2011 saying that the stand taken by the respondents against the judgment of the Hon'ble Delhi High Court is misconceived. The respondents have also challenged the veracity of the list of 85 MBCs which has already been affirmed by Hon'ble High Court, Delhi. It has been further said that the same question of law pertaining to MBCs of the same list of 85 and 43 was involved before the aforesaid courts and similar point of non-production of some witnesses for examination /cross examination was also there. Therefore, those judgment cannot be treated as judgment in personam.

Facts of O.A.No. 389/2007:-

This O.A. has been filed for the following reliefs:-

i) to quash the impugned punishment order dated 3.10.2006 ,Appellate order dated 8.2.2007 and Revisionary authority's order dated 19/20.7.2007, which are being annexed herewith as Annexure No.A-1, A-2 and A-3 to this O.A. with consequential benefits.

ii) to direct the respondents to reinstate the applicant in service forthwith with all consequential benefits like promotion, back wages etc.

iii) Any other relief, which this Hon'ble Tribunal may deem fit just and proper under the circumstances of the case, may also be passed.

iv) cost the present case.

15. The case of the applicant is that he worked as MBC at Campierganj Station from 8.3.84 to 31.7.86 for 353 days under the scheme formulated by Railway Board which was discontinued on 17.11.86. But on 6.2.90, an order was issued for regular absorption for such MBCs who had worked prior to 17.11.86.As such he was re-engaged on 3.4.91 and was also conferred with temporary status w.e.f. 29.8.92. However, on 3.12.93, he was served with major penalty charge sheet for obtaining appointment on the basis of fake certificates. Further, it was withdrawn on 29.3.1998 and another charge

sheet dated 25.3.98 was served. Aggrieved by the charge sheet, the applicant filed O.A. No. No. 1144 of 1998 before the CAT Allahabad which was dismissed on 16.5.2001. Thereafter, he filed a writ petition which too was dismissed on 1.3.2005. The applicant therefore, participated in the enquiry though the charge sheet was patently time barred and highly belated, having been issued after about 7 years. During the enquiry, he sought certain documents in defence. The relevancy of those documents was admitted but the documents at Sl.Nos.1 to9 were not supplied. Ultimately , the enquiry was concluded and enquiry report was submitted. He filed an objection/ reply . The disciplinary authority kept the matter pending for about 3 years despite submission of objection against the enquiry report on 9.1.2003. Thereafter, the impugned removal order dated 3.10.2006 was passed. The applicant filed the statutory appeal dated 30.10.2006 before respondent No.3. But ignoring all the points raised by the applicant the second impugned order dated 8.2.2007 was passed by the respondent No.3 , rejecting the appeal. The applicant then preferred a revision petition on 12.3.2007 to the respondent No.2, who rejected the revision vide order dated 19th July, 2007. The other details contained in the O.A. are almost same as in the aforesaid O.A. No. 114/2007.

16. The claim of the applicant has been contested by filing detailed CA. in which, almost similar grounds have been taken by the respondents as already mentioned in connected O.A. No.114/2007. But in respect of non-supply of documents sought in defence, it has been said that the same were very old and were weeded out as per rules. Therefore, those documents could not be supplied to the applicant. Similarly, in respect of non-production of prosecution witnesses for examination/ cross examination, it has been averred that for Sri Raghunath Sahai, retired Station Superintendent, five dates were fixed but he did not come and his son informed in writing that his father is very old and has lost his memory and therefore unable to attend the enquiry. It has been admitted that one V.N. Singh, who was similarly charge sheeted was exonerated by the revisionary

authority after taking into account the previous service record and age of superannuation. The rest of the contention made in the O.A. were denied.

17. A Rejoinder Reply has been filed reiterating the averments made in the O.A.

18. Thereafter, on behalf of the respondents, a Supple. C.A. was also filed enclosing therewith certain documents i.e. CR-1 to CR-6 which were though mentioned in the original C.A. but could not be enclosed.

19. A supplementary Affidavit dated 8.6.2009 has also been filed by the applicant along with M.P. No.1280/2011 for bringing on record two important facts. The first is that several other persons were also removed for similar charges. Out of them, one Sri Subodh Kumar Verma sought certain information under the Right to Information Act from the Divisional Commercial manager, NER, who had furnished vide his letter dated 25.4.2008 a list of 85 MBCs who had worked on various stations. In this list (S-1), the name of the applicant finds place at Sl.No. 82 and his total number of working days against his name have been shown to be 353 days which belies the charges leveled against the applicant. The second fact as mentioned in para 4 of this affidavit is that, out of several removed MBCs, Sri Rajesh Kumar , Suresh Chandra Verma and R.P. Chauhan had filed O.A. Nos. 2186/2007, 2235/2007 and 2282/2007 before Principal Bench, CAT, New Delhi and their OAs were allowed vide judgment dated 19.9.2008, 23.3.2009 and 25.3.2009.

20. As against the above, a Supple. C.A. has been filed on behalf of the respondents saying that the above list was prepared on the basis of documents produced by the candidates which were found false afterwards and therefore, they were charge sheeted.

21. The applicant then filed a Supple. R.A. saying that the above contention is false . Had this list being prepared on the basis of false documents filed by the candidates as is being contended now, then why the respondents did not take such plea before the Hon'ble High Court, Delhi. Now it is not open for them to dispute the genuineness of the list.

The authenticity of the list of 85 candidates was taken as 'not in dispute' in paragraph 20 of the judgment dated 6.8.2010 rendered by the Hon'ble High Court of Delhi in W.P. No. 307 of 2009 (Union of India and others Vs. Rajesh Kumar and others) and connected writ petitions filed by the respondents against the aforesaid order/ judgments passed in the four OAs (Annexure SR A-2). After the judgment of the Hon'ble High Court rendered on 6.8.2010, all the four MBCs have been reinstated by the DRM, NER , Lucknow. It has also been averred that in fact the disciplinary authority (DRM, NER, Lucknow) was himself convinced that it would be against the principle of natural justice to treat the charges proved. He therefore, referred the matter to the General Manager (Vigilance) NER, Gorakhpur vide letter dated 3.6.2005 for advise (SR –A4) who vide his letter dated 1.9.2005 recommended for taking decision in view of the seriousness of the case.

22. We have heard the arguments at length. The applicant of both the OAs were engaged along with some others as MBCs under a scheme of Railway Board issued in 1973. The object was to give employment to the wards of Railway employees by requiring them to give assistance at the Railway Stations when extra work was needed and in this manner help the regular staff dealing with the work of booking / reservation etc. An assurance was also given to absorb them after three years . This scheme was however, withdrawn on 17.11.86. It was therefore, challenged before the Central Administrative Tribunal which directed the Railways to re-engage such MBCs. This decision was upheld even by the Apex Court. Secondly, the Railway Board issued a general order directing that all who had worked prior to 17.11.86, under the above scheme should be re-engaged and on completing three years of service should be regularized as clerk. Accordingly, on different dates, such MBCs were re-engaged. In 1993, charge sheets were issued on some of the MBCs alleging that working certificates submitted by them was forged and fabricated

documents but those charge sheets were withdrawn in 1993 itself. Then in 1998, fresh charge sheets were issued on the same grounds.

23. From the material on record, it appears that after service of the charge sheets, departmental enquires were proceeded against 8 MBCs. Finally, all of them were removed on the same date. It further appears that four of them filed OAs before the Principal Bench, Delhi while the present two applicants have field these two OAs here. The principal Bench allowed the above 4 OAs as mentioned in para 10 of this judgment. Feeling aggrieved, the Railways filed four Writ Petitions which have been dismissed on 6.8.2010. There is also no quarrel on the point that the Railways did not file any SLP and rather reinstated all those 4 MBCs with full wages.

24. In both the OAs before us, the charge sheets are almost similar and most of the grounds of challenge are common. There is negligible difference in the facts and in the reliefs sought by them. We have already mentioned the pleadings and reliefs of both the OAs one after another. Now, we are taking up both these OAs one by one for giving findings.

Findings on O.A.No. 114/2007

Firstly, we deal with the O.A. No.114/2007:- In this O.A. the following grounds have been emphasized:-

i) Belated second chargesheet without assigning any reasons (during course of arguments, this argument was fairly given up in view of the fact that this charge sheet was challenged before the CAT, Allahabad Bench which refused to interfere in the matter) and thereafter, Hon'ble High Court also upheld that decision.

ii) It is a case of no evidence because none of the four witnesses cited in the charge sheet were examined/ cross examined to prove any of the documents relied upon by the Administration. The submissions of both the defence witnesses were discarded on an unreasonable analogy that since they have been summoned by the delinquent , they will depose in his favour.

iii) Relevant documents sought in defence were not supplied which amounts to denial of opportunity.

iv) In all most similar matters of removal, the four OAs filed by Rajesh Kumar, Suresh Chandra Verma, R.P. Chauhan and Deen Dayal Pandey, have been allowed by the Principal Bench , CAT, New Delhi and upheld by Hon'ble High Court, Delhi. During the pendency of above litigation, a list of 85 MBCs of various stations was obtained under RTI from General Manager, NER, Gorakhpur in which the name of the applicant finds place at Sl. No. 68 showing 277 working days, whereas the name of applicant of O.A. No. 389/2007 is at Sl. No. 82 and the authenticity of this list was never disputed before the Hon'ble High Court of Delhi as observed in para 20 of the judgment dated 6.8.2010 by means of which all the four writ petitions (filed against above four OAs) were dismissed. The Railways did not file any SLP. Instead they have reinstated all the four MBCs. This judgment of Hon'ble High Court squarely applies in the present case.

25. Now we come to the point of 'no evidence'. It is true that in disciplinary proceedings , technical rules of evidence are not applicable and court cannot enquire the correctness of findings in a disciplinary proceedings. Similarly, standard of prove in criminal cases vis-à-vis departmental proceedings is different as has been laid down in the cases of:-

i) State of Orisa Vs Murlidhar Jena reported in AIR 1963 SC, 404.

ii) R.C. Sharma Vs. Union of India reported in AIR 1976 SC 203

iii) Suresh Pathrela Vs. Oriental Bank of Commerce reported in (2007) 1 SCC (L&S) 224.

upon which reliance has been placed by the learned counsel for the Respondents. The learned counsel for the respondents also placed reliance on the case of **Secretary to the Govt. Home Department and others Vs. Sri Vaikundnathan reported in (1988) 4 SCC 553.** But this case is rather in favour of the applicant, because it says that if there is perverse findings

or it is based on no evidence, then the proceedings can be set aside. But such findings cannot be disturbed merely on account of dis-satisfaction of the evidence which was led. In fact the case of **Roop Singh Negi Vs. Punjab National Bank and others reported in (2009) 2 Supreme Court Cass , 570** is one of the leading cases on the matters of departmental enquiry wherein several decisions of the Hon'ble Apex Court have been considered comprehensively. In para 16, one of such decision in the case of Union of India Vs. H.C. Goel reported in (1964) 4 SCR 718 has been referred, wherein it was laid down that the court can and must enquire whether there is any evidence at all in support of impugned conclusion and if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved. This approach will avoid weighing the evidence . Applying this test, the Hon'ble Court opined that the order of dismissal in that case was not justified because the finding in respect of relevant charge was based on no evidence. In the case before us, also none of the following four witnesses cited in the charge sheet were examined/ cross examined:-

i) Ram Das, Station Superintendent, Itaunja

ii) Yamuna Prasad

iii) V.K. Pandey, Vigilance Inspector/ GKP

iv) V.S. Pandey, G.K.P.

26. The statements of Ram Das and Yamuna Prasad was recorded during preliminary enquiry. But they were not examined in the final enquiry. Ram Das did not turn up whereas Yamuna Prasad died in 1993 and as such could not be examined. Thus, these two main witnesses were not examined/ cross examined during the final enquiry. Even then their statements recorded in the preliminary enquiry behind the back of the applicant, were wrongfully relied upon as mentioned in the enquiry report (see page No. 105 and 106 of the O.A. - Annexure 15). Similarly, Sri V.S. Pandey, Vigilance Inspector also did not turn up in the regular departmental enquiry. Sri V.K. Pandey, Vigilance Inspector/GKP was produced but when

the enquiry officer asked question No.4(page No. 149 of O.A.), the witness requested for providing the relevant documents and thereafter, he never turned up in the departmental enquiry. Thus, this witness was only partly examined on 19.1.2005 but never appeared thereafter for further examination/ cross examination. Thus, any of four witnesses cited in support of the charge sheet were not examined/ cross examined during the departmental enquiry and still their submissions were relied upon and on that basis and also on the basis of some documents which were not proved by any witness, the enquiry officer wrongly concluded that the charges have been proved. It is a case of no evidence and the enquiry officer arrived at his findings against the principle of natural justice and fair play. In the case of **Kuldeep Singh Vs. Commissioner of Police and others reported in (1999) 2 SCC page 10,** cited on behalf of the applicant, it was held that judicial review is not totally barred. Although finding of guilt would not be normally interfered with but the court can interfere if the same is based on no evidence (as in the present case) or is such which could not be reached by any ordinary prudent man or is perverse or is made at the dictates of superiour authority.

27. The learned counsel for the respondents submitted that on the basis of relied upon documents No.1,2 and 3, the charges have been duly proved. Similarly, on the basis of submissions of Mohd. Amit, it was proved that no payment was made to the applicant. We regret for not accepting this submission because mere production of documents is not enough. The contents of the documents are required to be proved by examining the witnesses as per law propounded in the above case of Roop Singh Negi (supra). In the present case, none of the four witnesses were produced for examination / cross examination as already discussed. Similarly, a certificate issued by Sri Mohd. Amin was taken into consideration , though Mohd. Amin was neither made a prosecution witness nor he was produced for examination/cross examination for proving/ verifying the alleged certificate. As if this was not sufficient, the statement dated 28.6.2005 of

defence witness P.P. Pathak, Goods Superintendent, Hargaon was not relied upon on the ground that he has been called as a defence witness and therefore, he would speak in favour of the applicant. This analogy was definitely against the judicial norms as laid down by the Hon'ble Apex Court in the case of **M.V. Bijlani Vs. Union of India and others reported in 2006 (5) SCC page 88.**

28. The next limb of arguments on behalf of the applicant is in respect of non-supply of relevant documents sought to be relied upon in his defence. He demanded 11 documents as contained in Annexure A-12. The order sheet dated 29.12.2004 (Annexure 12 page 81) shows that the copies of documents at Sl. No. 1,2,6,7,8 and 9 were not supplied because the documents were not available. Similarly, in respect of document of file shown at Sl. No. 3 i.e. file No. C/431/MBC/Lko./79 , it was said by the respondents that there is no justification to prove the service rendered by the applicant on the basis of this file. Therefore, it cannot be made available. According to relevancy shown in the last column of this list of 11 documents (Annexure A-12), this file could have certified the working of the applicant before 17.11.86. But as said above, the respondents refused to supply its copy on the ground that there is no justification. But they did not elaborate as to why there was no such justification. It is interesting to note that this stand was subsequently falsified by respondents themselves when under RTI, General Manager, NER, Gorakhpur had to furnish a list of 85 list MBCs showing their parentage residence and working days. This list was brought to the notice of the Hon'ble High Court, Delhi when the above four writ petitions were pending. The authenticity of this list was never challenged by the respondents Railways as mentioned in para 20 of the judgment of the Hon'ble High Court, Delhi, which is on record. A copy of this list has also been brought on record of this O.A. by means of a Supplementary Affidavit dated 17.2.2011 and perusal of its covering letter shows that this information has been furnished on the basis of the same above file mentioned at Sl.No. 3 (File No. C/431/MBC/Lko Jn./79, the copy

whereof was denied in an arbitrary manner saying there is no justification and thus depriving the applicant from making an effective defence during enquiry. Though the relevancy of documents was admitted but concededly six more (Sl. No. 1,2 6 to 9) documents were also not supplied on the ground that the same are not available (see order sheet dated 19.12.2004-Annexure 12 page 81 of O.A.). It clearly amounts to denial of opportunity. Accordingly, this point is also decided in favour of the applicant.

29. In respect of 4th point as mentioned above, the learned counsel for the applicant would argue that similar matters of MBCs have been decided in their favour by the Principal Bench of Delhi and the writ petitions filed by the Railways have also been dismissed. In those cases, the Principal Bench had directed for reinstatement but at the same time it kept the option open to the Railways/ respondents to furnish the documents and to proceed afresh against them if so advised. The Hon'ble Delhi High Court, while dismissing the writ petitions, took a step further and after considering all the facts and circumstances, drew the attention of the competent authority that though permission has been granted to recommence the enquiry in all the four cases but the same has to be upon the condition that the documents production whereof has been sought by the respondents are brought on record. It further observed that it would be futile exercise to conduct an enquiry without producing such documents. If they are available , only then it would be advisable to hold the enquiry, failing which the competent authority should consider the desirability of closing the matter as it is.

30. As already mentioned above the railways did not contest the authenticity of above list of MBCs including applicants of both OA showing requisite number of working days against each of them. This list was prepared on the basis of relevant register/ file kept in the safe custody of the respondents and it was supplied by an officer of the rank of General Manager. Its authenticity was not challenged at all by the respondents before the Hon'ble High Court , Delhi as mentioned in para 20 of their

judgment. These lists have been brought on record before this Tribunal also and there is no convincing reply from the side of the respondents , except a fragile denial. But they can not be permitted to aprobate and reprobate. They did not challenge its authenticity before Delhi High Court. Therefore, they have no right to challenge it now. Not only that, after the aforesaid judgment dated 6th August, 2010 of the Hon'ble High Court, Delhi (Annexure 4 to Supple. Affidavit dated 17.2.2011), Railways did not even file any SLP. Rather, in furtherance of the judgment, DRM, NER, Lucknow has reinstated those four persons. From the other side, an argument was made that earlier this Tribunal in an earlier O.A. No. 367/2007 (Pramod Kumar Pandey Vs. Union of India and others) decided on 18.9.2009 did not follow any judgments rendered by the Principal Bench, Delhi and dismissed that O.A. Therefore, this Tribunal should either follow its earlier decision of coordinate bench and dismiss these OAs also or refer it to larger Bench. It was pointed out that this Tribunal had distinguished the judgment of P.B. on the following grounds:-

a) certain documents were not provided hence it amounted denial of opportunity

b) burden of proof has been shifted to the applicant without prosecution prima facie establishing the charge.

In the above O.A. No. 367/2007, this Tribunal found that none of these grounds existed. Hence Learned counsel for respondents placed reliance on the following case laws on the point that the doctrine of president should be followed:-

i) **State of Orissa Vs. Bhagwan Sarangi and others reported in (1995) 1 SCC 399-** Administrative Tribunal is bound by the decision of the High Court of the State.

ii) **Union of India Vs. Sudhir Kumar Jaiswal reported n (1994) 4 SCC 212-** In the cases of difference of opinion, matter should be referred to Larger Bench.

iii) **K. Ajit Babu an another Vs. Union of India and others (1997) 6 SCC 473** – if the bench concerned dissents from the view taken in the earlier decision, the matter can be referred to Larger Bench.

iv) **Sub Inspector Roop Pal and another Vs. Lt. Governor (2000)1 SCC 644** - A coordinate bench cannot pronounce judgment contrary to earlier Bench. It can refer to it to the Larger Bench, if it disagreed with the earlier pronouncement.

But the above case laws have no relevance in the present case firstly because at the time of the judgment of O.A. No. 367/2007, the above judgment of Delhi Hon'ble High Court had not come. At that time there were only judgments of Principal Bench , CAT which were distinguished on the above two points. But here the position is just otherwise. In the case in hand, both the above points i.e. denial of supply of documents and shifting of burden of prove are also in question. Further, all the judgments rendered by P.B., Delhi have now merged in the above judgments of the Hon'ble High Court, Delhi which this Tribunal has to follow in the absence of any judgment of our own High Court on this point. Moreover, the above judgment of Hon'ble Delhi High Court has attained finality because no SLP has been filed against it, rather in compliance of that judgment , those four persons have been even reinstated by these very respondents.

31. The Principal Bench of Delhi itself has laid down in O.A. No. 555/2001 as mentioned in para 8 of the judgment dated 1.7.2009 in O.A. No. 6/2007 **A.K. Rai Vs. Union of India and others** that in the absence of a decision of the High Court, they have territorial jurisdiction on the issue but where a decision of another High Court was available, this Tribunal would be bound by the decision of that High Court. For this reason, the earlier coordinate bench of this Tribunal in the above O.A. No. 6/2007 followed a decision of Calcutta High Court even though the full bench of this Tribunal held a different view. A copy of this judgment has been

submitted from the side of the applicant for perusal and we have thoroughly gone through it. In the present matter also, no decision of our own High Court of Judicature at Allahabad has been brought to our notice and therefore, we are bound to follow the above decision of Delhi High Court. Lastly, in the above judgment of this Tribunal in O.A. No. 367/2007 following observations were made in paragraph 10 of the judgment:-

> "The applicant could not produce a shred of evidence other than the disputed certificate. If there was any such documentary evidence supporting his case, he could have obtained it either from personnel department or from commence department under Right to Information Act, 2005 and produced before us by way of Supplementary Affidavit."

32. The above paragraphs has two corollaries. Firstly, the same submissions was made by the Railways before Delhi High Court that it was for the respondents to prove that the certificate submitted by them was forged and a fabricated documents. The Hon'ble High Court rejected this submission and said that the onus has to be on the Railways. Secondly, in the later part of the paragraph, it was suggested that the relevant information could have been obtained from the Railways under the RTI Act, 2005 and the same could have been produced. This has now been done and a list obtained under Right to Information Act had been filed before the Hon'ble High Court and also before us as already mentioned hereinbefore. Therefore, on account of this reason also, the above earlier judgment dated 18.9.2009 in O.A. 367/2007 of this Bench has no significance as far as these two OAs are concerned. This point also is accordingly decided in favour of the applicant.

33. In the above back drop, we thoroughly perused both the impugned orders which suffer from the above embellishments. We find that these orders were passed without proper application of mind and in gross violation of statutory provisions of the Railway Servants (Disciplinary and Appeal) Rules, 1968 and also the Principle of Natural Justice and fair play.

Therefore, O.A. is allowed and both the impugned orders dated 3.10.2006 and 31.1.2007 (Annexure 2 and Annexure A-1) deserve to be and are accordingly quashed. However, it would be open for the respondents to proceed with the chargesheet afresh in accordance with law. But as has been held on 6.8.2010 by Delhi High Court in almost similar matters in the above Writ Petitions No. 307/2009,11275/2009, 11637/2009 and 11653/2009, enquiry may be recommenced on the condition that all the relevant documents as discussed hereinbefore are made available, failing which the competent authority should consider the desirability of closing the matter as it is, as has been further held in the above judgments of Delhi High Court in this matter which pertains to 1991.

Findings on O.A. No. 389/2007

34. In respect of this O.A., emphasis has been laid on the following grounds:-

i) Non-supply of relevant documents on the ground that the same have been weeded out.

ii) The main prosecution witness Raghunath Sahay, Retired Station Superintendent was not produced for examination/ cross examination but his evidence recorded in preliminary enquiry was relied upon which caused prejudice to the applicant.

iii) Similarly charge sheeted official, namely Sri V.N.Singh has been exonerated by the revisionary authority.

iv) Disciplinary authority did not find any legal and binding evidence to substantiate charges as mentioned in his report/ letter to the Vigilance. But after receiving reply, he took a U-Turn and punished the applicant.

v) Similarly charged four officials, namely Rajesh Kumar, Suresh Chandra Verma , R.P. Chauhan and Deen Dayal pandey had filed O.As before the Principal Bench which were allowed and those judgments have been upheld by the Hon'ble High Court Delhi vide order dated 6.8.2010 passed in Writ Petitions No.307/2009, 11275/2009, 11637/2009 and

11653/2009 which has already attained finality because no SLP has been filed and even the above officials have been reinstated. Thus, above judgments of Delhi High Court squarely applies in the present case.

35. As far as non-supply of relevant documents is concerned, its non-supply has been conceded. The relevancy of these documents has also not been denied. It has been merely said that the documents were very old and have been therefore, weeded out on account of which the same could not be supplied. As far as documents being old is concerned, as long as its relevancy has not been challenged, its non –supply would certainly cause prejudice to the delinquent. In fact, the respondents are themselves responsible for making the delay in holing the enquiry. The matter is of 1991. The initial charge sheet was served in 1993. Then after a gap of 5 years, another charge sheet was served on 25.3.98. The first charge sheet was wrongly withdrawn afterwards on 29.3.98. Thus, the respondents themselves permitted to become the relevant documents old. Be that as it may. But this point is proved in favour of the applicant.

36. It is not disputed that the main witness, Raghunath Sahay, Retired Station Superintendent was not produced during the final enquiry for examination/ cross examination. Even then his statement recorded during the preliminary enquiry was relied upon to the effect that he did not issue the certificate in favour of the delinquent official. This point was specifically raised by the applicant before the disciplinary authority/ appellate authority / revisionary authority but they failed to appreciate this point. Therefore, this ground is also decided in favour of the applicant.

37. It has also been admitted in the Counter Affidavit that one of the similarly situated officially namely , Sri V.N.Singh who was similarly charge sheeted was ultimately exonerated by the revisionary authority. The law is settled on the point that persons placed similarly cannot be treated differently. In other words, treating similar cases differently causes discrimination and shows arbitrariness. Accordingly, this point is also decided in favour of the applicant.

38. The next point as mentioned hereinbefore is that after considering the enquiry report, the Disciplinary Authority himself found that the charges were not proved against the delinquent. He accordingly exonerated the applicant from the charges vide his detailed report dated 3.6.2005 running into four pages (SR A-4). He however sent this report to the General Manager, Vigilance, NER, Gorakhpur for advice/ recommendations. The above authority of the Vigilance gave the advice otherwise vide their letter dated 1.9.2005 (Annexure SR-A5) on account of which the disciplinary authority took a U-Turn and passed the impugned order dated 3.10.2006 terminating the services of the applicant (Annexure A-1). It is therefore apparent that disciplinary authority did not apply his mind. Instead he passed the above order on the dictates of the Vigilance authorities which is not permissible under law. The authorities performing quasi-judicial function are supposed to exercise their own judicial discretion having regard to the facts and circumstances. They cannot act under the dictation of the Vigilance authorities. Almost similar observations were made by Hon'ble Apex Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank reported in 1991 SCC (L&S) page 965. This point is also decided accordingly in favour of the applicant.

39. As already discussed in detail hereinbefore in paragraph Nos. 29 to 32 of this judgment, this point is also decided in favour of the applicant.

40. In the above back drop, we find that in the present case also, all the three impugned orders suffer from above embellishments. These orders were passed without application of mind and in gross violation of statutory provisions of Railway Servants (Disciplinary and Appeal) Rules, 1968 and also the Principal of Natural Justice and fair play. The entire decision making process suffers from above lapses. Therefore, all the three impugned orders deserve to be and are accordingly quashed. However, as observed in the previous O.A., in this O.A. also it is observed that it would be open for the respondents to proceed with the charge sheet afresh in accordance with law. But as has been laid on 6.8.2010 by Delhi High Court

in almost similar matters in Writ Petition Nos. 307/2009, 11275/2009, 11637/2009 and 11653/2009, the enquiry may be recommenced on the condition that all the relevant documents as discussed hereinbefore are made available, failing which the competent authority should consider the desirability of closing this old matter pertaining to the year 1991.

41. With the above observations, both the O.As are partly allowed. No order as to costs.

(S.P. Singh) **(Justice Alok Kumar Singh)**
Member (A) **Member (J)** 16.11.2012

HLS/-