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**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No 397 OF 2009
Order Reserved on 7.7.2014**

Order Pronounced on 04/08/2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

S.S. Dubey, aged about 60 years, son of Late Sheri Shadhu Sharan Dubey, resident of Village and Post Office Sahuwa Kol, District Gorakhpur(Lastly working as Section Engineer/P.W.I. Grade I, North Eastern Railway, Jarwal Raod.

Applicant

By Advocate Sri A. Moin.

Versus

1. Union of India, Ministry of Railways (Railway Board), through the General Manager, North Eastern Railway, Gorakhpur.
2. Principal Chief Engineer, North Eastern Railway Gorakhpur.
3. Additional Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
4. Senior Divisional Engineer (Co-ordination), North Eastern Railway, Lucknow Division, Lucknow.
5. Sri Ram Kamal, Inquiry Officer, Office of the Chief Vigilance Officer, North Eastern Railway, Gorakhpur.

By Advocate Sri Praveen Kumar for Sri M. K. Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (a) Issuing/ passing of an order or direction to the Respondents setting aside the impugned punishment order dated 3.7.2008, passed by the Senior Divisional Railway Engineer, North Eastern Railway, Lucknow, impugned appellate order dated 18/19.6.2009, passed by the Additional Railway Manager, North Eastern Railway,

Lucknow Division, Lucknow and the impugned revisional order dated 17/31.082009, passed by the Principal Chief Engineer, North Eastern Railway, Gorakhpur (as contained in Annexure Nos. A-1, A-2 and A-3 to the original application), after summoning the original records.

(b) issuing/passing of any other order or direction to the Respondents as the Hon'ble Tribunal considers appropriate in the circumstances of the case.

(c) Allowing this Original Application with cost.

2. The brief facts of the case are that the applicant was selected on the post of P.W.I. in the North Eastern Railway and after completion of his training, he joined in 1978. The applicant was promoted in 2000 to the post of P.W.I Grade I/Section Engineer. In 2005, while the applicant was going to board a train to proceed for his duty, one Sri Harihar Prasad against whom the charge sheet was issued given Rs. 500/- to the applicant and ran away. Soon thereafter, the vigilance team appeared and charged the applicant for bribery and the applicant was placed under suspension in contemplation of the inquiry under the Railway Servants (Discipline and Appeal) Rules, 1968. The suspension of the applicant was revoked in June 2005. It is also pointed out by the learned counsel for the applicant that though no charge sheet was issued to the applicant, yet inquiry officer was appointed, but subsequently, after an inordinate delay of more than three years, the charge sheet was issued by the authority who is not competent to do the same. The charge sheet was withdrawn on technical ground and another charge sheet for the same misconduct was issued. During the course of the inquiry, the applicant appeared before the inquiry officer and submitted the list of documents required for his defence and also statement and also requested for the names of the defence

witnesses. The inquiry was concluded and the applicant also submitted his written brief before the inquiry and also submitted his representation against the inquiry report to the inquiry officer. In 2008, the applicant was awarded the punishment of removal from service. The applicant preferred the O.A. 271 of 2008 without preferring the appeal but subsequently, he preferred the appeal against the punishment order. Accordingly, the O.A. was disposed of with a direction to decide the appeal within a period of 2 months. Subsequently the appeal of the applicant was also rejected and the revision preferred by the applicant was also rejected by the Revisional Authority.

3. The learned counsel for the applicant has also taken a ground that the provisions of Para 704 and 705 of the Vigilance Manual are violated and the same has not been kept in mind while conducting the vigilance raid as there was no independent witness. Not only this, he has also relied upon two decisions of Hon'ble Apex Court in the case of Union of India and others Vs. Chakradhar Mani Tripathi reported in 2013 (3) UPLBEC 1992 in which the Hon'ble Apex Court has been pleased enough to deal with the provisions of Para 704 and 705 of the Vigilance Manual and also relied upon the decision of the Case of **Moni Shankar Vs. Union of India and Another reported in (2008) 3 SCC 484.**

4. The learned counsel appearing on behalf of the respondents filed their reply as well as supplementary counter reply and through their reply, it is indicated by the respondents that the applicant while working as Section Engineer accepted the bribe of Rs. 500/- from his subordinate for posting at his desired place. As such, he was issued a charge sheet, a full fledged inquiry is conducted after giving a full reasonable opportunity of hearing to the applicant. On behalf of the respondents, it is also indicated that the Senior Divisional Engineer (Co-ordination)

North Eastern Railway, Lucknow after considering the representation of the delinquent against the inquiry report agreed with the finding of the inquiry officer passing the order of removal and the Appellate Authority has also accepted version of the Disciplinary Authority and the dismissed the appeal of the applicant. Not only this, the Revisional Authority has also considered the revision of the applicant rejected the same. As such it is submitted by learned counsel for respondents that there is no violation of any procedural lapses as such, no interference is called for by this Tribunal. Learned counsel, appearing on behalf of the respondents has also argued that the decoy Sri Harihar Prasad an independent witness was also examined by the Vigilance department and after reiterating the submissions, the action was taken against the applicant. It is also indicated by the respondents that one Sri Arjun Prasad of the Vigilance department was taken as an independent witness. Not only this, in the statement, the currency note No. was also mentioned. The learned counsel appearing on behalf of the respondents vehemently argued and submitted that prior to the vigilance check, a joint note was prepared by the vigilance department including the decoy, the independent witness and four other officials excluding the applicant in which the currency note number was also mentioned. Thereafter, the vigilance check was conducted and in that vigilance check, the same currency is found from the pocket of the applicant and the applicant has also put his signatures though he has signed under protest and pointed out that the said money was taken by the decoy from my wife as such the same was returned back to him though the applicant in the inquiry has denied the allegations levelled against him, but the disciplinary authority after considering the material available on record passed an order of removal from service.

5. The learned counsel appearing on behalf of the applicant has filed the rejoinder as well as supplementary rejoinder affidavit and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply as well as supplementary counter affidavit are denied. Through R.A., it is once again reiterated by the learned counsel for the applicant that the Inquiry Officer made every endeavour to prove the charges and as such the whole proceeding was nothing but an eye wash and the decision of the appeal is also in a mechanical manner and the trap was launched in a pre determined manner and the decoy Sri Harihar Prasad pushed a currency note of Rs. 500 in the pocket of the trouser of the applicant forcefully on account of repayment of the loan by him from the wife of the applicant. On behalf of the applicant, another ground is taken that neither the relevant provisions of Railway Manual nor procedural fairness was observed while conducting the inquiry and the disciplinary authority has also overlooked the relevant provisions of law.

6. Heard the learned counsel for the parties and perused the record.

7. The applicant was initially appointed in the respondents organization was charge sheeted vide charge sheet dated 19.1.2007 in which one charge was levelled against the applicant which provides that the applicant while working as Section Engineer P.Way at Kaptanganj accepted a sum of Rs. 500/- as bribe from one Sr Harihar Prasad, who was working under him with an ulterior motive to give him a particular place of posting and further in connivance with his wife along with three Gangmans, he prepared a wrong statement to mislead the department. Along with the charge sheet, the list of witnesses and documents along with the statement of imputation of misconduct



was also given. Not only this, the charge sheet also contains the joint note prepared prior to Vigilance checking as well as after the vigilance check, was also annexed along with the charge sheet. Both the joint notes clearly provides a number of currency note which is of Rs. 500/- The applicant submitted the objections to the said charge sheet vide his objections dated 22.3.2007. The respondents after considering the reply submitted by the applicant, appointed the Inquiry Officer. Prior to appointment of the Inquiry Officer, the applicant has also submitted a detailed representation in his defence to the Inquiry Officer through his representation dated 7.12.2007 and Inquiry Officer submitted his inquiry report and in the findings recorded by him, the charges levelled against the applicant were stands proved. The Inquiry Officer has categorically pointed out this fact that on 4.3.2005 that prior to the vigilance check, the joint note was prepared by the vigilance team and the independent witness namely Arjun Prasad, was also involved in the same. The applicant has also given reply to inquiry report and has also pointed out that the applicant is innocent and he has not accepted any bribe and entire story has been concocted to harass the applicant. Thereafter the Disciplinary Authority i.e. Divisional Railway Manager, Co-ordination passed an order of removal on 3.7.2008. The applicant submitted the appeal and has also taken a number of grounds and indicated that decoy Sri Harihar Prasad forcefully put the currency note of Rs. 500/- in the pocket of the applicant. It is also indicated by the applicant in his appeal that one Sri Anil Kumar who himself is working with the Vigilance department, is made as an independent witness. As such, the provisions of Para 704 and 705 of the Vigilance Manual is violated.

8. The relevant provisions of Para 704 and 705 of the Vigilance Manual reads as under:-

"704. Traps (i)-(iv)

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

- (a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.**
 - (b) The transaction should be within the sight and hearing of two independent witnesses.**
 - (c) There should be an opportunity to catch the culprit red-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.**
 - (d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are Government employees and of other departments.**
 - e) After satisfying the above conditions, the Investigating Officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the S.P., S.P.E., is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the S.P.E. or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.**
- (vi)-(vii) * * * * ***

705. Departmental Traps.-For Departmental traps, the following instructions in addition to those contained under paras 704 are to be followed:

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

All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without

a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

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

(c) -(d) *

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9. The grounds inter alia were that while conducting the vigilance check the provisions of paragraphs 704 and 705 of the Vigilance Manual had not been observed and there was no independent witnesses, the independent witness is an employee of Vigilance department therefore, the inquiry is vitiated and is stained by the element of bias and could not be said to be fair and impartial and there is no direct evidence showing the involvement of the applicant in accepting the bribe.

10. The learned counsel has also relied upon the decision of the Hon'ble Apex Court in the case of **Moni Shankar Vs. Union of India** (Supra) and pointed out that in the said judgment, the Apex Court has clearly observed that while vigilance checking, the

provisions of 704 and 705 is required to be taken care of and the independent witness was required to be indicated in the same. The learned counsel for the applicant has also submitted that while deciding the case of Moni Shanka (Supra) the Hon'ble Apex Court has also considered the earlier decisions of Hon'ble apex Court in the case of **Chief Commercial Manager, South Central Railway Vs. G. Ratnam reported in (2007) 8 SCC 212.**

10. In the instant case, it is undisputed to the fact that the decoy is a railway employee and the independent witness is an officer of the vigilance department. The Hon'ble Apex court in the Moni Shankar (Supra) has also observed as under:-

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

11. Considering the observations made by the Hon'ble Apex Court in the case of **Moni Shankar**(Supra) and the provisions of Rule 704 and 705 of the Vigilance Railway Manual and also after the perusal of the pleadings on record, we are of the considered view that the order passed by the Disciplinary authority order dated 3.7.2008, Appellate order dated 18/19.6.209 and the Revisional order dated 17/31.8.2009 are liable to be quashed.

W The applicant be reinstated forthwith. It is made clear that since

the applicant has not worked during the period of punishment, as such, he is not entitled for any salary.

12. With the above observation, the O.A. is allowed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

V.R. Agarwal
(Navneet Kumar)
Member (J)

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