IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No 255 of 2006

Date of order : 31.10.2012

C O R A M
Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Bidisha Banerjee, Member [J]

1. K.S. Verma, S/o Late Rajendra Prasad, presently working as Senior Commercial Manager / Passenger Service, East Central Railway, Hjipur.

.....Applicant.

By Advocate : Shri M.M.P. Sinha

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The Secretary, Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, N.F. Railway, Maligaon, Guwahati [Assam].
4. The Chief Commercial Manager, N.F. Railway, Maligaon, Guwahati [Assam].
5. Shri J.D. Goswami, Chief Commercial Manager/Passenger Service, Southern Railway, Chennai.
6. The Secretary, Union Public Service commission, Dhaulpur House, Sahjahan Road, New Delhi.

.....Respondents.

By Advocate :Shri R. Griyaghey for Railways and Shri R.K. Choubey for UPSC

O R D E R

Naresh Gupta, M [A] - This OA has been filed by one K.S. Verma seeking to quash the order of the Disciplinary Authority [DA, in short] dated 03.08.2004 imposing the penalty of reduction by one stage in the scale of pay for a period of six months with cumulative effect [Annexure A/13 of OA] and the order of the Appellate Authority dated 03.02.2006 rejecting the appeal of the applicant [Annexure A/16 of OA]. The case of the applicant is as follows:

2. The catering services of the Indian Railways were managed both by departmental agency as also by private agencies. In 1980, a circular dated 06.11.1980 was issued by the Railway Board that in case of conversion of meter gauge to broad gauge service, the private contractors running pantry cars on the meter gauge be rehabilitated on the broad gauge for the balance period of the contract [Annexure A/1 of OA]. In 1992, there was a change in the policy of the Government with Union Minister for Railways announcing during his budget speech for 1991-92 that in future no catering / vending unit should be taken up for departmental management and all the existing departmental units be phased out and given to private agencies. Accordingly, the Railway Board issued a circular dated 06.01.1992 giving broad guidelines to the Zonal Railways with regard to award of

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contracts to private agencies [Annexure A/2 of OA]. This circular had three headings [i] General [ii] Staff and [iii] Policy for allotment of catering / vending licenses only. In the guidelines given for policy for allotment of catering / vending licenses in the above circular, it was indicated that the guidelines were in supersession of all previous instructions.

3. According to the applicant, as the circular dated 06.01.1992 did not talk about the steps to be taken in case of conversion from meter gauge to broad guage, the impression after reading the two circulars was that whereas a new contract was to be given only to private agencies by calling for applications through press, the steps for rehabilitation of existing contract on conversion of meter gauge into broad gauge could continue as per the earlier circular of 1980.

4. The applicant was working as Senior Commercial Manager / Catering and Ticket Checking in the office of Chief Commercial Manager, N.F. Railway, Maligaon during the years 1995-1998.

(i) It had been suggested by the applicant that treating 5603/5604 Intercity Express between Guwahati & Dibrugarh as a replacement of erstwhile 5905/5906 MG Kamrup Express, the Railway Administration may accede to the request of Shri Alok Kumar Ghose permitting him to operate pantry cars in the two rakes of 5603/5604 between GHY to DBRT on temporary basis till 24.11.1998, the date up to which he had valid license for MG Kamrup Express in terms of the Railway Board's letter dated 06.11.1980 [Annexure A/1 of OA].

(ii) The pantry car on the first service of 5625/5626 Bangalore Express was introduced w.e.f. 08.12.1992. After transfer of ownership, the contract was finalized by N.F. Railway and the offer was given to one shri Romen Deka. When the second service was introduced from 01.08.1997, the N/F. Railway awarded the pantry car contract to the same contractor on 24.07.1997 on the basis of one license for one train in terms of para 8 of Railway Board's letters dated 06.01.1992 [Annexure A/2 of OA] and 22.08.1996 [Annexure A/7 of OA]. The proposal was scrutinized by CCM [G] and approved by the then CCM. On N.F. Railway as well as on Northern Railway, whenever frequency of any train increased, the same contractor were allotted by the CCM of the Zonal railway to run the pantry cars in additional rakes. For example, in one such case of Northern Railway, when the frequency of New Delhi - Guwahati Rajdhani Express increased, the same contractor had been allowed by CCM/Northern Railway to run the pantry car in second and third rakes of Rajdhani /Shatabdi Express.

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(iii) The pantry car services of Cochin Express were taken over from Southern Railway on 01.08.1997. The combined /integrated rake link to run more than one train was introduced in N.F. Railway from August 1997 when Guwahati Bangalore and Guwahati Cochin Express rakes where integrated. This could be overcome only by treating them as one service for the purpose of pantry car operation/management. However, no guidelines are said to have existed on the issue from the Board. The applicant suggested in the relevant note to refer the issue to Railway Board for post facto approval. The same was accepted by the competent authority and the proposal was accepted and approved by the Board vide their letter dated 23.03.1998 [Annexure A/6 of OA].

(iv) The applicant initiated proposal for 5645/5646 Guwahati Dadar Express on the basis of office note of CPTM Maligaon on the basis of Board's letter. On 12.03.1998, the CPTM/ N.F. Railway advised the CCM that the frequency of 5645/5646 Guwahati Dadar Express was being increased from bi-weekly to tri-weekly w.e.f. 01.07.1998. Recommendation was made treating it only as an additional service in existence. The G.M. approved the case on 30.05.1998 and the contractor was advised on 22.06.1998. The applicant was in the meantime transferred from catering section after initiation of the proposal.

5. The then G.M., N.F. Railway, Shri Rajendra Nath wrote to the Railway Board vide his D.O letters dated 25.09.1998, 16.12.1998 and 16.12.1998 [Annexures A/3, A/4 & A/5] seeking the Board's advice / decision in this regard. These letters were for the pantry cars in respectively Guwahati- Trivandrum Express, Guwahati -Dadar Express and Kamrup Express between Howrah and Dibrugarh Express.

6. In the above 3 Train Nos. 5625/5626, 5623/5624 and 5645/5646, the applicant initially proposed a license fee of Rs. 1,30,000/- per annum to be realised from contractors as per third License Fee Committee recommendation but on the appeal of contractor of Train No. 5625/5626 [namely, Shri Ramen Dekka] the then CCM/N.F. Railway is said to have ordered and permitted to realise Rs. 10,000/- per annum as per existing / old rate in view of the stay order in the court case pending before Hon'ble High Court Guwahati in the matter of enhanced license fee [Annexure A/9 of OA]. The contractor's appeal [letter - [Annexure A/8 of OA] is said to be lying in the CCM's office, N.F. Railway, Maligaon, Guwahati's file No. C/56/CD/2/Pt.IX.

7. It is contended that it was not the applicant who took any decision. He simply processed the papers as per orders given by the CCM on the body of

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application submitted by the parties. After some time the incumbent of the post of Chief Commercial Manager changed and the new Chief Commercial Manager who joined the post thought that for granting licenses for the services [indicated above], the proper step would have been to call for fresh applications through press advertisement. The General Manager who had earlier approved CCM's orders of license etc referred the matter to the Railway Board for clarification in the face of conflicting views of the two CCMs of the N.F. Railway. The Railway Board approved the steps already taken by the Railway Administration i.e., N.F. Railway, but it was not clear, according to the applicant, whether this approval was one time relaxation or a confirmation of the interpretation of the earlier CCM.

8. The applicant is said to have been served with a major memorandum dated 31.05.2000 wherein two articles of charges were brought against him. One article of charge related to awarding of contracts on conversion of meter gauge to broad gauge / increase of frequency / introduction of new trains under integrated link system to the existing contractor and the second article of charge related to license fee fixed in connection with a contractor working pantry car of train No. 5625/5626 [Guwahati Bangalore Express]. The memorandum was issued against the applicant by the same General Manager, Shri Rajendra Nath, who is said to have been a party to the whole exercise of granting contract or allowing services in BG trains for the remaining period for which, they had authority to serve in MG trains. A similar charge sheet was also issued to Shri J.D. Goswami, the CCM [G] who is said to have practically taken all decisions regarding granting contract etc to the contractors. On transfer of Shri Rajendra Nath, Shri B.M.S. Bist, the then General Manager, N.F. Railway became the Disciplinary Authority and appointed Ms. Meeta Nambiar as I.O from the establishment of Chief Vigilance Commissioner to conduct the inquiry. She held preliminary inquiry on 10.09.2001 and submitted her report on 17.05.2002 to the G.M, N.F. Railway. A show cause was sent to the applicant in February 2004 with disagreement memo vide letter dated 12.03.2004 [Annexure A/11 of OA], after nearly six months. The applicant has further submitted that the I.O had given her findings in her Report as follows:

Article of Charge I : Not Proved.

Article of Charge II : Partially proved,

but the DA, that is the General Manager, East Central railway, held both the charges as proved against the applicant.

9. Meanwhile, the applicant was considered for Group A along with his

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junior Shri S.K.Karmakar in the year 2000-2001, but his case was kept in sealed cover while his junior was promoted to JA grade w.e.f. August, 2002. The proceedings initiated against the CCM [G], the applicant's controlling boss were concluded according to the model time schedule, and he was given a minor penalty while the proceedings against the applicant were unduly delayed. This abnormal delay showed malafide intention of the DA against the applicant The delay affected the promotion of the applicant. On appeal against imposition of penalty against him, this penalty was withdrawn on the advice of the UPSC that the ends of justice would be served if the appeal of the charged officer Shri J.D. Goswami be accepted and he be completely exonerated of the charge levelled against him [Annexure A/12 of OA].

10. The applicant has stated that on receipt of dis-agreement memo from the General Manager, East Central Railway, the applicant submitted his representation against the memo of disagreement wherein he expressed that no decision was taken by him and the exercise had the approval of his superiors i.e., CCM [G] and even that of the General Manager who had obtained the approval of the Railway Board in some cases and therefore, the charges levelled against the applicant could not be sustained against him. The General Manager, East Central Railway, however, felt that the approval given by the Board was only to regularize a fait accompli and did not approve the steps taken by the applicant. The Railway Board, on consideration of the inquiry report together with disagreement memo of the General Manager imposed penalty against the applicant vide letter dated 03.08.2004 [Annexure A/13 of OA]. The applicant filed an appeal [Annexure A/14 of OA] to the President of India who in consultation with the Union Public Service Commission upheld the penalty imposed on the applicant [Annexures A/15 and A/16 of OA]. Meanwhile, the persons much junior to the applicant were considered for Group A in the year 2003-2004 but the applicant was left out. The name of the applicant also did not figure in the list of Group A published for the year 2004-2005.

11. The applicant has contended that the decision of awarding contract etc was taken by CCM [G], the applicant's superior authority and nowhere the said authority had alleged that the applicant misled him through his notings / proposal etc and hence giving clean chit to CCM [G] and imposing penalty on the applicant was arbitrary, discriminatory, and the penalty on the applicant was imposed vide Railway Board's letter dated 03.08.2004 by which time the appeal of Shri J.D. Goswami, the then CCM [G]/N.F Railway had been disposed of. It was obligatory on the part of the Disciplinary Authority to have given the reasons justifying the

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different treatment accorded in the two cases. This discrimination was a clear violation of Article 14 and 16 of the Constitution. Shri Rajendra Nath, the then General Manager having been party to the exercise of power in decision making in which the applicant was only a lower authority to initiate the matter could not have acted as Disciplinary Authority against the applicant. The law is clear that the Disciplinary Authority cannot be one having bias. It is not the actual existence of the bias, but even a suggestion of bias bars one from becoming a disciplinary authority, and therefore, initiation of proceedings by him was ab initio void. The GM/East Central Railway, in his disagreement memo considered that the interpretation of the I.O was not correct. In that view, according to the revised Rule 10 in force from 08.08.2002, the GM/ E.C. Railway should have remitted back the case to the IO recording his reason for further inquiry and report. the GM/East Central Railway had not followed his procedure.

12. Vide his supplementary application filed on 01.03.2007, the applicant has brought on record the report of the I.O [Annexure A/18 of OA] and submitted that the I.O had held charge II as partially proved. The I.O had asked the applicant to produce CCM/N.F. Railway's order and the appeal of the contractor to pay Rs. 10000/- per annum. The applicant had failed to produce the documents as it was a part of an official document not under his possession. He had been able to obtain a copy of the requisite document which has been marked as Annexure A/19. A copy of the stay order of Hon'ble High Court was filed with the OA [Annexure A/9]. Had these documents been supplied to the applicant in course of disciplinary inquiry, the 2nd charge might not have been declared partially proved. It has been further stated that one Shri P.K. Hazarika who was also undergoing punishment during the relevant period of 2004-2005 was promoted for the year 2004 - 2005 itself vide separate notification dated 03.11.2006 [Annexure A/23] indicating that the applicant's apprehension regarding biasness towards the applicant was true.

13. In his Supplementary Petition filed on 26.06.2007, the applicant has brought on record a copy of the memorandum dated 31.05.2000 [Annexure A/24] issued by the GM, N.F. Railway and copies of notings in the office file starting from note prepared by the applicant dated 16.07.1997 till the orders passed by CCM's on the note submitted by the applicant on 06.08.1997.

14. In yet another supplementary petition filed on 25.07.2007, the applicant has filed a copy of the Investigation Report of the Vigilance dated 01.03.1999 against the applicant and 3 others.

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15. Vide his supplementary application filed on 03.08.2007, the applicant sought amendment of reliefs by addition of the following reliefs:

> "2. To issue a direction to respondent to promote the applicant in Group A on the bais of the DPC held in 2000-01 with consequential benefits.
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> 3. To issue a direction to grant him the deemed promotion in Junior Administrative Grade with retrospective effect and with consequential benefits w.e.f. the date his junior Shri S.K. Karmkar has been given.
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> 4. To issue a direction to the respondent to publish in leading newspapers the date from which the applicant is promoted in Dy. Chief in the grade [Rs. 12000-16500/-]
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> and
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> apart from the cost of litigation, any other relief that the Hon'ble Tribunal deems fit."

16. Finally, the applicant vide his supplementary petition filed on 03.09.2007 sought inclusion of a copy of defence statement to the charge memo [Annexure A/29], representation against memo of disagreement [Annexure A/30] and appeal submitted to the Hon'ble President of India [Annexure A/31 of OA].

17. In their written statement, the respondents have set out the history of the case as follows:

> The disciplinary proceedings were initiated against the applicant under Rule 9 of the Railway Servants [Discipline & Appeal] Rules, 1968 by the General Manager / N.F. Railway vide issue of charge memorandum dated 31.05.2000 containing the following charges:
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> That said Shri Verma, the then SCM [Catering] N.F. Railway, while posted and working as such during the period February 1997 to May 1998 and processing the files pertaining to allotment of pantry cars, committed following serious irregularities with ulterior motive.
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> Article - I
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> He favoured select licenses of pantry car services by recommending the allotment of additional pantry cars in their favour during this period without calling for applications through press advertisement and thus by passing scrutiny / short-listing of applications by Screening committee and Zonal Selection committee and approval by the competent authority i.e. G.M in violation of the provisions made in Railway Board's policy circular No. 91/Tg-III/600/15 dated 06.01.1992.

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Article -II

Shri Verma benefited the existing licensee of GHY-SBC Express monetarily at the cost of substantial revenue loss to Railway by proposing lower amount as annual license fee for the second rake of the GHY-SBC Express.

By the above acts of omission and commission, Shri K.S. Verma, the then SCM [Catg.], N.F. Railway failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of Railway Servant, thereby he contravened provisions of Rule 3 [1] [i], [ii] and [iii] of Railway Service [Conduct] Rules, 1966.

18. In response to the aforesaid charge memorandum, the applicant submitted his written defence statement dated 30.11.2000 denying the charges. After considering the defence statement of the applicant, the General Manager, N/F. Railway [Disciplinary Authority] remitted the case for inquiry. In the inquiry which was held, the I.O in her report dated 17.05.2002 held Article -I of the charge as not proved and Article II as partly proved against the applicant. The Disciplinary Authority, however, did not agree with the IO's findings and held both the charges against the applicant as proved. Accordingly, a copy of the I.O's Report along with the Disagreement memorandum dated 26.02.2004 was issued to the applicant calling for his representation thereon. The applicant submitted his representation dated 31.03.2004 on the I.O's report and the Disagreement memorandum. The applicant was also given an opportunity of personal hearing by the Disciplinary Authority on his request. Since the General Manager, North Frontier Railway was not the competent authority to impose a major penalty on the applicant, he forwarded the case to the competent Disciplinary Authority i.e., the Railway Board along with all relevant documents, in accordance with Rule 10 [3] of the Railway Servants [D&A] Rules, 1968 for further action. The Disciplinary Authority, that is, the Railway Board imposed the penalty of "reduction by one stage in the present time scale of pay for a period of six months with cumulative effect" on the applicant vide order dated 03.08.2004. Thereafter, the applicant preferred an appeal dated 24.08.2004 to the President [Appellate Authority] against the penalty order dated 03.08.2004. As required under the Rules, the appeal of the applicant was referred to the Union Public Service Commission for their advice. The UPSC advised vide their letter dated 18.11.2005 that the applicant had not brought out any new fact or point of law in his

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appeal which could merit any re-consideration of the penalty imposed and that there was no merit in the appeal and that the penalty imposed upon him was not excessive. The President concluded that UPSC's opinion was acceptable and that there was no merit in the appeal of the applicant and accordingly, the same was rejected by the President vide order dated 03.02.2006.

19. The respondents have cited certain decisions of the Hon'ble Supreme Court in support of their submissions that the Tribunal cannot sit in appeal over the orders in the departmental proceedings of the Disciplinary Authority and the Appellate Authority, [a] Kuldeep Singh vs. Commissioner of Police & Others [1999] 2 SCC 10 [b] Damoh Panna Sagar RRB vs. Munna Lal in Civil Appeal No. 8258 of 2004 - judgment dated 17.12.2004 [c] Government of Tamil Nadu & Others vs. R. Rajapandian - AIR 1995 SC 561, [d] Shri Parma Nand vs. State of Haryana & Ors in SLP [Civil] No. 6998 of 1988. The impugned orders had been passed complying with the statutory Rules and by observing the principles of natural justice.

20. The respondents have submitted that the instructions in the circular dated 06.01.1992 which had the heading "**New Catering Policy on Indian Railways**" made it very clear that these were in supersession of the previous instructions on the subject. It was not expected that the fact that the instructions were in supersession of all previous instructions should have been mentioned repeatedly in the circular. According to the new instructions, applications had to be called through press advertisement and no scope was left for any exceptions. All applications had to be scrutinized by a Screening Committee comprising designated officers and these had to be finally approved by the G.M. As such, a new contract had to be allotted and this could have been done only on the basis of new instructions instead of following the earlier circular of 1980. The applicant's contention that the guidelines of 1992 did not cover the situation arising out of gauge conversion and as such the pantry contract on BG could automatically be given to the MG contractor was false and misconceived. The guidelines of the New Catering Policy issued in 1992 explicitly provided that whenever a new contract was to be operated, the only mode of allotment was to call applications through press advertisement. The policy did not allow for any digression from this general principle. The contentions / issues raised by the applicant had been considered by the Disciplinary Authority, i.e., the Railway Board while passing the penalty order, and the Appellate Authority i.e., the President of India at the time of deciding the appeal in consultation with the UPSC. The policy of "one train one licensee" was applied very

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selectively and by passing the procedure laid down in the new policy. The post facto approval of the Railway Board of the action taken by the Railway was a reluctant acquiescence with a fait accompli presented by N.F. Railway in the matter.

21. In regard to the averment of the applicant that the CCM/N.F. Railway had ordered and permitted Rs. 10,000/- per annum as per existing / old rate in place of Rs. 1,30,000/- initially proposed by him, the respondents have submitted that there was documentary evidence, that is, his own Note dated 24.07.1997 that he had proposed a license fee of Rs. 10,000/- per annum, and the applicant cannot absolve himself of his responsibility by blaming his superiors since as the initiator of the proposals, it was his responsibility to process the case as per rules.

22. The averment that the G.M was also implicated as he was himself a party to the whole exercise of granting contract or allowing services in BG trains for the remaining period for which they had the authority to serve in MG trains has been refuted by the respondents by submitting that the General Manager of the Zonal Railway is the administrative head of the Railway and was the administrative authority for the approval of the said contracts by virtue of his position. By giving administrative approval to the contract on the technical recommendations of the concerned technical officers, the G.M does not become a party to the whole exercise. The disciplinary proceedings against all officials involved in a case are independent and separate proceedings and the case against each person has to be decided based on the culpability in the matter and on the merits of the case. Further, it cannot be interpreted to mean that the General Manager would be biased having been party to the decision making. The General Manager was the competent authority to initiate proceedings against the applicant under Rule 8 of the Railway Servants [Discipline and Appeal] Rules, 1968. The applicant had not raised the issue of the General Manager being the Disciplinary Authority at the penalty or appeal stage. The penalty had been imposed in the case by the Railway Board [Disciplinary Authority] and not by the General Manager, East Central Railway and the same had been confirmed by the President i.e., Appellate Authority in consultation with the UPSC. It was the primary responsibility of the applicant, while he was processing the cases, to go by the Rules which has no provision for any exception. Not even in one case, the applicant issued any advertisement in the press or set up Committees which were mandatory under the instructions. Instead, he managed to get applications from a few selected contractors and then recommended a favoured contractor on some ground or other. There was no infirmity in the issue of charge memorandum by the

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General Manager /N.F. Railway who was the Disciplinary Authority for initiating action against the applicant under Railway Servants [Discipline & Appeal] Rules, 1968. The applicant's contention that the CCM [G] had practically taken all decisions regarding granting contract to the contractors was not correct. The CCM [G] is the middle level officer in the hierarchy of decision making to whom the applicant had put up the proposals for awarding of the contracts, in contravention of the extant policy, and therefore, the applicant's contention that the CCM [G] took the decision for award of the contracts was wrong.

23. In regard to the time taken in the procedures, the respondents have submitted that the Railway Servants [D&A] Rules 1968 do not lay down any time limit for the Disciplinary Authority to pass orders in the disciplinary proceedings. It is not practicable to adhere to any such limit on account of necessity of pursuing the due procedure before imposition of the penalty on the charged officer, the same being a quasi judicial proceeding. The model time schedule merely lays down the desirable time limit to be adhered to at different stages of the proceedings. The applicant has not brought out how the delay had caused prejudice to him. The respondents have denied that the proceedings against the applicant were pending for unduly long or that the proceedings against him were deliberately delayed so as to take a longer time than those against CCM [G]. In cases where there are several co-accused and reference to UPSC in connection with the case against one co-accused is required, the processing of the cases against other co-accused can get delayed sometimes since cases have to be referred to UPSC with all original documents and the absence of the same may hamper the proceedings of cases against the other co-accused. Such delays, however, cannot be attributed to ulterior motives but may occur on account of procedural requirements. The applicant was transferred from N.F. Railway to East Central Railway during the pendency of the proceedings. Therefore, the General Manager, E.C. Railway became the Disciplinary Authority for the applicant by virtue of being the administrative head of the E.C. Railway. The report was, therefore, rightly considered by General Manager, E.C. Railway. The documents pertaining to the disciplinary proceedings had to be transferred from N.F. Railway to E.C. Railway and the process of transfer of documents from one Zonal Railway to another naturally took some time. There was no inordinate delay in this case. The disciplinary proceedings against any employee being quasi judicial proceedings have to be proceeded with as per laid down procedure and observing all principles of natural justice and require extensive examination of documents and

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witnesses and due consideration by the concerned authorities. As such, the procedure takes time.

24. The respondents have further submitted that in view of the applicant's transfer to E.C. Railway, the G.M/ E.C. Railway became the Disciplinary Authority to consider the I.O's report, and in this capacity, he was competent authority to issue the disagreement memo to the applicant in accordance with Rule 10 of the Railway Servants [D&A] Rules, 1968. It is only where the Disciplinary Authority, after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross examine and re-examine the witnesses. This provision of Sub rule 1 [a] of Rule 10 of the Railway Servants [D&A] Rules, 1968 cannot be construed to mean that the Disciplinary Authority is under obligation to examine or re-examine the witnesses further in every case irrespective of whether he considers it necessary to further examine the witnesses. Similarly, Sub rule 1 [b] of the Rule 10 provides that if the Disciplinary Authority is not self the inquiring authority, may for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule, as far as may be. This provision of the Rules cannot be construed to mean that the Disciplinary Authority necessarily has to remit the case to the inquiry authority for further inquiry. If the Disciplinary Authority disagrees with the findings in the I.O's report, then under Rule 10 [2] [b] of the Railway Servants [D&A] Rules 1968, he may forward a copy of the I.O's report together with the tentative reasons for his disagreement with the I.O's findings on any article of charge to the charged officer calling for his representation. The applicant's case was kept in sealed cover as per procedure in view of the major penalty proceedings pending against him which was in accordance with the rules. It was not relevant as to what penalty was imposed / not imposed on the applicant's controlling boss by the Disciplinary / Appellate Authority since each case has to be considered on its own merits and the penalty has to be decided upon depending on the gravity of the offence committed by the charged officer. The decision by the Appellate Authority was taken in consultation with the UPSC, an independent Constitutional Authority which cannot be accused of being biased either in favour of, or against, either the applicant or his superior.

24. In regard to the applicant's contention that the smallest of the major penalties was imposed on him instead of the minor penalty of withholding of

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increment, the respondents have submitted that the Disciplinary Authority imposed a penalty commensurate with the guilt established, and the same was also confirmed by the Appellate Authority. The fact that the applicant could not get his promotion on account of a major penalty being imposed on him on account of the charges against him being held to be proved is only incidental and does not in any way imply that the smallest/least of the major penalties was imposed on him to deprive him of his promotion. The applicant was issued a major penalty memorandum in June 2000, and the major penalty proceedings were pending against him in June 2002 when his junior was promoted. His case has to be kept in sealed cover. The final orders of disciplinary authority imposing the penalty of "reduction by one stage in the present time scale of pay for a period of six months with cumulative effect" were issued on 03.08.2004, and therefore, promotion could not have been given to him during the period of imposition of the penalty as per Rules. In terms of the sealed cover procedure, if any major penalty is imposed on the Government servant as a result of the disciplinary proceedings, the findings of the sealed cover[s] shall not be acted upon and his case for promotion may be considered by the Departmental Proceeding Committee in the normal course and having regard to the penalty imposed upon him. As such, the applicant's contention that his name should have figured in the least of Group A published for the year 2004-2005 was not tenable.

25. Heard the learned counsels for the applicant and the respondents on 03.07.2012, 27.08.2012 and 28.08.2012. On the last day, that is, on 05.09.2012, there was no one present on behalf of the respondents. Perused the entire record.

26. At the outset, it may be mentioned that the law is well settled that the power of the Tribunal to interfere in disciplinary matters is very limited. The Tribunal can interfere only if

(a) the charges are vague or not specific;

(b) inquiry has not been conducted in accordance with law and established procedure;

© it is a case of no evidence;

(d) Inquiry Officer's finding is perverse;

(e) principles of natural justice have been violated; or

(f) punishment is so disproportionate as to shock the conscience of the Tribunal.

27. In the present case, the charges are quite specific and not vague and inquiry has been conducted in accordance with law and established procedure. The

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applicant participated in the inquiry and did not complain of any violation of procedure. It is not a case of no evidence. The findings of the IO cannot be said to be perverse. It is seen that the impugned orders of the Disciplinary and Appellate Authorities [Annexures A/13 and A/16 of OA] are detailed and reasoned orders and do not suffer from non- application of mind.

28. It is trite that in a disciplinary proceeding, Courts/ Tribunal cannot go into the correctness of charge and re-appreciate evidence by assumption of the role of appellate authority. It is open for Courts/ Tribunal to interfere only when the proceedings are based on no-evidence, perverse evidence, surmises or conjectures which is not the case here. As early as on 10 April, 1963, in *State Of Andhra Pradesh vs S. Sree Rama Rao,* the Hon'ble Supreme Court of India held as follows: *"But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution."* There is a string of judgments in this regard.

29. This is not a case of no-evidence or perverse evidence. If there is some legal evidence on which the findings could be based, then adequacy or even reliability of such evidence would be outside the pale of judicial review [*High Court of Judicature at Bombay vs. Shastrikant S. Patil* (2000) 1 SCC 416: AIR 2000 SC 22 : (1999) 5SLR 615]. Further, in *Apparel Export Promotion Council vs A.K. Chopra*, the Hon'ble Supreme Court held on 20 January, 1999 as follows:

> *"..... Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Haltom in Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, observed: The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court.*
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> *Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact*

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that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

.....

After a detailed review of the law on the subject, this Court while dealing with the jurisdiction of the High Court or Tribunal to interfere with the disciplinary matters and punishment in Union of India v. Parma Nanda, (1989) 2 SCC 177, opined: We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

In B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, this Court opined: The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate them evidence or the nature of punishment. In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

30. As regards delay in the disciplinary proceedings, the applicant has submitted that the delay has caused him prejudice inasmuch his promotion or movement to next grade was denied or delayed but he has not made out a case of prejudice being caused to him in his defence in the disciplinary proceedings. The respondents have submitted that the model time schedule merely lays down the desirable time-limit to be adhered to at different stages of proceedings and that it was not practical to conform to any time-limit. The delay in this case cannot be considered to be abnormal considering the position set out in para 23 above nor can it inferred that is was wanton or deliberate. That the disciplinary proceedings and the result thereof affected the applicant's promotion is only incidental. It may be worthwhile, in this regard, to refer to the judgment of the Hon'ble Supreme court in

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Appeal (Civil) 513 of 2008 in *U.P. STATE SUGAR CORPORATION LTD. & Ors. vs. KAMAL SWAROOP TONDON* on 18/01/2008, wherein it was said as follows:

> *26. Strong reliance was placed by the learned counsel for the respondent on P.V. Mahadevan v. MD. T.N. Housing Board, (2005) 6 SCC 636: JT 2005 (7) SC 417. In that case, there was inordinate delay of ten years in initiating departmental proceedings against an employee. In absence of convincing explanation by the employer for such inordinate delay, this Court held that the proceedings were liable to be quashed.*
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> *27. In our opinion, Mahadevan does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed.*

In P. D. Agrawal vs. State Bank Of India & Ors, the Hon'ble Supreme Court held on 28 April, 2006 as follows:

> *In State of M.P. vs. Bani Singh & Anr. [(1990) Supp. SCC 738], whereupon Mr. Rao placed strong reliance, this Court opined that by reason of delay of 12 years in initiating the disciplinary proceeding, the delinquent officer could not defend himself properly. In that case there was no satisfactory explanation such a long delay. There was also doubt as regards the involvement of the delinquent officer. In State of Punjab & Ors. vs. Chaman Lal Goyal [(1995) 2 SCC 570], however, this Court refused to set aside those disciplinary proceeding which had been initiated after a delay of 5 years. Distinguishing the decision of this Court in Bani Singh & Anr. (supra), it was stated:*
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> *"Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how*

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long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing"

31. As regards the plea that the G.M., Shri Rajendra Nath who issued the charge-memo was a party to the entire exercise of granting contract or allowing services in BG trains for the remaining period and was accordingly biased, the respondents have stated that the General Manager is the administrative head of the Zonal Railway and was the administrative authority for approval of contracts by virtue of his position and this approval was based on the technical recommendations of the concerned technical officers. This did not make him a party to the decision making. He was the competent authority under Rule 8 of the Railway Servants [D & A] Rules, 1968 to initiate proceedings against the applicant. The contention of the applicant in this regard is not tenable considering that if the GM had been an interested party, he would not have addressed the Railway Board referring to the view of the new CCM and seeking advice of the Board in the matter [Annexure 4 & 5 of OA]. It is well known that the head of an organization like the GM in this case has multifarious responsibilities and plays multiple roles and in the administrative structure of Government or Governmental organizations we have in the country, a proposal or note emanates from the lowest level in the hierarchy and travels upwards through different levels, with each officer putting quite often his 'dhobi mark'. No doubt objectivity is the hall-mark of disciplinary proceedings, which partake the character of quasi-judicial proceeding. The Supreme Court has pointed out that actual bias as well as reasonable apprehension of bias is sufficient to disqualify a person from talking a valid decision [*A.K. Kraipak vs. UOI*]. But, whereas, actual bias is a factual aspect, what is relevant as regards the test of likelihood of bias, is reasonableness of the apprehension in that regard in the mind of the party [*Ranjit Thakur vs. UOI*].

32. In *Chandra Prakash Singh & Ors vs Chairman, Purvanchal Gramin Bank*, the Supreme Court of India said as follows on 22 February, 2008:

15. In State of Punjab v. V.K. Khanna's case (supra), this Court held that the concept of fairness in administrative action has been the subject-matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending

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scrutiny before the Court and no strait-jacket formula can be evolved therefore. Further it is stated that as a matter of fact, fairness is synonymous with reasonableness and on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed. It is the appreciation of this common man's perception in its proper perspective which would prompt the Court to determine the situation as to whether the same is otherwise reasonable or not. Similarly, the existence of mala fide intent or biased attitude cannot be put on a strait-jacket formula but depends upon facts and circumstances of each case. Further, it is said that whereas fairness is synonymous with reasonableness, bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". ***Mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether, in fact, there was a bias or a mala fide move which resulted in the miscarriage of justice. It is also held that the test of bias is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there exists a real danger of bias, administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise.***

16. In Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal and Ors.'s case (supra), this Court dealing with the question of mala fide exercise of power, held as under:

"Allegations of mala fide are serious in nature and they essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite materials are not on record, the Court would not make "fishing" or roving inquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be mala fide. It must be demonstrated by facts. Moreover, the burden of proving mala fide is on the person leveling such allegations and the burden is "very heavy".

.....

In addition to the decisions referred to above, this Court in Tara Chand Khatri vs. Municipal Corporation of Delhi & Ors. [AIR 1977 SC 567]; E.P. Royappa v. State of Tamil Nadu & Anr. [AIR 1874 SC 555] and M/s. Sukhwinder Pal Bipan Kumar & Ors. v. State of Punjab & Ors. [AIR 1982 SC 65] held that the burden of establishing mala fide is very heavy on the person who alleges it.

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18. In M. Sankaranarayanan, IAS v. State of Karnataka & Ors. [AIR

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1993 SC 763], this Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain the realm of institution, surmise or conjecture." In N.K. Singh v. Union of India and Ors. [(1994) 6 SCC 98], this Court held that the inference of mala fides be drawn by reading in between the lines and taking into account the attendant circumstances.

19. Thus, as a proposition of law, the burden of proving mala fide is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under the legal obligation to place specific materials before the Court to substantiate the said allegations. There has to be very strong and convincing evidence to establish the allegations of mala fides specifically and definitely alleged in the petition as the same cannot merely be presumed.

33. In *Dr. Bhagwat Singh vs Union Of India And Ors.*, the Central Administrative Tribunal, Jodhpur Bench said on 6 March, 2002 as follows:

19. Now, we come to the plea of bias alleged to have been entertained by the enquiry officer against the applicant. The sweeping remarks came to be made on behalf of the applicant that the conduct of the enquiry officer exhibited bias and consequently, he was, from the very beginning, bent upon to arrive at the finding that the charge against the applicant has been established. This submission appears to have been founded on the plank of the decision of the Apex Court in the case of Kumaon Mandal Vikas Nigam Limited v. Girija Shanker Pant, 2000(8} SLR 769. In that case, Hon'ble the Supreme Court found that the entire chain of events smacked of some personal clash and adaptation of a method unknown to law in hottest of haste and bias on the part of the authorities to weed out the charged employee. ***The Apex Court ruled that, if there was existing a real danger of bias, and not mere apprehension of bias, administrative action cannot be sustained.*** *The decision aforesaid is, hardly of any help and assistance to the applicant. The learned Counsel for the applicant could not point out even a single patent or latent fact which may suggest even faintly or remotely that Shri Geeta Ram, enquiry officer had entertained the feeling of grudge or bias against the applicant. The bald submission made on behalf of the applicant with regard to the fact that there was a total mind-set from the beginning to punish the applicant, is wholly baseless.*

34. Again in O.A. NO.2765/2008, Shri A.K. Sharma vs The Chairman, the Principal Bench of this Tribunal said on 14 January, 2010 as follows:

5.4 As per the settled law, the plea of malafide is more easily made than made out. It is also well settled that in judicial review, the Courts and Tribunals do not accept such pleas of malafide unless substantiated appropriately. ***Further, unless otherwise proved, the presumption is that the administrative authorities are acting in discharge of their duty bonafidely.***

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35. The general tenor of the above decisions is that there should be not merely an apprehension of bias. It should be a **reasonable apprehension**. The applicant has failed to establish that that the G.M. was an interested party and was biased against the applicant.

36. The contention of the applicant is that the senior of the applicant was exonerated although he had endorsed the proposals for continuance of the contracts till the balance period on conversion from Metre Gauge to Broad Gauge while the applicant was punished. This contention cannot be accepted as the endorsement by his immediate boss of the proposal does not absolve the applicant of his responsibility to put up the proposal and make his recommendation correctly, particularly in view of the change of policy vide circular dated 06.01.1992 and if there was any doubt or ambiguity in this regard, he should have suggested seeking of clarification in the matter. In regard to discrimination against the applicant vis-à-vis his boss, Shri J.D. Goswami, it may be worthwhile to refer to the case of *State Of Bihar & Ors vs Kameshwar Prasad Singh & Anr* on 27 April, 2000, wherein the Hon'ble Supreme Court held as follows:

> *The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh & Ors. v. NDMC & Ors. [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:*
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> *"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."*
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> *Again in Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors. [1997 (1) SCC 35] this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding*

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the concept of equality holding:

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

In State of Haryana & Ors v. Ram Kumar Mann [1997 (3) SCC 321] this Court observed:

"The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wronglygiven to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the Wrong order and claim parity or equality. Two wrongs can never make a right."

37. In the light of the factual and legal position set out above, the OA fails and is accordingly dismissed. In view of this order, the additional reliefs sought by the applicant vide his supplementary application filed on 03.08.2007 also cannot be granted. With this the OA stands disposed of. No order as to costs.

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[Bidisha Banerjee] M [J]

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[Naresh Gupta] M [A]

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