CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

C.P. 27/93 in

Original Application No. 814/92

Shri L.S. Chavan ... Applicant.

V/s

Shri R.K. Sapre,
Additional Divisional Rly Manager
Central Railway Bhysawal. ... Respondent.

CORAM: Hon'ble Ms. Usha Savara, Member (A)
Hon'ble Shri V.D.Deshmukh, Member (J)

Appearance:

Shri D.V.Gangal, counsel
for the applicant.

Shri J.G. Sawant, counsel
for the respondents.

Tribunal's order. Dated: 15.3.93

It is submitted by Shri Sawant, that Review Petition No 5/92 is pending, Since the order was passed by Hon'ble Shri Justice S.K. Dhaon who is in Delhi, Registry will take appropriate steps in this matter for disposal of the Review Petition.

Applicant has filed C.P. 27/93. We are of the opinion that as the Review Petition was already pending it is not proper to issue notice in the C.P. Shri Gangal submits that the Review Petition does not operate stay of the order passed in OA 814/92 and the respondents have not filed an application for extension of time to implement the judgement in the O.A. However we find that as Review petition has been filed and it is before us to day it would not be proper to pass any order on C.P. immediately. Mr. Gangal also submits that no prejudice is likely to be caused to the respondents if notice is issued in the C.P. In our opinion it is a matter of propriety and we find therefore

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that the C.P. be considered only after the Review Petition is disposed of.

(V.D. DESHMUKH)
M(J)

(USHA SAVARA)
M(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 205/92
in
OA No. 814/92

Shri L. S. Chavan .... Applicant

Vs.

Addl. Div. Rly. Manager,
Central Railway, Bhusawal & Anr.... Respondents

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Appearance :
Shri D.V.Ganal, Advocate
for the Applicant.

Shri J. G. Sawant, Advocate
for the Respondents.

Tribunal's Order
(Per : M.R.Kolhatkar, Member (A)) Dated 9-3-1994

In this review petition the original respondents, Railway Administration have sought review of the oral judgement dated 28.9.1992 passed by this Bench in OA. No. 814/92.

2. In OA No. 814/92 the penalty of reduction to lowest stage in the same time scale Rs. 1200-2040 (RPS) from stage of Rs. 1500/- to Rs.1200/- for a period of two years with immediate effect, with further directions that on expiry of the period this will have the effect on postponing future benefits was imposed on the original applicant by order dated 21.8.1991 at'Annexure A-5' Page 53 of the OA. Against this order of penalty by the disciplinary authority viz. DCS Bhusaval, the original applicant filed an appeal on 25.9.1991 before the Additional Divisional Railway Manager, Central Railway, Bhusawal. The A.D.R.M. by his show cause notice dated

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15.7.1992 at'Annexure A-8' page 62 of the OA. asked the applicant to show cause as to why the penalty should not be increased, that is to say, as to why the penalty of reduction to the lowest stage in the same time scale should not operate for a period of three years instead of two years as per the original order of punishment with effect on future benefits. The OA. was filed on 20.7.1992 and prayer (A) in the OA. was to quash and set aside the order by which the applicant's pay was reduced to the minimum of the same scale i.e. to Rs. 1200/-, prayer (B) was to direct the respondents to pay all consequential benefits including refund of reduced pay and allowances, prayer (C) was to saddle the cost of the application on the respondents and prayer (D) any other reliefs.

3. The order sheet shows that on 24.8.1992 notice to the respondents, returnable on 26.9.1992 for admission hearing was issued. The oral order was passed on the date fixed for admission hearing. On that date, it is clear that the counsel for the respondents had appeared but the Court observed that "in view of the order we are about to pass, we do not consider it necessary to call for a reply and that we are disposing of this application finally". The directions are contained in Para 4 of the order and the reasons therefor are contained in Para 3 which are reproduced below :-

> " 3. It is averred in paragraph 4.9 of the application that on 25.9.1991 the applicant preferred an appeal addressed to the Additional Divisional Railway Manager, Central Railway,

Bhusaval, a copy of the appeal dated 25.9.1991 is annexed as 'Annexure A-6'. It is also averred that on 21.11.1991 the applicant sent a reminder to the Appellate Authority. A copy of the said reminder has been filed as 'Annexure A-7', It is also alleged that the appeal has not been disposed of as yet but nonetheless the Divisional Railway Manager has initiated the proceedings to enhance the punishment.

4. If the appeal is pending and has not been disposed of as yet, the proceedings initiated by the Divisional Railway Manager for enhancing the punishment is clearly illegal. The Divisional Railway Manager shall stay his hands till the appeal is disposed of. After the decision of the appeal, the said officer shall give a fresh notice to the applicant to show cause, if he feels necessary, as to why the punishment imposed upon the applicant may not be enhanced. However, we make it clear that this order does not empower the Divisional Railway Manager to revise the order of punishment if he does not possess that power under the law. The Appellate Authority shall endeavour to dispose of the appeal as expeditiously as possible but not beyond a period of four months from the date of presentation of a certified copy of this order from the applicant. The applicant is permitted to transmit a certified copy of this order under the Regd. Post A.D. With these directions the application is disposed of finally but without any order as to costs".

4. The contention of the Railway Administration, i.e. Review Petitioner is that this judgement is required to be reviewed because there is an error aparent on the face thereon. The judgement had proceeded on the footing that the show cause notice issued by ADRM (who has been refeered to as DRM in the first and third paras of judgement) was under Rule 25 of

the Railway Servants (Discipline and Appeal) Rules, 1968 for enhancing the punishment by way of revision in as much as the show cause notice itself referred to Rule 25. According to the Review Petitioners, the reference to Rule 25 in the show cause notice by the ADRM was a typographical error and that it was a show cause notice in terms of Rule 22 and it is a well settled position that in case of a wrong reference to a particular rule, so long as powers exist and the powers are otherwise exercised in accordance with the rules, the mere misquoting of the rule would not vitiate the order.

5. The second contention of the review petitioners is that where as the prayer in the original application was for quashing the penalty imposed by the disciplinary authority on 21.8.1991, the Tribunal's order proceeded on the basis that the original applicant had impugned the show cause notice dated 15.7.1992 and the order states so in Para 1.

6. The third contention of the review petitioners is that the order itself shows that it is an ex-parte order. According to him, this is also a strong ground for the review of the order.

7. In their Review Petition, the contention has also been taken that even assuming that the Tribunal was clear about the show-cause notice being under Rule 22, Tribunal misinterpreted the Rule 22, because that rule does not envisage that the appellate authority must

first dispose of the appeal and then by an independent and subsequent action should issue the show-cause notice to the delinquent.

8. The prayer of the review petitioners therefore is that the ex-parte order dated 28.9.1992 may be reviewed for the reasons indicated and restore the proceedings of the original application 814/92, for fresh hearing of the same at the stage where it was, prior to the passing of the oral judgement dated 28.9.1992.

9. Shri Gangal for the original applicant has strenuously opposed the application for review. According to him power to review, whose scope is much more limited than that of appeal, is to be sparingly used and that there is no such error apparent on the face of the record as would justify this Tribunal in reviewing its earlier order. According to him, we must read the order the way it is worded and should not attribute to the Bench any misunderstanding between Section 22 and 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 on the footing that ADRM was proceeding to revise the order of the disciplinary authority. He also contends that the ADRM was without jurisdiction in issuing show-cause notice on the relevant date, that is to say 15.7.1992 as the Applicant was no longer within the jurisdiction of the ADRM, Bhusaval having been transferred to Jabalpur earlier. According to him, the appellate authority was senior Divisional Commercial Superintendent and not the ADRM. Further, the show cause notice is also vitiated because it does not give any reason for enhancement of the

penalty apart from a bare statement that the penalty is regarded as inadequate. So far as the original prayer in (A) of the application being different is concerned, according to him, the prayer for quashing the show cause notice dated 15.7.1992 can be read into prayer (D) which refers to "any other reliefs". He also states that the practicalities of the matter may also be considered. The charge-sheet was issued on 19.10.1989 and the penalty was imposed on 21.8.1991. He has already undergone the penalty which originally related to reduction to lowest stage of the pay scale for two years and any further proceedings cannot but cause harassment to him. Finally, Shri Gangal has raised the point of limitation. Though the judgement dated 28.9.92 was admittedly despatched to and received by the respondents on 14.10.1992, the application for review though dated 13.11.1992 was actually registered on 17.11.1992. The period of review petition being one month, there is a delay of two days. According to counsel, while the delay is not too long, no formal application has been made for condonation of delay. He, therefore, argues that the review petition may be dismissed. 9-A In reply the counsel for Railway Administration has stated that so far as delay of two days is concerned, he makes an oral application for condoning the delay and the same may be condoned. According to him, the appellate authority was fully competent to issue show cause notice even after Applicant's transfer to Jabalpur. So far as the

reading of the prayer regarding quashing of the show cause notice dated 15.7.1992 into the original prayer for quashing of the penalty dated 21.8.1991 is concerned, according to him, the prayer "any other reliefs" may be so construed if it is "ejusdem generis" with the original prayer. This is not so in the present case. He, therefore, prays for allowing the review petition.

10. So far as the point of limitation is conerned the delay involved is of only two days. The oral application of the counsel for the Railway Administration for condonation of the same is allowed and we proceed to dispose of the matter on merits.

11. So far as the contention of show cause notice dated 15.7.1992 not containing detailed reasoning is concerned, it is open to the applicant to take this and any other contentions at an appropriate stage before appropriate forum. Regarding the question of applicant having undergone the penalty, we are not impressed by this argument. The charges involve moral turpitude and it is competent for the appellate authority to take action to enhance penalty as per rules. In any case, the show cause notice by itself does not mean that the penalty would be finally enhanced. ~~In any case,~~ All these are arguments on the merits of O.A.

12. The original applicant has addressed his arguments in regard to Review Petition on the supposition that the show cause notice was issued by the revisionary authority under Section 25. However, we are required to

carefully examine the contention of the review petitioners that the show cause notice was not under Rule 25 but it was under Rule 22. On a plain reading of the documents on record, we have no doubt that the show cause notice was under Rule 22 and not under Rule 25. The disciplinary authority in its original order dated 21.8.1991 itself indicated that the appeal shall lie before the ADRM and the original applicant could file an appeal before ADRM within 45 days. No contention was taken in the OA that the ADRM was not the appellate authority and that the show cause notice was actually issued by a revisionary authority. Under Rule 22, Appellate Authority does have power to enhance the penalty after giving a reasonable opportunity to the appellant to make a representation. There is also no doubt that what was challenged in OA before the Tribunal was not the show cause notice dated 15.7.1992 but the order of penalty dated 21.8.1991. In the review proceedings, we are not required to go into the merits of original application but we are required to see whether the judgement dated 28.9.1992 had contained an error apparent on the face of it. We are of the view that the oral judgment contained following such errors :-

(1) Para 1 refers to show cause notice issued by DRM whereas it was issued by ADRM vide Page 62.

(2) Para 1 states that the show cause notice was impugned whereas it was penalty which was impugned. Challenge to show

cause notice could not be read into prayer (D).

(3) Para 3 summarizes averments in para 4.9 of OA. Towards the end, it is stated "It is also alleged that the appeal has not been disposed of as yet but nonetheless DRM has initiated the proceedings to enhance the punishment".

If we read references to DRM in Para 1 and Para 3 together, and note that in para2, reference is made to the appeal made to ADRM, we come to the heart of the matter, The Tribunal didnot misinterpret sequence of steps under Rule 22, but the Tribunal appeared to harbour a genuine misunderstanding that while appeal before ADRM under rule 22 was pending, the higher authority viz DRM had issued show-cause notice under Rule 25 in exercise of revisionary powers. It could be stated that it was the mistake of Railway Admn. that the show-cause notice in terms referred to Rule 25 and not Rule 22. But the Tribunal ought to have noticed that show cause notice was in fact issued by ADRM i.e. appellate authority and not by DRM. Thus, there was a misunderstanding in the mind of the Tribunal partly caused by misquotation of relevant rule but also partly due to failure of Tribunal to notice the actual designation of the officer issuing show cause notice. Reading Rule 22, inplace of Rule 25, as urged by Review Petition in accordence with settled legal position, we have no hesitation in holding that Tribunal's order dated 28.9.1992 was vitiated by an error apparent on the face of the record.

13. Considering all the contentions and arguments

of the learned counsel and we dispose of the application by the following order.

C R D E R

14. Review Petition is allowed. The order dated 28.9.1992 is hereby reviewed and set aside. In the result, the OA. is restored to file and remitted for admission at the stage where the respondents were to file written statement to the original application for facilitating admission hearing. No order as to costs.

15. Original Respondents may file a written statement by the next date. List the matter on 6.6.1994 for admission hearing.

(Lakshmi Swaminathan)
Member (J)

(M.R.Kolhatkar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 814/92

Date of Decision: 19.3.99

L.S.Chavan — Petitioner/s

Shri D.V.Gangal — Advocate for the Petitioner/s.

v/s.

A.D.R.M.C.Rly.Bhusawal.& Ors. — Respondent/s

Shri V.S.Masurkar — Advocate for the Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 814/92

this the 19th day of March 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

L.S.Chavan,
Train Ticket Examiner,
Divisional Commercial Superintendent,
Central Railway,
Bhusaval.

By Advocate Shri D.V.Gangal ... Applicant

V/S.

1. Additional Divisional Railway Manager, Central Railway, Bhusaval.
2. Divisional Commercial Superintendent, Central Railway, Bhusaval.

By Advocate Shri V.S.Masurkar ... Respondents

ORDER

(Per: Shri D.S.Baweja, Member (A)

The applicant while working as Train Ticket Examiner in Central Railway at Bhusawal was issued a major penalty chargesheet dated 19.10.1989 containing 7 charges. Enquiry was conducted and findings of the enquiry officer were that all the 7 charges were proved. Accepting the findings of the enquiry officer, the disciplinary authority as per order dated 21.8.1991 imposed punishment of reduction from the stage of Rs.1600/- to Rs.1200/- in the grade of Rs.1200-2040 for a period of 2 years with immediate effect and with further stipulation that on expiry of the period, this will have the effect of postponing his future

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benefits. The applicant filed an appeal against this punishment on 25.9.1991. The appeal was not, however, disposed of within a period of six months and the applicant has filed the present OA. on 20.7.1992 seeking the relief of quashing of the punishment order dated 21.8.1991 with all consequential benefits including refund of reduced pay and allowances.

2. The applicant has assailed the punishment order pointing out the following infirmities in disciplinary proceedings :- (a) The chargesheet is bad in law as the charges are vague and based on perverse and prejudice mind of the disciplinary authority against the applicant. (b) The enquiry officer had been appointed before the submission of the written statement of defence by the applicant in violation of provisions of Rule 9 (9)(a)(i) of Railway Servants (Discipline & Appeal) Rules,1968. (c) Three main prosecution witnesses who were the passengers and said to have made complaints against the applicant were dropped by the enquiry officer. Their statements recorded during the preliminary enquiry had been relied upon by the enquiry officer and the disciplinary authority without giving reasonable opportunity to the applicant to cross-examine these witnesses. (d) Findings of the enquiry officer are perverse as there is no evidence available on record as adduced during the enquiry in the absence of non-recording of the statements of the three witnesses who are said to have made complaint against the applicant. Applicant's contention is that this is a case of no evidence. (e) The order of the disciplinary authority is unreasoned and non-speaking. (f) The

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punishment imposed is not worded as required under Rule 6 (v) of Railway Servants (Discipline and Appeal) Rules,1968. Depriving the applicant of future benefits will tentamount to "double jeopardy" as the order envisages two punishments.

3. The respondents have contested the application through the written statement. At the outset, the respondents have submitted that subsequent to filing of the appeal by the applicant, the appellate authority had issued a show cause notice dated 15.7.1992 enhancing the punishment and therefore the impugned order dated 21.8.1991 no longer exists and is merged into the order dated 15.7.1992. As regards the infirmitiesbrought out by the applicant in the disciplinary proceedings, the respondents submit that the enquiry had been conducted as per the extant rules and the applicant had been given full opportunity to meet with the charges levelled against him. The respondents submit that the chargesheet is not perverse and based on prejudiced mind as the charges are specific. As regards the nomination of enquiry officer, the respondents have clarified that the applicant replied to the chargesheet on 2.1.1992 and enquiry officer was nominated only thereafter on 13.2.90 and as such there is no violation of the rules. As regards dropping of three witnesses, i.e. the passengers who had given complaint in writing against the applicant, the respondents contend that these witnesses did not come forward to participate in the enquiry inspite of giving 7 chances and the enquiry officer dropped these witnesses with the consent of the applicant. The respondents further add that the

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findings of the enquiry officer are based as on the evidence had come on record during the enquiry and all the charges are proved and it is not a case of no evidence as alleged by the applicant. It is also stated that the disciplinary authority had accepted the findings of the enquiry officer and therefore the order of the disciplinary authority has to be read with that of the findings of the enquiry officer wherein all the reasons for arriving at the findings had been recorded. Based on these submissions, the respondents have made a plea that the applicant is not entitled to any of the reliefs sought for and therefore the application deserves to be dismissed.

4. The applicant has filed rejoinder reply to the written statement of the respondents. The applicant has controverted the submissions of the respondents reaffirming the grounds taken by him in the original application.

5. We have heard the arguments of Shri D.V. Gangal and Shri V.S.Masurkar, learned counsel for the applicant and respondents respectively. The respondents have made available the original file containing the disciplinary proceedings under reference. We have carefully gone through this file and also the other material brought on record.

6. The applicant and respondents have cited the following judgements/orders in support of their submissions :-

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Applicant

1.	AIR 1964 SC 369	U.O.I. vs. H.C.Goel
2.	1990(2) ATJ 369	Gurbanchan Singh vs. Commandant 259, Coy ASC (Sup.).
3.	(1988)6 ATC 1004	Ram Babu Puskar vs.U.O.I.
4.	1987(4) ATC 628	Smt.Nasrath Akbar Khan vs. Joint Controller of Imports & Exports & Others.

Respondents

1.	1997(1) SC SLJ 226	Govt. of Tamil Nadu & Ors. vs. V. Vee Raj.
2.	AIR 1996 SC 1232	State of Tamil Nadu vs. S. Subramanium.
3.	JT 1998(4) SC 236	Commissioner & Secretary to the Govt. & Ors. vs. C.Shanmugam.
4.	1998(1) SC SLJ 78	U.O.I.& Ors. vs. A.Nagamalleshwar Rao

7. The respondents in the written statement have brought out that subsequent to filing of the appeal by the applicant, the disciplinary authority had issued a show cause notice dated 15.7.1992 proposing enhancement of punishment. On going through the OA., it is noted that though the applicant has brought on record this show cause notice to Annexure.'A-8' on record but no averment to this extant has been made in the OA. This order has also not been impugned seeking the relief of quashing the same. On going through the order sheet, it is noted that OA. was disposed of finally as per order dated 28.9.1992 with the direction that the appeal filed by the applicant will be first disposed of by the competent authority and only after decision on the appeal, the competent authority shall give a fresh notice to

the applicant if he feels necessary for enhancement of punishment. The respondents filed a Review application 20/92 against this order. The Review application was allowed as per order dated 9.3.1994 and the order dated 2.9.1992 was set aside with the direction to restore the OA. to file at the stage where the respondents were required to file the written statement. Thereafter, the respondents filed the written statement and the applicant filed the rejoinder reply. From the record, it is noted that the applicant has not taken any action to impugn the order dated 15.7.1992 of the appellate authority giving a show cause notice to the applicant for enhancement of punishment. The OA. as it stands today, is with regard to the relief of quashing of the order dated 25.9.1991 of the disciplinary authority. Since it was based on the order in the review application, the OA. has been restored to its original position, it is to be taken that the appeal filed by the applicant had not been disposed of and the same is pending. Though the OA. was earlier decided with the direction to dispose of the appeal of the applicant, we are not inclined to take this view at this stage in view of the fact that the matter had been pending for several years now. We consider it appropriate in the interest of justice that instead of remitting back the case to the appellate authority, we should go into the merits of the case on the basis of arguments advanced by the parties and the material brought on record.

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8. The various grounds which have been advanced by the applicant in challenging the impugned punishment order have been detailed in Para 2 above. These grounds will be now examined to identify if any of the infirmities constitute procedural lapses and denial of reasonable opportunity to the applicant to put forward his defence thereby vitiating the disciplinary proceedings.

9. The first ground of attack is that the chargesheet is bad in law as the charges are vague and are based on perverse or prejudice mind of the disciplinary authority. The applicant has labelled the charges as vague submitting that in respect of Charges No. (iii) and (iv) no names of the persons who had crowded the reserved compartment had been disclosed. Further the articles of charge No.(V) and (vi) are contrary to each other. As in the Article No. (v) it was mentioned that although 9 berths were available, the applicant did not allot the berths to the needy passenger. In Article of charge No. (vi.) it had been mentioned that the applicant had failed to collect the reservation charges from the passengers to whom berths had been allotted by the applicant. The respondents, as indicated earlier, have contested this submission. We have carefully gone through the Articles of Charges and Statement of Imputations and find that no vagueness and any manifestation of perverse prejudiced mind. For each article of charge, the detailed statement of imputation had been recorded and reading of the same clearly brings out as to the nature of charges levelled against the applicant. In our opinion, the charges are very

specific and devoid of any vaguness. Further, it is noted that applicant has not made any averment that he had brought out to the notice of the disciplinary authority that the charges are vague and he cannot meet with the same in preparation of his defence statement. After going through the enquiry report also we find that at no stage the applicant had raised this issue. Keeping these facts in view, we are of the view that this infirmity pointed out by the applicant is not sustainable.

10 The second ground taken by the applicant is that the enquiry officer was nominated even before the statement of defence against the charge-sheet had been submitted against the applicant. The applicant contends that the action of the disciplinary authority was in violation of provisions of Rule 9(9)(a)(i) of Railway Servants (Discipline & Appeal) Rules,1968.

10. The applicant has sought the assistance of two orders of the Tribunal, Firstly, Smt. Nusrath Akbar Khan vs. Joint Controller of Imports & Exports and secondly, Gurbanchan Singh vs. Commandant 259, Coy ASC (Supra) in Para 5(E) of the OA. We have gone through these two orders and find that order in respect of Smt.Nusrath Akbar Khan does not concern the issue and the order has been wrongly cited as the matter here concerns adhoc appointment. In the second order of Gurbanchan Singh, the facts of the case are entirely different. In this case, immediately after issuing of the chargesheet, on the same date,

the order appointing the enquiry officer was also issued. In view of this, the Bench held that appointment order of enquiry officer without getting the reply of the applicant is in violation of the rules. However, in the present case the situation is entirely different. The applicant was given 10 days time as per the rules as indicated in the chargesheet dated 19.10.1989. The enquiry officer had been appointed much after that on 13.2.1992. Though the applicant has stated that the enquiry officer had been nominated before the submission of the defence statement but the applicant had not given any details as to when he submitted the defence statement. The respondents have brought out in the written statement that the reply was given by the applicant on 2.1.1992. However, on going through the disciplinary proceedings file, we find that as per letter dated 2.1.1990, the applicant had sought additional time for appointment of his defence assistant. There is no mention here with regard to seeking time for filing the defence statement. In fact, from the record we find that no defence statement had been filed by the applicant. There is no request also from the applicant for extending the time. In the light of these facts, we are unable to find any violation of the rules in the appointment of enquiry officer as alleged by the applicant.

11. The 3rd ground and which was the main thrust of arguments of the applicant is that the 3 prosecution witnesses No. 3,4,5 who were the passengers and made complaint against the applicant had been dropped by the enquiry officer. The applicant further submits that statements recorded during the preliminary enquiry

have been relied upon by the enquiry officer as well as the disciplinary authority and thereby the applicant had been denied a reasonable opportunity of cross-examining all the witnesses whose statements had been relied upon. The respondents, on the other hand, have submitted that these 3 witnesses were given several opportunities by the enquiry officer to come forward for the enquiry but they did not turn up and finally, the enquiry officer dropped these witnesses with the consent of the applicant. On going through the disciplinary proceedings file, we notice that the submission of the respondents is borne by the daily order sheet of the enquiry officer. On 15.4.1991 the enquiry officer had recorded that since the prosecution witnesses No. 3,4 and 5 (Complainant/passengers had not attended the enquiry inspite of 7 notices, they are being dropped and for the same, the delinquent employee had no objection. This order-sheet had been signed by applicant. Further, in the statement of the applicant recorded on the same day, the applicant had replied to Question No. 11 and submitted that he has no objection to dropping of witnesses No. 3,4 and 5. It is further noted that in reply to the findings of the enquiry report, the applicant had not taken up this issue of non-examination of the 3 prosecution witnesses who were relied upon by the applicant. Even in the appeal filed on 25.9.1991 and brought on record at Exhibit 'F', the applicant had not taken this point. In any way, the main issue which needs consideration is whether any prejudice had been caused to the applicant in not recording of the statements of these 3 witnesses.

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The applicant has put forward the argument with regard to prejudice caused to him stating that reliance had been placed on the statements of the 3 passengers, i.e. prosecution witnesses No. 3,4 & 5 at the preliminary enquiry without giving any opportunity of cross-examining to the applicant. On going through the findings of the enquiry officer, we do not find that the findings are based on only on the statements of the three passengers. The enquiry officer had come to the conclusion that all the charges were proved on the basis of the evidence of other witnesses who were associated with the matter based on which the charges were framed. We are unable to subscribe to the view of the applicant that evidence of these 3 passengers were vital and the evidence of other witnesses cannot be relied upon for proving the charges. It is enough if there is some evidence on record to establish the charges. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Commissioner & Secretary to the Govt. & Ors. vs. C.Shanmugam (Supra) cited by the respondents. In this case, the Hon'ble Supreme Court has quashed the order of the Tribunal as per which the punishment order was set aside taking a view by re-appreciating the evidence that the evidence relied upon by the enquiry officer cannot be accepted as free from bias in the absence of independent evidence. The Hon'ble Supreme Court held that the Tribunal was not right in holding that enquiry report cannot be accepted. In this judgement, the Hon'ble Supreme Court has also referred to their earlier judgement in the case of State of Haryana vs. Rattan Singh, 1977 SCC (L&S) 298, where the issue

involved was more or less the same as in the present OA. In this case, the matter concerns with the passengers in bus who were found travelling without ticket when the checking was done by a Flying Squad. The inspector of the flying squad noted that 11 passengers were travelling without ticket although they had paid the fare and 4 passengers who had already alighted were also without ticket. Based on the Inspector's report, chargesheet was issued to the bus conductor. An enquiry was conducted and the charges were held as proved and punishment of termination of services was imposed. This punishment order was challenged in the lower court which set aside the punishment on the ground that the evidence of ticketless passengers was not recorded. The High Court in appeal also up-held the decision of the lower court. However, the Hon'ble Supreme Court set aside the judgement of the lower court which was up-held by the High Court holding that the evidence of the Inspector has some relevance to the charge and merely because the statement of ticket-less passengers was not recorded, does not become the order of termination as evidence. It would be appropriate here to extract Paras 4 & 5 of the judgement as below :-

> "4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is

not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgement vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter nor for the court but for the administrative tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal."

.. 14/-

In the present case, in their statements, the passengers had stated that they had already paid the reservation charges to the applicant, for which no money receipts were issued. These statements were recorded by the conductor who had taken over the charge from the applicant. If the passengers had given the statement in writing to the conductor who had taken charge from the applicant, the statements can be disbelieved only if the conductor who had taken the charge from the applicant had acted with malafide intention. There is no such allegation that he had any interest in implicating the applicant in using fraudulence means. The position of the Train conductor who took charge from the applicant is similar to that of the Inspector who checked the bus as brought above. Keeping in view what is held by Hon'ble Supreme Court in the case of State of Haryana vs. Rattan Singh and Commissioner and Secretary to the Govt. & Ors. vs. C.Shanmugam, we are of the view that no prejudice had been caused to the applicant in not recording the statements of the three passengers which had been relied upon as prosecution witnesses. Findings are not based on the statements of the passengers but there is other corroborative evidence available on record based on which the competent authority had come to the conclusion that the charges are proved.

12. The fourth ground advocated is that the findings of the enquiry officer are perverse as there is no evidence available on record and adduced during the enquiry in the absence of non-recording of the statement of 3 passengers who were listed as prosecution witnesses. The applicant has pleaded that the findings are arrived at merely on suspicion and mere suspicion cannot be the base for proving the charges. In

this connection, the applicant has cited the judgement of the Hon'ble Supreme Court in the case of Union of India vs. H.C.Goel (Supra). The applicant has further pleaded that reliance had been placed on the statement of the passengers recorded during the enquiry in proving the charges and such statements have no evidentiary value without the opportunity of cross-examination being afforded to the applicant. To support this contention, the applicant has referred to the order of the Tribunal in the case of Ram Babu Puskar vs. Union of India & Ors. referred to in Para 6 above. As regards the contention of findings being based mere on suspicion, we are unable to accept the contention of the applicant. As stated earlier, on going through the enquiry report, we find that the findings are supported by evidence brought on record and are not based on mere suspicion only. In view of this, what is held by Hon'ble Supreme Court in the case of Union of India vs. H.C.Goel does not apply to the facts and circumstances of the present case. As regards the reference to the order of the Tribunal in Ram Babu Puskar vs. Union of India & Ors., we have already discussed the issue with regard to non-recording of the statement of the 3 passengers who were listed as prosecution witnesses. We have held that non-recording of statements of 3 passengers has not prejudice the case of the applicant as the findings of the enquiry officer are not based on the evidence of three passengers only. In view of this, what is held in the case of Ram Babu Puskar is of no avail to the case of the applicant. During the arguments,

.. 16/-

the learned counsel for the applicant was at pains to refer to the statement of the various witnesses and made an effort to make out a case that the statement of the witnesses can not be relied upon and there is no evidence available on record to support the charges. As held by Hon'ble Supreme Court in several judgements, it is settled law that in case of disciplinary proceedings, when challenged, the High Court or Tribunal does not exercise the power of appellate court or authority. The scope of judicial review is very limited and is confined to rectification of errors of law and procedural lapses leading to manifest injustice or violation of principles of natural justice. It is not the scope of judicial review to re-appreciate the evidence as if Tribunal or High Court is an appellate court and reach on its own conclusion. Some of such judgements have been cited by the respondents as stated in Para 6 above. In the present case as stated earlier, we are of the view that the findings are supported by some evidence on record and it is not a case of "no evidence" which may call for going into the reappreciation of the evidence and whether it supports the charges levelled against the applicant. It is therefore our considered view that this ground of challenge has no merit.

13. The 5th ground is that the order of the disciplinary authority is unreasoned and non-speaking. After going through the order of the disciplinary authority, we find that he had accepted the findings of the enquiry officer as per which all the charges are proved. In case the disciplinary authority concurs with the findings, it is not necessary for the disciplinary authority to write the findings again. In this connection, we refer to the judgements of the Hon'ble

Supreme Court in the case of Ram Kumar vs. State of Haryana, 1988 SCC (L&S) 246 and Indian Institute of Technology, Bombay vs. Union of India & Ors. 1991 SCC (L&S) 1137, wherein their Lordships of Supreme Court have held that if the punishing authority accepts the findings of the enquiry officer, then the punishing authority is not required to discuss the evidence again and come to the same conclusion of its own. Keeping these observations in view, we do not find any infirmity in the order of the disciplinary authority.

14. The last ground of attack is that the punishment is not worded as required by Rule 6 (v) of Railway Servants (Discipline and Appeal) Rules, 1968 and the punishment imposed tentamounts to double jeopardy. We have gone through the Rule 6 (v) and are not able to appreciate the point made by the applicant. The order of the disciplinary authority states reduction to lower scale in the same time scale from the stage of Rs.1600/- to Rs.1200/- in the grade of Rs.1200-2040 for a period of two years with immediate effect with further direction that on expiry of period this will have the effect of postponing the future benefits. This order when read with Rule 6 (v) would mean that the future benefits will be in respect of withholding of the future increments. We are not able to subscribe to the interpretation of the applicant that the punishment imposed will be double jeopardy.

.. 18/-

In fact, the applicant has not amplified as to what is meant by double jeopardy. He has not indicated as to how the punishment imposed constitutes two punishments. We are, therefore, unable to find any infirmity in the punishment imposed.

15. We have gone into the various grounds raised by the applicant challenging the punishment order and come to the conclusion that none of the grounds have any merit. We find that there is no denial of reasonable opportunity and non-observance of principles of natural justice.

16. In the result of the above, the OA. lacks merit and the same deserves to be dismissed and is accordingly dismissed. No order as to costs.

(D.S.BAWEJA)
MEMBER (A)

19.3.99
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.