CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

APPLICATION NO.106/1992

WEDNESDAY, DATED THE NINETH DAY OF FEBRUARY, 1994

Present: Mr. Justice P.K. Shyamsunder, Vice Chairman.

Mr. T.V. Ramanan, Member (A).

Shri H.B. Netrekar
Age 58 years
No.174, Shivanandanagar
Hubli - 25. .... Applicant

(By Advocate Shri M.V. Rao)

Vs.

1. The Divisional Railway Manager
South Central Railway
Hubli.

2. The General Manager
Personal Branch
Secunderabad.

3. The Chief Operating Supdt.
S.C. Railway
Secunderabad. .... Respondents

(By learned Standing Counsel Mr. N.S. Prasad)

O R D E R

(Mr. Justice P.K. Shyamsunder, Vice Chairman)

This application is by an employee of the South Central Railway, who finds himself removed from service on the score of having committed some misconduct whatsoever according to the respondent was serious enough to merit the punishment of removal from service. The aforesaid misconduct is alleged to have taken place on 22.11.1985 when applicant was functioning as Station Superintendent at a place called Collem in the State of Goa. The misconduct allegedly committed by the applicant was that on 22.11.1985 during night

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time, 4 bundles containing 500 nos of bamboo canes were said to be auctioned by the applicant for Rs 150/- although the value of the bamboo bundles was estimated to be Rs 1000/- and he did that despite warning given by the round Forester of Collem. The said sum of Rs 150/- being the highest bid offered by a group of 3 people was accepted and the canes were disposed of on 22.11.1985. The case is that it was done under the stewardship of the applicant who was mainly responsible for the improper disposal of goods worth Rs 1000/- for a paltry sum of Rs 150/- only.

2. Later a disciplinary enquiry was held at which he was charged of having ensured the disposal of valuable goods costing Rs 1000/- at a rock bottom price of Rs 150/- despite the warning given by an authorised officer who was actually on the spot and had thereby committed a misconduct punishable under the Railway Disciplinary Rules. He was called upon to submit defence statement, which however was not done at all.

3. Thereafter the Railway authorities had nominated an enquiry officer to hold an enquiry at which 5 people were actually summoned and called as witnesses in support of the charge. The applicant who was offered the assistance of a defence assistant turned down that offer, undertook his own defence and cross examined some of the witnesses called in support of the charge. He was however later interrogated by the enquiry officer following the evidence recorded at the enquiry, a step specially enjoined under Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, 1968.

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The said Rule says:-

> "Rule 9(21): The inquiring authority may, after the railway servant closes his case, and shall, if the railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the railway servant to explain any circumstances appearing in the evidence against him."

It transpires from the examination of the delinquent official by the enquiry officer not much of leeway being made it is contended herein that there was nothing in the examination on the basis of which the delinquent official could claim any advantage. At the same time, we notice that he did not also make any damaging idioms although a few questions directed to him by the Enquiry Officer in the guise of examining him at the tail end did suggest that he was not telling the truth. But from the end result we see that the punishment in question was more in compliance of a statutory requirement not being a plea to prick from the official the secrets he held along to his chest and then nothing else was actually intended on adumberated trauma. We do not think that the question by the Enquiry Officer was aimed at deliberately pushing the delinquent official into a trap nor were any questions put to him that were likely to unworthily divulge something against him later.

4. After considering the evidence recorded, the enquiry officer had submitted an enquiry report holding the charge to be proved to the disciplinary authority who after consideration of the said report came to the conclusion that the charges framed against the applicant has been proved and that he deserved the punishment of removal from service, which is

at Annexure-A11. On and from that date the applicant stood removed from service and naturally aggrieved by that order preferred an appeal to the Appellate Authority who rejected the appeal and a further revision petition to the higher authority under the statute was also dismissed as bereft of any substance.

5. This being the factual position, we have heard Shri M.V. Rao for the applicant and learned Standing Counsel, Shri N.S. Prasad for the Railways. Having regard to the contention raised by both sides, the points arising for our consideration are as follows: (1) Whether the enquiry was vitiated for violation of principles of natural justice? (2) Whether there was no evidence or any evidence at all indicating that the goods said to have been purportedly auctioned by the accused being worth Rs 1000/- in value and auctioned the same for Rs 150/- thus causing a loss of revenue to the railway administration it is not alleged a misconduct. Before we proceed and dispose of the foregoing, we may place in the forefront the following facts. We are considering herein that a departmental enquiry which is mostly held and orders are passed by persons who are not specially trained to do that job. These positions are manned by technical personnel who take some time of to hold such enquiry in addition to their duty, so long as the procedure adopted in holding such enquiry is just and fair to the charged officer, the findings accorded at such an enquiry cannot be assailed even on the ground of sufficiency of evidence unless of course it could be said the findings themselves are based on no evidence at all and therefore, the finding is based on a non-est factum. We have a catena of decisions which have laid down ~~the very~~ guidelines in these matters of examining a departmental proceeding. We only wish to refer to the decision of the Supreme Court in State of Andhra Pradesh and Others Vs.

S. Sree Rama Rao reported in AIR 1963 SC 1723 which states:

" Constitution of India, Arts. 311, 226 - Public servant - Departmental enquiry into misconduct - Power of High Court under Art. 226 to interfere with findings - Power to review evidence - Rule to prove offence in criminal trial beyond reasonable doubt - Not applied in proving misconduct - Findings of departmental authorities whether vitiated - statement of facts accompanying charge sheet - Ground of misconduct stated in statement but not in charge-sheet - Enquiry whether vitiated - Writ Petn. No.922 of 1956, D/- 18.11.1959 (Andh Pra), Reversed.

In considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court, does not apply and even if that rule is applied, the High Court in a petition under Art. 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant, it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art.226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious

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> that no reasonable person could ever have arrived at that conclusion, or on similar grounds. 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. " (Page - 1723 & 1724)

6. Bearing in mind the principles set out above, we now proceed to consider point (1), i.e., is there any travesty of natural justice in holding the enquiry. It is on this point we have heard a lot of arguments particularly, from Shri Rao, the learned counsel for the applicant who takes strong exception and submits that the enquiry was not held as per the prescribed procedure that the enquiry officer had himself acted as a Presenting Officer as well thus the enquiry officer who asked a few questions in the guise of examining the officer on the basis of the new evidence at the end and an attempt that was just made to conclude the enquiry. We have also gone through the transcript of the examination of the delinquent official by the enquiry officer. We do not find any serious flaw in the method adopted in examining the delinquent official at the end of the enquiry. By and large it appears to be fair and considerate excepting for one question the enquiry officer asked for giving reasons as why the Rakshak who had given evidence against him should not be believed and why he should be believed as against the words of that Rakshak. Even there, we do not find anything untoward as we have already observed the enquiry officer is not judicially trained and is one who is not familiar with the technique that is employed in these matters. It may not be proper for

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him to have insisted on a definite answer from the delinquent official on that score from a lay man's eye that would indicate he was trying to jumble the officer while it was not actually so. There have been one or two slips of the kind referred to above. The examination is otherwise fair and is not such as to ensnare the delinquent official. Regarding circumstances that can be taken to vitiate an enquiry, the Supreme Court has long years ago laid down the following dicta in the case of EMPLOYERS OF FIRESTONE TYRE AND RUBBER Co.(PRIVATE) LTD., Vs. THE WORKMEN - AIR 1968 SC 236 that too much of legalism cannot be called in when dealing with domestic enquiry. Herein his Lordship Mr. Justice Hidayatullah (as he then was) held:

> "(C) Constitution of India, Article 226 and 311 - Domestic Enquiry - Delinquent examined before leading all evidence against him - Enquiry when may be said vitiated.
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> The principle that in a domestic enquiry before a delinquent is asked anything all the evidence against him must be led cannot be an invariable rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fairplay. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over by the failure to question him in this way does

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not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against seems to have been held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated. The procedure of examining to delinquent first may be adopted in a clear case only AIR 1968 SC 266, Rel. on; (1963) 2 Lab LJ 78(SC) and AIR 1963 SC 1914 and AIR 1963 SC 1719 and (1963) 2 Lab LJ 396, Ref. to.

(D) Constitution of India, Articles 226 and 311 - Domestic Enquiry - Leadings questions put to delinquent - Propriety of - Too much legalism cannot be expected from a domestic enquiry - Evidence Act (1872), Sections I and 141. " (P. 236 and 237)

We rely more on head note (2) which emphasises that too much legalism cannot be expected from a domestic enquiry unlike a regular trial in which putting leading question is a taboo under Section 141 of Evidence Act. To put things in a clearer way we refer to the aforesaid passage of the judgement adverted at pages 239 and 240.

"Para-10: ---- ----------

No doubt some of the questions appeared to be leading but they were respecting the matter of record and too much legalism cannot be expected from a domestic enquiry of this character. The Officer asked Subramaniam again and again whether he was defending himself properly or not and Subramaniam always expressed his satisfaction. Para-11: In these circumstances, we do not see how the enquiry can be said to have offended any principle of natural justice at all. " (P. 239 & 240)

The decision of the Supreme Court referred to above effectively answers the 1st point raised by the applicant herein.

7. We would like to put out that some 5 witnesses were examined at the enquiry and 2 of them including the Rakshak, Shri Methrani, and a Clerk who is a subordinate to the applicant, Shri Augustin, Pw-3 was examined and they had stated that the applicant had auctioned the bamboo canes at a rock bottom price

of Rs 150/-. In that situation there being also very little cross examination of these witnesses by the applicant, the fact that the enquiry officer who probably was a little more curious than it was necessary had put some questions more to satisfy his own curiosity could not possibly accused of having thoroughly grilled the delinquent officer at the end of the enquiry and that step be treated as vitiating the enquiry itself. Thus, we again see that there is no substance in that point and hence reject the same. The 2nd point is in regard to the value of the goods sold. The allegation is that goods worth Rs 1000/- was auctioned for Rs 150/-. Certainly none can deny that if what had been done can be said to have caused loss to the Railway administration. The argument of Mr. Rao that there is absolutely no evidence to sideline that the canes were worth Rs 1000/- only. In support of this he invited our attention to the observations of the reviewing authority who did make some such observation while disposing of the review petition which is at Annexure-15 states:

> "Though it is not clear as to who auctioned the consignment, involvement of Shri Netrekar in the auction is obvious from the paper prepared as auction proceedings, in which signatures of three parties have been taken for the various offers made, is signed by Shri Netrekar also. His submissions on this are not convincing and not based on any facts. The auction sale document, in my opinion, is a conclusive proof that Shri Netrekar had carried out the auction on his own. Had it been done by Shri Metrani, Shri Netrekar would have definitely made a remark on this paper to this effect. The statement of the Pointsman and Comml. Clerk to the effect that it was on the intervention of Shri Netrekar that the auction document was prepared and money receipt issued, cannot also be ruled out. Had Shri Netrekar been really innocent, he would not have made irrelevant remarks like one he wrote on the Forest official's letter (received by him on 23.11.1985) asking him to withhold auctioning of the consignment.

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> Shri Netrekar instead could have clearly written on the said letter from the Forest official that the consignment had been auctioned and already removed and hence the question of detaining the same does not arise. Apart from this, contradictory statements given by him during the fact finding inquiry on 5.5.1986 and hasty action in auctioning the consignment on 23.11.85 though he was informed of the seizure of consignment only at 18.00 hrs. on 22.11.1985 is clear proof of malafide intention in auctioning the consignment in a hasy manner.
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> In the circumstances, the undersigned finds that Shri Netrekar is guilty of the charge levelled against him and therefore, the punishment of removal from service imposed on him is not excessive. The punishment is confirmed. "

8. We think that too much is sought to be made out of so little by emphasising in the absence of material to show that the canes auctioned were actually worth Rs 1000/- charge of having sold them of less value does not merit serious attention. It seems to us the value as such was not denied. The very first charge of auctioning of goods worth Rs 1000/- at the rock bottom price of Rs 150/-. The applicant who was asked to submit his defence did not do so. We find that PW-4, the forest officer who had examined the goods did assess the value to be Rs 1000/-. In that situation it is for the applicant to dispute the same. There is absolutely no explanation as to why the delinquent official put his signature to the document P-13 which purports to be some kind of a Panchnama regarding the auction held. He could not deny any longer that he was not responsible for selling away valuable goods. In a faint manner, Shri Rao urged that the other man, the Rakshak, Methrani, who was almost an accomplice or it may be vice versa both should have been tried together. The other man, the Rakshak, it appears was let off with a simple punishment whereas it is said the applicant had been discriminated having been asked to forfeit the fruits

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of his toil spanning over 30 years. But this is a matter for the Railway administration to decide regarding the severity of punishment. It has been held by the Supreme Court in PARMA NANDA Vs. STATE OF HARYANA & OTHERS case/reported in AIR 1989 SC 1185 that the Tribunals cannot interfere in in the matter of punishment as if functioning like an Appellate Authority. We, therefore, find no substance in this contention also. In the result, the findings on both the points being against the applicant, this application is dismissed. No costs.

9. However, we are told, even now it is open to the applicant to make a representation for grant of compassionate allowance in terms of Rule 309 of Pension Rules. If the applicant so desires, he can avail himself of that opportunity and make an appropriate representation setting forth his travails and the hardship to which he and his family have been exposed. If he does that, we are quite sure the Railway administration will take somewhat kindly to his plight which may result in granting of a compassionate allowance.

(T.V. RAMANAN)
MEMBER(A)

(P.K. SHYAMSUNDER)
VICE CHAIRMAN

mr.