

(179)

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.1102 OF 1995.

DATE OF ORDER:- 3-4-1998.

BETWEEN :

P. Vasantha Rao, Son of P. Venkat Rao,
aged about 50 years,
Sr.Cashier(Pay)
(Under order of removal),
South Central Railway,
Secunderabad.

... APPLICANT

A N D

1. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. The Financial Advisor & Chief Accounts
Officer, South Central Railway (BG),
Secunderabad.
3. The Deputy Chief Accounts Officer(G),
F.A. & C.,A.O.'s Office,
South Central Railway,
Secunderabad.
4. The Senior Divisional Accounts
Officer, South Central Railway(BG),
Secunderabad.
5. The Divisional Accounts Officer,
South Central Railway (BG),
Secunderabad. ... RESPONDENTS

Counsel for the applicant : Mr. J. Sudheer

Counsel for the respondents : Mr. J.R. Gopal,SC for
Railways.

CORAM :

HONOURABLE MR. H.RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

HONOURABLE MR.B.S.JAI PARAMESHWAR, MEMBER (JUDICIAL)

Jc

...

O.R.D.E.R.

(Per Hon. Mr. B. S. Jai Parameshwar, Member (Judicial))

1. Heard Mr. J. Sudheer, the learned counsel for the applicant and Mr. J. R. Gopal Rao, the learned Standing Counsel for the respondents at great length spanning over six months.

2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 11.9.1995.

3. The facts giving raise to this O.A. may, in brief, be stated thus :

(a) On 11.5.1964 the applicant joined the Railway Administration as Shrof. During 1967 he was promoted as Cashier and during 1969 he was promoted as Senior Cashier in the scale of pay of Rs.1400-2300/-.

(b) During February, 1993, the applicant as Senior Cashier was entrusted with the duties of distributing salaries, allowances and advances etc., and of maintaining the accounts and vouchers. He was distributing the salaries, allowances and advances in four routes, viz., (1) Secunderabad to Wadi, (2) Vikarabad to Parli, (3) Secunderabad to Kondapalli and (4) Secunderabad to Balarsha via Kazipet.

(c) On 2.2.1993 the applicant had encashed the cheque of the State Bank of India for Rs.3,64,585.45 paise and as per the balance sheet, the amount that was in the custody of the applicant was to the tune of Rs.11,53,593.45 paise.

(d) On 3.2.1993 the applicant along with three RPF and voucher escorts carried the cash/ boxes and other relevant registers for distributing the salaries, allowances and

advances on Vikarabad to Parli route. He was provided with a Diesel Car attached to Manjeera Express to travel on this route with the escorts.

(e) The applicant disbursed the cash at Vikarabad on 3.2.1993 and 4.2.1993. On 5.2.1993 at 10 AM he left Vikarabad for Bidar. In the mid way, he disbursed the cash at 5 Railway Stations. He reached Bidar at 4.30 P.M. On 6.2.1993 he left Bidar at 8 A.M. He did not disburse cash at Ghat Nandur Railway Station. He promised the Station Master, Ghat Nandur Railway Station to disburse the cash on his return journey.

(e) While the train was moving slowly at the home-signal point at Parli Railway Station, the applicant alighted from the train assuring the RPF escorts to return to Parli Railway Station in or about 2 hours' time to distribute the cash at Parli Railway Station.

(f) The applicant never returned to Parli Railway Station as assured to the escorts.

(g) The concerned railway authorities conducted a Panchnama and verified the cash in the box. The cash in the box did not tally with the registers and vouchers. It is stated that there was a difference to the tune of Rs.1,32,055.15 paise which is the confirmed shortage noticed by the Railway Administration.

(h) On 11.2.1993 the applicant appeared before the Divisional Accounts Officer (Broad Gauge), Secunderabad and submitted his explanation as follows :

" I fell sick at Bidar on 6.2.1993 due to severe stomach ache, vomitings and fever and with the state of affairs, I continued disbursement from HBU to HER. At HER station, I have issued a control message to CTO/BG for stabilizing my diesel car due to serious pain. Since the pain was unbearable, I have no other alternative except to stay away abruptly. Due to said uneasiness in my health, the records which I am expected to maintain day-to-day and check the cash balance day-to-day, I could not do it. Therefore, on 6.2.1993, I left the duties at Parli-Vaijnath in a bit of mental agony.

36

In this connection, I submit that my family members were very much perturbed about my continuous absence and my son started searching for me. Finally, they located me at my sister's house i.e., Amba Jogai, where I am convalescing and brought me to Hyderabad by bus on 8.2.1993 after treatment. I submit that due to extraordinary circumstances explained above, and exigencies, I lost the Government cash amounting to Rs.1,17,409.85.

I solely own the responsibility for missing the said cash. I do not have any doubt on anyone including my escorts who accompanied me, I am not in a position to say how the shortage has occurred due to my ill health. I may please be given 30 days time to make good the shortage.

I request further that criminal action proposed against me may kindly be withdrawn as I am willing to recoup this amount within 30 days without fail since I am at the fagend of service and having put in 30 years of unblemished service."

(i) However, a criminal complaint was lodged against the applicant in FIR No.32/93 with the Railway Police. The copy of the FIR is at page 34 of the O.A. The copy of the complaint is at page 33 of the O.A. In the complaint it is stated that a sum of Rs.1,17,409.85 paise of the Railway Administration was lost. The complaint pointed out at the applicant since the amount was entrusted to him.

(j) On 5.4.1993 the Divisional Accounts Officer (SC) S.C.Railway, Secunderabad, served the Memorandum of Charges on the applicant. The charges of misconduct/misbehaviour imputed against the applicant read as under :

"Article I.

That Sri P.Vasanth Rao, Senior Cashier/BG/SC, committed serious misconduct in that while working as Sr.Cashier on 6.2.93, for disbursement of salaries and other payments to the staff on Vikarabad-Parli Section, he abandoned carelessly the Cash Box containing Government cash entrusted to him for making payments to the staff and disappeared at the Home Signal of Parli Station and deserted the Pay Special in which he was travelling. He thus failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant, contravening Rule 3(l)(ii) and (iii)

183

of the Railway Services Conduct Rules, 1966 as detailed in the statement of imputations.

Article II.

That Sri P. Vasanth Rao, Senior Casher/BG/SC, committed serious misconduct in that he as a Sr. Cashier was entrusted with making payments to the staff on the Vikarabad-Parli Section on 6.2.93. He did not make payments to the staff of Ghatnandur and Parli Stations though he was entrusted with the connected pay sheets and sufficient money for disbursement of these payments, creating unrest and dislocation in Railway working and thus failed to maintain devotion to duty and acted in a manner unbecoming of a Railway Servant contravening Rule 3(1)(ii) and (iii) of the Rly. Services Conduct Rules 1966 as detailed in the statement of imputations.

Article III.

"Sri P. Vasanth Rao, Sr. Cashier/BG/SC, committed serious misconduct on 6.2.93, in that where he was entrusted with sufficient money and the connected pay sheets for making payments to the staff on the Vikarabad-Parli section, he did not make payments to the staff on Ghatnandur and Parli stations and misappropriated a sum of Rs. 1,32,055.15 with an intention to gain pecuniary advantage to himself and cause loss to the Railway Administration. He thus exhibited lack of integrity and failed to maintain devotion to duty and acted in a manner unbecoming of a Railway Servant contravening Rule 3(1) (i), (ii) and (iii) of the Railway Services Conduct Rules 1966, as detailed in the statement of imputations."

(k) The applicant submitted his explanation dated 24/25.5.1993 to the Charge Memo. The copy of his explanation is at page 39 of the O.A.

(l) A detailed enquiry was conducted into the charges levelled against the applicant. The applicant was assisted by his Defence Assistant. The applicant in the enquiry put up the defence as follows :

That his health condition was not good; that in spite of his request, his official superiors did not relieve him; that he continued the journey after handing over the cash and vouchers to Sri M. Chenna Reddy at Pangaon Railway Station with much difficulty; that at Ghatnandur Railway station he could not get up

TR

and hand over the cash and vouchers to the Station Master on duty; that he requested him to collect the same on his return journey; that the train reached outer signal of Parli Station; that while the train was in slow motion, he got down from the train duly entrusting the Cash Box, Vouchers Box and his personal belongings to the custody of the RPF escorts informing them that he would come back to Parli Station after collecting medicines from the Railway Hospital; that as he went to the hospital, the doctor was not available; that he rushed to a medical shop and purchased some tablets and had a cup of tea in a nearby hotel; that his ailment did not subside; that he was mentally upset with a feeling that his condition might deteriorate further; that immediately he thought to go to his sister who was residing at Ambajogai (a place near Parli Station) and could take care of him in case his condition had worsened; that he got into a bus and reached his sister after about 20 to 30 minutes and that his sister got treated him.

That the applicant put forth his health condition and stated that he had left the cash box and his personal belongings with the custody of the RPF escorts. Thus his contention is that he cannot be held liable for any shortage of funds.

(m) Considering the material placed on record by the disciplinary authority and also the defence of the applicant, the Inquiry Officer submitted his report dated 22.9.1993. The copy of the report of the Inquiry Officer is at pages 43 to 55 of the O.A. The I.O. recorded his findings on Charge No.I - proved; Charge No.II - proved; and on Charge No.III - Partly proved. A copy of the report of the Inquiry Officer was furnished to the applicant. The applicant submitted his explanation dated 14.12.1993. The copy of his explanation is at pages 93 to 94 of the O.A.

R

(n) The disciplinary authority after going through the report of the Inquiry Officer, explanation of the applicant and perusing the material on record, agreed with the findings of the Inquiry Officer with regard to Charges I and II and disagreed with the finding of the Inquiry Officer on Charge No.III and held that the Charge No.III is proved. Considering the totality of the circumstances and also the explanation offered by the applicant, the disciplinary authority imposed the penalty of removal of the applicant from service by his proceedings No.AAD/29/1/PVR dated 24.12.1993. The copy of the order of the disciplinary authority is at pages 90 to 92 of the O.A.(Annexure-8).

(o) The applicant preferred an appeal dated 28.12.1993/3.1.1994 to the Senior Divisional Accounts Officer, Broad Guage, S.C.Railway, Secunderabad against the punishment order of dismissal. The copy of the Memorandum of Appeal is at pages 95 to 101 of the O.A. (Annexure 10). This appeal came to be considered by the Deputy Chief Accounts Officer. The appellate authority by its order of even number dated 22.7.1994 rejected the appeal and confirmed the punishment of removal of the applicant from service.

The order of the appellate authority is at pages 106 to 108 of the O.A.(Annexure 16).

(p) The applicant submitted a revision petition dated 1/3.8.1994 against the order of the appellate authority to the Financial Advisor and Chief Accounts Officer, S.C.Railway, Secunderabad. The copy of the revision petition is at page 109 of the O.A.(Annexure 17). In the revision petition he reiterated the grounds submitted earlier in his revision petition dated 26/28.1.1994.

RE

(q) The revisional authority by his proceedings of even number dated 17.5.1995 rejected the revision petition and confirmed the punishment imposed on the applicant.

(r) The respondent No.2 is the revisional authority. The respondent No.3 is the appellate authority and the respondent No.5 is the disciplinary authority.

5. The applicant has filed this O.A. for the following reliefs :

To declare the orders passed by the Revising Authority, the 2nd respondent herein in No.A/AD/29/1/PVR dated 17.5.1995 confirming the order of the Appellate authority, the 3rd respondent herein in even No. dt.22.7.1994 and also the order of the Disciplinary Authority, the 5th respondent herein in No.AAD/29/1/PVR dated 24.12.1993 as illegal, arbitrary, without jurisdiction and opposed to principles of natural justice and the same may be set aside and further direct the respondents to reinstate the applicant with all consequential benefits including the arrears of salary, seniority and promotions etc.

6. Deviating from the above sequences, few facts regarding the criminal proceedings require to be stated: The Railway Police, Secunderabad, after investigation in the C.F.I.R. No.32/93 submitted a charge sheet against the applicant before the Court of XIIIth Metropolitan Magistrate, Secunderabad. The charge sheet was numbered as Criminal Case No.301 of 1993 . The Court of the XIIIth Metropolitan Magistrate, Secunderabad, by its judgment dated 10.11.1995 convicted the applicant for the offence punishable under Section 409 of the Indian Penal Code and sentenced him to undergo Simple Imprisonment for a period of one year and to pay a fine of Rs.1000/- and in default of payment of fine, he was further directed to undergo Simple Imprisonment for a period of 3 months.

7. Against the said judgment and conviction, the applicant preferred an appeal before the Court of the Ist Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.423 of 1995. The Court of the Ist Additional Metropolitan Sessions Judge, Hyderabad by its judgment dated 22.3.1997 accepted the appeal and acquitted the applicant of the charges. The applicant has submitted an additional affidavit in M.A.No.735 of 1997 with a copy of the judgment of the Ist Additional Metropolitan Sessions Judge, Hyderabad, in the above Criminal Appeal.

8. At this juncture, it may be stated that the Railway Board has in its letter No.E(D&A) 95, RG-6-4 dated 7.6.1995 laid down certain principles to ~~the following employees who were~~ punish the ~~employees~~ employees who were punished in the disciplinary proceedings were later acquitted of the charges by the court of law. This position is also admitted by the respondents in their counter in para-9 wherein they have stated that in case an employee is acquitted in the Criminal case on merits the departmental proceedings have to be reviewed.

9. Now in view of the acquittal recorded by the Ist Additional Metropolitan Sessions Judge, it is for the authorities to take necessary action in accordance with the said letter. The applicant may, if so advised, submit a detailed representation to the concerned respondent-authority to review his case on the face of the order of acquittal. We cannot say anything on this aspect of the matter.

10. While the applicant was working as Senior Casher he was provided with an official quarters for his residence. By an interim order dated 27.9.1995 the applicant was allowed to continue in occupation of the said quarters pending disposal of the O.A. The applicant did not pay either the normal rent or the penal rent for

3

his occupation of the quarters. However, the applicant paid the normal rent of Rs.3,800/- on 26.2.1998 as per the direction of this Tribunal. This sum covers the rent for the period from 1.1.1994 to 28.2.1998. The applicant has paid the said sum vide receipt No.668622 dated 26.2.1998. He has enclosed a copy of the said receipt to his reply arguments. We feel that this payment by the applicant is contrary to the directions issued in ~~M.M.W.O.1050/93 DATED 12.12.1993 WHEREIN HE WAS ORDERED~~ to continue to occupy the quarters on payment of penal rent (para 5 of the order). It is for the concerned respondent authority to take such action as is provided under the rules to recover the penal rent in case payment of Rs.3,800/- does not cover the penal rent.

11. We may make it clear that the findings recorded by the Ist Additional Metropolitan Sessions Judge Court are not in any way binding on us. Even during the course of arguments, the learned Standing Counsel for the certain respondents has brought to our notice ~~the~~ observations made by the Sessions Court while acquitting the applicant. The Sessions Court felt that there were no ingredients of the offence of misappropriation of cash brought out by the prosecution and that the Railway Administration is at all times entitled to recover the loss caused to it by the applicant in a civil proceeding. This was brought to our notice to show that here the applicant had in clear terms admitted to have accepted the cash of nearly Rs.11 lakhs and odd from the Railway Administration and also admitted the shortage.

12. The respondents have filed a counter. The factual aspect of entrusting the cash to the applicant for the purpose of disbursing the same at various stations is not disputed. The applicant categorically admits that he was entrusted with the cash of Rs.11 lakhs and odd on 2.2.1993. The respondents stated that

R

on 8.2.1993 a message was received from the Divisional Office at Secunderabad stating that the applicant who had proceeded to Parli on 6.2.1993 alighted from the train at the home signal of Parli Station leaving the cash box, voucher box and other relevant registers without putting the seals to the boxes to the custody of the RPF Guards assuring them that he would return to the railway station; that since the applicant did not turn up and on receipt of the above information, the Welfare Inspector, Divisional Cashier and the Inspector of Cashier of the Divisional Office were deputed to Parli. The son of the applicant then on his own accompanied the officials. The cash box was opened after conducting Panchanama and the shortage noticed was to the tune of Rs.1,17,409.85 paise; that however, this short was later confirmed as Rs.1,32,055.15 paise as the applicant had not disbursed the cash to the staff of Ghatnandur; that the applicant was therefore placed under suspension and the disciplinary proceedings were initiated against the applicant under the DAR Rules, 1968; that an information was also lodged with the police; that after conducting the disciplinary proceedings in accordance with the rules and procedure in accordance with the rules and procedure, the disciplinary authority imposed the penalty of removal of the applicant from service and the appellate and the revisional authorities also agreed with the conclusion of the disciplinary authority; that in CC No.301/93 on the file of the XIIIth Metropolitan Magistrate, Secunderabad, the accused was found guilty of the offence punishable under Section 409 of the Indian Penal Code and was convicted; that the applicant challenged the said judgment and conviction before the Ist Additional Metropolitan Sessions Judge; that the averment that his alighting from the Diesel car at the home signal of Parli station was beyond control is

false; that the said averment does not carry any meaning as the same was not in consonance with the duties and responsibilities of the Sr.Cashier; that the place where the applicant alighted from the Diesel car was at a distance of 5 minutes walk from Parli Station; that the applicant alighted from a moving Diesel car without understanding the implications of his alighting from the car; that the applicant was not expected to do so when he was entrusted with the public funds; that after alighting from the Diesel car the applicant travelled for about half an hour to Ambajogai and it was surprising that the applicant who claimed to be seriously ill and alighted from the Diesel car relinquishing the cash and the world thinking that he would not be alive is far from the truth; that the very fact that the applicant after alighting from the car went in search of the doctor, took medicines and a cup of tea and travelled for some distance clearly indicates that his condition was not so serious as he posed to be; that, admitededly, the applicant did not care to return to the Parli Station till completion of the Panchnama on 9.2.1993. The actual shortage of funds noticed is Rs.1,32,055.15 paise; that the averment made by the applicant that there is discrepancy in the shortage noticed is not correct; that if the applicant is acquitted in the criminal case on merits, the departmental proceedings require to be reviewed; that the Hon'ble Supreme Court in the case of Government of Tamil Nadu v. A.Rajapandian,reported in AIR 1995 SC 561 observed that the Tribunals have no jurisdiction to sit over the findings recorded by the Enquiry Authority as an appellate authority; that on 11.2.1993 it is the an appellate authority; that on 11.2.1993 it is the applicant who owned the responsibility for the shortage

3

19

of public funds noticed and he also expressed his willingness to make good the shortage vide his letter dated 11.2.1993 (Annexure 3 to the reply) that the said letter was addressed to the Senior Divisional Accounts Officer; that the XIIIth Metropolitan Magistrate found the applicant guilty; that the appeal against the said judgment and conviction is still pending; that the disciplinary authority disagreed with the reasoning of the Enquiry Officer on Item No.(iii) of the Articles of Charges and recorded his reasons; that there was no obligation on the part of the disciplinary authority to communicate to the applicant his disagreement views; that recording of reasons by the disciplinary authorities disagreeing with the findings of the Enquiry Officer cannot be regarded as violation of principles of natural justice; that the findings of the disciplinary authority is based on evidence; that the revising authority also found that the charges under Item No.(iii) of the Articles of Charges as proved; that the Assistant Station Master, Ghatnandur allowed the applicant to proceed his journey without making any disbursement of the salary to the staff was only to facilitate the applicant to have the medical care as early as possible; that though his condition was said to be so bad at Ghatnandur Railway Station, the applicant was able to alight from the moving train at the home signal of Parli Railway Station; that nowhere on the assessment of evidence by the Enquiry Officer it is stated that the Diesel car was stopped at the home signal of Parli Station to allow the applicant to get down from the moving train; that at the time of alighting from the car, he did not obtain the assistance from any of the RPF escorts on duty; that this circumstance also clearly indicates that the health condition was not so serious as the applicant claims to be; that between 6.2.1993 and 9.2.1993 no cash could be

Pr

distributed to the Station Master at the Parli Station; that the cash box was received at 5.40 p.m. in the absence of the Cashier and orders from the superior officers were solicited; that on 7.2.1993 there was no address of the applicant; that the Cash Guards Incharge gave a Memo. to the Station Superintendent, Parli Station for sealing the cash and voucher boxes; that a complaint was also lodged with the Sub/Inspector of Police, Parli Station on 8.2.1993; that on 9.2.1993 the seal was broken and the cash box was opened under a Panchnama in the presence of Panchas; that no line inspection was conducted by any Supervisor and the cash balance was not checked from 14.12.1992 till the date of Panchanama i.e. 9.2.1993; that therefore the entire responsibility lies with the applicant to safeguard the cash entrusted to him by sealing the cash and voucher boxes and handing over them to the RPF escorts; that in this case the cash and voucher boxes were sealed not by the applicant but by the Station Superintendent, Parli after receiving instructions and it was opened on 9.2.1993 with the original keys lying in the unlocked suit case of the applicant in accordance with the procedure; that the Senior Clerk in the Office of the DC/P/BG/SC is in the grade of Rs.1400-2300(RSRP), that DAO is the appropriate authority to initiate the disciplinary proceedings and is authorised to take a decision as the disciplinary authority. They rely on Rule 10(5) of the Railway Servants(D&A) Rules,1968 and further submit that earlier the appellate authority who happened to be the complainant in the criminal case had decided the appeal; that this lacuna was noticed by the revising authority and that the revising authority by his order dated 6.7.1994(at page 102 of the OA) set aside the order of the appellate authority and directed the appeal to be heard and decided by the Deputy Chief Accounts Officer; that the Deputy Chief Accounts

D

Officer(G), S.C.Railway, Secunderabad as the appellate authority went through the records of the enquiry, findings recorded by the Inquiry Officer and the reasoning adopted by the disciplinary authority while considering Item No.(iii) of the Articles of Charges and agreed with their conclusions though for different reasonings. They submit that in case of acts of misappropriation, the disciplinary authority is independent to impose any major penalty; that the applicant is entitled for honorarium for the period earlier to the order of removal but the same becomes payable to the staff of the Cash Office along with the applicant after the date of his removal and after obtaining sanction from the Railway Board. Hence the honorarium is held back with a view to adjust the loss caused by the applicant to the Railway Administration. Thus they submit that the impugned orders are perfectly valid and legal and there are no grounds to interfere with them.

13. The learned counsel for the applicant during course of his arguments, submitted the following points in support of his various contentions:

- (i) The findings of the Inquiry Officer are perverse inasmuch as his coming to the conclusion that there was proven negligence on the part of the applicant was incorrect since the evidence on record showed that the applicant had taken all due and reasonable precautions in bringing the fact of his sudden illness, while on duty, to the notice of the authorities.
- (ii) The fact that no timely relief was provided to the applicant on the day of the incident in view of his reported sickness, led to a situation where the applicant was obliged to persevere in his duties despite his increasing illness. Resultantly, a situation was brought on where the applicant was compelled to function in a state of near physical disability and it would, therefore, be incorrect to accuse him of negligence of duty.

(iii) After the applicant left the carriage, the cash boxes were left in an unlocked state for as much as 17 hours, before they were sealed and locked, whereas the rules require that immediately on noticing the inability of a Cashier to discharge his duties due to any reason prompt action should be taken to secure the cash and have it properly sealed under a regular panchanama.(Rule 425 of General Instructions for Cashiers and Procedure of Manual of the Office of the Financial Adviser and Chief Accounts Officer).

(iv) A document purported to have been issued by ADRM on the day of the incident was introduced in the inquiry and certain questions were put to one of the prosecution witness based on this document. However, the document cited was actually got introduced by a third party and the author of the document itself was not summoned or examined.

(v) The Inquiry Officer had held that two charges relating to negligence had been proved while the third charge relating to negligence and misappropriation was held to be only partly proved. The record of inquiry as well as the inquiry report would indicate that whereas the applicant was held to be guilty merely of the charge of negligence while on duty, the charge of misappropriation cannot have been held to be proved, specially in view of the fact that :
(a) none of the witnesses had seen him disembarking from the train with any cash, brief case or bag, on his person;
(b) he had left the keys of his brief case containing the keys of cash chests behind and had not carried them with him.
(c) the criminal court had gone into these aspects in detail and come to the conclusion that dishonest intention or the charge of misappropriation were not proved.



(vi) In coming to the conclusion that the charges were held to be proved during the inquiry, the Disciplinary Authority virtually disagreed with atleast one of the findings of the Inquiry Officer. Certain procedure has been laid down where the Disciplinary Authority disagrees with the findings of the Inquiry Officer. In the context of this case Rule 10(3) of DAR is relevant. In the present case, it can, therefore, be said that the Inquiry Officer has either come to a conclusion on 'no evidence' regarding the aspect of misappropriation, or in case of his disagreement the D.A. has neither recorded any reasons nor followed the procedure of the said rule.

(vii) The Appellate Authority is required to go into the whole gamut of facts including the evidence tendered during the Inquiry and give an independent decision as required under Rule 22(2) of the DAR. In the present case, however, the order passed by the Appellate Authority does not indicate any such attention to the facts and reflect rather a casual non-application of mind to the facts. The Appellate Authority is also empowered to go into the adequacy or proportionality of punishment imposed on the applicant. This too has not been done. Secondly, in the light of the judgment in Supreme Court AIR 1986 SC 1173 in such situations, a personal hearing would also be necessary. Such hearing was not given.

(viii) The respondents have stated in their counter that their decision of removal of the applicant from service could require a review after the acquittal of the applicant in the criminal case (para 9 of the counter affidavit). Now that the criminal case against the applicant has ended in acquittal, the respondents are bound to review their decision as per their own commitment as also by the instructions of the Railway Board in Circular No.E-D&A/54-95 dated 7.6.1995 (Additional Annexure- V).



(ix) Such a review is also called for because of the fact that the punishment imposed on the applicant is based largely on the charge of misappropriation (Para 27 of the counter). Apart from the fact that misappropriation was not proved or brought out in the departmental enquiry itself, the applicant was duly exonerated of this charge in the criminal trial against him which was based on the same incident and on the same facts and charges.

(x) If the aspect of misappropriation is held to be non-existent or not proved by facts and evidence, the only aspect that survives is one of negligence on the part of the applicant which led directly to the loss caused to the Government. Rule 6 of DAR Rules, 1968, has a specific punishment for losses caused to the Government due to negligence or breach of orders. This punishment is listed at 6(3) of the said Rules and speaks of recovery from the pay of official as a possible penalty to be imposed. While it is not argued that this is the only punishment that can be imposed on the applicant for his proven lapses, the fact remains that there is one specific punishment which pointedly refers to such situations, and, unless there is a compelling cause to impose a higher punishment on proper justification, there is no reason why this particular punishment (6(3)) should not have been resorted to.

(xi) The punishment of removal is far in excess of the lapse of the Government servant. If it is agreed that he is responsible merely of negligence, there are a number of judgments in this regard to decide how such cases could or ought to be disposed of. The position is very clear that while the Courts cannot substitute their own discretion in matters of quantum of punishment, they are, nevertheless, free to interfere where there is reason to hold that a particular punishment, far in excess of the lapse committed, has been imposed unjustly on the basis of an incorrect appreciation of facts or misapplication of rules relating to various situations.

197

(xii) The charge sheet is defective inasmuch as the amount of loss caused to the Government has a discrepancy as shown in the charge sheet and in the Panchnama cited in the list of documents accompanying the Memo. of Charges.

14. On the contrary, the learned Standing Counsel for the respondents submitted that the powers of this Hon'ble Tribunal is very much limited; that this Tribunal cannot play the role of an appellate forum; that the Tribunal cannot try to appreciate the evidence and come to a different conclusion; that the authorities have properly appreciated and analysed the evidence placed on record by the disciplinary authority; that the version of the applicant that his health condition was so serious as to relinquish the cash at the custody of the RPF Guards without locking ^{sealing} the cash and voucher boxes and ^{to} alight at the home signal of Parli Station is totally concocted; that the very fact that the applicant after alighting from the train, went to the Railway hospital, but could not find a doctor there and then he went to a local ^{medical} shop, purchased tablets, took tea and proceeded to Ambajogai which involved further journey from the place of his alighting for about 30 minutes or so. The subsequent conduct of the applicant clearly indicated that his condition was not so serious as he posed to be. The applicant failed to return to the Parli Station as assured to the RPF Guards. The applicant gave statement owning the responsibility for the shortage of cash found in the cash box; that the applicant failed to make good the loss; that the disciplinary authority is well justified in taking into consideration
the said statement of the applicant dated 11.2.1993

R

before his official superior; that subsequently while submitting his explanation to the Charge Memo. the applicant came with altogether a different version that his earlier statement dated 11.2.1993 was obtained by force and coercion. He has not indicated as to who coerced or forced him to make such a statement; that misappropriation means, as detailed in the criminal case, misapplication of funds; that the disciplinary authority is not expected to lead evidence as to how the applicant misappropriated the same; that the applicant unequivocally accepted the entrustment of the cash of nearly Rs.11 lakhs and odd on 2.2.1993; that the applicant was expected to utilise the said funds for the purpose for which it was entrusted to him; that the applicant has not disclosed as to how he utilised the funds entrusted to him; that the applicant made no approach to the Station Superintendent for sealing the cash box on 6.2.1993 and made no attempt to be present at the time of opening of the cash box on 9.2.1993; that in that connection, the circular instructions relied upon by the applicant are not disputed; that at the time when he alighted from the train, he was expected to seal the cash and voucher boxes and hand over the same to the custody of the RPF Guards; that therefore he committed the act of dereliction of duty in not safeguarding the funds of the Railway Administration; that the theory of ill-health taken by the applicant in his defence is an utter falsehood; that the Inquiry Officer conducted the inquiry with all care and caution and adhering to the principles of natural justice; that the findings of the Inquiry Officer on Item No.(iii) of the Charges may be somewhat different; the Inquiry Officer did not find that there was no element of misappropriation in the misconduct alleged against the applicant; that the Inquir Officer recorded his findings on Item No.(iii) of

the charge as partly proved; that the disciplinary authority after analysing and appreciating the evidence and observing that the applicant had not explained the cash entrusted to him felt that there was an element of misappropriation; that the ingredients of misappropriation as can be found under Section 409 of the Indian Penal Code may not be strictly applicable to the disciplinary proceedings; that non-accounting of the amount entrusted to the applicant may also amount to misappropriation; that the evidence of misappropriation as defined under Section 409 of the Indian Penal Code is quite different from the offence of misappropriation in a disciplinary proceedings; that while proving the offence of misappropriation in a criminal court, the prosecution is expected and duty bound to establish the entrustment and also the manner in which the amount was misappropriated by the accused; that in this case since the applicant himself admitted entrustment of the cash, he is expected to account for the same and that he failed to account for the same; that the authorities were justified in coming to the conclusion that the amount was misappropriated by the applicant and that the very fact that the applicant did not disburse the cash to the Asst. Station Master, Ghatnandur clearly indicated that by then there was shortage of funds with the applicant; that had the cash with him was sufficient, then nothing prevented him to hand over the cash; that therefore the applicant enacted a drama to the effect that he could not get up and hand over the cash to the Station Master, Ghatnandur and assured to distribute the cash on his return journey; and that the applicant could not distribute the cash at Ghatnandur because he had shortage of cash at Ghatnandur. These acts clearly establish the dereliction of duty and also act of misappropriation of the funds of the Railway

Administration on the part of the applicant and that having regard to the facts and circumstances of the case, the authorities have taken a just conclusion.

15. We will consider the grounds urged by the learned counsel for the applicant in support of the application in seriatim.

16. The learned counsel submitted that the findings of the Inquiry Officer are perverse; that there was no material on record for him to come to the conclusion that there was negligence on the part of the applicant and that the evidence on record showed that he had taken all due care and reasonable precaution in bringing to the notice of his superior officers about his sudden illness while on duty. This ground is with respect of Item No.(i) of the Articles of Charges. The applicant submits that he was suddenly taken to ill while on duty. In the preceding paragraphs, we have explained the circumstances relied upon by the learned counsel for the respondents to contend that the alleged illness set up by the applicant is only a concocted story. Any material or any information which is within the personal knowledge of the applicant must be proved by him. In the first instance, he pleaded that he was ill at the Ghatnandur itself; that he was not able to get up and that he requested the ASM, Ghatnandur Railway station that he would deliver the cash on his return journey. Therefore, in our humble opinion, it is for him to examine the A.S.M., Ghatnandur Railway Station. He would have been the proper person to state as how his condition was when he reached Ghatnandur Railway Station. He has not examined the ASM, Ghanandur. No doubt, in the cross-examination of the Guards and other witnesses, he has elicited from them that he had

vomitting and was laying down. But till today he has not produced any medical advice given to him for his illness during February, 1993, particularly between 3.2.1993 and 6.2.1993. Even when he appeared before the DAO, BG, Secunderabad and submitted his explanation on 11.2.1993, he only submitted that he was suffering from pain. We do not know what pain he was suffering whether it was bodily pain or whether it was abdominal pain or it was pain in his muscles. The reason purforth by the applicant in his explanation dated 11.3.1993 is that he was suffering from pain and that he could not bear the pain.

17. It is not in dispute that the applicant alighted from the moving train at the home signal of Parli Railway Station. He also does not dispute that he went to the Railway hospital, the doctor was not available; went to the medical shop and took some tablets. He has not stated what tablets he took. It is not in dispute that subsequently he took tea in a hotel and undertook journey to Ambajogai. His further explanation is that he was not ina position to know whether he was surviving or not and that his sister on seeing him got him laid down and got him treated. Then to ascertain his actual condition and actual ailment, he should have examined the doctor who treated him at Ambajogai as to his illness and also he should have examined his sister to state what was his condition when he approached her. As already observed by us, mere eliciting from the witnesses that he had vomitting and was laying down is not sufficient to come to the conclusion that those pains or vomittings compelled him to relinquish the cash and voucher boxes and alight from a moving train.

18. He has not produced any document to show that he informed the higher authorities about his state of

health. If really his condition was so serious as he is now poses to be, he should have submitted a request in writing immediately to the Station Superintendent, Ghatnandur and should not have proceeded further for performing the duties as Sr. Cashier. Atleast if that condition was continuing when he reached Parli Station, instead of alighting from the moving train at the home signal, he should have handed over the cash and voucher boxes to the custody of the station Superintendent and should have pleaded his inability to perform duties on account of his illness. His version that he alighted from the moving train to save his life cannot be accepted. In fact, Article I places some burden on him to prove under what circumstances he abandoned the cash and voucher boxes in the Diesel car. He has not examined any witness in support of defence. Therefore, on the material available on record, the Inquiry Officer, the Disciplinary Authority, the Appellate Authority and the Revising Authority have reached the proper conclusion as to his alleged illness.

19. The other contention is that he was not given timely relief when he was suffering from the illness. Unless a person gives it in writing to the higher authorities about his health condition, the authorities cannot make arrangements for his relief. Without that, blame cannot be made at the Railway Administration for not providing the timely relief. As already observed, he has not produced an iota of evidence to show that his condition was such that he could not move further and a request was made to get himself relieved. It is elicited from the cross-examination of the RPF Guards that when he was about to alight from the moving train, one of the Guards enquired with the applicant whether his assistance was necessary. Then the applicant answered in the negative and he did not secure the assistance of the

RPF Guard. This itself clearly goes to show that his health condition was not such that the Railway Administration was required to relieve him from the duties and to make alternative arrangements. All his statements, versions etc. are only self-serving ones lacking truth. Our opinion is that such versions have to be viewed with much caution.

20. His other contention is that the applicant alighted from the moving train bearhanded. It is his contention that even he left his own personal belongings at the mercy of the RPF Guards. This contention is taken to make us believe that he is not responsible for the shortage of cash. This line of argument might have influenced the Ist Additional Metroplitan Sessions Judge to come to a conclusion that there was no evidence led by the prosecution to prove that the accused had misappropriated the railway funds. The learned counsel for the respondents brought to our notice the observation made by the Court of the Ist Additional Metroplitan Sessions Judge that it is a civil liability and the Railway Administration can recover the amount from the applicant by filing a civil suit. Abandoning the railway funds and leaving the place of duty may amount to misconduct. The applicant should have explained the circumstances under which he left the cash and voucher boxes at the home signal of Parli Railway Station. He should have better explkained only by placing on record the evidence of the Asst. Station Master, Ghatnandur, his sister and the doctor who alleged to have treated him at Ambajogai.

21. The train reached Parli Station after about 6 p.m. At the time of alighting from the train, the applicant had instructed the RPF Guards that he would arrive at the station within about 2 hours. Admittedly the applicant did not return to duty. He made his first appearance before the D.A.O. on 11.2.1993.

22. When the applicant did not return to Parli Station, the Station Superintendent obtained necessary instructions and sealed the cash box. It is the contention of the respondents that the applicant had not even sealed the cash and voucher boxes when he left the carriage at Parli station. Thereafter the cash box was opened under a Panchnama on 9.2.1993 after obtaining instructions from the superior officers. If he suspected any foul play during this period, he should have summoned the persons who had written the Panchnama and examined and cross-examined them. When he could not be traced, the authorities awaited for him, adopted the procedure of sealing the cash and voucher boxes and opened them on 9.2.1993 in the presence of Panchas. They have given the details of the amount delivered by the applicant and also the vouchers available in the voucher box. In the first instance, when they conducted the Panchanama at the Parli Station, they noticed shortage of cash of Rs.1,17,409.85 paise and after verifying the vouchers in the voucher box, they noticed that the applicant had not disbursed the cash to Asst. Station Master, Ghatnandur. Hence the amount that was payable to the ASM, Ghatnandur was also taken into account and thereby the shortage was confirmed at Rs.1,32,055.15 paise.

23. The learned counsel for the applicant submitted that they violated the Rule 425 of the General Instructions for Cashier and Procedure of Manual of the Financial Adviser and Chief Accounts Officer. He also produced the circular instructions issued as to the procedure to be adopted when the Cashier is not available or when the original keys were not available. No doubt, they have followed the procedure while sealing the cash and voucher boxes at Parli Station and also while opening the cash box on 9.2.1993. The applicant was expected to be careful with regard to the funds of

the Railway Administration. It is stated that the place where he got down and the Railway Station was just at a distance of a few minutes' walk and the applicant could have very well gone to the Parli Station and handed over the cash and voucher boxes with full particulars to the Station Superintendent, Parli. If he had any suspension against any of the RPF Guards or any higher officer, then he should have brought the said fact to the higher authorities and he should have stated so in clear terms what was the cash that was in the box when he left the train. The very fact that in the first instance the shortage was noticed at Rs.1,17,409.85 p. and subsequently they noticed that the shortage was to the tune of Rs.1,32,055.15 paise, clearly indicates that no foul play has been made by the staff of the Parli Railway Station or the Panchas. We cannot say that the staff of the Railway Administration had vengeance against the applicant to falsely implicate him in the loss of funds.

24. Another contention of the applicant is that the document purported to have been issued by the ADRM on the date of incident was introduced in the inquiry and certain questions were put to one of the prosecution witnesses based on the said document. The applicant submits that the author of the document was not at all examined. The applicant actually refers to the letter which is at page 21 of the OA. It is written by the ADRM-II on 8.2.1993. It was not the day of the incident. The applicant alighted from the moving train on the evening of 6.2.1993. The cash box was opened on 9.2.1993. This letter was written on 8.2.1993. It is his contention that this letter has been clandestinely introduced in the inquiry and certain questions were put to one of the witnesses examined on behalf of the disciplinary authority and that the author of this letter has not been examined.

In the first instance, it is to be noted that this letter finds place in Annexure-3 to the Memo. of Charges. At sl.No.2 the letter dated 8.2.1993 of the ADRM-II has been clearly indicated. Therefore, the contention of the applicant that this letter has been introduced during the inquiry cannot be accepted. Further this letter discloses about the nature of the applicant. If he felt that this letter is against his interest, then he should have requested the Inquiry Officer to summon the ADRM-II. It is too late in the day for the applicant to contend that this letter has been introduced during enquiry even though this letter finds

place in Annexure-III to the Memorandum of Charges. Annexure-III discloses the proposed to be details of the documents/relied upon by the disciplinary authority to substantiate the charges. Therefore, this contention of the applicant has no substance and is accordingly rejected.// The Inquiry Officer held the Items (i) & (ii) of the charges as proved and held Item No.(iii) of the charges as partly proved. The report of the Inquiry Officer is at pages 45 to 55 of the O.A. Item No.(iii) of the Charges includes the misconduct as well as misappropriation of a sum of Rs.1,32,055.15 paise. The Inquiry Officer in his report has observed as follows :

.... It is a fact that the Cashier carelessly left the box with the keys and left from the moving train at the home signal of PRLI. The Cash Guards took the box upto PRLI and got it sealed at PRLI by S.S. on 7.2.1993. Evidence is that the CE promised to the cash guards that he would come back to PRLI station after taking some tablets. Presumably the cash guards were waiting for the Cashier to turn up. This did not happen and on the other hand the Cashier ultimately turned up in the Sr.DAO's Office on 11.2.93. He gave a statement to the Sr.DAO indicating the circumstances of the case and also owning that he lost the Government cash vide Ex.P.1. The charge is that the CE misappropriated the money for his pecuniary gain and causing loss to the Railway administration. Record of the enquiry shows that after making payments at Pangaon the CE was not seen carrying anything in his hands while getting down at the home signal of PRLI. He did not make any payment at GTU. In these circumstances, the possibility is that the CE did not have the cash between Pangaon and PRLI, sufficient to make payments at GTU and PRLI. Even though the charge of misappropriation for his pecuniary gain does not get substantiated by any direct evidence, if one ponders over the probability the circumstantial evidence indicate that the CE was careless enough to cause pecuniary loss to Railway Administration. On this score failure of devotion to duty is established. In the circumstances of the evidence adduced in the oral Enquiry, I feel that the aspect of lack of integrity can not be substantiated but by his action of leaving the Cash Box and the keys of this Box in the custody of the Cash Guards, is undoubtedly an action indicating failure of devotion to duty. The unbecoming action can be attributed to the fact that he got down from a moving diesel car, had tablets and tea and then left for Ambajogai a far off place. After he reported to Sr.DAO, he confessed about the aspect of loss of money and promised to make good the same."

R

Thus the Inquiry Officer held Item No.(iii) of the charges as partly proved.

25. The disciplinary authority after considering the findings recorded by the Inquiry Officer and the explanation of the applicant, by his order dated 24.12.1993 observed as follows :

... The contention of Sri P. Vasantha Rao that he left the cash box to the custody of the RPF cash guards is not a valid point as the cash box was not entrusted to the cash guards duly sealed and hence amounts to abandoning the cash box. This is a clear dereliction of duty. The contention of Sri P. Vasantha Rao through his representation dt.14.12.1993 that the loss of cash to the tune of Rs.1,32.055/- was not caused while the cash box was in his custody i.e. upto the time he left the Coach near the outer signal of Parli Railway Station or the evidence given by the witness that they have not seen Sri P. Vasantha Rao carrying anything while leaving the Pay Special is not accepted. The said plea will not absolve him of his responsibility and hence the charge of misappropriation of cash with an intention to gain pecuniary advantage to himself and cause loss to the administration is proved."

26. In a way the disciplinary authority disagreed with the findings recorded by the Inquiry Officer. Therefore, the contention of the applicant is that he should have been given an opportunity to explain against ^{/views} the findings of the disciplinary authority and thus there has been violation of principles of natural justice.

In this connection, the observations of the Hon'ble Supreme Court in the case of N.Rajaratnam v. State of Tamil Nadu and another, reported in 1997 AISLJ page 10 may be referred to. In para-2 their Lordships have observed as follows :

"... It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to

consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier career. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference."

Further in the case of State Bank of India, Bhopal v. S.S. Koshal, reported in 1994 SCC(L&S) 1019, the Hon'ble Supreme Court considered the necessity for furnishing disagreement of the disciplinary authority to the charged employee. Their Lordships have observed as follows:

"6. So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us. (B.P. Jeevan Reddy, J.) as a Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India. The second contention accordingly stands rejected."

Hence we find no substance in this contention.

27. The learned counsel for the applicant contended that this is a case of no evidence. We certainly cannot agree with the learned counsel for the applicant. It is an admitted fact that the applicant was entrusted with the cash to the tune of Rs. 11 lakhs and odd on 2.2.1993 and between 3.2.1993 and 6.2.1993 he was on duty of disbursing the salaries, allowances and advances to the

209

staff between Vikarabad and Parli route. He was expected to disburse the cash to the concerned Station Superintendents between the said route and other three routes. The applicant admits that he did not disburse the cash to the Assistant Station Master at Ghatnandur Railway Station. The applicant had not disbursed the cash beyond and including Parli Railway Station. Atleast he should have explained by documents as to how the cash with him was found short in the cash book when it was opened under the Panchnama. If he was certain that he had maintained the correct accounts, he should have clearly disputed the statement of accounts found in the voucher box and supplied to him during the enquiry (pages 24 to 29 of the OA). Those documents were enclosed to the Memorandum of Charges. If he had any suspicion over those documents, he should have cross-examined the persons who gave evidence in support of the said document or he should have explaiedned as to how he used the Railway funds.

Therefore, we feel that the disciplinary authority had analysed the evidence and disagreed with the findings recorded by the Inquiry Officer on Item No.(iii) of the Memorandum of Charges.

28. The applicant has challenged the order passed by the appellate authority. The order passed by the appellate authority is at pages 106 to 108 of the OA. The appellate authority has given its own reasons on Item No.(iii) of the Charge Memo. The appellate authority has considered the contentions raised by the applicant and has passed a speaking order. We cannot find fault with the order of the appellate authority. The appellate authority is not expected to pass an order like a judgment of the Court. The appellate authority has

210

also considered the adequacy or otherwise of the punishment imposed by the disciplinary authority.

29. The learned counsel for the applicant submitted that the element of misappropriation is not established and that what is established, if at all, is only the negligence resulting in pecuniary loss to the Railway Administration; that the rules provide for recovery of the loss caused to the Railway Administration and that the extreme penalty of removal from service of the applicant was not called for. Thus he contents that the punishment imposed by the disciplinary authority is too harsh and severe. It may be noted that there were three items of misconduct or misbehaviour in the Memorandum of Charges. The applicant strongly contended that the findings of the authorities on item No.(iii) of the Charge Memo. was conflicting. Even accepting for the moment that it is so, we cannot say anything when the appellate authority thought it fit to impose the penalty of removal on the basis of the findings, on Item Nos.(i) and (ii) of the Charge Memo.

30. In the case of Union of India v. Paramanand, the Hon'ble Supreme Court has held that this Tribunal can have no power to interfere with the punishment imposed by the authorities. In the case of AGB Naik v. Union of India and others, reported in 1998(1) ATJ 222 the Mumbai Bench of this Tribunal considered the power of the Tribunal to interfere with the punishment imposed by the authorities. In para-11 the Mumbai Bench of this Tribunal has observed as follows :-

"11. The last submission on behalf of the applicant is that the punishment of dismissal from service is too harsh and the Court must take a lenient view. In our view, the scope of judicial review is very limited. Imposition of penalty is in the sound discretion of the disciplinary authority. Since we are not sitting in appeal we cannot normally interfere with the penalty imposed by the disciplinary authority. It may be in extreme cases where the punishment is disproportionate to the

24

misconduct which shocks the conscious of the Court, the Tribunal may interfere either directly modifying the order of punishment or remitting the matter back to the disciplinary authority to reconsider and impose appropriate penalty. But in our view, having regard to the facts and circumstances of the case, there is no question of this being a case of punishment shocking the conscious of the Court."

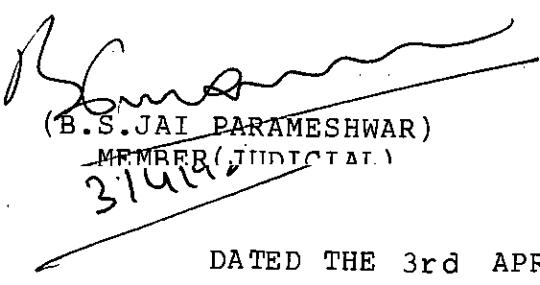
31. Lastly the applicant contended that the charge was defective. It is on the ground that in the Panchnama the shortage of cash was mentioned as Rs.1,17,409.85 paise, but in the Charge Memo, it was alleged that the applicant had misappropriated Rs.1,32,055.15 paise. The discrepancy has been explained in the earlier paragraphs. When the cash box was opened on 9.2.1993 at Parli Station, it was found then the shortage to the extent of Rs.1,17,409.85 paise and after verifying the vouchers, it was found that the applicant had not handed over the cash to the Assistant Station Master, Ghatnandur. Therefore, the shortage was confirmed at Rs.1,32,055.15 paise. In this view of the matter, we do not feel that the Charge Memo is defective. We cannot agree with the learned coounsel for the applicant in this regard.

32. This Tribunal has a limited scope in disciplinary proceedings. This Tribunal cannot sit as an appellate forum to consider and appreciate the evidence. The disciplinary authority, the appellate authority and the revising authority have considered and appreciated the evidence placed on record and have come to the conclusion that the charges levelled against the applicant have been proved. When that is so, it may not be proper for this Tribunal to come to a contrary conclusion. Definitely, it is not a case of "no evidence".

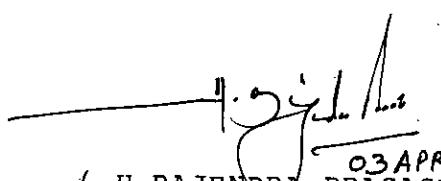
212

33. In view of what is stated above, we find no merits in this O.A. and the O.A. is liable to be dismissed.

34. Accordingly the O.A. is dismissed; but in the circumstances of the case, no order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDICATURE)

31/4/98


(H.RAJENDRA PRASAD)
MEMBER

03 APR 98

DATED THE 3rd APRIL, 1998.

DJ/


Deputy Registrar

-34-

O.A. 1102/95.

To

1. The General Manager, SC Rly.
Railnilayam, Secunderabad.
2. The Financial Advisor and Chief Accounts Officer,
SC Rly, (BG) Secunderabad.
3. F.A. & Deputy Chief Accounts Officer (G)
SC Rly, Secunderabad.
4. The Senior Divisional Accounts Officer
SC Rly (BG) Secunderabad.
5. The Divisional Accounts Officer,
SC Rly (BG) Secunderabad.
6. One copy to Mr. J. Sudheer, Advocate, CAT.Hyd.
7. One copy to Mr. J.R.Gopal Rao SC for Rlys, CAT.Hyd.
8. One copy to HBSJPM(A) CAT.Hyd.
9. One copy to DR(A) CAT.Hyd.
10. One spare copy.

pvm

12/5/98

I Court

TYPED BY
COMPIRED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE B.S. Tai
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

The Hon'ble Mr. B.S. Tai presiding over the C

DATED: 3 - 4 - 1998

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in

O.A.No. 1102/95

T.A.No.

Q.W.P

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

p.m.

