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**Central Administrative Tribunal
Jabalpur Bench**

OA No.220/05

Jabalpur, this the ^{7th} day of ~~September~~ 2006

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Mr.A.K.Gaur, Judicial Member

S.P.Pandey

S/o Late Uma Prasad Pandey

Head Booking Clerk

(Compulsorily Retired)

Sihora Road

Khitaula Bazar

Dist.Jabalpur.

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
its Secretary
Ministry of Railway
Railway Board
New Delhi.
2. The Union of India through
Its General Manager
West Central Railway
Jabalpur
3. The Divisional Railway Manager
West Central Railway
Jabalpur Division
Jabalpur.
4. The Additional Divisional Railway Manager
West Central Railway
Jabalpur Division
Jabalpur.
5. The Sr.Divisional Commercial Manager
West Central Railway
O/o Divisional Railway Manager
Jabalpur Division
Jabalpur.

(By advocate :Shri S.P.Sinha)

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ORDER

By A.K.Gaur, Judicial Member

By filing this Original Application, the applicant has sought for quashing the orders dated 6.2.2004 (A-1) and 27.12.2004 (A-2) to the extent they maintain the order of compulsory retirement passed by the disciplinary authority. The applicant has also claimed reinstatement with all consequential benefits.

2. It is, submitted on behalf of the applicant that he was promoted as Head Booking Clerk in the year 1990 and has rendered about 38 years of service in the respondent department. His entire service record has been unblemished throughout. It is also contended on behalf of the applicant that on an alleged complaint of one Shri Prabhu Chouhan on 19.12.1992, the CBI laid a trap. However, the CBI did not lodge any criminal case against the applicant. It is urged that the charge sheet was issued at the instance of CBI and the disciplinary authority was also directed by the CBI to nominate Shri Vinay B.Kumar, Inspector of CBI, as presenting officer.

While the applicant was posted at Sihora Railway Station as Head Booking Clerk, he received the charge sheet dated 19/22.3.1993 (A-3). It was mentioned in the charge sheet that the applicant had instructed Shri B.D.Sijoriya, Assistant Booking Clerk, to accept the bribe from Shri Prabhu Chouhan and in turn he (B.D.Sijoriya) had accepted the said bribe and while taking the bribe of Rs.25/- from Shri Prabhu Chouhan, he was caught red handed by the CBI.

3. The allegations contained in the charge sheet were denied by the applicant in toto and he demanded the documents enclosed along with the charge sheet, vide letter dated 7.4.2003 (A-4). The grievance of the

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applicant was also to the effect that the relied-upon documents were not supplied to him. On 30.6.1993, the disciplinary authority appointed Shri Vinay Kumar, Inspector of CBI, as presenting officer, as per the directions of the Superintendent of Police, CBI. Shri N.G.Dhankhore was appointed as inquiry officer. On 19.12.1993, the said inquiry officer was changed by the respondents and Shri S.B.Agnihotri was appointed as inquiry officer in his place. He also did not take any action to complete the inquiry. The inquiry officer was further changed and one Shri P.C.Punde was appointed as inquiry officer. He was also changed. Thereafter Shri K.Paul was appointed as inquiry officer. Although in the charge sheet, names of 11 prosecution witnesses were mentioned, but the prosecution has produced only 3 witnesses during the course of enquiry. Out of the three witnesses, 2 were present along with the CBI decoy team at the time of trap. The statements of the witnesses of decoy team namely Shri Surendra Gaikwad and Mahendra Sejav were recorded by the inquiry officer (A-5 & A-6). During the course of departmental inquiry, the complainant, Shri Chouhan was not produced for examination in support of the allegation and for cross examination. However, his complaint was relied upon by the prosecution to establish the allegation against the applicant. The inquiry officer submitted his report on 5.7.2002 (A-7), which was supplied to the applicant on 16.9.02. The inquiry officer in his report observed that the charges are found proved. After receipt of the report of the inquiry officer, the applicant preferred a representation on 27.9.2002 (A-8). In this representation, the illegality committed during the course of the departmental enquiry was categorically pleaded. According to the applicant, the disciplinary authority did

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not consider his representation and passed the impugned order dated 6.2.04 (A-1) whereby the applicant was compulsorily retired from service with 2/3rd pensionary benefits.

4. Being aggrieved by the order dated 6.2.04, the applicant preferred a detailed appeal to the Additional Divisional Railway Manager on 20.2.04 (A-9). The Appeal was decided by the appellate authority on 27.12.04 (A-2) whereby the penalty of compulsory retirement imposed by the disciplinary authority was maintained. However, the appellate authority modified the order of the disciplinary authority to the extent that full pensionary benefits were restored purely on humanitarian considerations.

5. It has also been contended on behalf of the applicant that the respondents have issued the order dated 31.8.04 (A-10) whereby the applicant was promoted in the pay scale of Rs.6500-10500 from the pay scale of Rs.5500-9000 under cadre restructuring scheme w.e.f. 1.11.03.

6. The case of the applicant has been resisted by the respondents by filing a detailed reply. In Para 4.3 of the reply, the respondents have admitted that on the basis of a written report of Shri Prabhu Chouhan, the CBI had conducted the raid on 19.12.92 and recovered the sum of Rs.25/-. It is also admitted that the CBI did not prosecute the applicant and recommended departmental action. The respondents have denied that the CBI gave any direction to appoint Shri V.B.Kumar as presenting officer and it was the department which made the appointment. The respondents have also denied that the documents were not supplied to the applicant. Certain documents were inspected by the applicant and in Para 4.6 of the reply it is stated that the essential witnesses accompanying the

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decoy team were examined. As the incident was of the year 1992 and the witnesses were examined in 1996, contradictions are bound to occur. It is also stated that it was not a case of no evidence and hence mere contradiction would not help the applicant. Sincere efforts were made to call Shri Chouhan a number of times, but he did not appear. The applicant was apprised of the situation and was asked if he wanted to cross examine Shri Chouhan on the basis of his complaint. However, the applicant did not avail the opportunity of cross examination and hence the production of witnesses was closed. The statement of the applicant in this respect has been filed as R-3.

7. We have heard Shri S.Paul, learned counsel for the applicant and Shri S.P.Sinha, learned counsel for the respondents, at considerable length.

8. Learned counsel for the applicant has argued that the inquiry has been conducted under pressure of CBI. It is submitted that the applicant was falsely implicated in the alleged trap by the CBI. According to learned counsel of the applicant, the CBI cannot be permitted to have any say or create any kind of pressure on the disciplinary authority; the same runs contrary to the principle of natural justice and the inquiry thereby loses its independent character. Along with the return, the respondents have filed a letter of CBI dated 31.12.92 (R-4), addressed to the General Manager (Vig.), Central Railway, General Manager's Office, Vigilance Branch, Bombay V.T. with a view to show that the respondents were under pressure of CBI and were working in a particular manner as desired by the CBI. Certain relevant portions of A-4 are being reproduced hereunder:

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“4. The services of the Investigating Officer of the CBI would be available to the Enquiry Officer for securing the attendance of witnesses, producing documents and exhibits, explaining the gist of the evidence available and for giving such clarification as may be required.

5. The date and venue of the departmental enquiry may kindly be communicated to the Supdt. Of Police, CBI, ACB, Jabalpur at the appropriate time so that he may depute the Investigating Officer to assist the Enquiry officer.

6. The result of the departmental action for major penalty may kindly be communicated to us in due course.”

9. The learned counsel for the applicant has vehemently argued that the letter of CBI dated 31.12.92 was issued much before issuance of the charge sheet dated 22.3.93 and according to him, the decision to initiate inquiry and impose punishment was the result of the pressure of CBI. This contention of the applicant is not legally sustainable, as the relevant decisions have been taken by the disciplinary authority after considering the recommendations of the CBI. There is nothing on record to show that the disciplinary authority was in any way pressurized by the CBI. Since the case was investigated by CBI, there is nothing wrong in appointing a CBI officer as the presenting officer.

10. It has been contended on behalf of the applicant that the complainant Prabhu Chouhan did not turn up to substantiate the charges. According to the learned counsel for the applicant, in the absence of Prabhu Chouhan, the charges cannot be said to be proved. In order to buttress the said contention, the counsel for the applicant has cited the Apex Court's judgement reported in 1999 8 SCC 582 -Hardwari Lal Vs. State of U.P. In the

said judgement, the observations of the court are as follows.

“Failure to examine - material witness - appellant a police constable, charged of having abused his colleague while he (appellant) was under the influence of liquor - However, neither complainant nor the other employee who accompanied the complainant to hospital for medical examination examined as witness - enquiry held vitiated.”

In this judgement it is further held that:-

“Examination of these two witnesses would have revealed as to whether the complaint made by Virendra Singh was correct and to establish that he was best person to speak to its veracity.”

11. The argument advanced by the counsel for the applicant is that pre-recorded statement taken by the CBI behind back of the applicant was produced in the inquiry and was not read out before examining the witnesses on merits. He argued that no examination in chief on the merits of the case was conducted and witnesses were merely required to answer as to whether they proved their pre-recorded statement and signatures mentioned therein. In support of his contention, the decision of the Allahabad Bench of the Tribunal reported in 1988 (6) ATC 1004 (Ram Babu Puskar Vs. Union of India) was heavily relied upon by the applicant. According to the applicant, the statements of witnesses which have already been recorded in the fact finding inquiry should be recorded afresh in the presence of the delinquent employee. The facts of Pushkar case (Supra) are identical to that of the present applicant. In that case, a written complaint was made against the applicant regarding acceptance of Rs.100/- as illegal gratification. However, the complainant did not appear in regular inquiry to face

cross examination. In the instant case, the charge sheet was issued to the effect that the applicant had instructed Shri B.D.Sijoriya, Asstt. Booking Clerk, to accept the bribe from Shri Prabhu Chouhan and in turn Shri Sijoriya had accepted the bribe and was caught red handed by the CBI while accepting the bribe of Rs.25. In this case also, the complainant did not appear in the inquiry to face cross examination. The Allahabad Bench of the Tribunal had set aside the punishment and observed as follows:

"Evidence heard at preliminary enquiry must be reproduced in departmental enquiry if it is considered necessary to be relied upon, especially so when the person who made the statement during preliminary enquiry is alive. It is immaterial that the person who made the complaint is not willing to come forward to support the allegation. It may be that the person made a false statement, so he is not willing to face cross examination."

The Tribunal held that those two complainants were not examined before the I.O. and the question of opportunity to cross examine them does not arise nor the I.O. had any opportunity to watch those witnesses giving statements and the manner in which the cross examination was done and questions were answered."

12. In order to show that there was no evidence against the applicant to prove the charge, statements of 2 independent witnesses namely Surendra Gaikwad and Mahendra Sejav were produced before us. According to the learned counsel for the applicant, these witnesses were required to prove the pre-recorded statement taken by the CBI. However, in cross examination by the CBI, "the cat came out of the bag" and it was proved that there was no evidence against the applicant. With a view to demonstrate that it was a case of no evidence, certain portions of the cross examinations of the aforesaid two

witnesses, reproduced hereunder, were brought to our notice:-

"Regarding Shri Surendra Gaikwad

Q/10. Is it correct that you in person did not hear any conversation which was said to have taken place between Shri Prabhu Chouhan and the booking clerk, and the head Booking Clerk nor you have seen any amount being given to Shri S.P. Pandey as illegal gratification?

A/10. Yes, it is correct.

Q/11. Do you have any thing to sustain the alleged charge against Shri S.P. Pandey that he entered into a criminal conspiracy with Shri B.D. Sijoria, B.C. Sihora?

A/11. No."

Q/13. Please go through the pre-trap memo dated 19.12.92 and confirm as to whether the said memorandum has been prepared in your presence and facts recorded therein are correct and you sign the same in token of its correctness"

A/13. I confirm the pre-trap memo dated 19.12.1992 whereon I have signed. I did not know the contents.

Q/14. Did you sign blindly?

A/14. Signed without reading contents.

Similarly in cross examination Shri Mahendra Sejav answered as under:

Q/14. Could you hear conversation between Shri Sijoria and Shri Chouhan from the place where you were posted?

A/14. Could not hear.

Q/15. Did you know Shri Pandey who is sitting by the side of me?

A/15. I did not know.

Q/16. Did you have any conversation with Shri Panedy before fact/materialized?

A/16. No.

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Q/17. Did you observe the money transaction said to have taken place between Shri Sijoria and Shri Prabhu Chouhan?

A/17. I have seen Shri Chouhan handing over some money to Shri Sijoria.

Q/23. Is it correct that you did not personally see handing over any bribe money to Shri Pandey, you did not hear any conversation, which took place inside the office and no alleged bribe money was either demanded by Shri Pandey or accepted by Shri Pandey or he issued the tickets?

(This question asked by defence is pregnant with the entire allegation mentioned in the charge sheet). The answer is as under:

A/23. Yes it is correct.

Q/27. According to you, you have signed three documents i.e. pre-trap memorandum (pre-panchnama) trap-panchnama & recovery memo what was the pre-panchnama?

A/27. I have signed the papers which have been prepared before me and in my presence and I do not know the terminology of the said papers.

13. On a perusal of the aforesaid statements, it is clear that the witnesses have categorically and specifically said that neither they have heard any conversation nor seen any taking of bribe by the applicant. This is stated to be contrary to the statements signed by these witnesses at the time of the trap, but these statements were not produced before us for judging the credibility of the witnesses. Moreover, there is nothing on record to show that these statements are included in the list of documents on which the prosecution wished to rely.

14. Learned counsel for the applicant has also argued that the findings of the Inquiry Officer are perverse. The inquiry officer has recorded the following findings:

"P.27(iv) As the case of 1992 PW-2 & PW-3 could not explained the incident because they were not able to recall their memory, however, they have confirmed the contents in the

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documents signed by them recorded at the time of incidence."

"Thus the charges leveled in Article of charge against Shri S.P.Pandey is proved." (emphasis supplied).

15. The said finding clearly shows that the basis for holding the charges proved is the pre-recorded statement of the said witnesses. The witnesses in the cross examination have stated that they have not heard, seen any conversation, of any taking of bribe by the applicant. They also asserted that these pre-recorded statements were signed by them without reading them. This is not believable as the witnesses are reported to be literate, responsible persons. Copies of these pre-recorded statements, however, have been filed neither by the applicant nor by the respondents. Hence we have to go by the statements recorded by the inquiry officer.

16. It is settled principle of law that Tribunal may not sit as a court of appeal over the findings recorded by the inquiry officer. But looking into the statements of the witnesses and the surrounding situation, we are of the considered view that the findings of the inquiry officer are not based on the statements recorded by him and do not inspire confidence.

17. It has also been argued that the orders of the disciplinary and the appellate authorities are cryptic, not reasoned and not according to law. We have carefully seen the order of the disciplinary and appellate authorities and we hold that both these authorities have not passed reasoned and speaking orders. The appellate authority has failed to deal with all the contentions raised by the applicant in his appeal and in view of the decision rendered by the Supreme Court in Ramchandra Vs. Union of India 1986 (3) SCC 103, the orders of the

disciplinary and appellate authorities are non speaking and cryptic.

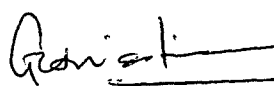
18. Learned counsel for the respondents has argued that no doubt Prabhu Chouhan, the complainant, did not appear with a view to prove his case but the applicant cannot take advantage of his non-production on the ground that he was clearly asked as to whether he would like to cross examine Prabhu Chouhan but he declined to do so and in this circumstance, even if the complainant was not produced, no adverse inference should be drawn against him. We are not convinced with this argument of the counsel for the respondents.

19. We have given our anxious thought and we come to the conclusion that the findings recorded by the inquiry officer are not supported by the evidence on record. The orders passed by the disciplinary and appellate authorities are wholly non-speaking and cryptic and same deserve to be quashed. Accordingly, the impugned orders dated 6.2.2004 passed by disciplinary authority (A-1) and 27.12.2004 by appellate authority (A-2) are quashed.

Respondents are directed to treat the applicant as reinstated in service with effect from the date of his compulsory retirement with all consequential benefits to the applicant. The directions are to be complied with within a period of three months from the date of receipt of this order.

20. With the above directions and observations, the OA is disposed of. No costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्जो धित:-

(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर

(2) आवेदक श्री/श्रीमती/व्यु.....को काउंसल

(3) प्रत्यक्षी श्री/श्रीमती/व्यु.....को काउंसल

(4) कांथपाल, के.प्र.अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

S. Paul, ADV 238

S-P Singh, ADV 238

ISSUED

ON 12-5-06

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