

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**

**ALLAHABAD**

**Original Application No.375 of 2013**

Dated; This , the 2<sup>nd</sup> day of November, 2018

**HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER**

**HON'BLE MR. MOHD. JAMSHED, ADMINISTRATIVE MEMBER**

Vijay Kumar Srivastava, aged about 53 years, son of Late Suresh Kumar Srivastava, resident of 5<sup>th</sup> Lane, Subhash Nagar, Post Office Gorakhnath, Gorakhpur. Previously posted as Commercial Supervisor at North Eastern Railway, Gorakhpur, but presently under order of compulsory retirement.

**-Applicant**

(By Advocate – Mr. Shyamal Narain)

**V e r s u s**

1. The Union of India, through the General Manager, North Eastern Railway, Gorakhpur.
2. The General Manager (Personnel), North Eastern Railway, Gorakhpur.
3. The Divisional Commercial Manager, North Eastern Railway, Lucknow.

**-Respondents**

(By Advocate – Shri L.M. Singh)

**O R D E R**

**BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER**

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

- “(i) That this Hon’ble Tribunal be pleased to quash and set aside, with all consequential benefits, the impugned order dated 29.2.2012 (Annexure No. A-1 of Compilation No.1) passed by the General Manager, North Eastern Railway, Gorakhpur, imposing upon the applicant the punishment of compulsory retirement from service.
- (ii) That this Hon’ble Tribunal be pleased to grant such other relief, as the applicant might be found entitled to in the facts and circumstances of the case.
- (iii) That this Hon’ble Tribunal be pleased to award the cost of this Original Application in favour of the applicant, throughout”.

2. Case of applicant Vijay Kumar Srivastava is that on 23.2.2006 applicant was working as Commercial Supervisor when Chief Vigilance Inspector Neeraj Kumar accompanied by Sanjay Pandey (Watcher) and few other officials came to the office of applicant and threatened the applicant to give some incriminating material. The applicant refused to succumb to the illegal demand of said Neeraj Kumar whereupon Neeraj Kumar and Sanjay Pandey beat the applicant and when Sudhakar Tripathi, Commercial Superintendent and immediate superior of applicant tried to intervene, he too was threatened. Applicant got his injuries examined on 23.2.2006 and informed Area Manager North Eastern Railway and Superintendent of Police Railway, Gorakhpur in writing about the offence. The injury report dated 23.2.2006 is annexed as Annexure A-3. It is further case of applicant that since Area Manager and S.P took no action, applicant also filed F.I.R. against Neeraj Kumar and Sanjay Pandey on 14.3.2006, which resulted in a charge-sheeted being filed against the said persons on 7.11.2006. Thereafter Neeraj Kumar lodged an F.I.R. against the applicant and Sudhakar Tripathi under section 353/504/506 IPC on 24.2.2006 at 2.45 PM.

3. Applicant further averred that inspite of the aforementioned facts, Neeraj Kumar was allowed to continue as Investigating Officer of the Vigilance Enquiry against the applicant and thereafter major penalty charge sheet dated 4.7.2006 was served upon the applicant by Divisional Commercial Manager (Disciplinary Authority). The charge sheet was issued on the basis of vigilance enquiry conducted by Neeraj Kumar as Investigating Officer against whom applicant had initiated criminal proceedings and therefore the impartiality was doubtful for the reason that applicant had filed an F.I.R. against the said Neeraj Kumar.
4. It is further case of applicant that despite asking the disciplinary authority (DA), the said authority refused to supply him the copies of documents, requested by the applicant. Vide replies dated 13.09.2006 and 03.10.2006 (Annexure A-15 and A-16) the authority refused to give the documents. The order sheet dated 19.03.2007 of the inquiry proceedings reveals the difference in the original of the Relied Upon Documents (RUD) and the copies supplied to the applicant along with the charge memo regarding which the applicant was informed that the matter is under investigation. It is also averred in the O.A. that only some of the persons signing the RUD were made witnesses by the prosecution and the request made by the applicant to summon these witnesses for cross examination was not accepted by the Inquiry Officer.
5. Applicant has further averred that the charges alleged against him were proved vide inquiry report (annexure A-20). Thereafter, order dated 14.08.2007 was served upon him stating therein that the Confidential Cell had given the information that the applicant has been removed from the railway services with immediate effect by order passed by Divisional Commercial Manager, Lucknow (annexure A-22).

6. Applicant has further taken the plea that :

"pursuant to inquiry instituted upon a complaint made by the applicant's wife, Smt. Aradhana Srivastava, against Sri Neeraj Kumar, it came to be established, on record, that all the Relied Upon Documents, as mentioned in the Charge Memo dated 04.07.2006, had been doctored/fabricated/manufactured and tampered with by Sri Neeraj Kumar, the investigating Officer of the vigilance case, and several of the prosecution witnesses, namely, Sri Rajmani Tripathi, (Chief Vigilance Inspector/Security), Sri Ganga Prasad, Head Constable, and Sri Sudhakar Tripathi, whose deposition had been relied upon in removing the applicant from service, had, in fact, not been eye-witnesses to the incident dated 23.02.2006, but had falsely been projected as such by the Prosecution, owing to wholesale tampering of the Relied Upon Documents by Sri Neeraj Kumar, who had resorted to getting the said documents signed by these state witnesses, as eye-witnesses, at a later date.

That to substantiate the assertion made in the preceding para, the applicant is bringing on record copies of the recorded warnings issued to Sri Rajmani Tripathi, Sri Ganga Prasad and Sri Sudhakar Tripathi for having signed on the Relied Upon Documents, as eye-witnesses of the incident dated 23.02.2006, even though they had not actually witnessed the same, and the draft copy of the charge sheet directed to be issued to Sri Neeraj Kumar, on the charges that he got the aforesaid persons to pose as eye-witnesses to the incident dated 23.02.2006, by obtaining their signatures on

various Relied Upon Documents on a later date, when in fact the incident had not actually been seen by them, and for tampering/ interpolating the said documents. It transpires that as a result of the proceedings, initiated against the aforesaid state witnesses on the charges mentioned above, Sri Neeraj Kumar was awarded the penalty of withholding of increment for a period of 35 months vide order No. T/SS/IZN/Vig./10 dated 24.11.2010, Sri Rajmani Tripathi was issued recorded warning vide Memo No. P/Sr.DSC- Lucknow/Pro-Misc./Vigilance/09/8617 dated 26.11.2010 and Sri Sudhakar Tripathi was issued warning vide Memo No. LD/SS-C/Vig/Warning dated 20.10.2010. The aforesaid documents were furnished to the wife of the applicant, Smt. Aradhana Srivastava, under the RTI Act, 2005, vide a letter dated 20.01.2011, a copy whereof, along with the documents referred to above, is annexed herewith and marked as Annexure No. A-25 to Compilation No. II."

7. Applicant stated that in context of the alleged incident dated 23.02.2006, it was not just the applicant but even the Commercial Superintendent Sudhakar Tripathi was implicated and the same of Sudhakar Tripathi also figures in the FIR filed by Neeraj Kumar and has also been issued a major penalty charge memo containing charges which are more or less similar in nature to those levelled against the applicant. The similar charge against applicant and Sudhakar Tripathi are that excess cash than what was declared was recovered from both the persons and they tried to destroy the evidence albeit in different manner and they had threatened the members of the vigilance team and showed an uncooperative attitude towards the inspection. Sudhakar Tripathi in comparison to the

applicant has been given the milder punishment of reduction to a lower scale of pay for two years.

8. It is also the case of applicant that looking to the finding of guilt recorded against Mr. Neeraj Kumar for tampering with the documents and planting false witnesses, the punishment of applicant was reviewed and punishment of compulsory retirement vide order dated 29.02.2012 was imposed upon the applicant by respondent No. 2 (Annexure – A-1) and which order reveals total non-application of mind.
9. Applicant has sought the quashing of impugned order dated 29.02.2012 passed by the respondent No.2 on the following grounds:
  - 1) Ignoring the advice of CVC which forms the basis for review of punishment imposed upon the applicant in light of the punishment awarded to Mr. Sudhakar Tripathi more so, when the cases of applicant and Mr. Sudhakar were nearly identical and arose out of the same transaction;
  - 2) Impugned order does not remotely refer to the case of Mr. Sudhakar, which reflects total non-application of mind by respondent No. 2 while passing the impugned order;
  - 3) Non-considering of the facts that it had been found that Mr. Neeraj Kumar had fabricated the documents relied upon in the enquiry proceedings and the witnesses relied upon by the prosecution and examined during the enquiry had not witnessed the incident of 23.02.2006 but falsely projected as eyewitnesses by Mr. Neeraj Kumar and for these illegal acts, Mr. Neeraj Kumar and other witnesses who had lied during the enquiry had been charge sheeted for these offences and held to be guilty for their acts of illegal omissions and commissions.

10. We have heard and considered the arguments of the learned counsel for the parties and gone through the material on record.

11. The Articles of Charge against the applicant read as below:

**“vkjki 1**

fnukad 23-02-06 dks yxHox 15-15 cts ikl zy dk;ky; fLFkr uk'koku dkmUVj dh fuokjd tkp dh x;ka bl grq ea uhjt dckj eq rkfu ;krk0 Jh l a; dckj ik.Ms l rdark [kykl h ds l kfk ikl zy dk;ky; igpddj loafke ok vf/k0 i fke Jh l qkddj f=iBh dks yddj uk'koku dkmUVj ij mi fLFkr gq/kA uk'koku dkmUVj ij dk;jr depkjh dks viuk ifjp; nrs gq ,oa vkus vkus dk mnns; crkrs gq mul svkus ikl ds/ku dh tkp djkus dks dgk x;k ,oa bl grq fiUVM QkeZ Hkjus dks fn;k x;ka Jh fot; dckj JhokLro 98-16 cts dh ikyh ea dk;jr FkA tkp grq dgus ij muds jkjk viuh tc l s dN : lk;s th0 l h0 ukvks dks fudkydj iSV dh fti [kyddj fNikus dk iz kl fd;k x;k; kj i jUrq ,d k djus l seuk djus ij muds jkjk mu : lk;ka dks vpkud vius eWj ea Mkydj pck fn;k x;ka yxHox 15-20 feuV rd tc muds jkjk tkp grq fn;s x;s QkeZ dks ijk ugh Hjk x;k rks l kfk ea vk;sok0 v/kh0 Jh l qkddj f=iBh l s izukRj ds : lk ea muds l keus ?kVr ?kVuk ds l aak ea c;ku fy[k x;ka Jh l qkddj f=iBh jkjk Hh ;g crk;k x;k fd tkp ds nkjku l rdark fujhkd jkjk euk djus ds cktm Hh Jh fot; dckj JhokLro usmu : lk;s dks pck fy; j ft l s mlgkus Hh nqkA

**vkjki 2**

Jh fot; dckj JhokLro jkjk ,d l kns dkxt ij dSk fooj.k cuk;k x;ka muds jkjk cuk;s x;s dSk fooj.k ds vuq kj muds ikl dN Hh l jdkjh /ku ugh FkA mlgkus vius l jdkjh /ku dks yxk dj fn;k FkA muds ikl tkp ds le; ek= futh /ku FkA fooj.k ds vuq kj mlgkus futh /ku : lk;k 140@

?kš'kr fd;k Fkk vkj tkp ds le; mudsiki 68@ : lk;k FkA  
tc fd futh /ku iqlrkd ds vuq kj Jh Jhoklor us viuk  
futh /ku : lk;k 40@ ?kš'kr fd;k FkA bl rjg buds futh  
/ku ea : l;k 28@ ds of} ik;h x;hA bl rF; dks Nqkus gsrq  
Jh Jhokloro 'kgyxgy epk dj lrdrk fujh{k d d /;ku ckV  
dj ?kš'kr futh /ku ea NM NM djus dk Hkj l d iz kl  
fd;kA ;g futh /ku iqlrkd ea buds }kjk dh x;h ifof'V l s  
Hh LiLV gkrk gS tgkVvad eafy[kh x;h jkf'k dks muds }kjk  
40 l scny dj 150 rks dj fn;k x;k ijUrq vpkud lrdrk  
fujh{k dh utj iM tkus ds dkj.k 'kcnks eafy[kh x;h jkf'k  
pkyhl dks ,d l k ipkl ugh fd;k tk l d kA ;g muds }kjk  
tkp ds le; Hkjus fn;s x;s ml QkeZ l s Hh fl --- gkrk gS  
ft l s muds }kjk viwZ Hkj x;k Fkk ,oaf l ij mlgkus ?kš'kr  
futh /ku : lk;k 40 fy[k dj bl s Hh 140 cuk;k Fkk  
bl rjg buds }kjk ?kš'kr futh /ku jkf'k ea NM NM djus dk  
Hkj ij iz kl fd; x;kA vius }kjk cuk;s x;s dSk fooj.k ea  
mlgkus ,d ckj 40 fy[k i q% ml s feVkdj 140 fy[k ,oa  
futh /ku ?kš'kr iqlrkd ea 150 fy[kA tcfd ek d ugha fey  
ikus ds dkj.k 'kcn eafy[kh jkf'k 40 ds l kFk d k bZ NM NM  
ugh dj l dA  
vkjki 3  
Jh fot; dekj Jhokloro usek d s ij cuk;s x;s l a q r ukV ij  
gLrk{kj djus l seuk fd;k rFk vius dks Qd rs n[k l r d r k  
ny ds l nL; ks ds l kFk vHknz 0; ogkj d j r s gq xkfy; k a n h r Fk  
/ke dh Hh n h FkA bl gkus us 'kgy epk dj l r d r k dk;Z ea  
0; o/kku Mkyk rFk l r d r k ny dk /;ku ckV dj futh /ku  
iqlrkd es NM NM dk Hh iz kl fd;kA buds vl g; k x k Red  
jo s s dks /;ku ea j[k dj l r d r k ny dks egki z d k d @  
l r d r k dk; k y; l s vU; l r d r k fujh{k d k s d s c y k u k i M k A"

12. The broadly admitted facts of the instant case are that (1)  
Applicant and Sudhakar Tripathi were charged for near similar



allegations; (2) Applicant was found guilty of the articles with which he was charged with; (3) the Disciplinary Authority (DA) imposed the punishment of removal from service upon the applicant; (4) Authority in revision changed his punishment from 'removal from service' to 'compulsory retirement'; (5) Sudhakar Tripathi was punished with imposition of reduction to the lower stage of pay for a period of 2 years with postponement of future increments.

13. Before proceeding further, reference is to be made to averments made in the O.A. regarding the factum of Neeraj Kumar being charged with fabrication of documents and putting up false witnesses to implicate the applicant in a false case. A perusal of the counter affidavit filed by respondents would be necessary to see, in what manner, the allegations levelled by the applicant have been met by the respondents.

14. The averments/facts in the O.A. and their reply by the respondents is as follow:-

A. The allegation in the O.A. regarding the tempering of the documents by Neeraj Kumar and witnesses namely Raj Mani Tripathi, Ganga Prasad and Sudhakar Tripathi whose testimony was relied upon in finding the applicant guilty of the offence with which he had been charged were in fact not eye witnesses and had falsely deposed and falsely become witness to the documents as eye witnesses at a later stage has not been denied by the respondents in the counter affidavit.

B. In respect of the aforementioned illegal acts of Neeraj Kumar, Raj Mani Tripathi, Ganga Prasad and Sudhakar Tripathi proceedings were initiated by the Department wherein Neeraj Kumar were awarded

the punishment of withholding of increment for a period of 35 months, Raj Mani Tripathi and Sudhakar Tripathi was issued a warning as averred in para No. 4.31 has not been denied in the counter affidavit.

C. The averment in para 4.34 and 4.35 of the O.A. that Sudhakar Tripathi was issued a major penalty charge memo containing charges almost similar in nature (different in respect that they tried to destroy the evidence, applicant by chewing the currency note whereas Sudhakar Tripathi alleged to have thrown the polythene bag containing the currency note) have not been specifically denied by the respondents in their counter affidavit.

D. In para No. 4.36 of the O.A. it has been averred that even though the charges against the applicant and Sudhakar Tripathi were nearly identical, yet applicant was singled out for harsh punishment of compulsory retirement whereas Sudhakar Tripathi was let off with a comparative milder punishment of reduction to the lower stage of pay for a period of two years with postponement of future increments. This averment too has not been denied by the respondents in the counter affidavit.

E. In para No. 4.37 of the O.A. it is mentioned that looking to the revelation regarding the doctoring of the documents and consequential punishment awarded to the witnesses and as also the difference in the punishment awarded to applicant and Sudhakar Tripathi, the Central Vigilance Commission advised review of the applicant's case by the Competent Authority (Annexure A-28). This averment also has not

been denied by the respondents in their counter affidavit.

15. In the rejoinder affidavit filed by the applicant, it has been averred that the allegation in the counter affidavit that previously applicant was awarded certain punishment is emphatically denied, which can be verified from the salary slips of the applicant which would show that applicant was granted all his annual increments on time and were never withheld. He has further averred that "it appears to the deponent that the punishment cited in the para under reply were awarded to one Sri B.K. Srivastava, a different person and not the deponent, and the respondents have either mistakenly, or deliberately, laid the same at the deponent's doorstep". The contention of respondents that the FIR filed against Neeraj Kumar was frivolous or filed as a counter to the FIR lodged by Neeraj Kumar against the applicant, is also denied in view of the fact that the case is currently in progress.
16. So, there is no denial to the facts that Neeraj Kumar was found guilty of fabricating documents and punished but it cannot be found as to which documents were fabricated by Neeraj Kumar and their impact on the enquiry report. No doubt, it was also found that witnesses namely Raj Mani Tripathi and Ganga Prasad were not present on spot during the alleged occurrence and they had falsely deposed against the applicant during the enquiry proceedings and have been punished for the said offence. Even so, applicant has not sought the relief of quashing the enquiry report and therefore, the report stands as it is.
17. Applicant, has however, challenged the order dated 29.02.2012 imposing the punishment of 'compulsory retirement' which reads as below:

“I dFku vknšk

Jh fot; dɛkj JhokLro fu”dkfl r okf.kT;  
lk; b{kd@xkj [ki j dks tkjh nh?k n.M vkjki i= fnukd  
4-7-2006 ml ij deɓkjh }kjk fn,s x;s cpko i= tkp  
vf/kdkjh dh tkp jiv ,oa tkp jiv ij deɓkjh dscpko  
ifronu vuq kl fud vf/kdkjh }kjk vf/kjksir nM dk  
I dFku vknšk Loiskuk iɸfj{k.k ij vkjkih deɓkjh dk  
ifronu fnukd 16-12-2011 ,oa dsk ls lɔcf/kr vu;  
iɔ=k dk xgurk iɔd v/; ;u fd;k x;k ,oa rnijkr  
fuEu fu”d’k ij igpk x;k&

Jh fot; dɛkj JhokLro fu”dkfl r okf.kT;  
lk; b{kd@xkj [ki j dsfo: } fuEu vkjki g&

- 1- Jh fot; dɛkj JhokLro lsviusikl miyC/k ljdkjh  
 ,oafuth /ku dh tkp djkus dks dgk x;k rks mlgkus  
 us vius ikl miyC/k vošk /ku dks lrdrk ny ds  
 l e{k eqk esMky dj pck fy; kA
- 2- blgkus futh /ku iqlrdk ea : 0 40@& futh /ku  
 ?k{k’kr dj j[kk FkA tkp ds le; buds ikl futh /ku  
 : lk;k 68@& ik;k x;kA bl vfuferrk dks fNikus ds  
 mnns; ls tkp ds le; ekds dk Qk; nk mBkrs gq  
 buds }kjk futh /ku iqlrdk ea igys ls ?k{k’kr futh  
 /ku dh jkf’k ea NM NM djrs gq cnyus dk Hkj l d  
 iz kl fd;k x;kA
- 3- blgkus us lrdrk ny ds l nL; ka ds l kFk vHkn~0; ogkj  
 djrs gq xkfy; ka ,oa /kedh nh rFk tkp dk; bkg h ea  
 0; o/ku mRilu fd;k ,oavl g; kxkRed jošk viuk; kA  
 mijkr l Hh vkjki ds fy;s Jh JhokLro dks nksh  
 ik;k x;k gA ftl dh rkfd d foopuk vuq k’kfud  
 vf/kdkjh vius I dFku vknšk ea cgr gh Li”V <x ls  
 fd;k gA rFkih deɓkjh ij yxk;s x;s vkjki ds dh  
 xEHhjrk dh ryuk es vuq k’kfud vf/kdkjh }kjk  
 vf/kjksir n.M dks dfri; vf/kd ik;k x;kA vr%n.M

dh lk; kkrk ds vfrfjDr vkjkih dh 'kjhfd v{kerk  
 fodkykark ,oa ifjokjd ifjLFkrh ij l gkukr iad  
 fopkj djrs gq vuqkl fud vf/kdkjh }kjk vkjsir  
 dekjh dks jy l ok l s fudkys tkus ds naM dks de  
 djrs gq vfuok;Z l ok fuofRr dk naM vf/kjsir  
 fd;k tkrk gA vfuok;Z l ok fuofRr dk mDr naM  
 dekjh dks jy l ok l s fudkys tkus dh frFk l s  
 iHkoh gkxA"

18. Applicant challenging the impugned order has questioned the action of respondents regarding the quantum of punishment imposed upon the applicant when compared with the punishment imposed upon Sudhakar Tripathi who along with applicant was charged for similar allegations arising out of similar transactions on the same date by said Neeraj Kumar. Said Sudhakar Tripathi was found guilty of the articles of charge and punishment of reduction to the lower stage of pay for a period of 2 years with postponement of future increments was imposed upon him whereas, the respondents have singled out the applicant and visited him with the harsh punishment of 'compulsory retirement'.
19. As per, the O.A, applicant, amongst other grounds, has challenged the order dated 29.02.2012 passed by respondent No. 2 on the following grounds regarding the quantum of punishment imposed on the applicant: (1) non-application of mind and scant regard to the advise of CVC (forming the basis and very reason for review) i.e. to conduct the review in the light of the punishment awarded to Sudhakar Trupathi; (2) case of Sudhakar Tripathi and applicant being near identical, there could be no question of applicant, validly, being visited with any penalty more severe than one awarded to Sudhakar Tripathi.

20. It has been argued by learned counsel for applicant that the applicant has been treated harshly and unjustly by the respondents in matter of quantum of punishment imposed upon his client whereas in charge sheet on near identical grounds, a lenient view has been taken in quantum of punishment imposed upon Sudhakar Tripathi.
21. On the other hand, learned counsel for respondents has strenuously argued that the all rules and procedures were followed in the present case during the department proceedings against the applicant and taking into account, the serious nature of the allegations levelled against the applicant, it was found that the applicant is not a employee fit to be retained in the service of the department, therefore, order of 'compulsory retirement' was passed against the applicant. The O.A. being meritless deserves to be dismissed.
22. It would be relevant to take note of the letter dated 30.8.2010 written by General Manager/Vigilance to Senior Divisional Commercial Manager, North Eastern Railway Lucknow which reads as under:-

"Sub:- D&AR case against Shri V.K. Srivastava, Commercial Supervisor/Gorakhpur – Major penalty memorandum No. LD/SS-C/Vig/18-A/06 dated 4.7.2006.

On examination of the complaint made by Smt. Aradhana Srivastava, wife of Shri V.K. Srivastava, Commerical Supervisor/Gorakhpur the Central Vigilance Commission observed that the punishment of 'Removal' from service imposed on Shri V.K. Srivastava, Commercial Supervisor is disproportionate in comparison with Shri Sudhakar Tripathi, Commercial Superintendent and advised to review the case by the competent authority. It is

worth mentioning here that an OA filed by Shri V.K. Srivastava is pending before CAT/Allahabad.

In view of the above, it is suggested that competent authority should conduct the review of the case and final implementation of the decision may be done after obtaining legal opinion and with the permission of the Hon'ble Tribunal.

As and when the order is passed by the revisionary/reviewing authority a copy of the same may be sent to this office for apprising the position to Railway Board."

23. On the question of almost identical charges against three workmen, the question of lesser punishment to two workmen and imposition of punishment by way of removal from service, the Hon'ble High Court held that it is denial of justice if one single workmen is singled out for a severe punishment in comparison to his co-workers and the said finding was upheld by the Hon'ble Apex Court in Tata Engineering & Locomotive Co. Ltd. v/s Jitendra Pd. Singh, (2001) 10 SCC 530 that

"What influenced the Court in deciding the matter is that:

Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.

3. As the judgment is rested upon this position, whatever other views may have been expressed in the course of the judgment may be of no significance. In that view of the matter, we think there is no need to interfere with the order made by the High Court, that too in a proceeding arising under Article 136 of the Constitution. Hence, we decline to interfere with the order made by the Highs Court. The appeals are dismissed accordingly."

24. In the present case, both applicant and Sudhakar Tripathi have admittedly being proceeded against on almost identical charge but a severe punishment has been imposed the applicant as compared to punishment imposed on Sudhakar Tripathi. The unequal treatment meted out to the applicant is apparent from the contents of letter dated 30.8.2010 written by General Manager/Vigilance to Senior Divisional Commercial Manager, North Eastern Railway Lucknow wherein it has been mentioned that the Central Vigilance Commission observed that the punishment of 'Removal' from service imposed on Shri V.K. Srivastava, Commercial Supervisor is disproportionate in comparison with Shri Sudhakar Tripathi, Commercial Superintendent and advised to review the case by the competent authority.
25. Looking to the facts and circumstances of the case and principle laid down in the Engineering & Locomotive Co. Ltd. v/s Jitendra Pd. Singh (Supra), the order dated 29.02.2012 is set aside to the extent of the imposition of the punishment upon the applicant and the case is remanded back to respondent No. 2 to consider the question of imposition of punishment on applicant afresh keeping in view the facts of the case as well as the principle laid down in Engineering & Locomotive Co. Ltd. (supra) after giving the applicant an opportunity of being



heard. The reconsideration shall be completed by respondent No. 2 within a period of one month from the date of receipt of the certified copy of this order by way of a reasoned and speaking order and informing the applicant. O.A. is accordingly disposed of. No orders as to costs.

**(Mohd. Jamshed)**

Member (A)

**(Rakesh Sagar Jain)**

Member (J)

Manish/-