

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A.NO.142 OF 2012**

New Delhi, this the 5<sup>th</sup> day of July, 2017

**CORAM:**

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER  
AND**

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Shri Rakesh Kumar,

Electric Signal Maintainer (ESM-I/DSA),

Working under Senior Section Engineer (Signal)(PS),

Northern Railway, Delhi

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Applicant

(By Advocates: Mrs.Meenu Mainee)

Vs.

Union of India through:

1. General Manager,  
Northern Railway,  
Headquarters Office,  
Baroda House,  
New Delhi.

2. Divisional Railway Manager,  
Northern Railway,  
Divisional Office,  
State Entry Road,  
New Delhi.

3. Divisional Signal & Telecommunication Engineer (Signal),  
Northern Railway,  
New Delhi

4. Senior Divl.Signal & Telecommunication Engineer,  
Northern Railway,  
New Delhi

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Respondents

(By Advocates: Mr.V.S.R.Krishna and Mr.A.K.Srivastava)

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## **ORDER**

**Per Raj Vir Sharma, Member(J):**

Brief facts giving rise to the present OA No.142 of 2012 are as follows:

1.1 Memorandum dated 21.9.2007 was issued by the Disciplinary Authority (DA) proposing to hold an inquiry against the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as öRS(D&A) Rulesö). As per rule, the statement of article of charge, statement of imputation of misconduct, list of document, and list of witnesses were also enclosed with the Memorandum dated 21.9.2007(ibid).

1.1.1 The article of charge framed against the applicant reads thus:

öShri Rakesh Kumar, ESM-I/DSA working under SSE/Signal/PS/DLI & S/o Shri Shiv Charan was a candidate in the written examination held on 28.7.2007 at DRM Office complex, New Delhi, for 20% selection of JEII/Signal for Delhi division. During the examination, he willfully allowed Shri Raj Kumar ESM-I/DLI, working under SSE/Signal/PS/DLI & S/o Shri Om Prakash, to take his answer booklet in his unauthorized possession, thereby indulging in use of unfair practices in the above mentioned examination. Shri Raj Kumar, ESM-I/DLI was caught while attempting to copy from the above mentioned answer booklet of Shri Rakesh Kumar, ESM-I/DSA in his unauthorized possession.

By the above act of omission and commission, Shri Rakesh Kumar, ESM-I/DSA working under SSE/Signal/PS/DLI failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant, thereby contravened the provision of Rule 3.1(i), (ii) & (iii) of Railway Service Conduct Rules, 1966.ö

1.1.2 The statement of imputation on the basis of which the article of charge was framed against the applicant reads thus:

A preventive check was made in conduct of written examination held on 28.7.2007 at DRM Office complex, New Delhi, for 20% selection of JEII/Signal for DLI Division. During the check, it was found that Shri Rakesh Kumar, ESM-I/DSA, working under SSE/Signal/PS/DLI & S/o Shri Shiv Charan while appearing as a candidate in the above examination, has committed serious misconduct in as much as at that

During the examination, Shri Rakesh Kumar, ESM-I/DSA willfully allowed Shri Raj Kumar, ESM-I/DLI, working under SSE/Signal/PS/DLI & S/o Shri Om Prakash to take his answer booklet in his unauthorized possession. Shri Rakesh Kumar, ESM-I/DSA had failed to bring the above mentioned unauthorized and mala fide action of Shri Raj Kumar, ESM-I/DLI to the notice of invigilators.

At 13:10 hrs, Shri Raj Kumar, ESM-I/DLI was caught by Shri Umesh Rastogi, APO/G/N.Rly/NDLS, in association with Shri Sunil Yadav, ASTE/PS/PNP, Shri Balbir Badhan, Hd Clerk/Personnel branch working under Sr DPO/N.Rly/NDLS, Shri Shyam Chand, CVI/Baroda House while attempting to copy from the above mentioned answer booklet of Shri Rakesh Kumar, ESM-I/DSA which he had in his unauthorized possession at his table. The answer booklet of Shri Rakesh Kumar, ESM-I/DSA was recovered from his unauthorized possession. Shri Rakesh Kumar, ESM-I/DSA has therefore indulged in use of unfair means in the above mentioned written examination.

By the above act of omission and commission, Shri Rakesh Kumar, ESM-I/DSA working under SSE/Signal/PS/DLI failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant, thereby contravened the provision of Rule 3.1(i), (ii) & (iii) of Railway Service Conduct Rules, 1966.

#### 1.1.3 The list of documents mentioned the following:

1. Joint check report dated 28.7.07
2. Statement dated 28/7/2007 of Shri Raj Kumar, ESM-I/DLI, working under SSE/Signal/PS/DLI.
3. Statement dated 28/7/2007 of Shri Rakesh Kumar, ESM-I/DSA working under SSE/Signal/PS/DLI.
4. Statement dated 31.7.07 of Shri Balbir Badhan, H/Clerk personnel branch.

1.1.4 The list of witnesses mentioned the names of the following persons/officials:

1. Shri Umesh Rastogi APO/G/N.Rly/DLI
2. Shri SunilYadav ASTE/PNP
3. Shri Shyam Chand, CVI/BH
4. Shri Ashok Kumar, SVI/BH
5. Shri Balbir Badhan H/Clerk
6. Shri Raj Kumar ESM-I/DLI working under SSE/Signal/PS/DLI.
7. Shri A.K.Gupta,CVI/BH.

1.2 The applicant having denied the charge, the DA appointed Inquiry Officer (IO) to conduct the inquiry. Presenting Officer (PO) was also appointed by the DA.

1.2.1 During enquiry, the documents produced by the prosecution were marked as Ex.P-1/A-D, P-2, P-3, P-4/A.C, P-5/1-3 and Ex.P-6/1-3. The documents produced by the applicant were marked as Ex.D-1, D-2/1-18 & Ex.D-3/1-10.

1.2.2 In support of the charge, seven witnesses were examined on behalf of the prosecution. The applicant declined to produce any witness in support of his defence.

1.2.3 The PO submitted his written brief. The applicant also submitted his written defence brief.

1.3 After analyzing the evidence, both documentary and oral, and other relevant materials available on record of the enquiry, the IO submitted its report finding the charge as proved against the applicant. The relevant findings arrived at by the IO are reproduced below:

On going through the available documentary record (RUDs) as well as oral evidence, it is evident that CO appeared in the written examination held on 28.7.2007 at DRM office Complex, New Delhi, for 20% selection of JE-II/Signal for Delhi Division. It is also evident from Ex.P-1/C that Shri Raj Kumar was found copying from the answer copy of CO after taking the same from his table and this fact is also strengthened from the deposition of PWs and brief of PO. The CO in his statement Ex.P-3 mentioned that he has to take extra sheet and was busy in attempting the questions because he was having 6 pages as such he was not aware when Shri Raj Kumar took his copy. Shri Raj Kumar (PW-1) owned the contents of his statement recorded by the VI vide Ex.P-2. He while replying to defence clarified that a paper was got down on the floor from CO's table who was going to collect extra answer sheet and on humanitarian ground he picked up the paper and wanted to keep the same on CO's table in the meanwhile same was taken by APO/G from his hand. Shri Umesh Rastogi (PW-2) was the Cadre controlling officer in the examination held on 28.7.07 confirmed that during his inspection at 13:10 hours he caught Sh.Raj Kumar with CO's answer sheet at that time Room Incharge (ASTE) was with him. But in this context Shri Sunil Yadav (PW-3) while replied to defence stated that Sh.Rastogi informed him that he had caught Shri Raj Kumar with a copy of CO. PW-4 to PW-7 also categorically confirmed that Shri Umesh Rastogi APO/G caught Shri Raj Kumar. Now it is crystal clear from the above depositions of PWs that Sh.Rastogi caught Shri Raj Kumar.

All the PWs during their examination admitted that neither the answer sheet of Sh.Raj Kumar was closed with the remarks of copying nor the copying material was attached with his answer book or encircled/marked the portion of his answer book as well as another answer sheet from which Sh.Raj Kumar was found copying. CO also not made any complaint to the invigilator about the missing of his answer copy.

From the above available oral as well as documentary evidences available on record, there is no dispute from the defence in regard to having possession of answer sheet in the possession of Shri Raj Kumar and Shri Raj Kumar also not denied this fact. As in this regard CO has not objected while recording his statement by the VI vide Ex.P-3.

Regarding first part of the charge that CO had willfully allowed Shri Raj Kumar to take his answer booklet in his unauthorized possession, thereby indulging in use of unfair practice, the defence pleaded that from Ex.D-3 it is clear that no paper of him was found with Sh.Raj Kumar and he copied

nothing from his answer book. It is an admitted fact that neither any remarks were given on Ex.D-3 nor the portion of answer sheets encircled/marked to support the version of prosecution. This fact is also corroborated/admitted by all the PWs during the course of enquiry. Shri A.K.Gupta (PW-5) IO of the case also admitted that answer sheets of both the employees were not seized. Thus, on face of statement of IO of the case and documentary evidence, i.e., answer sheet Ex.D-3, it is clear that the same was evaluated by the concerned authority & not seized. IN this regard contention of PO as contended by him in his PO brief is not agreed. Regarding found in possession of Shri Raj Kumar, this fact is strengthened from Ex.P-1/C as well as confirmed by all the PWs and admitted by Shri Raj Kumar in his statement Ex.P-2. It is also came on record that CO had taken three extra sheets vide Ex.D-2/13 to 18 during the examination and submitted the same after comply with the instruction after crossing the blank space or endorsing the number of sheets used. This fact is also admitted by PW-2. CO during his general examination by IO pleaded that at both the occasion his answer sheet was on the table when he gone to collect extra sheet or returned back, this plea of defence is not tenable and justified as the copy was found in possession of Shri Raj Kumar and this fact is also strengthened from the deposition of PWs as well as from Ex.P-1/C, Ex.P-2 and Ex.P-3.

Defence further pleaded that Roll NO.40 was sitting in between CO & Sh.Raj Kumar then why that candidate was not asked for clarification and how Sh.Raj Kumar has taken the answer sheet of CO when one candidate was in between. This plea of the CO seems to be correct and further corroborated from the deposition of PW-2 and PW-6 as both admitted that all the candidates were sitting according to their roll numbers in the examination hall and CO was sitting on his seat at that time. But on face of statement of CO and Shri Raj Kumar recorded on the same day there is no need to get the clarification from Roll NO.40 in this regard.

CO pleaded that he wrote his statement on the dictation given by VI is not acceptable, as in support of this defence failed to produce any oral or documentary evidence. Defence also pointed out that nothing was found copied by Sh.Raj Kumar from the answer sheet of CO.

Defence pleaded that CO has not given any paper or copy to Shri Raj Kumar for making copy from that as in this regard Sh.A.K.Gupta (PW-5) also admitted that CO is responsible for not having safety of his answer sheet, which was caught in possession of Sh.Raj Kumar. Defence also added that from

none of the relied upon documents marked as Ex.P-1/A to D and P-2 to Ex.P-4 prove that CO willfully allowed Shri Raj Kumar to take his answer booklet in his unauthorized possession.

On comparison of both the answer sheets marked as Ex.D-2 and Ex-3 nothing was found copied by Shri Raj Kumar and in this regard prosecution also not attached any supporting material.

From the above discussion it is cleared that prosecution failed to provide any documentary evidence from which it can be ascertained that CO allowed Shri Raj Kumar willfully to take his answer booklet in his unauthorized possession but circumstantial evidence brought on record and admitted by Shri Raj Kumar in his statement (Ex.P-2) it is established that he was having answer sheet of CO in his possession. Thus it is cleared that CO is responsible for not having safety of his answer sheet, which was caught in possession of Sh.Raj Kumar as corroborated by IO (PW-5) of the case. Regarding attempting to copy from the answer booklet of Shri Rakesh Kumar prosecution failed to provide any documentary evidence from which it can be established that Shri Raj Kumar was found copying by indulging unfair practice in the examination, but on the basis of circumstantial as well as hearsay evidence available on record prove that Shri Raj Kumar was found copying from the answer sheet of CO.

#### 8. CONCLUSION & FINDINGS

8.1 In view of the documentary, oral and circumstantial evidence available on record of the enquiry and considering the PO brief and defence brief submitted by the CO, the undersigned comes to the conclusion that the findings are as under:-

The Charges leveled against the CO is proved as discussed in Para-7.1 above.ö

1.4 The applicant was supplied with a copy of the inquiry report.

He made a representation dated 19.8.2008 against the findings of the IO.

1.5 After considering the applicant's representation dated 19.8.2008, the inquiry report, and the materials available on record of the inquiry, the DA imposed on applicant the penalty of reduction to a lower stage in time scale of pay (one step) for a period of one year from the date of

issue of this order with the stipulation that the reduction would have the effect of postponing of future increment of one year, vide order dated 2.1.2009.

1.6 The applicant made an appeal dated 4.2.2009 against the DA's order dated 2.1.2009(ibid). During pendency of the said appeal, the applicant approached the Tribunal in OA No.2456 of 2009 challenging the DA's order dated 2.1.2009. The Tribunal allowed OA No.2456 of 2009, vide order dated 5.10.2010, the relevant/operative part of which is reproduced below:

“8. Resultantly, OA is allowed to the extent of quashing the impugned orders. Consequences to ensue upon the applicant. However, disciplinary authority is at liberty to pass fresh order, if so advised, after dealing with the contentions of the applicant. In such an event, law shall take its own course. No costs.”

1.7 Thereafter, the DA passed a fresh order dated 15.12.2010 again imposing on applicant the penalty of reduction to a lower stage in time scale of pay (one step) for a period of one year from the date of issue of initially passed orders i.e. 13.8.2009 with the stipulation that the reduction would have the effect of postponing of future increment of one year. The relevant portion of the DA's order dated 15.12.2010 is reproduced below:

“On going through the available documents on record (RUD's), enquiry report submitted by the Enquiry Officer, it is evident from the enquiry report that answer booklet of Sh.Rakesh Kumar was found in the custody of Sh.Raj Kumar, who was attempting to copy from the answer booklet of Sh.Rakesh Kumar. It was also confirmed by APO/G in his statement.

The copy of the enquiry report was sent to Sh.Rakesh Kumar for his representation. He submitted his representation accordingly on 04.02.2009.

In his representation he never denied the charges of possession of his answer booklet with Raj Kumar. He further



quoted in one para of enquiry report as -prosecution failed to produce any supporting evidence from which it could be ascertained that CO allowed Shri Raj Kumar willfully to take his answer booklet in his unauthorized possession.

Since he did not denied the allegation of possession of his copy with Sh.Raj Kumar and same was also accepted by Raj Kumar during course of enquiry it is sufficient circumstantial evidence in support of the charges.

Again during course of enquiry it was also came out that when Sh.Raj Kumar was caught by Sh.Umesh Rastogi, Sh.Rakesh Kumar was found sitting on his seat. It is pertinent to note that unless there is connivance between two, copying is not possible. This is also a sufficient circumstantial evidence to prove the willful involvement in unfair practice.

He again stated that result of the examination was declared while enquiry was going on without leaving any slot and is the proof of predetermined mind.

Here it is made crystal clear that nothing was prejudice and everything was done with full application of mind.

After full application of mind, undersigned comes to the conclusion as under:-

It is clearly established that Sh.Rakesh Kumar working under SSE/Sig/PS/DLI was indulged in unfair practice in the examination.ö

1.8 Being aggrieved by the DA's order dated 15.12.2010(ibid), the applicant again approached the Tribunal in OA No.620 of 2011. The Tribunal passed the following order on 10.2.2011:

öCounsel for the applicant seeks permission to withdraw this O.A. with liberty to file an appeal to the Appellate Authority against the orders passed by the Disciplinary Authority. Accordingly, this O.A. is dismissed as withdrawn with liberty as aforesaid.ö

1.9 Being armed with the Tribunal's order dated 10.2.2011, the applicant made an appeal dated 24.3.2011 against the DA's order dated 15.12.2010(ibid). The applicant's appeal dated 24.3.2011 was rejected by

the Appellate Authority (AA), vide its order dated 21.9.2011, which is reproduced below:

Sub: OA No.620/2011 dated 10/2/2011 before Honøble CAT/New Delhi Shri Rakesh Kumar ESM/DSA under SSE/Sig/PS/DLI Vs. Union of India.

(THROUGH SSE/Sig/PS/DLI)

1. I have gone through (i) Major Penalty charge sheet No.Vig/12A/Sig/RK/Major/07 dated 21.9.2007 served to Shri Rakesh Kumar S/o Shri Shiv Charan Dass, ESM-I working under SSE/Sig/PS/DLI at DSA (ii) enquiry report dt.16/6/2008 (iii) decision of DA dt.15/12//2010 and (iv) appeal of Shri Rakesh Kumar, ESM/I under SSE/Sig/PS/DLI dated 24/3/2011.
2. Shri Rakesh Kumar S/o Shri Shiv Charan Dass, ESM/I/DLI working under SSE/Sig/PS/DLI was a candidate in the written examination held on 28/7/2007 at DRM Offie complex, New Delhi for 20% selection of JE/II/Signal for Delhi Division. During the examination, Shri Rakesh Kumar willfully allowed Shri Raj Kumar S/o Shri Om Prakash ESM/I/DLI who was caught with the answer booklet of Shri Rakesh Kumar S/o Shri Shiv Charan Dass, ESM-I/DSA while attempting to copy.
3. Shri Rakesh Kumar, in his representation never denied the charges of possession of his answer booklet with Raj Kumar.
4. Further, there is no new fact in appeal (under consideration) dated 24/3/2011.

It is clearly established that Shri Rakesh Kumar S/o Shri Shiv Charan Dass, ESM-I working under SSE/Sig/PS/DLI indulged in unfair practice during above referred examination.

I, therefore, find no merit in appeal of Shri Rakesh Kumar S/o Shri ShivCharan Dass ESM-I. Penalty of -Reduction to a lower stage in time scale of pay (one step) for a period of one year from the date of issue of initially passed orders i.e. 13/8/2009. Reduction will have the effect of postponing of future increment of one yearö would remain.ö

1.10 Hence, the present O.A.No.142 of 2012 has been filed by the applicant seeking the following reliefs:

- 8.1 That this Honøble Tribunal may be graciously pleased to allow this application and quash the impugned order.
- 8.2 That this Honøble Tribunal may be further pleased to direct the Respondents to declare the result of the Applicant and in case the Applicant has made the grade, his name may be included in the panel at the rightful place.
- 8.3 That this Honøble Tribunal may be further pleased to direct the Respondents to restore the Applicant in his original position and reimburse the amount which has already been recovered from his salary and give him all consequential benefits.
- 8.4 That the Honøble Tribunal may also be pleased to award any other or further relief which this Honøble Tribunal may deem fit and proper under the facts and circumstances of the case.
- 8.4 That the cost of these proceedings may kindly be granted in favour of Applicant and against the Respondents.

2. In the above context, Ms.Meenu Mainee, the learned counsel appearing for the applicant, made the following submissions:

- (1) The appointment of Shri Ranjan Singh as IO was in violation of the Railway Board Circular No.89/2001, which stipulates that the IO nominated to hold the disciplinary inquiry should be completely impartial officer and not under the influence of Vigilance Branch. As Shri Ranjan Singh was attached to the Vigilance Branch working under the very same Chief Vigilance Officer under whom the Vigilance Inspector, at whose

behest the charge sheet was served on the applicant, was working, the inquiry held and the inquiry report submitted by the said Shri Singh stand vitiated.

- (2) Copies of the additional documents asked for by the applicant were not made available to him during the inquiry and, therefore, the applicant was denied a reasonable opportunity of defending himself of the charge levelled against him.
- (3) Shri Raj Kumar, ESM-I/DSA, against whom disciplinary proceeding was initiated on the same set of allegation/charge, was examined as PW 1. Therefore, the statement made by co-delinquent Shri Raj Kumar ought not to have been given credence by the IO and DA for returning any finding against the applicant.
- (4) There was no evidence to substantiate the charge levelled against the applicant and, therefore, the findings arrived at by the IO and DA are perverse.
- (5) Without analyzing the evidence and materials available on record of the inquiry, the IO has jumped to the conclusion that the charge was proved against the applicant.
- (6) The orders passed by the DA and AA being non-speaking ones are liable to be quashed.

(7) Rule 9(21) of the RS (D&A) Rules, 1968, has been violated by the IO.

2.1 In support of her contentions, Ms.Meenu Mainee, the learned counsel appearing for the applicant, relied on the following decisions:

- (i) (1998) 7 SCC 84, **Punjab National Bank and others Vs. Kunj Behari Misra;**
- (ii) 2005(2) SLJ 172, **Amar Singh Bhati Vs.Union of India;**
- (iii) 2002(2) SLJ 352, **Union of India Vs. R.K.Rastogi;**
- (iv) 2003(1) SLJ (CAT) 2, **G.C.Gupta Vs. Union of India;**
- (v) 2003(3) SLJ(CAT) 365, **Raja Ram Verma Vs. Union of India;**
- (vi) (2009)1 SCC (L&S) 394, **Union of India and others Vs. Prakash Tandon;**
- (vii) 2006(3) SLJ 184, **M.V.Bijlani Vs. Union of India and others;**
- (viii) 1998(3) SCC 227, **Ministry of Finance Vs. S.B.Ramesh;**
- (ix) 2008(3) SLJ 325, **Moni Shankar Vs. Union of India and another;**
- (x) CWP No.1760/2008, decided on 10.8.2011, **Union of India Vs. Trilok Singh;**
- (xi) 1990(5) SLR 8, **S.N.Mukherjee Vs. Unon of India;** and
- (xii) 2014(2) SLJ (CAT)49, **T.Mudalagiriappa & ors Vs. Union of India.**

We have carefully perused the above decisions.

3. On the other hand, the learned counsel appearing for the respondents, in tune with the stand taken by the respondents in their counter reply, submitted that there was sufficient evidence to prove the charge levelled against the applicant. The IO and DA have recorded the findings in fair manner. The pleas taken by the applicant in the written statement of his defence have been duly considered and findings thereon have been arrived at by the IO and DA. The procedure established by law has been duly

followed. Thus, there is no infirmity in the orders passed by the authorities. Therefore, the O.A. is liable to be dismissed. In support of his submissions, the learned counsel appearing for the respondents relied on the decisions of the Honøble Supreme Court in **Union of India and others Vs. Upendra Singh**, (1994) 3 SCC 357, and in **H.B.Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal and others Vs. M/s Gopi Nath & Sons & others**, 1992 Supp.(2) SCC 312. We have perused these two decisions.

4. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only (i) where the disciplinary proceedings are initiated and held by an incompetent authority; (ii) such proceedings are in violation of the statutory rule or law; (iii) there has been gross violation of the principles of natural justice; and (iv) on account of proven bias and mala fide.

5. In **State of Mysore v. Shivabasappa**, (1963) 2 SCR 943 = AIR 1963 SC 375, it has been held thus:

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and

through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

6. The Honøble Apex Court in the case of **K.L. Shinde v. State of Mysore**, (1976) 3 SCC 76, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence, has ruled as under:

õ9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this

Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in *State of Mysore v. Shivabasappa*, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

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witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

7. In **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others**, AIR 1984 SC 1805, it has been laid down by the Honøble Supreme Court that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It has also been laid down that where a quasi judicial tribunal records findings based on no legal evidence and the findings are its mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

8. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Honøble Apex Court has held as under:

ō12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual

receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

9. In **R.S. Saini v. State of Punjab and ors**, (1999) 8 SCC 90, the

Hon~~o~~ble Apex Court has observed as follows:

"We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

10. The above view has been followed by the Honøble Apex Court in **High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil**, (2000) 1 SCC 416, wherein it has been held as under:

õ...Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority, (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed before Article 226 of the Constitution.ö

11. In **Syed Rahimuddin v. Director General, CSIR and others**, (2001) 9 SCC 575, the Honøble Apex Court has observed as under:

õí It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable maní .ö

12. In **Sher Bahadur v. Union of India**, (2002) 7 SCC 142, the order of punishment was challenged on the ground of lack of sufficiency of the evidence. The Honøble Apex Court observed that the expression "sufficiency of evidence" postulates "existence of some evidence" which links the charged officer with the misconduct alleged against him and it is not the "adequacy of the evidence".

13. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan**, (2006) 2 SCC 373, the Hon'ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority.”

14. After having given our anxious consideration to the materials available on record and the rival submissions, we have found no substance in any of the contentions of Ms.Meenu Mainee, the learned counsel appearing for the applicant.

15. The copy of the Railway Board Circular No.89/2001, to which reference has been made by Ms.Meenu Mainee, the learned counsel appearing for the applicant, has neither been filed by the applicant along with his pleadings, nor has the same been placed before us during the course of hearing. The applicant has also not brought to our notice any rule, or instruction issued by the Railway Board stipulating that when any disciplinary proceeding is initiated against a Railway servant on the basis of any report made by an officer of the Vigilance Branch, another officer working in the same Vigilance Branch shall not be appointed as IO to

conduct the inquiry against the said Railway servant. Therefore, we are not inclined to accept the first submission of Ms.Meenu Mainee, the learned counsel appearing for the applicant.

16. By his letter, copy of which has been filed as Annexure A-3 to the OA, the applicant had requested the IO to supply him the copies of the following additional documents:

- (1) Copy of statement of Sh.Umesh Rastogi, APO/G/N/N.Rly.
- (2) Copy of statement of Sh.Sunil Yadav, ASTE/PNP
- (3) Copy of sitting plan and site plan where both Sh.Raj Kumar & Rakesh Kumar were sitting for examination.
- (4) Details and time of extra answer sheets issued to Sh.Ramesh Kumar, ESM-I/DSA(EO).
- (5) Answer sheets of Rakesh Kumar C.O. along with the papers of answer sheet found with Sh.Raj Kumar, ESM-I.
- (6) Answer sheet of Sh.Raj Kumar, ESM-I/DLI.

Considering the nature of charge levelled against the applicant, we do not find any infirmity or illegality to have been committed by the IO in not acceding to the applicant's request for supplying to him the said additional documents. Furthermore, the applicant has failed to demonstrate before this Tribunal as to how prejudice was caused to him due to non-supply of those additional documents. Therefore, we do not find any substance in the second submission of Ms.Meenu Mainee, the learned counsel appearing for the applicant.

17. Shri Raj Kumar, ESM-I/DSA, was examined by the prosecution as PW 1 to prove the statement made by him in writing on 28.7.2007 which was produced and marked as Ex.P-2 during the inquiry. Shri Raj Kumar being the author of Ex.P-2 was rightly examined as PW 1 during the enquiry

conducted against the applicant, though he was proceeded against in another disciplinary proceedings on the same allegation/charge. Therefore, we do not find any substance in the third contention of Ms.Meenu Mainee, the learned counsel appearing for the applicant.

18. After going through the enquiry report and the orders passed by the DA and AA, and the materials available on record, we are of the view that the conclusions reached by the said authorities cannot be said to be perverse or based on no evidence. It cannot also be said that without analyzing the evidence and materials available on record of the inquiry, the IO has jumped to the conclusion that the charge was proved against the applicant. The DA and AA have succinctly given cogent and convincing reasons in support of the conclusion arrived at by them. The DA has recorded its findings on the charge levelled against the applicant. Although the AA has not discussed in detail the points urged by the applicant in his appeal, yet, in view of the clear findings arrived at by the EO and DA that the charge was proved against the applicant, and in view of the fact that the AA, after considering the grounds urged by the applicant in his appeal and the materials available on record of the enquiry, has agreed with the findings of the DA and has upheld the order passed by the DA, we do not find the appellate order to have been vitiated. This view of ours is fortified by the decisions of the Honøble Supreme Court in **Ram Kumar v. State of Haryana**, AIR 1987 SC 2043; **S.N.Mukherjee v. Union of India**, AIR 1990 SC 1984; and **State Bank of Bikaner & Jaipur and others v.**

**Prabhu Dayal Grover**, AIR 1996 SC 320, wherein it has been laid down, inter alia, that the need for recording of reasons is greater in a case where the order is passed at the original stage, and that the appellate or revisional authority need not give separate reasons if it agrees with the reasoning given by the DA in the order under challenge and affirms the said order. Therefore, the fourth, fifth and sixth submissions of Ms.Meenu Mainee, the learned counsel appearing for the applicant, are without any substance.

19. Rule 9(21) of the RS (D&A) Rules, 1968, stipulates that the IO may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him. In paragraph 6.1 of his report, the IO has observed thus:

ö6.1 CO during his general examination owned his signatures on Ex.P-3. When asked whether he has given any time in writing to his controlling authority or higher ups regarding false charge levelled against him after issue of the charge sheet, has admitted that he gave a reply on 02.11.07. He confirmed when he gone to collect extra sheet or returned back at both the occasion his answer sheet was on the table. When asked specifically that Shri Raj Kumar in his statement stated that his (CO) answer sheet was fallen down from the table and he (Raj Kumar) was putting the same on his desk in the meanwhile he was caught by the vigilance team with his answer sheet, has replied that he has not seen him putting the answer sheet on his table.ö

From the above observation made by the IO in his report, it is clear that after the prosecution case was closed and the written briefs were submitted by the

applicant and the PO, the IO generally questioned the applicant on the circumstances appearing against him in the evidence for the purpose of enabling him to explain the circumstances appearing in the evidence against him. Thus, it cannot be said that Rule 9(21) of the RS (D&A) Rules, 1968, has been violated by the IO. Therefore, we do not find any substance in the 7<sup>th</sup> submission of Ms.Meenu Mainee, the learned counsel appearing for the applicant.

20. The decisions relied on by Ms.Meenu Mainee, the learned counsel appearing for the applicant, besides being distinguishable on facts, do not go to support the submissions made by her.

21. No other point worth consideration has been urged or pressed by the learned counsel for the parties.

22. In the light of our above discussions, we hold that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SHEKHAR AGARWAL)**  
**ADMINISTRATIVE MEMBER**

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