CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2443 OF 2014
New Delhi, this the 19th day of September, 2017

CORAM:
HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
……..

Bimal Kishore Singh,

Aged 44 years,

S/o late Sh.Bihari Singh,

working as Inquiry & Reservation Supervisor,

In IRCA, Northern Railway, IRCA Building, New Delhi,

R/o 366, Sector-2B, Vasundhra,

Distt.Ghaziabad(UP) é é é Applicant

(By Advocate: Mr.Yogesh Sharma)

Vs.

1. Union of India through the
General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Chief Commercial Manager/PM,
Northern Railway, IRCA Building,
New Delhi.

3. The Deputy Chief Commercial Manager/UTS,
Northern Railway, IRCA Building,
New Delhi.

4. The Senior Commercial Manager/DB,
Northern Railway, IRCA Building,
New Delhi é é é .. Respondents

(By Advocate: Mr.Shailendra Tiwary)

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ORDER

Per **RAJ VIR SHARMA, MEMBER(J):**

Brief Facts: While the applicant was serving as an Inquiry-cum-Reservation Clerk, the Disciplinary Authority (DA) issued to him a charge memo dated 30.8.2007(Annexure A/4) proposing to hold an inquiry against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as ñD&A Rulesò). There were two articles of charges. Article 1 of the charges was that he accepted and dealt 3 reservation requisition slips at S.Nos.1,34 & 44 from an unauthorized tout misusing his official position with vested interest on the cost of image of Railway Administration. Article 2 of the charges was that he tried to mislead vigilance investigation by giving irrelevant reply to questions put to him during investigation with a premeditated mind to hide the information in view of the irregularities committed by him in his duty on 3.3.2007 and thereby acted in a manner unbecoming of a Railway servant. In response to the charge memo, the applicant submitted his written statement of defence on 8.9.2007 (Annexure A/5) denying the charges and stating that all the charges were false, baseless and fabricated. The DA, by order dated 20.9.2007(Annexure A/6), decided to hold the enquiry under Rule 9 of the D&A Rules and appointed Shri Surinder Singh, CE-I(HQrs.) as Inquiry Officer (IO) to conduct the enquiry. The applicant, by his letter dated 28.9.2007(Annexure A/7), requested the DA to change the IO as Shri Surinder Singh was previously a Vigilance Inspector with the Vigilance

Branch of the Northern Railway. The DA, vide his letter dated 16.11.2007, declined the request of the applicant for change of Shri Surinder Singh as IO, stating that Shri Singh was not Vigilance Inspector, and that Shri Singh was Vigilance Inspector in HQ and not in Railway Board, which was not under direct control of DVT-II, and, therefore, there was no adequate and valid ground to change Shri Singh as IO. During the enquiry, six documents were produced by the prosecution, marked as Ex.P-1 to Ex.P-6, and only one document was produced by the defence, marked as Ex.D-1. To sustain the charges, the DA cited and examined three witnesses, namely, Sh.Ugrasen Singh II/VSS/Rly.Bd.(PW 1), Sh.Sunil Kumar Dewakar II/VSS/RB(PW 2), and Sh.Deomani, DVT-II/Railway Board(PW 3), whereas the applicant produced and examined two witnesses, namely, Sh.Sewa Ram, RS/IRCA, Sh.O.P.Yadav, ERC/IRCA as D.Ws.1 and 2 respectively. After general examination of the applicant was conducted and concluded, written defence brief was submitted by him. After assessing the evidence adduced by the DA and the applicant during the enquiry, the IO submitted its report (Enclosure to Annexure A/10), holding both the articles of charges against the applicant as proved. The DA, vide his letter 6.11.2008(Annexure A/1) supplied a copy of the enquiry report to the applicant, and called upon him to make any representation/remarks on the enquiry report. The applicant submitted his representation, dated 25.11.2008 (Annexure A/11), on the enquiry report. After considering the enquiry report and the applicantôs representation thereon and other materials available on record of enquiry, the DA held the

applicant guilty of the charges and imposed on applicant the penalty of ñREDUCTION IN PAY IN SAME TIME SCALE BY TWO STEPS FOR A PERIOD OF ONE YEAR WITH CUMULATIVE EFFECTò, vide order dated 6.1.2009(Annexure A/1). Being aggrieved thereby, the applicant made an appeal dated 20.2.2009 (Annexure A/12). After considering the points raised by the appeal and materials available on record, the AA, vide order dated 26.8.2009, upheld the DAôs order dated 6.1.2009(ibid) and rejected the applicantôs appeal. The revision petition filed by the applicant against the orders passed by the DA and AA was also rejected by the Revisionary Authority (RA), vide its order dated 16.7.2010. Being aggrieved by the orders passed by the DA, AA and RA, the applicant filed OA No.2071 of 2011 before the Tribunal. The Tribunal, vide order dated 23.7.2012, while disposing of OA No.2071 of 2011, quashed the order dated 26.8.2009 passed by the AA and the order dated 16.7.2010 passed by the RA, and remanded the matter to the AA (other than Shri Upjeet Singh who passed the order dated 26.8.2009) to decide the appeal of the applicant by passing a reasoned and speaking order. In compliance with the Tribunalôs order dated 23.7.2012, Mr.Sabir Ali, Dy.CCM/UTS, exercising the powers of the AA, vide order dated 1.11.2012 (Annexure A/2), considered the applicantôs appeal and reduced the punishment from ñReduction in pay in same time scale by two steps for a period of one year with cumulative effectò to that of ñReduction in pay in same time scale by one step for a period of one year with cumulative effectò, while upholding the findings recorded by the IO

and DA that the charges were proved against the applicant. Rejecting applicantôs revision petition and upholding the findings as recorded by the IO, DA and AA that the charges were proved against the applicant, the RA upheld the AAôs order by which the punishment was reduced to ñReduction in pay in same time scale by one step for a period of one year with cumulative effectò. Hence, the present O.A. has been filed by the applicant seeking the following reliefs:

> ñ(i) That the Honôble Tribunal may graciously be pleased to pass an order of quashing the penalty order dated 06.012009(Annex.A/1), Appellate Authority order dated 01.11.2012(Annex.A/2), Revisional Authority order dated 20.07.2013(Annex.A/3), Charge Sheet dated 30.08.2007(Annex.A/4), IO Report (Annex.A/10), order dated 16.11.2007 (Annex.A/8) and entire inquiry proceedings, declaring to the effect the same are illegal, arbitrary, against the rules and against the principle of natural justice and consequently pass an order directing the respondents to grant all the consequential benefits to the applicant including the arrears of difference of pay and allowance with interest deeming no charge sheet was imposed to the applicant.
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> (ii) Any other relief which the Honôble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.ò

2. Resisting the OA, the respondent-Railways have filed a counter reply, wherein, referring to a number of decisions of the Honôble Supreme Court, it has been submitted that there is no infirmity in the charge memo, the enquiry report, and the orders passed by the DA,AA and RA, and, therefore, there is no scope for the Tribunal to interfere with the same.

3. The applicant has filed a rejoinder reply refuting the stand taken by the respondent-Railways.

4. We have carefully perused the records, and have heard Mr.Yogesh Sharma, the learned counsel appearing for the applicant, and Mr.Shailendra Triwary, the learned counsel appearing for the respondent-Railways.

5. Mr.Yogesh Sharma, the learned counsel appearing for the applicants submitted that there is no rule or instruction issued by the respondent-Railways requiring the Reservation Clerks to verify the identity of any person approaching them for issuance of tickets and that issuance of tickets by such Reservation Clerks to a particular person on multiple numbers of times in a shift does not constitute misconduct or misuse of official position by them. Therefore, the allegation made against the applicant that he accepted and dealt 3 reservation requisition slips at S.Nos.1, 34 and 44 from same person did not constitute misconduct. In view of the provisions of Article 20(3) of the Constitution of India, the further allegation that the applicant misled the vigilance team by giving irrelevant reply to questions put to him during investigation also did not constitute misconduct. As Shri Surinder Singh, CE-I(HQ), was working as Vigilance Inspector, his appointment as IO, and the enquiry conducted and the enquiry report submitted by him holding the charges as proved against the applicant stand vitiated. Thus, the entire charge memo, the inquiry report, and the orders passed by the DA, AA and RA stand vitiated and liable to be quashed. In support of his submissions, Mr.Yogesh Sharma has relied on the decision of the Hon'ble Supreme Court in **Union of India and others Vs.**

Prakash Kumar Tandon, (2009)1 SCC (L&S) 394, and the decisions of the Tribunal in **Sh.Kulwinder Singh Vs. Union of India and others**, OA No.4204 of 2010, decided 11.5.2011, and in **Roopak Saharia Vs. Union of India and others,** OA No.535 of 2011, decided on 3.1.2012.

5.1 In **Union of India and others Vs. Prakash Kumar Tandon,** (supra), the disciplinary proceedings were initiated against the respondent, an Inspector of Works in the Railways, on the charge that he had accepted supply of substandard wood. Raid was conducted by Vigilance Department and subsequently, the Chief of Vigilance Department was appointed as inquiry officer to conduct enquiry against the respondent. The respondent requested that the AEN, who had conducted 100% test check, should be called as a witness,, but this request was not considered by the IO. The Tribunal as well as the Hon'ble High Court held the enquiry as vitiated. The Railways filed the appeal in the Hon'ble Supreme Court. Dismissing the appeal, the Hon'ble Supreme Court held that in order to be fair to the delinquent officer, appointment of the Chief of the Vigilance Department as IO should have been avoided. Alleged loss caused to the Railways was negligible and mere marginal allowances were permitted for measurement of ñscantlings and planksò. The Tribunal and the High Court were right in holding that the concerned AEN should have been examined as a witness. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the IO. It was obligatory on the part of the IO to pass an order in the said application. He

could not refuse to consider the same. It was not for the Railways to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the IO to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An IO is a quasi-judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice. If disciplinary proceedings have not been fairly conducted, an inference can be drawn that the delinquent officer was prejudiced thereby. Though the principle that non-compliance with the principles of natural justice itself causes prejudice has been watered down, yet in a situation of this nature the concurrent findings of the Tribunal and of the High Court cannot be said to be unreasonable or suffering from any legal infirmity warranting interference.

5.2 In **Sh.Kulwinder Singh Vs. Union of India and others**(supra), the challenge was to the order of the respondent authority by which the applicantôs representation for change of IO was rejected. Following the decision of the Honôble Supreme Court in **Union of India and others Vs. Prakash Kumar Tandon** (supra), the Tribunal set aside the impugned order and directed the Disciplinary Authority to change the IO and appoint someone who was not connected with the Vigilance Department to proceed with the enquiry from the stage at which it reached.

5.3 In **Roopak Saharia Vs. Union of India and others** (supra), the challenge was to the charge memo issued to the applicant. The charge against the applicant was that during an investigation conducted by the

Railway Board Vigilance Department relating to irregularities in departmental examination for promotion from Group ôDô to Group óCô for the post of Ticket Examiner (TE), he was called to appear and clarify certain questions. The applicant was asked to solve a mathematics question, which he refused to do. Therefore, the impugned charge memo was issued against the applicant for having committed misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened Rule 3(1)(ii)&(iii) of the Railway Services (Conduct) Rules, 1968. It was submitted by the applicant that the allegation that he refused to cooperate with the investigation did not constitute misconduct. The charge memo was against Article 20(3) of the Constitution of India which prescribes that no person accused of any offence shall be compelled to be a witness against himself. The DA failed to consider his written statement of defence and to decide whether inquiry should be proceeded with. Referring to paragraph 411.5 of the Indian Railways Vigilance Manual, 2006, and considering the facts and circumstances of the case, the Tribunal held that refusal of the applicant to be óre-testedô cannot be taken to be a misconduct. Therefore, the impugned charge memo was quashed by the Tribunal.

6. *Per contra,* Shri Shailendra Tiewary, learned counsel appearing for the respondent-Railways submitted that that Rule 3 of the Railway Services (Conduct) Rules, 1966, stipulates, *inter alia,* that every Railway servant shall at all times maintain absolute integrity, maintain devotion to duty,

and do nothing which is unbecoming of a Railway servant. In the instant case, considering the materials available on record, the statutory authorities have rejected the plea taken by the applicant about the absence of specific rule requiring the Reservation Clerks to verify the identity of any person approaching them for issuance of tickets on reservation requisition slips on the same day. The DA has considered and rejected the applicantôs request for change of Shri Surinder Singh, CE-I(HQ) as IO, after assigning cogent reasons. During vigilance investigation, the applicant was not accused of any offence, nor was he a delinquent in any disciplinary proceedings. Therefore, the protection guaranteed under Article 20(3) of the Constitution of India is not applicable to the applicant. It was also submitted by Shri Shailendra Tiwary that there was sufficient evidence to prove the charges against the applicant. The IO, DA and RA have recorded the findings in fair manner. The pleas taken by the applicant in the written statement of his defence, appeal and revision petitions have been duly considered and findings thereon have been arrived at by the IO, DA and RA. 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.

7. 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.

8. 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."

9. The Hon'ble 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:

> ñ9. 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:-
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> > "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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> 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."

10. In **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others,** AIR 1984 SC 1805, it has been laid down by the Hon'ble 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.

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

> ñ12. 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 office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate 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.

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

13. The above view has been followed by the Hon'ble 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:

> ñ...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.ò

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

> ñé 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 mané .ò

15. 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 Hon'ble 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".

16. 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:

> ñBy 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 Authorityé ..ò

17. In **Jai Bhagwan Vs. Commissioner of Police and others,** (2013) 11 SCC 187, the Hon'ble Supreme Court held thus:

> ñ10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the

> discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishmenté ..ò

18. Keeping in mind the principles laid down by the Hon'ble Supreme Court in the above decisions, we have to examine the rival contentions of the parties.

19. The statement of articles of charges, and the statement of imputation of misconduct in support of the articles of charges framed against the applicant read thus:

(i) **Statement of article of charges framed against Shri B.K.Singh, ERC/IRCA,**

> That, Shri B.K.Singh, ERC/IRCA, while working as such on 3.3.07 and manning window no.30 at current reservation office, New Delhi had committed following serious acts of omission and commission
>
> **Article-1**
>
> That, he accepted and dealt 3 reservation requisitions slips at S.No.1, 34 & 44 from an unauthorized tout misusing his official position with vested interest on the cost of image of Railway administration.

Article-2

That, he tried to mislead vigilance investigation by giving irrelevant reply to questions put to him during investigation with a premeditated mind to hide the information in view of the irregularities committed by him in his duty on 03.03.07 and thereby acted in a manner unbecoming of railway servant.

By his above act Shri B.K.Singh, ERC/IRCA failed to maintain absolute integrity & devotion to duty and acted in a manner unbecoming of a railway servant thereby contravening provisions of rule no.3.1(i), (ii) & (iii) of Railway Services Conduct Rules, 1966.ò

(ii) **Statement of imputation of Misconduct in support of article of charges framed against Shri B.K.Singh, ERC/IRCA**

On 03.03.07, Shri Deomani, DVT-II, Railway Board visited current reservation office, New Delhi at about 1800 hrs, as a passenger with luggage in his hands to verify the veracity of a complaint regarding unauthorized touting. As soon as he reached near current reservation office, two persons approached him and offered him to get confirm ticket from him for any train. One of these two persons took him to M/s óShubham Tours Pvt. Ltd.ô Situated on first floor in front of exit gate of NDLS in Paharganj. After 15 minutes, they arranged a BPT no. 239513 Ex NDLS to Patna by train no.2402 dated 03.03.07. The unauthorized touts charged Rs.1000/- against the fare of Rs.361/- from him on the ticket of SL class for Patn by train no.2402 dated 03.03.07. BPT no.239513 for Rs.361/- was found issued from window no.30.

Shri B.K.Singh, ERC/IRCA and Shri O.P.Yadav, ERC/IRCA manning window no.30 on 3.03.07 in the evening shift from where ticket for DVT-II was issued through the tout were called to Railway Boards office for recording their statements. Sh. O.P.Yadav, ERC/IRCA has stated in written statement that he was deployed to work as a helper on window no.30, in evening shift on 03.03.07. He was helping Sh. B.K.Singh, ERC/IRCA in his duties. He was shown BPY no.239513 dated 03.03.07 for train no.2402 ex. NDLS to PNBE for one adult in sleeper class and was asked to state whether he had issued the BPT. On perusal of BPT he identified his handwriting on the BPT and stated that yes, it was issued by him only on the instructions of Sh. B.K.Singh, as he was deputed as his helper. He has further stated that he entered the

> name of the passenger on reservation chart also. In reply to a question he has stated that Sh. B.K.Singh dealt the passenger on window no.30 and conducted transaction of money with the passenger, his role was limited just to prepare BPT and enter the name of passenger on reservation chart.
>
> On scrutiny of reservation requisition forms dealt by him on 03.03.07 at window no.30, it was found that requisitions forms dealt at S.No.1, 34 & 44 shows address of applicant as 5/12, Saket, New Delhi. Address and handwriting on all these 3 requisition forms are same. Requisition form dealt at S.No.34 was the requisition form on the basis of which the unauthorized tout had procured ticket.ò

After going through the above statement of articles of charges and the statement of imputations of misconduct, we are not inclined to accept the submission of Shri Yogesh Sharma, the learned counsel appearing for the applicant that the allegations levelled against the applicant do not constitute any misconduct. Article 20(3) of the Constitution of India stipulates that ñno person accused of any offence shall be compelled to be a witness against himselfò. As has rightly been pointed out by Shri Shailendra Tiwary, the learned counsel appearing for the respondents, the applicant was not accused of any offence, nor was he a delinquent in any disciplinary proceedings when he was required by the Vigilance Branch of the Railway Board on 8.5.2007, 9.5.2007 and 10.5.2007 to explain the circumstances under which he had issued tickets to the same person on requisition forms dealt at Sl.Nos.1, 34 and 44 on 3.3.2007 and, thus, it can by no stretch of imagination be said that the applicant was compelled to be a witness against himself in any criminal case or departmental proceedings initiated against him. Therefore, in our considered view, Article 20(3) of the Constitution of

India cannot be said to be attracted in the case of the applicant. The decision in **Roopak Saharia Vs. Union of India and others** (supra), besides being distinguishable on facts, does not come to the aid of the applicant.

20. The applicantôs request for change of Shri Surinder Singh, CE-I(HQ) as IO was rejected by the DA, vide his letter dated 16.11.2007(Annexure A/8) which is reproduced below:

> ñSub: D&AR action against Sh.B.K.Singh, E&RC, TRCA.
>
> I have considered your request regarding change of Inquiry Officer very carefully. Reason given by you are not reasonable as at present Sh.Surender Singh is not Vigilance Inspector. Earlier also he was VI in HQ not in Rly.Board i.e. not under direct control of DVT-II.ò

In his letter (Annexure A/7) requesting the DA to change Shri Surinder Singh, CE-I(HQ) as I.O., the applicant has stated that Shri Surinder Singh, CE-I(HQ) was ñpreviously a Vigilance Inspector with Vigilance Branch of Northern Railwayò. In view of the admitted facts that the DA, after considering report of the DVT-II, Railway Board, initiated the disciplinary proceedings against the applicant, that Shri Sh.Surender Singh was not working as Vigilance Inspector either in HQ of the Northern Railway or in the Railway Board at the time of his appointment as IO and till conclusion of the enquiry and submission of the enquiry report, and that Shri Surender Singh (IO) was previously working as Vigilance Inspector in HQ of the Northern Railway and not in the Railway Board under which DVT-II was functioning, we do not find any substance in the contention of Shri Yogesh Sharma that appointment of Shri Surender Singh as IO, and conduct of the enquiry and report submitted by him vitiate the entire enquiry proceedings as

well as the orders passed by the DA, AA and RA against him. The decisions in **Union of India and others Vs. Prakash Kumar Tandon**(supra) and in **Sh.Kulwinder Singh Vs. Union of India and others**(supra), besides being distinguishable on facts, also do not come to the aid of the applicant.

21. After assessing the evidence adduced during the enquiry, the IO in his enquiry report has recorded the following findings:

> ñ7.1 **Charge-I:**
>
> xx xx
>
> It is evident from Ex.P-4 to Ex.P-4 and Ex.D-5 that 3 requisition slips No.1, 34 and 44 were dealt during COôs duty at his counter. CO himself admitted in Ex.P-2 that these requisitions were dealt by him. He also admitted this fact in his written statement and defence note in the enquiry that the requisitions were dealt by him.
>
> For issuing BPT No.239513 against requisition of S.No.34 he admitted the money transaction with the tenderer of the requisition in reply to question No.16 of Ex.P-2/4 and tried to create false evidence of his helper Sh.O.P.Yadav for correct charging of Rs.361/-, but Sh.Yadav clearly stated in his statement vide Ex.P-3 that he do not know how much amout was charged by CO and only Sh. Bimal Kumar Singh (CO) can tell about the charged amount. This statement is accepted by CO as correct during his general examination in the enquiry. It is clearly mentioned in Ex.P-1 that PW-3 paid Rs.1000/- for procuring Ticket/BPT No.239513 from the tout which is only of Rs.361/- and issued from the COôs counter and CO dealt the requisition.
>
> It is also evident from Ex.P-5 that the requisitions are having same handwriting and same addresses as also admitted by CO in his written statement of defence and in his defence note. But CO pleaded that it was not possible for him to recognize the face of passenger and addresses on the requisition due to heavy rush and the requisitions were dealt on the gap of time. Whereas CO is duty bound to check thoroughly details of the requisition tendered at his counter. Thus the plea adduced by CO is not acceptable but just after thought. Hence the charge is established against the CO.

7.2 **Charge-2.**

xx xx

This charge is based on statement of the CO i.e. Ex.P-2 which was recorded by CO during investigations conducted by PW-1 as stated by him during his depositions in the enquiry . It is evident from Ex.P-2 that so many questions were not replied by CO completely and properly. Further not even a single question/clarification was sought by defence from the investigator i.e. PW 1 during his cross-examination on this charge, whereas this PW-1 clearly deposed that the charges against the CO are correct. CO had pleaded in his defence that he could not be expected to say the dictated replies suggested by the investigators, but his plea is after thought. He mainly stressed in Ex.P-2 that he was not aware about the tout activities at current counter NDLS where he was on duty at counter No.30 as main counter clerk. Whereas during enquiry PW-3 confirmed that the contents of the Ex.P-1 are correct in which he clearly indicated that he was charged Rs.1000/- by a tout for getting reservation from NDLS to PNBE against BPT No.239513 for Rs.361/- on 03.03.07. Thus this charge is also established against the CO.ò

21.1 After considering the findings of the IO and the representation made by the applicant thereon, the DA has recorded the following findings in the impugned order of penalty passed by him on 6.1.2009(Annexure A/1):

ñFrom the record available in case file it is beyond doubt that requisition slip No.1,34 & 44 are in same handwriting with same address. You admitted that these requisition were dealt by you and money was collected by you. BPT of S.No.1 was prepared by you and BPT for S.No.34 & 44 were prepared by DW-2 under your instructions.

It is very clear that you were the person who was directly dealing and interacting with the passengers approaching to purchase tickets. Therefore, you were responsible to check detail on R/Slips. You should have noticed the same handwriting and address on R/Slip. You have noticed also that the same person approaching again and again for reservation and it should have been brought into the notice of Incharge.

Your plea that tickets in question were purchased at quite sufficient interval of time and it is always very difficult to keep in memory the face of passenger and the address coming on counter and to recognize this is particularly when working in

> huge rush on counter dealing and attending so many requisition is not acceptable. Persons coming at counter frequently can be recognized easily. It is not acceptable that a person who came at your counter three times In same shift could not be noticed by you. You accepted that there was heavy rush on counter but tout took only fifteen minutes time from taking money from PW-3 and handing over tickets to him. No satisfactory answer could be given by you when asked to clarify this. This proves that tickets were issued to tout knowingly.
>
> Each and every railway employee must be vigilant while on duty and should stop any illegal activity noticed by you or should inform the Incharge. In this case reply given by you during investigation by PW-1 shows that you were avoiding reply of question relating to the tout activities or incomplete/improper reply were given. This is not acceptable that you were not aware of tout activities at current ounter. Straight and proper reply were not given b y you to hide the fact of your involvement with tout. Both charges are correctly proved against you by IO.ò

21.2 The AA, in his order dated 1.11.2012(Annexure A/2), while upholding the findings as recorded by the IO and DA and reducing the punishment as imposed by the DA in his order dated 6.1.2009, has recorded the following findings:

> ñI have gone through the entire case file, charges mentioned above, enquiry proceeding, documents/evidence available on record, enquiry report submitted by the enquiry officer and your comments thereon, decision taken by the DA. On scrutiny of all the evidence/documents I find that requisition slip nos.1,34 & 44 are in same handwriting with same address and the same was admitted by you that these R/slips has been dealt by you and money collected by you. Also, BPT for R/slip no.1 was prepared by you and BPT for R/slip nos.34 & 44 has been prepared by DW on your instructions.
>
> It is clear that you were the person who was directly dealing and interacting with the passengers approaching to purchase ticket and you are supposed to check details of R/slip and if you found any discrepancies you should have reported it to your supervisor. But in this case you failed to do so.
>
> In view of the above I feel that you did not pay attention in meticulously performing your duty probably due to atmospheric pressure I reduce the punishment awarded by the

DA to that of ñReduction in pay in same time scale by one step for a period of one year with cumulative effect.ò

21.3 While rejecting the applicantôs revision petition and upholding the findings as recorded by the IO,DA and AA that the charges were proved against the applicant and the decision of the AA reducing the punishment, the RA, in his order dated 22.7.2013 (Annexure A/3), has recorded the following findings:

> ñI have carefully gone through your revision petition dt.21.12.12, enquiry proceedings, facts adduced during the enquiry and the entire enquiry report. All possible opportunities were provided to you to prove your innocence but the charges are proved during the enquiry.
>
> After going through all the documents, enquiry report and evidences adduced during the enquiry I am of the opinion that they do not help to dilute the impact of the imputation of charges as is clearly evident that requisition slip nos.1,34 & 44 are in same handwriting with same address and the same was admitted by you that these R/slips are dealt by you and money collected by you. Also BPT for R/Slip no.1 was prepared by you and BPT for R/Slip nos.34 & 44 are prepared by DW-2 on your instructions.
>
> Also I have earlier taken the decisions on your revision petition and hence do not find any new convincing facts to provide any relaxation to you.
>
> I also feel that both the charges are correctly proved by IO & DA and AA has already taken utmost care while deciding the case. Hence I uphold the decision taken by AA, i.e., ñReduction in pay in same time scale by one step for a period of one year with cumulative effect.ò

22. Taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that the IO has correctly evaluated the evidence available on record. The DA, AA and RA have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any

perversity in the impugned orders. Hence, no interference therewith is warranted by this Tribunal.

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

24. 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

AN