

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.1439 of 2012

Date of CAV:03.11.2017.

Date of Order : 01.12.2017.

Between :

B.S.Purushotham, s/o B.Sundara Rajan,
aged 55 yrs, Occ:Ticket Examiner,
O/o the Chief Ticket Inspector,
South Central Railway, Tirupati,
r/o 87/G, Yellappa Reddy Quarters,
R.C.Road, Tirupati, Chittoor District.

... Applicant

AND

1. Union of India, rep., by the
General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager,
South Central Railway,
Guntakal Division, Guntakal.
4. The Senior Divisional Commercial Manager,
South Central Railway,
Guntakal Division, Guntakal.
5. The Divisional Commercial Manager,
South Central Railway,
Guntakal Division, Guntakal.
6. The Assistant Commercial Manager,
South Central Railway,
Guntakal Division, Guntakal.

... Respondents

Counsel for the Applicant ... Mr.K.R.K.V.Prasad
Counsel for the Respondents ... Mr.N.Srinatha Rao, SC for Rlys.

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

This Original Application has been filed with a prayer to set aside the orders of the Disciplinary Authority and the Appellate Authority imposing a penalty of withholding of annual increment for a period of 40 months as well as Annexure.A-1 orders dated 05.12.2012 of the 4th respondent enhancing the penalty of withholding of the applicant's annual increment to that of compulsory retirement from service. The applicant also seeks a consequential direction for all consequential benefits including restoration of pay, pay fixation, arrears and promotion on par with his juniors.

2. The brief facts of the case are that the applicant while working as Ticket Examiner in Guntakal Division was issued the Annexure.A-4 charge memorandum by the 6th respondent under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The charges relate to the misconduct of the applicant during a decoy check by the vigilance team in Train No.248 Passenger from Madanapalle to Tirupati on 27.04.1997 when the applicant was working as Ticket Examiner in the said Train. As per the articles of charge, the applicant allowed a decoy passenger to travel from Kalikiri station to Tirupati without ticket by collecting Rs.30/- for which no Railway receipt was issued thus violating the provisions of the Indian Railway Commercial Manual and the Railway Services (Conduct) Rules. On denial of the charges, the Disciplinary Authority appointed an Inquiry Officer to conduct the inquiry as per rules. The Inquiry Officer after conducting the inquiry submitted his report with a finding that both the articles of charge were proved. The report of the Inquiry Officer was sent to the applicant by the Disciplinary Authority for submitting his representation, if any, against the findings of the Inquiry Officer. After considering the material on record including the representation of the applicant against the Inquiry Officer's report, the Disciplinary Authority, vide his proceedings dated 30.09.1999 imposed the punishment

of withholding of annual increment for a period of 40 months (non-recurring). Accordingly, the annual increment raising his pay from Rs.4030-4130/- in the scale of Rs.3050-4590/- RS (RP) was withheld for a period of 40 months on non-recurring basis. According to the applicant, he submitted an appeal dated 13.11.1999 to the Appellate Authority. However, without disposing of the appeal, the 4th respondent issued a show cause notice proposing to enhance the penalty to that of compulsory retirement. Aggrieved by the show cause notice issued by the 4th respondent, the applicant filed O.A.No.515/2000, which was dismissed by this Tribunal. Thereafter, he filed Writ Petition No.22420/2001 before the Hon'ble High Court of Andhra Pradesh. The said Writ Petition was disposed of by the Hon'ble High Court directing the 4th respondent to withdraw the show cause notice, but making it clear at the same time, that such withdrawal is without prejudice to taking further action after disposal of the applicant's appeal dated 13.11.1999. Thereafter, the Appellate Authority and the 5th respondent herein confirmed the earlier orders of the 6th respondent vide Annexure.A-II order dated 07.06.2011. Thereupon, the 4th respondent again issued a show cause notice dated 14.10.2011 proposing to impose once again the penalty of compulsory retirement on the applicant. The applicant submitted a detailed reply pointing out the illegalities in the vigilance check and the deemed findings of the Inquiry Officer and also the violations of the law and requested for a personal hearing. However, without granting any personal hearing, the 4th respondent has enhanced the penalty to that of compulsory retirement.

3. The main grounds urged by the applicant are that the Disciplinary Proceedings relate to an illegal vigilance check conducted in violation of the procedure prescribed in Paras 704 and 705 of the Vigilance Manual and that the action of the respondents in

accepting the proceedings of the illegal vigilance check is a violation of the law settled by the Hon'ble Supreme Court in the case of *Moni Shankar v. Union of India* (2008 (3) SCC 484). It is also contended that there was no Gazetted Officer to witness the proceedings as prescribed in the Manual and that two Railway Protection Force Constables who are stock witnesses in the vigilance checks on earlier occasions were deputed to act as decoy witnesses in the incident. The applicant also avers that no cogent evidence was adduced to show that the money paid by the decoy was recovered from him and inspite of the fact that there was no evidence led against him, the Inquiry Officer who is working under the administrative control of the same Vigilance Organization which arranged the trap has given a perverse finding that the charges have been proved and without considering the fact that both the articles of charge contained one and the same allegation. Further, the action of the respondents in accepting the report submitted by the Inquiry Inspector working under the administrative control of the Sr.Deputy General Manager (Vigilance) is in violation of the law settled by the Hon'ble Supreme Court in *Union of India & Others v. Prakash Kumar Tandon* (2009 (2) SCC 541). It is also submitted that the respondents have erred in accepting the report of the Inquiry Officer, which contained a perverse finding inspite of the fact that there was no evidence in respect of the allegations levelled against him.

4. Another specific ground taken by the applicant is that as per the orders of the Hon'ble High Court of AP in W.P.No.11851/2001, the Divisional Railway Manager alone is competent to revise the penalty under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968. Hence, the impugned orders issued by the Sr.Divisional Commercial Manager, Guntakal, suffers from lack of jurisdiction as he is not competent to revise the penalty under the Railway Servants (Discipline & Appeal)

Rules, 1968. The applicant also states that the action of the respondents in prolonging the disciplinary proceedings for 15 long years and revising the penalty after 13 years of imposition of the original penalty points to a colourable exercise of power.

5. The respondents have filed a reply statement pointing out that the applicant had never filed an appeal against the orders of the Disciplinary Authority imposing the penalty of withholding his annual increment for a period of 40 months. Therefore, after the time for submitting appeal was over, the 3rd respondent suo motu sought to revise the order of the Disciplinary Authority on 30.09.1999 by enhancing the punishment to that of compulsory retirement from service. The applicant was also granted opportunity to represent against the said order. However, instead of submitting his representation, he filed OA.No.515/2000, which was dismissed by this Tribunal. However, on the Writ Petition filed by him, the Hon'ble High Court of AP directed the appellate authority to dispose of the appeal of the applicant dted 13.11.1999 and directed that the revision authority shall not pass any orders till the appeal filed by the applicant is disposed of. Accordingly, the earlier show cause notice issued by the 4th respondent dted 04.05.2011 was withdrawn without prejudice to taking further action after the disposal of the appeal. The Appellate Authority considered the appeal dated 13.11.1999 and confirmed the orders of the Disciplinary Authority, vide Annexure.R-IV orders dated 07.06.2011. After the period for filing revision petition was over, the Revising Authority by his memorandum dated 14.10.2011 issued a show cause notice again proposing to enhance the punishment imposed on him as the said punishment was considered to be inadequate for the proven misconduct. The applicant submitted his representation against the proposal on 05.11.2011. Thereupon, the Revising Authority after considering the entire material including the representation of the applicant imposed the punishment of compulsory retirement from the date of service of the applicant.

6. The respondents have refuted the contention of the applicant that the Inquiry Officer was biased and argued that no such contentions were raised by the applicant at the time of the inquiry. They also point out that the contention of the applicant that the decoy passenger and the witness passenger in the trap were stock witnesses, have no relevance to the proven charge that he had accepted Rs.30/- from the decoy who was found travelling without a ticket and who was permitted by him to travel from Kalikiri to Tirupati without issuing any Railway receipt. It is also the case of the respondents that the contention that the Inquiry Officer held the charges as proved only as he was working in the Vigilance Organization is incorrect.

7. With regard to the contention regarding the incompetency of the 4th respondent to act as Revising Authority, the respondents have stated that Rule 25 (v) states that any other authority not below the rank of Deputy Head of the Department in the case of a Railway servant serving under his control, may at any time, either on his own motion or otherwise, call for the records of the enquiry and revise any order made under the rules. The Senior Divisional Commercial Manager of the Division under whom the applicant is working is a Junior Administrative Grade Officer equivalent in rank to that of Deputy Head of the Department and as such he fulfils the requirement of revision authority as provided under Sub-Rule (1) (v) of Rule 25. Hence, the contention of the applicant with regard to the competency of the 4th respondent is incorrect. It is also submitted that the delay that has occurred in the case is due to the filing of cases by the applicant. It is also pointed out that the Revising Authority, after considering whether the retention of an employee who was found indulging in activities prejudicial to the interest of the department was desirable, held that he cannot be retained in service. However, taking into consideration the previous service rendered by him, the applicant was granted all service benefits including pension and such action cannot be faulted.

8. The respondents submit that in the instant decoy check the amount accepted by the applicant from the decoy was not recovered from him. However, in the inquiry proceedings, it is confirmed that the applicant received the amount from the decoy and handed over to another employee. The conduct of the applicant in collecting part amount in contravention of the rules and leaving such a passenger without accounting even the collected money cannot be supported by the decisions of the Hon'ble Supreme Court. Further, the applicant, without quoting any instances either in the inquiry proceedings or otherwise is alleging illegality and arbitrariness in the action against him.

9. The applicant has filed a rejoinder reiterating the averments in the main OA and pointing out that the fairness of the inquiry is vitiated as the case was initiated by one wing of the Vigilance and the disciplinary inquiry was conducted by another wing of the same Vigilance department. He also pointed out that the Deputy Head of the Department functions only at the Zonal level and there is no such post available at the Divisional level. Hence, the Divisional Railway Manager is the Head of the Division, who has been specifically identified as the Revising Authority in the said rule in respect of the employees working in the particular Railway Division. He also drew attention to the clarification given vide letter dated 13.04.2011 by the Chief Personnel Officer to DRM's Office in which it has been stated that any suo moto action for enhancement of the penalty/issue of show cause notice has to be taken up by the appropriate revising authority not below the rank of DRM in future. The denial of an opportunity of personal hearing shows malice in law and violation of the principles of natural justice. It is also stated that while the initial penalty imposed itself is unwarranted in the eyes of law, the penalty of compulsory retirement is shockingly disproportionate.

10. Heard the learned counsel on both sides and perused the record.
11. The learned counsel for the Applicant placed reliance on the judgment of the Hon'ble Supreme Court in *Moni Shankar v. Union of India & Others* (2008 (3) SCC 484), in which the Hon'ble Supreme Court had allowed the appeal as the trap was not conducted in terms of the Manual and the Inquiry Officer acted as a prosecutor and not as an independent quasi-judicial authority, and did not comply with Rule 9 (21) of the Railway Servants (Discipline & Appeal) Rules, 1968. He also argued that this Tribunal had allowed O.A.No.809/2009, dated 26.04.2011 holding that the Hon'ble Supreme Court in *Union of India v. Prakash Kumar Tandon* had held that the raid against the Government servant was conducted by the Vigilance Department and that the appointment of an Inquiry Officer by the Chief of Vigilance Department is not fair and such appointment should have been avoided. Accordingly, this Tribunal had allowed the OA giving liberty, however, to the respondents to appoint fresh Inquiry and Presenting Officers and conduct the inquiry as per rules.
12. It was further submitted by the learned counsel for the Applicant that the Hon'ble High Court of AP had in W.P.No.11851/2001 held that in respect of an employee in the Divisional Railway, the Disciplinary Authority would be the Divisional Commercial Manager and that the Senior Divisional Commercial Manager and the Divisional Railway Manager would be the Appellate and Revising Authorities accordingly. It was also held that since the rule provides for only Divisional Railway Manager, an order passed by even the Additional Divisional Railway Manager was without jurisdiction. It was also submitted by him that in the instant case, no Presenting Officer was appointed and that leading of the evidence by the Inquiry Officer is improper. The

applicant was also not examined at the end of the inquiry as provided under the rules and thus he stands on the same footing as Moni Shankar. It was also submitted that in the instant case, there was another co-accused by name Sri K.C.Lingaiah, who was also charge sheeted along with the applicant as he received the money paid by the decoy. However, he was allowed to retire and there has been lack of fairness, parity and equality in the treatment meted out to the two officials who were charge sheeted in the same incident.

13. Mr.N.Srinatha Rao, learned Standing Counsel, on the other hand, argued that since an appeal has been filed in the case of the applicant, the power of the Divisional Railway Manager is ousted under Rule 25 (1). He submitted that Rule 25 (5) would be the appropriate rule in the matter and that the Sr.DCM alone would be the Revising Authority. He also drew attention to the judgment of the Jabalpur Bench of this Tribunal, which has also interpreted Rules 24 and 25 of the Railway Service Rules. He also relied on the judgment of this Tribunal in O.A.No.559/2001, dated 27.8.2001 in which it has been held that "what is material in the case is whether the applicant has accepted the bribe from a decoy passenger. He vehemently rejected the contention of the applicant that there was no misconduct on his part as there was no pecuniary benefit or gain to him by collecting the amounts from the passenger.

14. Briefly stated the grounds on which the applicant has challenged the impugned orders are that -

- i) There has been violation of Paras 704 and 705 of the Railway Vigilance Manual while conducting the trap;
- ii) The respondents have placed heavy reliance on the statement of the applicant recorded during the Vigilance check;

- iii) Even when no money was recovered from him and when there was evidence against him, the inquiry officer has given a perverse finding that the charges are proved;
- iv) The Annexure.A-I orders dated 5.12.2012 are without jurisdiction and has been passed by an incompetent authority;

15. In support of his contentions, the applicant has relied on the judgment of the Hon'ble Supreme Court in *Moni Shankar v. Union of India* (2008 (3) SCC 484), in which the Hon'ble Supreme Court had allowed the Civil Appeal holding that the Vigilance trap against the employee was not conducted in terms of Vigilance Manual, which stipulated the requirement of two or more independent witnesses, who must hear the conversation, to establish that the money was being passed as illegal gratification. Further, the witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the Department. Para 705 also lays down that for the departmental traps, the investigating officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. It also held that as the trap was a pre-arranged trap, it was not a case which can be said to be an exceptional one where two gazetted officers as independent witnesses were not available. The applicant has raised these contentions in his appeal dated 13.11.1999 and also in his reply to the second show cause notice after 14.10.2011 submitted to the 4th respondent.

16. In response to these contentions, the respondents have only stated that the provisions of the Vigilance Manual are for the guidance of the Administrative

authorities and that the contention of the applicant that the decoy passenger and the witness passenger are stock witnesses have no relevance to the charges proved against the applicant that he accepted Rs.30/- from the decoy who was found travelling without a ticket and without issuing any Railway receipt. However this contention of the respondents is untenable in view of the law laid down in Moni Shankar's case, in which the Hon'ble Supreme Court has held that in a pre-arranged trap the independent witnesses could have been made available and that the guidelines cannot be given a go-by. It was also held that even though the instructions were only executive instructions, which do not create any legal right, the total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the department has been able to prove the charges against the delinquent official. In the instant case, the witnesses were RPF Constables, who admittedly had been participating in a similar traps earlier also. Although the trap was a pre-arranged trap, the respondent-authorities have not ensured the presence of gazetted officers to act as independent witnesses. We are, therefore, of the considered view that the trap was conducted in violation of Paras 704 and 705 of the Railway Vigilance Manual and that the disciplinary proceedings, which are based on the trap, are unsustainable in view of the law laid down by the Hon'ble Supreme Court in Moni Shankar's case.

17. The applicant has also pointed out that the respondents in contravention of the settled law has placed excessive reliance on the statements recorded during the Vigilance check. He also pointed out that the imposition of penalty by relying on these statements without any corroborative evidence is illegal and arbitrary. In response to this, the respondents have pointed out that the applicant never informed the authorities that the statements made by him immediately after the decoy check was

incorrect and that he was forced to give such a statement. However, on going through the Annexure.A-7 appeal dated 13.11.1999 and also the Annexure.A-12 reply to the show cause notice, it is seen that the applicant has pointed out that the Inquiry Officer and the Disciplinary Authority have not judiciously analyzed and evaluated the evidence adduced during the inquiry and heavily relied on the statement recorded under duress during the check conducted by the Vigilance Inspector. He had also brought to notice the judgment of the Hon'ble High Court of Gujarat in the case of *Makwana v. Union of India* in which the Hon'ble High Court had held that ordinarily the recorded admission of the delinquent employee alone cannot be taken as sufficient proof of misconduct as well as the facts constituting misconduct. In the present case, it is seen that the disciplinary authority had held that there was no pecuniary gain intended by the charged employee and the applicant herein and that the charge relating to lack of integrity has not been established. It has also been stated that after collecting Rs.30/- from the decoy, the applicant had passed on the said amount to one Sri K.C.M.Lingaiah at his request to make out a receipt towards unbooked luggage and there was no intent on the part of the charged employee to defraud. This finding has also been confirmed by the Appellate Authority, who also observed that "the charged employee could bring out the fact that the independent witness did not witness the transaction between the charged employee and the decoy and he failed to observe the charged employee handing over such Rs.30/- to some one else. The punishment of stoppage of increment imposed by the Disciplinary Authority was confirmed by the Appellate Authority as the applicant had failed to collect due charges from the ticketless passenger and failed to grant receipt for the amount collected. However, the Revising Authority while proposing to enhance the punishment, from withholding of increment to compulsory retirement, has again relied on the statement

of the applicant at the time of the Vigilance check when he has accepted that he asked the decoy passenger to pay Rs.86/- for not taking a ticket and subsequently taken only Rs.30/- since the passenger told him that he had entered at Kalkiri Station. Thus, it is clear that the main reason for enhancing the punishment is the statement given by the applicant at the time of the Vigilance check. The acceptance at the time of the Vigilance check of the charge cannot be an adequate ground for enhancing the penalty to that of compulsory retirement. Further, when the recorded G.C. Notes were never recovered from the applicant, there is some substance in the applicant's contention that the Inquiry Officer has given a perverse finding that the charges were proved.

18. Coming to the question as to whether the Annexure.A-1 orders passed by the Revising Authority are without jurisdiction, we note that this matter has already been decided by the Hon'ble High Court of AP in W.P.No.11851/2001 dated 01.03.2011, in which it has been held that the Revising Authority in respect of a Travelling Ticket Examiner was the Divisional Railway Manager and not even the Additional Divisional Railway Manager. It has been held that Rule 25 (1) (iv) of the rules empowers the Appellate Authority not below the rank of Divisional Railway Manager to revise the orders. The Hon'ble High Court has held as follows:

"Shorn of all other facts, which have already been narrated in the preceding paras, in respect of which there being no dispute, it is to be seen that the Tribunal, by referring to Rule 25 of the Rules, found categorically that the said authority viz., Additional Divisional Railway Manager is not competent. It was found that the aforesaid Rule contemplates the exercise of the powers only by the Divisional Railway Manager who has to exercise of the revisional jurisdiction. There is no dispute to the fact that the Additional Divisional Railway Manager is below the rank of the Divisional Railway Manager. The counter was silent as to the equal position in the category, cadre or post. Except

referring to the drawal of same scale of pay by both the Divisional Railway Manager and the Additional Divisional Railway Manager and referring to certain proceedings issued by the petitioners, nothing has been pointed out, as observed by the Tribunal, to bring both the posts on equal platform. Further, admittedly the respondent is the railway servant working under the Divisional Railway Manager and therefore even as per the aforesaid Rule, it is only the Divisional Railway Manager, who is competent authority.”

19. Further, our attention was drawn to the Annexure.A-9 letter of the Chief Personnel Officer dated 13.04.2011 in which it has been stated that any suo motu action for enhancement of the penalty has to be taken by the appropriate revising authority not below the rank of DRM in future. Despite this, the Sr.DCM issued the show cause notice for enhancement on 14.10.2011 and passed final orders enhancing the penalty on 05.12.2012. Having regard to the judgment of the Hon'ble High Court of Andhra Pradesh and the aforesaid letter, we hold that the impugned proceedings have been issued by an incompetent authority.

20. In the result, the applicant succeeds. The OA is allowed by quashing and setting aside the impugned orders. Consequently, the applicant shall be entitled to consequential benefits such as pay fixation and promotion on notional basis on par with his juniors in accordance with Rules. There shall be no order as to costs.

Dated: this the 1st day of December, 2017

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