IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

O.A. No.937 of 2012

Date of CAV:22 .11.2017. Date of Order : 11 .01.2018.

Between :

K.Sudhakar Rao, s/o Sri Devadanam,
aged about 44 yrs, Working as Head Traveling
Ticket Examiner, South Central Railway,
Hyderabad Division, Kurnool Railway Station,
Kurnool. ... Applicant

AND

1. Union of India, rep., by the Additional Divisional
Railway Manager, South Central Railway, Railnilayam,
Hyderabad Division, Secunderabad.

2. The Senior Deputy General Manager (Vigilance),
South Central Railway, Railnilaym, Secunderabad.

3. The Senior Divisional Commercial Manager,
South Central Railway, Hyderabad Division,
Hyderabad Bhavan, Secunderabad.

4. The Divisional Commercial Manager,
South Central Railway, Hyderabad Division,
Secunderabad.

5. The Divisional Commercial Manager,
South Central Railway, Guntakal Division,
Guntakal.

6. The Senior Divisional Personnel Officer,
South Central Railway, Hyderabad Division,
Hyderabad Bhavan, Secunderabad.

7. The Chief Commercial Manager,
C&PS/SC, SC Railway, Railnilayam,
Secunderabad. ... Respondents

Counsel for the Applicant … Mr.Krishna Devan
Counsel for the Respondents … Mr.N.Srinivasa Rao, SC for Rlys

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.) 2

ORDER

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

The applicant while working as Head Travelling Ticket Examiner (HTTE) was issued Annexure.A-I charge memo dated 15.07.2008 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The said memorandum contained two Articles of charge. The first charge against the applicant was that while he was manning S-4 to S-7 Coaches on Train No.1028 on 06/07.06.2008, he had demanded and collected Rs.200/- from Sri M.Srinivas, decoy passenger, towards difference of fares for allotment of berths in the sleeper class and did not grant receipt for the amount so collected and gained pecuniary benefit for himself as detailed in the statement of imputations. The second charge was that while on duty on the said date i.e., 06/07.06.2008, he was found to have Rs.340/- short in his personal cash and that he had declared an inflated amount as personal cash with an intention to cover up his illegal collections. According to the statement of imputations, the proceedings of the vigilance team was drawn up in the presence of Sri B.Satyanarayana, CTTI/SL/GTL and Sri M.Pedda Reddaiah, SR.TTE/GTL, who were manning AC Coaches and S-8 to S-10 Coaches. It is further stated the Government Currency Notes of Rs.200/- collected from the decoy passenger were available in the private cash of the applicant. The said amount was seized vide Seizure Memo dated 07.06.2008. The applicant was therefore alleged to have violated the instructions in Para 101 and 2430 of Indian Railway Commercial Manual (IRCM), Volume-I and II and Rule 3 (1) (i) (ii) and (iii) and Rue 26 of the Railway Services (Conduct) Rules, 1966.

2. On receipt of the charge memorandum, the applicant on 25.07.2008 requested the disciplinary authority to furnish a copy of Rule 101 of IRCM Volume-I and Para 2430 of IRCM Volume-II and the Vigilance Manual rulings governing the conduct of the

decoy checks so that a detailed written statement of defence could be submitted. The applicant contends that even without supplying the documents as requested by him, the disciplinary authority on 30.07.2008 appointed one Sri N.Subbarayudu working as Enquiry Inspector, Headquarters, Secunderabad under the control of Sr.Deputy General Manager (Vigilance) to inquire into the charges framed against him. He immediately objected to the appointment of the Inquiry Officer without his reply to the charge sheet. He also pointed out that the selection of an official as Inquiry Officer of the Vigilance Department amounts to violation of Rule 9 (9) (a) (i) and (ii) of Discipline & Appeal Rules. Thereafter, the 5th respondent on 06.05.2009 arranged to supply one of the two documents requested by him. However, he did not supply the Vigilance Manual rulings. Without acceding to his request, the Inquiry Officer commenced the inquiry from 03.06.2009. It is also contended that the Disciplinary Authority without application of mind as to whether the allegations constitute a misconduct or violation of rules, issued the major penalty charge memorandum and appointed the Inquiry Officer even before the receipt of written statement of defence from him. He also alleges that the Disciplinary Authority has not acted independently but as per the dictates of the 2nd respondent.

3. It is also submitted that during the course of the Inquiry, the applicant informed the Disciplinary Authority that the Inquiry Officer is proceeding with the xerox copies of the listed documents in the charge memorandum without the originals and without furnishing a copy of the preliminary inquiry proceedings. He also requested for three additional documents for the purpose of his defence and also to enlist Sri M.Pedda Reddaiah, SR.TTE/GTL, and Sri B.Satyanarayana, CTTI/SL/GTL as defence witnesses in the regular inquiry. However, in response to his request for additional documents, the Disciplinary Authority informed that the Excess Fare Ticket (EFT)

pertaining to the incident was not available and that the Second Class Mail Express Ticket purchased by the decoy witness for travelling from Vijayawada to Chennai was handed over at the station and was not available. It is pointed out by the applicant that the decoy passenger and witness never had any authority to travel from Vijayawada to Chennai and that both of them have unauthorizedly travelled for participating in the decoy check. As they have travelled without ticket and as they themselves are wrong doers, they are unfit to act as decoy. The non-supply of other documents such as Reservation Chart for the Train No.1028 fro Chennai to CSTM is reflected in the inquiry proceedings.

4. On completion of the inquiry, the applicant submitted his defence to the Inquiry Officer on 21.11.2011 pointing out that the oral evidence of the prosecution witnesses and the documents relied upon by the prosecution do not prove the charges levelled against him. It was also represented that the conduct of the decoy check was not in compliance with Rule 307 of the Railway Vigilance Manual and that there was no evidence to prove the charge. Further, the non-supply of the documents has deprived him of reasonable opportunity to defend the charges against him.

5. Being aggrieved by the issue of the charge memorandum and the appointment of Inquiry Officer on the behest of the Vigilance authority and the denial of the reasonable opportunity to defend his case and the perverse findings of the Inquiry Officer without considering the evidence on record, he filed OA.No.50/2012 before this Tribunal with a prayer to set aside the charge sheet, inquiry proceedings and the inquiry report. However, the Tribunal disposed of the said OA with a direction to him to submit his explanation to the inquiry report within two weeks and also directed the Sr.DCM/SCR/HYB Division to take decision as per rules. Accordingly, the applicant submitted his objections to the findings of the inquiry officer

on 01.02.2012. He also approached the Hon'ble High Court of AP in WP.No6542/2012. However, the WP was closed by confirming the orders of this Tribunal dated 20.01.2012. Thereafter, the 3rd respondent imposed the punishment of removal from service with immediate effect after holding the charges as proved. He challenged this order before this Tribunal in O.A.No.387/2012. However, the same was dismissed by this Tribunal on 16.04.2012 for approaching the Tribunal without exhausting the remedy of appeal. Thereafter, he filed W.P.No.12032/2012 along with WPMP.No.15123/2012, which was disposed of by the Hon'ble High Court of AP permitting him to file an appeal against the impugned order dated 28.02.2012. Accordingly, he submitted his appeal, which was also rejected by the Appellate Authority by confirming the punishment of removal from service imposed by the 3rd respondent. The orders of the Disciplinary and Appellate authorities are challenged in this OA.

6. The applicant filed a Revision Petition before the Revising Authority.

7. During the pendency of this OA, the Revising Authority, vide his orders dated 02.07.2013 after consideration of his Revision Petition dated 07.03.2013, on humanitarian considerations, reduced the penalty of removal from service imposed on the applicant to that of compulsory retirement with full benefits. The applicant thereafter amended the OA, so as to challenge the orders of the Revising Authority also.

8. The main grounds urged by the applicant are that the decoy check was executed contrary to the Vigilance Manual inasmuch as there was no complaint against the applicant and that both the decoy passengers and the witnesses belong to

Ticket Collector's cadre (Non-Gazetted) of the same depot in Vijayawada Division. Further, the decoy passenger had participated in a vigilance trap against another Ticket Collector viz., Sri N.Joseph Babu. The decoy was also placed under suspension for his misconduct on duty. Therefore, such persons are unfit to be selected as decoy check and as witness under Rule 307 of the Railway Vigilance Manual. As the decoy passenger has participated in more than one decoy check, he is unfit to act as witness in the present check. Further, the decoy should have a clear past and should not have enmity against the persons who are to be trapped. It was also pointed out that this Tribunal in O.A.No.240/2010 , dated 11.07.2012 had held that as all the witnesses are Railway Officers, their evidence cannot be straight away accepted.

9. The applicant avers that the 5th respondent who is competent to initiate disciplinary proceedings has not applied his mind in framing the charges inasmuch as the allegations in the charge memorandum do not amount to violation of Rule 101 and Rule 2430 of IRCM Volume-I & II respectively. Further, the charges and the rules alleged to have been violated do not match the allegations in the Articles of charge. Further, the allegations are vague, improper and erroneous, and wrong provisions of the conduct rules were invoked and Rule 26 of the Railway Services (Conduct) Rules is not at all there in the Railway Services (Conduct) Rules. Further, the draft charge sheet has been sent by the 2nd respondent vide his letter dated 30.06.2008 and thus the charge sheet issued by the 5th respondent is vitiated for non-application of mind. It is also submitted that the 5th respondent has acted in contravention of the instructions of the Railway Board in Serial Circular No.24/2009, dated 26.02.2009 by mentioning of both Clauses 1 & 2 relating to lack of integrity and devotion to duty under the same charge thereby giving an impression that the Disciplinary Authority is not clear about the misconduct committed by the charged official. Thus, the initiation of disciplinary proceedings as per the dictates of the Vigilance is nothing but abuse of the process of law.

10. The applicant also submits that the 4th respondent who acted as Disciplinary Authority is not competent to act as such in view of the change in his pay scale, which was upgraded to Rs.9300-34800/- with Grade Pay of Rs.4200/- with effect from 01.01.2006. Thus, the 4th and 5th respondents are not the competent authorities in view of the Railway Circular dated 04.02.1971. It is also contended that in view of his Grade Pay of Rs.4200/-, only a Junior Administrative Grade Officer is competent to impose major penalties and initiate disciplinary proceedings.

11. The applicant's contention is that his action of demanding charges due from the decoy passenger is his duty as per Rule 522 and 537, 137 of the Commercial Manual. It is also his case that he was unable to prepare the EFT receipt because the decoy failed to produce the balance amount of Rs.652/- and the Ticket held by him. Further, after the Vigilance Team arrived, he was not permitted to do any transaction. Thus, the duty discharged by him cannot be termed as misconduct. However, these submissions were not considered by the Inquiry Officer. It has been further contended that he cannot issue EFT receipt when the correct charges as demanded by him was not paid by the decoy passenger.

12. In the reply statement, the respondents have stated that the irregularities detected during a vigilance check has led to the issuance of the impugned Annexure.A-I charge memorandum. The applicant was therefore kept under suspension for the misconduct committed by him on 10.06.2008. He acknowledged the charge memorandum with the relied documents on 21.07.2008. He was also directed to submit his written statement of defence on 25.07.2008. The applicant submitted a representation seeking extracts of IRCM and Rules governing the decoy

checks. Subsequently, after revocation of his suspension, he was transferred to Hyderabad Division. The 4th respondent by proceedings dated 06.05.2009 sent the extract of the Manual provisions and also advised the applicant to take the instructions of the decoy check from the Vigilance Manual available in the website and submit his defense within 7 days and that if no explanation was received within that time, further proceedings would be issued. As the applicant did not give any representation, the Disciplinary Authority appointed an Inquiry Officer on 19.05.2009 to inquire into the allegations against the applicant. The Inquiry Officer conducted the preliminary hearing on 03.06.2009 at which time the applicant denied the charges and requested for one month's time to engage a defence counsel. However, he raised bias against the Inquiry Officer by his representation dated 30.06.2009 and sought for change of the Inquiry Officer. The said representation was considered by the competent authority and rejected on 19.08.2009. Aggrieved by this, he filed O.A.No.758/2009, which was dismissed by this Tribunal, vide Annexure.R-II order dated 03.08.2010, upholding the appointment of the Inquiry Officer. After the dismissal of the OA, the inquiry was conducted and completed on 03.11.2011. After considering the entire material and the defence statement, the Inquiry Officer submitted his report on 12.12.2011 holding both the charges as proved and sent his report to the applicant for his representation. The applicant challenged the charge sheet in OA.No.50/2012, which was disposed of at the admission stage with a direction to him to submit his representation within two weeks. The respondents have also confirmed that OA.No.387/2012 filed by the applicant was dismissed and that W.P.No.12032/2012 filed by him was disposed of directing him to file his appeal before the Appellate Authority.

13. The respondents have further submitted that the applicant had questioned the witnesses citing the relevant provisions of the Vigilance Manual during the inquiry and

as such no prejudice is caused to him. They also point out that the applicant's contention that the appointment of the Inquiry Officer was in violation of the Railway Servants (Discipline & Appeal) Rules was earlier rejected by this Tribunal in OA.No.50/2012. It is also stated that the misconduct alleged against the applicant is with regard to collecting money from the passengers and not issuing receipt for the said amount and thereby defrauding the Railways. This aspect of collecting money illegally without remitting it to the Railways has been proved in the inquiry. Further, there is no need for a complaint from any other person as the aggrieved party is the Department which has suffered a loss of revenue. It is also pointed out that the facts in OA.No.240/2010, cited by the applicant, has no relevance to his case as in the said case the amount said to have been received by the employee could not be traced out. In the instant case, Rs.200/- received by the applicant from the decoy passenger was recovered from the personal cash of the applicant and the numbers of the notes tallied with the notes given by the decoy. They have also refuted the contention of the applicant that he demanded Rs.852/- from the decoy. The applicant was given a Ticket by the decoy passenger at Chennai and he made an endorsement on it. When such allotment is made, the applicant is supposed to collect the difference in fare and if the passenger is not having the amount, he should not have been allowed to travel in the reserved Coach.

14. It is submitted by the respondents that the applicant has never stated anything about the vagueness of the charges or challenged the same during the inquiry. In fact, during the preliminary hearing on 03.06.2009, he stated that he understood the charges and denied the same. The charges and the misconduct was clearly proved against the applicant based on evidence. They also state that the draft charge

prepared by the Vigilance sent to the Disciplinary Authority is as per the procedure and there is no violation of any rules. The applicant had canvassed the same in the earlier OA and this Tribunal had rejected the same. As the applicant kept quiet during the inquiry on the specific provisions of the Commercial Manual and Conduct Rules, he cannot raise such issues at this stage. The respondents reiterate that collecting money from passengers and not issuing the receipt is the misconduct proved against the applicant and the said amount has also been recovered from his possession. Further, the Disciplinary Authority has duly considered the entire evidence and accepted the findings of the Inquiry Officer before imposing the punishment. They have refuted the contention that the Disciplinary Authority's orders have been passed without application of mind.

15. The applicant has filed a rejoinder stating that the respondents have relied on the documents fabricated by the Vigilance and denied the supply of the documents requested by him.

16. After the impleadment of the 7th respondent, the respondents have filed an additional reply statement stating that the Revision Petition was considered by the Revising Authority and the penalty order was modified. Hence, the contention that the orders of the 7th respondent are arbitrary and without application of mind is untenable and devoid of merit. They also submit that as long as the applicant worked in Hyderabad Division, the Sr.DCM/Hyderabad has exercised the disciplinary control over the applicant. They also state that the Sr.DCM/GTL cannot exercise jurisdiction after the transfer of the applicant to Hyderabad Division.

17. The respondents have also filed the entire DAR inquiry proceedings.

18. The applicant has thereafter filed an additional rejoinder stating that the Revising Authority has failed to consider that the findings of the Inquiry Officer, Disciplinary Authority and Appellate Authority were perverse and not based on legally admissible evidence. Hence, the order of the Revising Authority is also perverse and based on no evidence and in breach of the principles of natural justice.

19. The applicant has filed his written arguments and has mentioned that the issuance of a charge sheet at the dictates of the Vigilance was deprecated by the Coordinate Bench of this Tribunal at Lucknow in the case of ***Raja Ram Vermav. UOI & Others*** (ATJ 2003 (3) 473) and also the Cuttack Bench of CAT in the case of ***Krishna Choudhary v. UOI & Others*** (ATJ 2005 (3) 548) and the Calcutta Bench of CAT in ***Sri Saraju Prasad Sinha & Others v. UOI & Others*** (2004 (2) ATJ 624), and the orders of the Punjab & Haryana High Court in ***Mani Ram v. State of Haryana & Others*** and the Hon'ble Supreme Court in ***A.K.Jadeja v. State of Gujarat*** (1995 SCC (5) 302) .

20. Heard the learned counsel on both sides and perused the record.

21. The learned counsel for the Applicant has relied on the judgments of the Lucknow Bench of the Central Administrative Tribunal in ***Raja Ram Verma v. Union of India & Others*** in O.A.No.642/1995, in ***Krishna Chowdhary v. Union of India & Others*** in OA.No.158/2004, dated 29.09.2005 of the Cuttack Bench of this Tribunal and in ***Sri Saraju Prasad Sinha & Others v. Union of India & Others*** in OA.Nos.83/2003 and 130/2003, dated 11.06.2004 of the Calcutta Bench in support of the contention that a charge sheet issued at the dictate of the vigilance would show

that the Disciplinary Authority has not applied its mind and that the charge memo is liable to be set aside. With regard to the same issue, he also cited the judgments of the Punjab & Haryana High Court in ***Mani Ram v. State of Haryana & Others*** (1995 (6) SLR 140, in ***M.S.Md.Ibrahim v. Union of India & Others*** in OA.No.2891/2001, dated 30.06.2004 of the Principal Bench of the Central Administrative Tribunal, in ***Union of India & Others v. B.N.Jha*** (2003 (4) SCC 531, in ***A.K.Jadeja v. State of Gujarat*** (1995 AIR (SC)-0-2390/1995 SCC (5) 302), and in ***Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal & Another*** (1991 (3) SCC 219). In support of his contention that the appointment of Inquiry Officer even before the submission of his Written Statement of Defence was wrong, he has relied on the orders of the Mumbai Bench of the Central Administrative Tribunal in O.A.No.265/1999, dated 22.01.2003. He has also cited the orders of the Hon'ble High Court at Hyderabad in W.P.No.14474/2004, dated 09.04.2014 in support of his plea that the Senior Divisional Commercial Manager was not the competent authority. It was also stated that the charges levelled against the applicant were not proved in the regular inquiry as the statement of decoy passenger was not corroborated by the witness passenger. Thus, no positive evidence was brought to prove the charge. As the finding of the Inquiry Officer was perverse, the same can be ignored as held by the Hon'ble Supreme Court in the case of Central Bank of India Ltd., v. Prakash Chand Jain (AIR 1969 SC 983), even though the findings of the Inquiry Officer were accepted by the Disciplinary Authority and confirmed by the Appellate Authority and the Revising Authority. The applicant has also drawn our attention to the judgment of the Bombay High Court in ***Jagdish Baliram Totade v. M.N.Bhagat & Others*** (1990 (6) SLR 604) in W.P.No.370/1989, dated 02.07.1990 in which it was emphasized that the High Court/Tribunals have a legal duty to see that the conclusion reached by the Inquiry Officer is based on legal evidence and is not perverse.

22. The learned Standing Counsel placed before this Tribunal the judgment of the Hon'ble High Court of A.P. in ***V.Ramana v. APSRTC, Visakhapatnam Region & Others*** (2001 (5) ALT 180 (F.B.), and the judgment of the Hon'ble Apex Court in ***Regional Manager, U.P.SRTC, Etawah & Others v. Hoti Lal and Another*** (2003 (3) SCC 605) and in ***Karnataka State Road Transport Corporation v. B.S.Hullikatti*** (2001 (2) SCC 574) to show that "if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, the matter should be dealt with iron hands and not leniently". On this ground, the Hon'ble Apex Court had upheld the termination of the service of a bus conductor for carrying ticketless passengers in the SRTC bus. It was also held that it is not only the amount that is involved, but the mental set-up, the type of duty performed etc., which has to be considered to determine whether the punishment is proportionate or disproportionate. Further, the Hon'ble Apex Court had held that where a person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is must and unexceptionable.

23. The judgment of the Hon'ble Apex Court in ***Commissioner of Police, New Delhi v. Narender Singh*** (2006 (4) SCC 265) was also placed before us in support of the argument that the admissibility of confessions as contained in Section 25 and 26 of the Evidence Act and Section 162 Cr.PC is not applicable to a departmental inquiry. The respondents have also cited the judgment of the Hon'ble Supreme Court in ***State Bank of India v. Ram Lal Bhaskar*** to buttress their argument that there is no scope for any re-appreciation of evidence by this Tribunal and that as long as the findings are based on same evidence, there are no grounds for interference.

24. The main grounds advanced by the applicant are that -

(i) the vigilance trap was contrary to Rule 307 of the Vigilance Manual;

(ii) the charge sheet is vitiated by the fact that it was issued at the influence of the Vigilance Department.

(iii) the charges are vague;

(iv) the Rules alleged to have been violated do not match the allegations in the charge memorandum.

(v) the inquiry was conducted in the absence of written statement of defence;

(vi) there was violation of the principles of natural justice by failing to furnish the documents requested by him.

(vii) the impugned orders are based on no evidence.

(viii) the punishment awarded is excessive and disproportionate.

(ix) the 4th Respondent is incompetent to act as Disciplinary Authority.

25. Coming to the ground that the vigilance trap was contrary to Rule 307 of the Vigilance Manual, we have perused the Rule as extracted by the applicant in the OA. Rule 307 lays down the procedure and guidelines for carrying out departmental traps. The main requirement is that the selection of the decoy has to be done carefully and that the decoy should have a clear past and should not have enmity against the person who is trapped. It is the applicant's contention that the decoy was once placed under suspension for misconduct and thus does not have a clear past. He has however not produced before us any evidence to this effect. The applicant also does not have a case that the decoy had any previous enmity against him. The instructions also do not prohibit a decoy and witness from belonging to the same depot. The fact that the decoy and the witness are from another division would indicate that there

would be no occasion for any previous association or enmity against the applicant unless contended otherwise. The guidelines also state as follows:

> "*307.5 Proper execution of the trap is very important (ii) the transaction should be within the sight and hearing of the independent witness/witnesses. (iv) the witness selected should not have appeared as witnesses in earlier cases of the department. It is safer to take as witness a Government employee who belongs to some other department. (v) It is preferable to take a written complaint from the decoy."*

26. While the above guidelines mention that it would be safer to take as witness a Government employee who belongs to another department and that it would be preferable to take a written complaint from the decoy, there is no strict prohibition or bar against Railway employees being witnesses in a departmental trap. Neither is there any mandatory requirement of a written complaint against the Railway official who figured in the trap. Further, just because the decoy has participated in one other trap, it cannot be held that the deposition of the decoy does not have proper evidentiary value.

27. The applicant has relied on the judgment of this Tribunal in OA.No.240/2010 to support his contention that the evidence of the decoy and the witnesses who are Railway employees cannot be accepted as held by this Tribunal in the aforesaid OA. However, on going through the aforesaid judgment, it is clear that the OA has been allowed mainly because the decoy amount which was the main evidence for proving the prosecution case was not recovered from the applicant. In these circumstances, the Tribunal held that it was difficult to accept the prosecution case when the said amount was not recovered from the applicant. It was also held that although the standard of proof in a departmental inquiry is not the same as required in a Criminal Case, still when there is no evidence in the main ingredient of the alleged tainted cash being recovered, it was not appropriate to hold that the case against the applicant is proved when all the witnesses are Railway employees and when there is no strict

proof of demand and acceptance by the delinquent, Thus, the main reason is that when the tainted amount was not recovered from the applicant in the aforesaid OA, reliance could not be placed on the depositions of the witnesses who are Railway employees. In the instant case, however, the proceedings show that an amount of Rs.200/- recovered from the applicant tallied with the Government currency, which were given to the decoy before the said trap. Thus, the facts in this OA and O.A.No.240/2010 are distinguishable and the judgment in the aforesaid OA has no applicability to the present case.

28. The applicant has also stated that the Disciplinary Authority has passed the order at the dictates of the Vigilance Branch. We note that the applicant has raised the same grounds in OA.No.758/2009. The relevant extracts of the judgment in OA.No.758/2009 are reproduced hereunder:

> ‘‘*3. The grounds taken in this OA are that Respondent No.2 works under the control of the Vigilance administration. Respondent No.4 and Respondent No.2 are prejudiced because the inquiry is based upon the vigilance check and Respondents No.4 and 2 being associated with the vigilance wing of the Railways, are bound to hold the charges to be proved. The applicant in the OA has referred to the case law regarding bias, prejudice and the principles of natural justice. During the course of arguments, the learned counsel for the applicant has referred to the judgment passed by this Tribunal in O.A.No.592 of 1989, Md.Rizwan v. The Divisional Commercial Superintendent and others passed on 6th August 1991 in support of his argument that the vigilance department cannot advise on the quantum of penalty. They can only advise on the facts and the findings.* ***The learned counsel for the applicant has also emphasised that the letter dated 30th June 2008 of Respondent No.4 addressed to the Senior Commercial Manager is dictatorial and the Disciplinary Authority is merely complying with the dictates of the vigilance wing.”***

29. Thus, this ground has already been taken by the applicant and this Tribunal had dismissed the earlier OA. Therefore, it is not open to the applicant to raise the very same ground in the present OA in view of the principle of Res judicata, which would

come into operation. Therefore, the various case laws cited by him in support of this contention are of no help to him.

30. The applicant has argued that the charges against him are vague. We have perused the Annexure.A-I charge memorandum containing two articles of charge. The first article of charge relates to the demand and collection of Rs.200/- from decoy passenger and not granting any receipt of the amount taken and thus making pecuniary gain for himself. The second charge was with reference to the declaration of inflated personal cash with the intention of covering up the illegal collection made by him from the passenger. The charges are distinct and are supported by detailed statement of imputations and hence we find no merit in this contention.

31. It has been contended that there is a mismatch between the charges and the Rules alleged to have been violated and that the 5th Respondent has framed charges in contravention of Railway Board Circular dated 26.2.2009. While the Railway Board Circular points out that each of the three clauses of Rule 3 of Railway Service (Conduct) Rules has a different connotation, and should be correctly applied, we cannot agree that in the present case, these clauses have been wrongly or indiscriminately used. The first article of charge would show that the allegations are with regard to demanding and collecting Rs.200/- from the decoy passenger which points to lack of integrity. The charge also mentions the non-issuance of a receipt after collecting money. This charge points to a failure of duty which is in contravention of the conduct that is expected of a Railway servant. Therefore, in the present context where the allegations are in respect of lack of integrity, failure of duty and conduct unbecoming that of a Railway servant, the contention sought to be raised by the applicant is untenable.

32. The applicant has contended that the failure of the respondents in furnishing the documents amounts to denial of opportunities and violation of the principles of natural justice. However, a perusal of the record shows that the applicant had asked for

extracts of Rule 101 and Para 2430 of IRCM as well as copy of the instructions under which the Vigilance Inspectors are empowered to conduct decoy checks even when it is common knowledge that these documents are very much in the public domain. Asking for supply of the same is a dilatory tactic adopted by the applicant to delay or stall the disciplinary proceedings against him. Nevertheless, the respondents vide their Annexure.A-VII letter dated 06.05.2009, have furnished a copy of the extracts of Rule 101 of IRCM Volume.I and Para 2430 and also advised the applicant to download the extracts of the Railway Vigilance Manual , which has been placed in the Rail Net Website. From the inquiry proceedings, which have been filed by the respondents, it is seen that the applicant has also asked for the original reservation charts and used EFT Book to be produced. Thereupon, the inquiry officer has observed in the proceedings that the applicant had not made any request for the original reservation charts neither at the time of the issuance of charge memorandum nor at the beginning of the inquiry. He had made his request after the lapse of two years knowing fully well that the same would not be available after a lapse of so much time. He has also pointed out that had the applicant been keen on accessing non-relied upon documents, he would have made efforts to ask for the same in the beginning itself. Likewise, the applicant has asked for EFT Book issued by him. However, as per the records of the Railway, it is seen that the applicant has not returned the EFT Book to CTI. He has also pointed out that the TTEs are required to return the used EFT containing record foils to the respective CTIs. But there is no acknowledgment of the applicant having handedover the said EFT Book to CTI. Thus, without returning the EFT Book to CTI, and asking for the same as an additional document is nothing but making mockery of the Institution. He has therefore dismissed the plea of the applicant that he cannot defend his case without the original EFT documents.

33. Having perused the aforesaid observations of the inquiry officer, we hold that the applicant has not been able to establish the contention that he has been deprived of an opportunity to defend his case properly.

34. The applicant has raised many issues regarding the inadequacy of evidence and lack of appreciation of the same by the disciplinary authority and the appellate authority. However, as held by the Hon'ble Supreme Court in the State Bank of India v. Ram Lal Bhaskar & Another (2011 STPL (Web) 904 SC), this Tribunal cannot re-appreciate the evidence taken by the disciplinary authority as this Tribunal does not sit as an Appellate Authority over the findings of the Disciplinary Authority. For this reason, we are not inclined to go into the various aspects which would require reappreciation of evidence, particularly when the disciplinary enquiry has been conducted in accordance with rules.

35. The applicant has also urged that this is a case of no-evidence. However, the inquiry which has been conducted following the due procedure after giving ample opportunity for examination of the witnesses and records and after analyzing the prosecution as well as the defense has held that the Government currency notes of value of Rs.200/- have been recovered from the personal cash of the charged employee. Thus, the charge levelled against him in Article-I was held proved. Similarly in view of his failure to show proper accountability of his personal cash, the second charge has also been established. It cannot therefore be held that it is a case of perverse finding or a finding without any evidence.

36. The applicant has contended that the inquiry officer was appointed even before his written statement of defence was submitted. We note that the charge memo

against the applicant was initially issued on 15.7.2008. On 25.7.2008, the applicant asked for a copy of the IRCM and the Railway Vigilance Manual. On 30.7.2008, the first order of appointment of inquiry officer was issued. However, on 3.8.2008, he again requested for time and for resending the order appointing the inquiry officer. In the meanwhile, the applicant was transferred from GTL to Hyderabad Division. Therefore the competent authority in the Hyderabad Division on 6.5.2009 supplied IRCM and also directed the applicant to take the Vigilance Manual from the Rail Net Website and again gave further 7 days time for submitting his explanation. The applicant, however, only submitted an interim reply on 12.5.2009. Therefore, after the expiry of the time granted to him, the disciplinary authority in the division to which he was transferred has appointed the inquiry officer again on 19.5.2009. From the observations and evidence as adduced above, it can be seen that the inquiry officer was appointed second time only after the expiry of the time that was granted to the applicant for submission of his written statement of defence.

37. The applicant has also contended that the punishment is excessive and shockingly disproportionate to the charge. In this context, the judgment of the Hon'ble Supreme Court in ***Regional Manager, UPSRTC v. Moti Lal*** (2003 (3) SCC 605, would come into play. Para 10 of the judgment reads as follows:

> " *10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons*

whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at Failure to give reasons amounts to denial of justice. (See Alexander Machinery (Dudley) Ltd. v. Crabtree). A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements fo functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

38. The applicant herein was also holding a position of trust and has been acting in a fiduciary capacity. In this view of the matter, the punishment imposed cannot be said to be excessive or disproportionate. Further, we find that the revising authority has reduced the punishment of dismissal from service to that of compulsory retirement with full pensionary benefits.

39. With regard to the contention of the applicant that the 4th Respondent was not competent to act as Disciplinary Authority, we note that he has earlier filed

OA.No.50/2012 questioning the validity of the charge memo and the show cause memo issued by the Sr.DCM, Hyderabad, after supplying the applicant a copy of the Inquiry Officer's report. At that stage, the applicant has never pointed out that the Sr.DCM was an incompetent Disciplinary Authority. His grievance was that the charge memo had been issued without following the prescribed Rules and that the Inquiry Report should be set aside as there was violation of the principles of natural justice. Nowhere has he mentioned that the Disciplinary Authority who issued the charge memo was an incompetent authority, even though the said ground was available to him. Thus, at this juncture, this ground is not available to him in view of the principle of constructive res judicata.

40. Having regard to the aforesaid discussions, we hold that the applicant is not entitled to the relief prayed for and that there are no grounds for interfering with the penalty of compulsory retirement with full benefits ordered by the revising authority.

41. The OA, therefore, fails and is accordingly dismissed.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated:this the 11th day of January, 2018

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