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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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**ORIGINAL APPLICATION NO.290/00246/2016
WITH MISC. APPLICATION NO.290/00111/2016**

**RESERVED ON : 04.05.2018
PRONOUNCED ON :**

09.05.2018

CORAM:

HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)

**BAHUBAL PRAKASH JAIN S/O SHRI UTSAV LAL, AGED ABOUT 53 YEARS,
RESIDENT OF RAILWAY QTR NO.6-A, RAILWAY COLONY, UDAIPUR
(RAJASTHAN), PRESENTLY EMPLOYED AS SENIOR INSTRUCTOR
(COMMERCIAL) ZONAL RAILWAY TRAINING INSTITUTE, UDAIPUR, NWR.**

**...APPLICANT
(BY ADVOCATE: SHRI J.K.MISHRA)**

VERSUS

- 1. UNION OF INDIA THROUGH GENERAL MANAGER, NORTH-WESTERN RAILWAY, HQRS. JAIPUR ZONE, NEAR JAWAHAR CIRCLE, JAIPUR PIN: 302017.**
- 2. DIVISIONAL RAILWAY MANAGER, NWR, AJMER DIVISION, AJMER.**
- 3. SHRI RAJU BHUTDA, SR. DCM, JODHPUR DIVISION, JODHPUR, NWR.**

**...RESPONDENTS
(BY ADVOCATE: MR. R.K.SOND)**

ORDER

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT DURING THE YEAR 2013 HE WAS SERVED WITH A CHARGESHEET UNDER RULE 11 OF THE RAILWAY SERVANTS (DISCIPLINE AND APPEAL) RULES, 1968 (HEREINAFTER CALLED AS 1968 RULES) BY RESPONDENT NO.3, THE THEN SENIOR DOM, AJMER DIVISION, OF THE NORTH WESTERN RAILWAY, ALLEGING IRREGULARITIES IN ISSUING TATKAL TICKETS. IT IS AVERRED THAT THE SAID CHARGESHEET HAS BEEN ISSUED BY RESPONDENT NO.3 SINCE HE WAS UNHAPPY WITH THE EFFICIENT WORKING OF THE APPLICANT AND HAD STRAINED RELATIONS. HE WANTED TO SUPPRESS THE FLOURISHING PERSONALITY OF THE APPLICANT AND TO ENTANGLE HIM AT ANY

PRETEXT. THE APPLICANT SUBMITTED A DETAILED REPRESENTATION AGAINST THE FAKE CHARGESHEET ON 10.9.2013. HE DENIED THE CHARGES BEING ABSOLUTELY FALSE AND SUBMITTED THAT HE RECEIVED A COMPLAINT WITH REGARD TO INTERFERENCE BY SOME MIDDLE-MEN AND INCONVENIENCE TO THE BONA-FIDE PASSENGERS AND BEING STATION SUPERINTENDENT DEALING WITH THE TRAIN MOVEMENT AND RESPONSIBLE FOR THE ADMINISTRATION OF THE STATION, HE WENT TO THE RESERVATION COUNTER AND TOOK STOCK OF THE SITUATION. HE MARKED NUMBERS ON THE RESERVATION FORMS OF THE PASSENGERS STANDING IN THE QUEUE, SO THAT THEY COULD BE ISSUED TICKETS AS PER THEIR TURN WITHOUT ANY INCONVENIENCE. OPPOSING THE CHARGES AS SET-UP IN THE CHARGESHEET, HE SUBMITTED THAT CHECKING OF ID PROOF AND RESERVATION FORMS ETC. WAS THE WORK OF THE RESERVATION/BOOKING CLERK AND HE CANNOT BE HELD RESPONSIBLE FOR THE CHARGES SET-UP IN THE CHARGESHEET. IT HAS FURTHER BEEN PLEADED THAT RESPONDENT NO.3 WHO WAS WORKING AS SENIOR DOM, AJMER DIVISION AT THE RELEVANT TIME, WITH A PREOCCUPIED MIND, ABRUPTLY IMPOSED THE PENALTY OF WITHHOLDING ONE INCREMENT FOR ONE YEAR WITHOUT CUMULATIVE EFFECT VIDE ORDER DATED 3.12.2013. WHILE PASSING THE SAID ORDER, NONE OF THE POINTS MENTIONED BY THE APPLICANT IN HIS REPRESENTATION WERE TAKEN INTO CONSIDERATION AS RESPONDENT NO.3 WANTED TO DAMAGE HIS SERVICE CAREER AT ANY PRETEXT. THE APPLICANT SUBMITTED A DETAILED AND EXHAUSTIVE APPEAL ON 20.1.2014. THE APPELLATE AUTHORITY DID NOT EVEN SIGN THE APPELLATE ORDER AND THE APPLICANT WAS INFORMED BY RESPONDENT NO.3 VIDE HIS LETTER DATED 17.12.2014 INFORMING THEREIN THAT HIS APPEAL HAS BEEN REJECTED BY RESPONDENT NO.2. THE APPLICANT WAS ADVISED TO PREFER A REPRESENTATION AND SEEK PERMISSION TO FILE AN ORIGINAL APPLICATION BEFORE THIS TRIBUNAL. HOWEVER, THE SAME WAS KEPT PENDING BY THE RESPONDENTS. THE APPLICANT, WHEN CONTACTED HIS COUNSEL ON 14.4.2016, HE WAS TOLD THAT NO SUCH PERMISSION WAS REQUIRED AND HE OUGHT TO HAVE FILED THE ORIGINAL APPLICATION BY 17.12.2015 AND IN THIS MANNER, THE DELAY OF ABOUT 4 MONTHS HAS OCCURRED IN FILING THE INSTANT OA.

AGGRIEVED BY THE ORDER OF PENALTY IMPOSED BY THE DISCIPLINARY AUTHORITY AND AFFIRMED BY RESPONDENT NO.2, THE APPLICANT HAS INVOKED THE JURISDICTION OF THIS TRIBUNAL U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

2. THE RESPONDENT NOS. 1 TO 3 WHILE FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE OA. RESPONDENT NO.3 WHO IS JOINED BY NAME AS PARTY-RESPONDENT HAS ALSO FILED AN ADDITIONAL REPLY TO OPPOSE THE OA. APART FROM RAISING PRELIMINARY OBJECTIONS THAT THE OA IS BARRED BY LIMITATION AND BAD DUE TO NON-JOINDER OF NECESSARY PARTY, IT HAS BEEN PLEADED THAT IN THE REPLY SUBMITTED DURING THE COURSE OF INQUIRY, THE

APPLICANT HIMSELF ADMITTED THAT HE DID NOT CHECK ID PROOFS AND RESERVATION FORMS LYING WITH THE BOOKING CLERK. THE APPLICANT BEING A SUPERVISING OFFICER WAS DUTY BOUND TO CHECK ID PROOFS AND RESERVATION FORMS LYING ON THE BOOKING COUNTER WITH THE BOOKING CLERK AND THEN HE SHOULD HAVE ARRANGED AND NUMBERED THE SAME AND SINCE HE HAS FAILED TO DISCHARGE HIS DUTY EFFICIENTLY, THEREFORE, HE COMMITTED MISCONDUCT PUNISHABLE UNDER THE '1968 RULES'. ON FINDING THE CHARGES PROVED AGAINST THE APPLICANT, THE RESPONDENTS AWARDED A MINOR PENALTY OF WITHHOLDING ONE INCREMENT WITHOUT CUMULATIVE EFFECT. IT HAS FURTHER BEEN PLEADED THAT THE APPELLATE AUTHORITY HAS SIGNED THE ORDER AND RESPONDENT NO.3 WAS ONLY A COMMUNICATING OFFICER WHO APPRISED THE APPLICANT ABOUT THE ORDER PASSED BY THE APPELLATE AUTHORITY.

IN THE ADDITIONAL REPLY FILED BY RESPONDENT NO.3, IT HAS BEEN PLEADED THAT THE OA IS BAD FOR MIS-JOINDER OF PARTY AS THE APPLICANT HAS IMPLEADED RESPONDENT NO.3 BY NAME, WHO HAS NOTHING TO DO WITH THE SUBJECT MATTER. ON MERIT, IT HAS BEEN AVERRED IN THE ADDITIONAL AFFIDAVIT THAT BEFORE SERVING STANDARD FORM OF MEMORANDUM OF CHARGES, A PRELIMINARY INQUIRY AS TO IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR WAS CONDUCTED AGAINST THE APPLICANT AND ON BEING SATISFIED ABOUT THE IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR COMMITTED BY THE APPLICANT AS STATION SUPERINTENDENT AT RANAPRATAPNAGAR RAILWAY STATION, THE DISCIPLINARY AUTHORITY SERVED UPON THE APPLICANT A CHARGESHEET SF-11 VIDE MEMORANDUM ANN.A/1 FOR INITIATING MINOR PENALTY PROCEEDINGS. THE DISCIPLINARY AUTHORITY FOLLOWED THE PROCEDURE AS LAID DOWN UNDER RULE 11 OF THE '1968 RULES' AND IMPOSED PENALTY OF WITHHOLDING OF INCREMENT FOR ONE YEAR WITHOUT CUMULATIVE EFFECT AGAINST THE APPLICANT BY WAY OF PASSING A REASONED AND SPEAKING ORDER DATED 3.12.2013. THE APPLICANT PREFERRED AN APPEAL AGAINST THE SAID ORDER, WHICH WAS CONSIDERED BY THE APPELLATE AUTHORITY AND AFTER APPLICATION OF MIND OVER THE COMPLETE MATERIAL, THE VIEW TAKEN BY THE DISCIPLINARY AUTHORITY WAS AFFIRMED. THE DECISION TAKEN BY THE APPELLATE AUTHORITY WAS CONVEYED BY RESPONDENT NO.3 VIDE LETTER DATED 17.12.2014. IT HAS FURTHER BEEN AVERRED BY RESPONDENT NO.3 IN HIS ADDITIONAL REPLY THAT THE APPELLATE AUTHORITY HAD SIGNED THE ORDER DATED 4.3.2014 AND THE RESULT OF THE APPEAL WAS CONVEYED TO THE APPLICANT THROUGH A LETTER DATED 17.12.2014. THE APPELLATE AUTHORITY HAS TAKEN INTO CONSIDERATION ALL THE RELEVANT MATERIAL AVAILABLE ON RECORD INCLUDING THE REPRESENTATION SUBMITTED BY THE APPLICANT.

3. HEARD LEARNED COUNSEL FOR THE PARTIES.
4. SHRI J.K.MISHRA, LEARNED COUNSEL FOR THE APPLICANT

CONTENTED THAT THE RESPONDENT NO.3 WHO WAS EARLIER WORKING AS SENIOR DOM WAS INIMICAL TO THE APPLICANT AND HE WAS UNHAPPY BECAUSE OF HIS EFFICIENT WORKING. RESPONDENT NO.3 WHO WAS THE DISCIPLINARY AUTHORITY OF THE APPLICANT AT THE RELEVANT TIME WANTED TO ENTANGLE HIM ON ANY PRETEXT AND, THEREFORE, CHARGESHEET DATED 27.8.2013 WAS ISSUED OUT OF MALICE. HE FURTHER SUBMITTED THAT WHILE INFILTING PENALTY OF WITHHOLDING OF INCREMENT FOR ONE YEAR WITHOUT CUMULATIVE EFFECT, THE REPRESENTATION SUBMITTED BY THE APPLICANT WAS NOT TAKEN INTO CONSIDERATION BY RESPONDENT NO.3 AND THE ORDER DATED 3.12.2013 (ANN.A/2) HAS BEEN PASSED WITHOUT RECORDING ANY REASONS. THE DETAILED APPEAL SUBMITTED BY THE APPLICANT WAS ALSO NOT CONSIDERED BY THE APPELLATE AUTHORITY AND THE SAME HAS ALSO BEEN DISPOSED OF WITHOUT PASSING A REASONED AND SPEAKING ORDER. RESPONDENT NO.3 WHILE ACTING MALICIOUSLY EVEN DID NOT FORWARD THE ORDER OF THE APPELLATE AUTHORITY ALONG WITH COMMUNICATION DATED 17.12.2014 (ANN.A/3). HE, THUS SUBMITTED THAT THE ORDERS PASSED BY THE RESPONDENT AUTHORITIES WITHOUT RECORDING ANY REASON CANNOT BE SUSTAINED. SHRI MISHRA RELIED UPON A JUDGMENT OF THE HON'BLE SUPRME COURT IN THE CASE OF CHAIRMAN, DISCIPLINARY AUTHORITY, RANI LAKSHMI BAI KSHETRIYA GRAMIN BANK VS. JAGDISH SHARAN VARSHNEY AND ORS., (2009) 1 SCC (L&S) 806 IN SUPPORT OF HIS ABOVE CONTENTIONS. SHRI MISHRA ALSO ARGUED THAT THE DELAY IN FILING THE OA IS BONAFIDE AS THE APPLICANT GOT A WRONG ADVICE AND MOVED A REPRESENTATION BEFORE THE AUTHORITIES IN ORDER TO SEEK THEIR PERMISSION TO PREFER THE ORIGINAL APPLICATION BEFORE THIS TRIBUNAL. IT WAS ONLY ON 14.4.2016, THE APPLICANT CONTACTED HIS COUNSEL AND HE WAS ADVISED THAT NO SUCH PERMISSION IS REQUIRED FROM THE AUTHORITIES FOR APPROACHING THIS TRIBUNAL. HE, THUS, CONTENTED THAT THE DELAY IN FILING THE OA BEING BONAFIDE, IS LIABLE TO BE CONDONED.

5. PER CONTRA, SHRI R.K.SONI, LEARNED COUNSEL FOR THE RESPONDENTS ARGUED THAT THE OA DESERVES TO BE DISMISSED AS THE DELAY IN FILING THE SAME, AS EXPLAINED BY THE APPLICANT CANNOT BE TERMED TO BE BONAFIDE. HE FURTHER ARGUED THAT THE OA IS ALSO BAD FOR NON-JOINDER OF NECESSARY PARTIES AS THE APPLICANT HAS NOT ARRAYED THE SENIOR DOM, AJMER DIVISION IN HIS OFFICIAL CAPACITY. ON MERIT, HE SUBMITTED THAT THE APPLICANT WHILE FILING HIS REPRESENTATION PURSUANT TO CHARGE MEMO WANTED TO SHIRK FROM HIS RESPONSIBILITY BY SHIFTING IT UPON THE BOOKING CLERK. HE FURTHER SUBMITTED THAT THE APPLICANT HIMSELF HAS ADMITTED THAT HE DID NOT CHECK THE ID PROOFS AND RESERVATION FORMS LYING ON THE BOOKING COUNTER, THOUGH HE ARRANGED AND NUMBERED THE SAME. THE APPLICANT WHILE WORKING AS STATION SUPERINTENDENT, WAS DUTY BOUND TO CHECK THE ID PROOFS AND

RESERVATION FORMS AS PER DUTY LIST OF STAFF AS SHOWN IN THE OPERATING MANUAL. SHRI SONI FURTHER ARGUED THAT RESPONDENT NO.3 ON HAVING FOUND THE CHARGES PROVED AGAINST THE APPLICANT, IMPOSED A MINOR PENALTY OF WITHHOLDING OF INCREMENT FOR ONE YEAR WITHOUT CUMULATIVE EFFECT BY WAY OF PASSING A REASONED AND SPEAKING ORDER. HE FURTHER CONTENDED THAT THE APPEAL SUBMITTED BY THE APPLICANT WAS ALSO CONSIDERED BY THE APPELLATE AUTHORITY AND AFTER TAKING INTO CONSIDERATION THE ENTIRE MATERIAL ON RECORD, HE PASSED THE ORDER DATED 4.3.2014 AFFIRMING THE ORDER OF PENALTY PASSED BY RESPONDENT NO.3.

6. CONSIDERED THE RIVAL CONTENTIONS OF LEARNED COUNSELS FOR THE PARTIES AND PERUSED THE RECORD.

7. A PERUSAL OF THE CHARGE MEMO ANN.A/1 REVEALS THAT THE APPLICANT WAS CONFRONTED WITH THE CHARGES THAT HE FAILED TO EXAMINE THE RESERVATION FORMS PRESENTED BY THE PASSENGERS OF TATKAL TICKETS AS THE SIGNATURE PUT ON THE SAID RESERVATION FORMS DO NOT TALLY WITH THEIR ID PROOFS ANNEXED WITH THE SAME. THE APPLICANT SUBMITTED A DETAILED REPLY PURSUANT TO SAID CHARGE MEMO NARRATING THEREIN THAT THE DUTY TO CHECK UP THE ID PROOFS SUBMITTED ALONGWITH RESERVATION FORMS WAS WITHIN THE DOMAIN OF THE BOOKING CLERK WHO WAS COLLECTING THE RESERVATION FORMS FROM THE PASSENGERS AND THE APPLICANT CANNOT BE HELD LIABLE FOR THE SAME. IT WAS ALSO EXPLAINED BY THE APPLICANT IN THE SAID REPRESENTATION THAT ON RECEIPT OF THE COMPLAINT THAT AN UNTOWARD SITUATION HAS BEEN CREATED AT THE INSTANCE OF THE MIDDLE-MEN, THE APPLICANT WHO WAS WORKING AS STATION SUPERINTENDENT VISITED THE BOOKING COUNTER AND ALIGNED THE QUEUE OF PASSENGERS BY PUTTING NUMBER ON THEIR RESERVATION FORMS. A PERUSAL OF THE ORDER DATED 3.12.2013 PASSED BY RESPONDENT NO.3, REVEALS THAT NONE OF THE EXPLANATION PUT FORWARD BY THE APPLICANT HAS BEEN DISCUSSED. THE ORDER INFILCTING PENALTY UPON THE APPLICANT HAS BEEN PASSED MERELY BY SAYING THAT THE DISCIPLINARY AUTHORITY IS NOT FULLY SATISFIED WITH THE APPLICANT'S REPRESENTATION. SUCH A NON-SPEAKING ORDER CANNOT BE SUSTAINED IN THE EYE OF LAW. THE APPEAL PREFERRED BY THE APPLICANT AGAINST THE SAID ORDER HAS ALSO BEEN DEALT WITH BY THE APPELLATE AUTHORITY IN THE SAME MANNER. THE APPELLATE AUTHORITY EVEN DID NOT CONSIDER IT PROPER TO CONVEY THE ORDER DATED 4.3.2014 TO THE APPLICANT. RESPONDENT NO.3 WHO WAS WORKING AS SENIOR DOM IN AJMER DIVISION AT THE RELEVANT TIME, BY WAY OF LETTER DATED 17.12.2014 (ANN.A/3) APPRISED THE APPLICANT THAT THE ORDER OF PENALTY PASSED BY THE DISCIPLINARY AUTHORITY HAS BEEN AFFIRMED AS IT IS BY THE APPELLATE AUTHORITY. THE RESPONDENT NO.3 ALSO EVEN DID NOT ANNEX THE ORDER OF THE APPELLATE AUTHORITY WITH HIS

LETTER DATED 17.12.2014. IN SUCH A SITUATION, IT CAN ONLY BE INFERRRED THAT THE DEFENCE PRESENTED BY THE APPLICANT BY WAY OF A REPRESENTATION HAS NEITHER BEEN CONSIDERED IN CORRECT PERSPECTIVE BY THE DISCIPLINARY AUTHORITY (RESPONDENT NO.3) NOR BY THE APPELLATE AUTHORITY AS NO REASONED AND SPEAKING ORDERS HAVE BEEN PASSED BY BOTH THE AUTHORITIES. IT IS A BARE MINIMUM REQUIREMENT FROM A DISCIPLINARY AUTHORITY THAT WHILE PASSING THE ORDER INFILCTING PUNISHMENT UPON A DELINQUENT OFFICIAL THAT HE SHALL RECORD REASONS DEALING WITH EACH AND EVERY EXPLANATION OFFERED BY THE DELINQUENT OFFICIAL IN HIS REPRESENTATION. BUT IN THE CASE IN HAND, THE RESPONDENT NO.3 WHILE PASSING THE ORDER OF PENALTY HAS NOT DEALT WITH THE REASONS OFFERED BY THE APPLICANT HEREIN IN HIS REPRESENTATION. EVEN THE APPELLATE AUTHORITY WHILE AFFIRMING THE ORDER PASSED BY RESPONDENT NO.3 HAS PASSED THE ORDER DATED 4.3.2014 IN A CASUAL MANNER. THE HON'BLE SUPREME COURT IN THE CASE OF JAGDISH SHARAN VARSHNEY (SUPRA) WHILE DEALING WITH THE ROLE OF THE APPELLATE AUTHORITY HAS OBSERVED THAT AN ORDER OF AFFIRMATION NEED NOT CONTAIN AS ELABORATE REASONS AS AN ORDER OF REVERSAL BUT THAT DOES NOT MEAN THAT THE ORDER OF AFFIRMATION NEED NOT CONTAIN ANY REASON. IN THIS VIEW OF THE MATTER, THE ORDER DATED 4.3.2014 PASSED BY THE APPELLATE AUTHORITY WHICH HAS BEEN BROUGHT ON RECORD BY RESPONDENTS AT ANN.R/1 CANNOT BE SAID TO BE AN ORDER IN CONFORMITY WITH THE PRINCIPLES LAID DOWN BY THE HON'BLE SUPREME COURT IN THE CASE OF JAGDISH SHARAN VARSHNEY (SUPRA).

8. IN THE CONSPETCUS OF DISCUSSIONS MADE IN THE FOREGOING PARAS, THE ORDER DATED 3.12.2013 (ANN.A/2) INFILCTING PENALTY OF WITHHOLDING OF INCREMENT FOR ONE YEAR WITHOUT CUMULATIVE EFFECT AND THE ORDER DATED 4.3.2014 (ANN.R/1) COMMUNICATION OF WHICH HAS BEEN GIVEN BY RESPONDENT NO.3 VIDE LETTER DATED 17.12.2014 (ANN.A/3) CANNOT BE SUSTAINED AND THE SAME DESERVE TO BE SET-ASIDE.

9. ACCORDINGLY, THE OA IS ALLOWED. THE ORDER DATED 3.12.2013 (ANN.A/2) AND THE ORDER DATED 4.3.2014 (ANN.R/1) PASSED BY THE APPELLATE AUTHORITY AS COMMUNICATED BY RESPONDENT NO.3 VIDE HIS LETTER DATED 17.12.2014 (ANN.A/3) ARE HEREBY QUASHED. HOWEVER, THE DISCIPLINARY AUTHORITY SHALL BE AT LIBERTY TO PASS FRESH ORDER IN ACCORDANCE WITH LAW AFTER TAKING INTO CONSIDERATION ALL THE PLEAS RAISED BY THE APPLICANT IN HIS REPRESENTATION PURSUANT TO CHARGE MEMO DATED 27.8.2013 (ANN.A/1). NEEDLESS TO SAY THAT THE APPLICANT SHALL BE AFFORDED AN OPPORTUNITY OF HEARING BY THE DISCIPLINARY AUTHORITY BEFORE PASSING SUCH AN ORDER. IN THE FACTS AND CIRCUMSTANCES OF THE CASE, THE MISC. APPLICATION FOR CONDONATION OF DELAY IN FILING THE OA IS ALSO ALLOWED.

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HOWEVER, THERE SHALL BE NO ORDER AS TO COSTS.

KUMAR MONGA)

**MEMBER(J)
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