

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 529 of 2009

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jayati Chandra, Administrative Member

SHEO SHANKAR SHARMA

VS

UNION OF INDIA & ORS. (E.RLY.)

For the applicant : Mr.J.R.Das, counsel

For the respondents : Mr.P.B.Mukherjee, counsel

Heard on : 1.2.2016

Order on : 11.3.16

O R D E R

Ms. Bidisha Banerjee, J.M.

Heard the ld. Counsels for the parties.

2. An entire departmental proceeding initiated with a charge memo dt. 13.6.95, culminating into removal from service and enhanced to dismissal, is under challenge in the present OA. The indictments against the present applicant raised vide charge memo dated 13.6.95 would be as under :

“Statement of imputations of mis-conduct of mis-behaviour in support of the article of charge framed against Sri S.S.Sharma/TC/BLN.

Acting upon source information that ticket collectors working at Asansol platform are indulging in malpractices by demanding and accepting illegal money from without ticket passenger and allowing them to pass away without realising Rly. Dues, the CVO(T)/E.Rly/Calcutta ordered for conducting a departmental test check at Asansol. Accordingly a vigilance team comprising of S/Sri D.Chatterjee, VI/CCC and others from Vigilance department in association with S/Sri A.Saha, CIT/AF Sqd/HWH, S.N.Ganguly, TTI/AF/HWH, A.K.Banerjee, TTI/AF/HWH conducted a departmental test check at Asansol platform on 29.6.94 under the order and leadership of CVO(T)/E.Rly./CCC. For the purpose of the test check a check memo was prepared at about 24 hrs on 28.6.94 at Raniganj Station. Under this check memo Sri R.C.Mahato, Sainik/Vig/CCC was deployed to act as a without ticket passenger and he was given a total sum of Rs.50/- under denomination of following SC notes :-

Rs.10/- x 4 No. 40A 298688
No. 34G 449121
No. 24B 640849
No. 75M 980949 = Rs.40/-

B3

Rs. 5/- x 1 No. 64L 823814	= Rs.5/-
Rs. 2/- x 2 No. 90A 089711 No. 38C 188406	= Rs.4/-
Rs.1/- x 1 No. 86L 594578	= Rs.1/-
<hr/> <u>Rs. 50/-</u>	

Under the check memo, Sri Mahato was advised to tender the amount as would be demanded and accepted by the TC concerned at Asansol for allowing him to pass through the gate.

The vigilance team along with members of Anti fraud Squad/HWH arrived ASN at about 0/30 hrs on 29.6.94 by 3111 UP Sri R.C.Mahato went to exit gate no. M/2 of Asansol Platform and the Vigilance team and Anti fraud Squad/HWH kept incognito to watch on Sri Mahato, while passing the gate, Sri Mahato was challenged by Sri S.S.Sharma, TC/ASN (Now TC/BLN) who was performing duty at the said gate from 00 hrs to 08 hrs shift on the said date. Sri Mahato as per earlier instruction posed himself as a without ticket passenger and Sri Sharma demanded and accepted Rs.30/- from Sri Mahato, which Sri Mahato tendered from the total sum of money given to him for the purpose of the test check, and allowed Sri Mahato to pass the gate. Sri Sharma TC/ASN (now TC/BLN) did not issue any EFT to Sri Mahato for accepting the above money. After completion of the cash transaction between Sri Sharma and Sri Mahato and allowing Sri Mahato to pass the exit gate and the vigilance team requested Sri Sharma to come to the Ticket collectors office/ASN, situated at platform No.5 of the station for cash check and for recording clarificatory statement.

Sri S.S.Sharma, TC/ASN (now TC/BLN) while entering in the above office, the on duty BIC (TC)/ASN and other TCs of the station came for his rescue and by this time he threw away the accepted amount of Rs.30/- on the floor of the said office and started non-cooperation with the checking team. The said money was however, recovered from the said office. The denomination of SC notes of the said amount are as under :

Rs.10/- x 2 No. 24B 640849 No. 75M 980949	= Rs.20/-
Rs. 5/- x 1 No. 64L 823814	= Rs.5/-
Rs. 2/- x 2 No. 90A 089711 No. 38C 188406	= Rs.4/-
Rs.1/- x 1 No. 86L 594578	= Rs.1/-
<hr/> <u>Rs. 30/-</u>	

Sri Sharma, TC/ASN (now TC/BLN) on being asked, refused to give any statement on the above amount as well as on the fact. He further refused to sign the check memo dated 28.6.94 and on the SC notes, mentioned above. However, he gave a statement on his personal cash kept in his purse, at the spot on 29.6.94 under his own hand writing.

The details of the said test check and the incident were noted down in a joint check memorandum, prepared under signatures of the members of vigilance team and members of Anti fraud Squad/HWH at Asansol platform at about 2/30 hrs. On 29.6.94.

Thus, by the above misconduct/misdeeds Sri S.S.Sharma, TC/ASN (now TC/BLN) has violated Rules 3(1)(i), (ii) & (iii) of Rly. Service (Conduct) Rules, 1966."

3. The applicant would allege the following :

Two of the members of the Vigilance team namely Shri Dipankar Chatterjee and Shri Debabrata Banerjee demanded money from him on the said date of 29.6.94 during Night Shift duty of the applicant at 1.30 AM and on his refusal to accede to their demand, the said members of the vigilance team seriously assaulted him physically and also threatened him of dire consequences. He lodged an FIR with GRP Asansol on the very same date and ultimately he had to be removed to Asansol Railway Hospital by the Station Master, Asansol on the said day.

Later on a criminal case was filed before the learned J.M. 1st Class 4th Court, Asansol under Sections 323/385/332/34 of IPC. They were found guilty for the offences under Section 332/34 of Indian Penal Code and convicted and sentenced them to pay fine of Rs.2000/- only cash in default to suffer simple imprisonment of three months under Section 248(2) Cr. P.C.

The same Dipankar Chatterjee as well as Debabrata Banerjee were witness to the Disciplinary Proceedings initiated against the applicant and so it was a clear case of victimization of the applicant due to his refusal to accede to the demand of the vigilance people. The said accused persons even filed a Criminal Revisional application before the Hon'ble High Court at Calcutta in C.R.No. 1848 of 1994, against the aforesaid decision of Ld. J.M. 1st Class 4th Court, Asansol which however, was summarily rejected by the Hon'ble Court on 14.9.94 whereafter the charge memo date 3.6.95 was issued.

As per Rule 9 of RD Rules, 1968, the cases of the Disciplinary Authority had to be presented by the Presenting Officer concerned. But no such Presenting Officer was appointed. The Inquiry Officer himself presented the case on behalf of the Disciplinary Authority and acted on behalf of the Disciplinary Authority vitiating the Inquiry Procedure itself. The Disciplinary Authority failed to supply any list of documents and list of witnesses in violation of sub-rule 4 of Rule 9 of D&A Rules, 1968. Further he was not

provided with documents he wanted to rely upon on 8/9.1.96. Enquiry Officer also failed to call such defence witnesses as cited by the applicant, thereby depriving him of all reasonable opportunities to default.

He was compelled to disclose his case before completion of the trial. The Inquiring Authority failed to appreciate and consider that he sustained serious injury and had to be admitted to Railway Hospital by Station Master, Asansol himself for examination/ treatment.

On such dates when the applicant appeared before the Inquiry Authority, no inquiry proceeding was held but on such dates, when the applicant could not attend due to his illness, ex parte inquiry was held in violation of principles of natural and procedural justice. The Inquiring Authority with a pre-fixed mind deprived him of all reasonable opportunities and held the inquiry ex parte. The Enquiry Officer refused to supply such vital documents as were requested by the applicant and inspected on behalf of the Disciplinary Authority in place of P.O.

The applicant would further claim that money, as alleged to be a sum of Rs.30/- or otherwise allegedly taken from Shri R.Mahato was not found from his possession. Yet he was transferred from Asansol Division to Ballygunge Station in Sealdah Division on a penal measure and further penalized with removal from service on 13.11.97. He was subjected to multifarious punishments i.e. (i) being transferred to a different division i.e. from Asansol Division to Sealdah Division at Ballygunge Station and (ii) stoppage of increment for three years on a trivial ground of less earnings and (iii) then removed from Railway service. All his prayers and appeals went in vain.

The following documents and materials - (1) written statement made before I.O., (2) Hospital Discharge Certificate, (3) Copy of prayer for inspection of documents, (4) order by ACJM, Asansol, (5) Order of Hon'ble High Court and (6) award of working compensation commissioner, Durgapur, were never considered.

4. The applicant in his pleadings would therefore inter alia highlight the following legal lacunae in the conduct of the proceedings :

- (i) The applicant was falsely implicated by the vigilance which the authorities failed to take cognizance of while issuing the order. The charge sheet was wholly bad in law and without jurisdiction besides being devoid of any material particulars.
- (ii) No extra money was found from the person of the applicant during the trap.
- (iii) He was dragged to Ticket Collectors office and brutally assaulted by the vigilance team members which resulted in lodging of an FIR and initiation of a criminal proceeding at the behest of the applicant culminating into holding the said officials guilty of such offence and punishment with simple imprisonment. Such persons could not be validly made witness in the proceedings.
- (iv) No PO was appointed and therefore the Enquiry Officer who belonged to vigilance conducted the case on behalf of administration in absence of PO, in a biased manner, vitiating the proceedings.
- (v) The main prosecution witness R.C.Mahato and other material witnesses were not examined during the course of enquiry which vitiated the proceedings.
- (vi) The procedural provisions were not followed.
- (vii) The authorities concerned acted in flagrant disregard to the rules and the principles of natural and procedural justice as also the extant rules of the Government.
- (viii) The order of the Disciplinary Authority was passed with a closely biased and prejudged mind and without considering the defence brief as well as the reply of the applicant to the inquiry report.
- (ix) The applicant before any inquiry, was transferred to other division from Asansol Division to Sealdah Division on punitive basis and was imposed with punishment of stoppage of increment for 3 years and then removal from service and again dismissal from Railway Service which not only show the vindictive attitude of the authority

concerned but was against the fundamental rights of the applicant as provided by the Constitution of India.

(x) The entire proceeding was vitiative.

5. Per contra the respondents would allege that the entire story, that two CBIs namely D.Chakraborty and D.Banerjee wanted money from the applicant, was a concocted and a fabricated one, although they were initially convicted in a criminal appeal but they were finally acquitted.

They would submit the following :

- (i) The appointment of PO was not mandatory.
- (ii) The applicant made a false statement that no documents were supplied to him whereas on 16.1.96 during preliminary enquiry proceedings in reply to Annexure No.1 he submitted that he received the list of documents.
- (iii) The applicant did not turn up on several dates to attend enquiry. He adopted dilatory tactics and did not co-operate with the Enquiry Officer.
- (iv) He was found guilty of the charges and thus punished with removal from service.
- (v) The Appellate Authority found that the penalty was not in commensurate with the offence and so after issuance of the show cause he enhanced the penalty to that of dismissal.

6. The respondents would further submit that the applicant preferred OA 405/98 and this Tribunal while disposing it of erroneously directed ADRM(O) as Appellate Authority to dispose of the appeal who was actually the Revisional Authority. Therefore the appeal preferred by the applicant was enhanced by Sr. DCM, the Appellate Authority, and the second appeal was upheld by ADRM(O).

7. The pleadings and rival contentions were considered and the materials on record were perused.

8. The scope of judicial review of departmental action is very limited. In

Registrar General, High Court of Patna -vs- Pandey Gajendra Prasad &

Ors. [2012 (6) SCC 357] it has been eloquently held that the scope of Judicial Review under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. The Hon'ble Apex Court has enumerated the following situations where the interference with the departmental authorities is permitted :

- (i) if such authority has held the proceedings in violation of principles of natural justice; or
- (ii) in violation of statutory regulations prescribing the mode of such enquiry; or
- (iii) if the decision of the authority is vitiated by considerations extraneous to the evidence on the merits of the case; or
- (iv) if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion;

9. It is trite, axiomatic and settled law that judicial review on findings of fact is possible only where the view taken is not sustainable (*Registrar General, High Court of Judicature of Madras -vs- K. Muthukumarasamy [2014 (16) SCC 555]*).

10. Evidently the matter at hand was in regard to a trap case staged by the Railway Vigilance and so it was required to be set up in terms of para 704 & 705 of Railway Vigilance Manual which lay down the following provisions : (extracted with supplied emphasis for clarity)

"704. Traps -

(v) When laying a trap, the following important points have to be kept in view:

(a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.

(b) The transaction should be within the sight and hearing of two independent witnesses.

(c) There should be an opportunity to catch the culprit red-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it off.

(d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are Government employees and of other departments.

(e) After satisfying the above conditions, the Investigating Officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the S.P., S.P.E., is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the S.P.E. or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

705. Departmental Traps - For Departmental traps, the following instructions in addition to those contained under paras 704 are to be followed:

(a) The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilised.

All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand. A memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the Investigating Officer/Inspector. Another memo, for returning the G.D. notes to the decoy will be prepared for making over the G.C. notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witnesses will take up position at such a place where from they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the Investigating Officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope."

11. Earlier the Hon'ble Apex Court in **Chief Commercial Manager, South Central Railway -vs- G.Ratnam [2007 (8) SCC 2012]** opined that non-adherence of the instructions laid down in paras 704 & 705 of Vigilance

Manual would not invalidate a departmental proceeding. Relying upon the decision rendered in **State Bank of Patiala -vs- S.K.Sharma [1996 (3) SCC 364]** the Hon'ble Court held that the violation of para 704 & 705 of the Railway Vigilance Manual by any Investigating Officer in conducting departmental trap cases would not ipso facto vitiate the departmental proceedings initiated against the respondents on the basis of the complaint submitted by Investigating Officer to the Railway Authorities. It held that the instructions as contemplated under para 704 & 705 of the Manual have been issued not for the information of the accused in the criminal proceedings or the delinquent in the departmental proceedings but for the information and guidance of the Investigating Officers.

12. However, in a subsequent decision in **Moni Shankar -vs- UOI & Ors. [2008 (3) SCC 484]** Hon'ble Apex Court altered the judgment of G. Ratnam (supra). The Hon'ble Court explained and distinguished the said position. In the later decision Hon'ble Justice S.B.Sinha on behalf of the Bench, observed,

"Though assumption can be drawn that Paras 704 and 705 of the Railway Vigilance Manual being executive instructions do not create any legal right yet it should be emphasised that 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."

The extracts of the said judgment would be useful to quote in the present scenario as the case at hand also relates to a pre-planned trap case staged by the Railway Vigilance and required due observance of procedures laid in the paras ibid. In the judgment Hon'ble Apex Court while referring to para 704 & 705 (ibid), observed that "*with a view to protect innocent employees from such traps appropriate safeguards have been provided in the Railway Manual*".

Having found that no Presenting Officer and no independent witnesses witnessed the trap, Hon'ble Court held as follows: (extracted with supplied emphasis for clarity)

"11. The trap was laid by the members of the Railways Protection Force (RPF). It was a pre-arranged trap. It was, therefore, not a case which can be said to be an exceptional one where two gazetted officers as independent witnesses were not available.

12. Indisputably the decoy passenger was a constable of RPF. Only one Head Constable from the said organization was deputed to witness the operation. The number of witness was, thus, not only one, in place of two but also was a non gazetted officer. It was a pre-planned trap and thus even independent witnesses could have also been made available.

13. When the decoy passenger purchased the ticket, the Head Constable was at a distance of 30 meters. The booking counter was a busy one. It normally remains crowded. Before the Enquiry Officer, the said decoy passenger accepted that he had not counted the balance amount received from the appellant after buying the ticket. It was only half an hour later that the Vigilance Team arrived and searched the appellant.

14. While we say so we must place on record that this Court in the Chief Commercial Manager, South Central Railway, Secunderabad and Ors. vs. G. Ratnam and Ors. : (2007) 8 SCC 212 opined that non-adherence of the instructions laid down in Paras 704 and 705 of the Vigilance Manual would not invalidate a departmental proceeding, stating :-

Xxx xxx xxx xxx

18. We are not inclined to agree that the non-adherence of the mandatory Instructions and Guidelines contained in paragraphs 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained."

15. It has been noticed in that judgments that Paras 704 and 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. This Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

16. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that 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.

17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See - State of U.P. v. Sheo Shanker Lal Srivastava : (2006) 3 SCC 276 and Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association and another : (2007) 4 SCC 669 2007.

18. We must also place on record that on certain aspects even judicial review of fact is permissible. *E v Secretary of State for the Home Department* : [2004] 2 W.L.R. 1351.

19. We have been taken through the evidence of Shri S.B. Singh by Dr. Padia. Significantly the examination-in-chief was conducted by the Enquiry Officer himself. As the proceeding was for imposition of a major penalty, why the Presenting Officer, who must have been engaged by the department, did not examine the witness is beyond any comprehension. Even the minimum safeguard in regard to the manner in which examination-in-chief was conducted has not been preserved. The questions posed to him were leading questions. It is interesting to note that in answer to a question as to whether he had asked the appellant to return Rs.5/-, he not only answered in the negative but according to him the said statement was made by him as instructed by the Vigilance Inspector. He although proved Exhibits P/1 and P/2 which were written in English language but also stated that he did not know what had been written therein. Strangely enough, the Enquiry Officer started reexamining him. Even in the re-examination he accepted that he could not read and write English.

20. The Enquiry Officer had put the following questions to the appellant:-

"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the Enquiry?"

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.

22. The High Court, on the other hand, as indicated hereinbefore, proceeded to opine that the Tribunal committed a serious illegality in entering into the realm of evidence. It is permissible in law to look to the evidence for the purpose of ascertaining as to whether the statutory requirement had been complied with or not.

23. Dr. Padia would submit that the jurisdiction of the Tribunal was limited and as some evidence was adduced, the Tribunal should not have interfered with the order of punishment imposed upon the appellant. The Tribunal was entitled to consider the question as to whether the evidence led by the department was sufficient to arrive at a conclusion of guilt or otherwise of the delinquent officer. While re-appreciation of evidence is not within the domain of the Tribunal, an absurd situation emanating from the statement of a witness can certainly be taken note of. The manner in which the trap was laid, witnessed by the Head Constable and the legality of enquiry proceeding were part of decision making process and, thus, the Tribunal was entitled to consider the same. It was only for the aforementioned purpose that paragraphs 704 and 705 of the Manual have been invoked. It may be that the said instructions were for compliance of the Vigilance Department, but substantial compliance thereof was necessary, even if the same were not imperative in character. A departmental instruction cannot totally be ignored. The Tribunal was entitled to take the same into consideration along with other materials brought on records for the purpose of arriving at a decision as to whether normal rules of natural justice had been complied with or not.

24. The High Court unfortunately even without any material on record held that some excess amount was found from the appellant which itself was

sufficient to raise a presumption that it had been recovered from the decoy passenger. No such presumption could be raised. In any event there was no material brought on records by the department for drawing the said inference. The High Court itself was exercising the power of judicial review. It could not have drawn any presumption without there being any factual foundation therefor. It could not have taken judicial notice of a fact which did not come within the purview of Section 57 of the Indian Evidence Act.

25. We must also place on record that even Dr. Padia has taken us through the evidence of one of the witnesses.

26. The High Court has only noticed paragraph 704 of the Manual and not the paragraph 705 thereof. Paragraph 705 was very relevant and in any event both the provisions were required to be read together. The High Court, thus, committed a serious error in not taking into consideration paragraph 705 of the Manual. The approach of the High Court, in our opinion, was not entirely correct. If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go by.

27. It is the High Court who posed unto itself a wrong question. The onus was not upon the appellant to prove any bias against the RPF, but it was for the department to establish that the charges levelled against the appellant.

28. The High Court also committed a serious error in opining that sub- rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied from the said opportunity.

29. The cumulative effect of the illegalities/irregularities were required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not.

30. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual ; the Enquiry Officer acted as a Prosecutor and not as an independent quasi judicial authority ; he did not comply with Rule 9(21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.

31. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly and that of the Tribunal restored. The appeal is allowed with costs. Counsel fee assessed at Rs.25,000/-.

(emphasis supplied)

From the decision (supra) it would be evident that the Hon'ble Apex Court quite eloquently deprecated the following:

- (i) Non-adherence to the provisions of paras 704 & 705 of Railway Vigilance Manual;

- (ii) An Enquiry Officer acting as a Prosecutor and not as an independent quasi judicial authority;
- (iii) Non-compliance of Rule 9(21) of RS (D&A) Rules.

13. In the aforesaid legal backdrop we have noted the facts and discerned the following:

- (i) Neither the indictments nor the enquiry officers report or impugned orders or even the pleadings reflected that the incident was witnessed by two or more independent witnesses to establish that money was infact being passed as illegal gratification and not for something else, i.e. there was a demand and consequent acceptance.
- (ii) There is nothing to demonstrate that the entire transaction was within the sight or hearing of two independent witnesses. Therefore the trap was not laid in conformity with Rules 704 and 705 (ibid) of Manual.
- (iii) The prosecution did not examine its main witness R.C. Mahato the decoy passenger and therefore it denied the right to cross examine him. The fact of demand was required to be proved.
- (iv) During the enquiry proceedings the Presenting Officer was conspicuously absent. The Enquiry Officer therefore conducted the enquiry and put the questions to the delinquent while acting as a prosecutor and not as an independent witness. Therefore a situation deprecated by the Hon'ble Apex Court supra, prevailed.
- (v) The tainted or marked notes were not recovered from the person of the delinquent. Neither any extra money was recovered from the person to suggest that he was a habitual offender, which would constitute a mitigating or extenuating factor.

14. The applicant had alleged that he was dragged and assaulted by the Vigilance Team Members due to which he sustained injuries, got hospitalised, lodged an FIR, instituted Criminal case and got the Members convicted and sentenced and even got compensation from Workman's Compensation Court from the said accused. The conviction was on the basis of statements of eye witnesses, P.B.Chaterjee, Head TC. The same officials acted as witness in the Disciplinary Proceeding that was initiated after one year of the incident and long after their conviction. The reason for use of force by the vigilance officials upon the applicant is not understood. All the officers of the Railways seemed to have ignored the facts aground.

15. That apart we noted that for a petty sum of Rs.30/- the applicant was first penalised with a removal and thereafter it was enhanced to dismissal from service robbing him of all his earned service benefits.

In regard to proportionality, a punishment has to be weighed to be seen whether the punishment imposed was really arbitrary or an outrageous defiance of logic so as to be called irrational and perverse warranting interference in exercise of power of judicial review (*Chandra Kumar Chopra - vs. UOI & Ors. [2012 (6) SCC 369]*) and (*Chairman-cum-Managing Director, coal India Ltd. & Anr. -vs. Mukul Kumar Choudhuri & Ors. [2009 (15) SCC 620]*).

In the case of *G.Ratnam* (supra) we noted that a Head TTE who was charged with Rs.36/- as un-accounted cash, was penalised by the Railways with reversion by grades from Head TTE to Ticket Examiner. Therefore the penalty of removal/dismissal imposed upon the applicant was shockingly disproportionate to the offence alleged and to the extent proved.

16. In the aforesaid backdrop we quash both the penalty order as well as the Appellate/ Revisional order and remand the matter back to the Disciplinary Authority with liberty to pass fresh orders in accordance with law within three months.

17. In case a further proceeding is contemplated the applicant may be reinstated on suspension w.e.f. the date of removal/dismissal or even otherwise in accordance with law. His rights would ultimately be governed by the fresh orders to be passed by the Disciplinary Authority.

18. The OA is accordingly disposed of. No order is passed as to costs.

(JAYATI CHANDRA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

in