CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI
ORIGINAL APPLICATION No.389/2014.

Dated this the 30th day of March, 2017

CORAM:HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE MS.B. BHAMATHI, MEMBER (A)

Shri. Asipi Krishna Rao
Age 47 years, working as Chief Depo Material Superintendent, Mahalaxmi Stores, Western Railway, residing at Saraswati Darshan, 'B' Wing Room No. 309, Plot No. 38, Central Park, Nallasopara (East),
Dist:- Thane Pin 401 209. **...Applicant**
(Applicant by Advocate Shri. S.V. Marne)

Versus

1. **Union of India,**
   Through the General Manager
   Western Railway Headquarters
   Chruchgate, Mumbai 400 020.

2. **The Chief Materials Manager (E&G)**
   Western Railway Headquarters office,
   Chruchgate, Mumbai 400 020.

3. **The Deputy Chief Materials Manager**
   Western Railway,
   Lower Parel Workshop,
   Mumbai 400013. **...Respondents**

(Respondents by Advocate Shri. V.S. Masurkar)

Reserved on :- 24.02.2017.
Pronounced on :- 30.03.2017.

ORDER

Per:-Hon'ble Ms.B. Bhamathi, Member (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

> *"(a). This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondent and after examining the same quash and set aside the orders dated 04.01.2013 passed by the Disciplinary Authority and order dated 22.06.2013 passed by the Appellate Authority with all consequential benefits.*
>
> *(b). Cost of the application be provided for.*
>
> *(c). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."*

2. The case of the applicant is that he was appointed to the post of Depot Store Keeper III (DSK-III) in Western Railway on 03.03.1992. The said post of DSK-III was subsequently redesignated as Depot Material Superintendent-III (DMS-III). The applicant was thereafter promoted to the post of DMS-II and DMS-I and is currently working on the post of Chief Depot Material Superintendent (CDMS) and is posted in Mahalaxmi Stores in the office of Deputy Chief Materials Manager (DCMM), Mahalaxmi.

2.1. During the year 1999-2000 the applicant was posted as DMS-II at Scrap Yard, Mahalaxmi. In the scrap yard there are

three different posts namely DMS-III, DMS-II and DMS-I. DMS-III was assigned the job of only receiving the scrap whereas the responsibility of putting the scrap for auction lies on DSM-I.

2.2. After 7-8 years of the posting of the applicant as DMS-III in scrap yard, Mahalaxmi, the respondents conducted stock verification in the year 2007 when the applicant was working on the post of DMS-I and was not posted in Scrap Yard, Mahalaxmi. In the said verification, 50487.47 kgs scrap copper/aluminium cable was found short. This conclusion was apparently reached on the basis of receipt of 46856.930 kgs of scrap copper/aluminium cable by the applicant during the year 1999-2000, whereas only 8500 kgs was put by the applicant for auction.

2.3. The above erroneous conclusion was arrived on the basis of vigilance investigations conducted by the office of SDGM and CVO/CCG. The applicant was never called for any investigations or enquiry.

2.4. On completion of investigations, the vigilance organization recommended major penalty charge sheet against the applicant and one Shri Nehru Manickam, who was also posted as DMS-III in Scrap Yard, Mahalaxmi before the applicant i.e. between 22.12.1997 to 18.05.1999, while the applicant was posted for the period 19.01.1999 to 12.04.2000. The Vigilance Department prepared the charge sheet to be issued to the applicant and nominated Enquiry Officer (IO) and Presenting Officer (PO). The applicant was supplied with the copy of letter nominating IO/PO dated 30.05.2008 of SDGM and CVO/CCG under RTI, later.

2.5. The Disciplinary Authority (DA) i.e. R-2 issued Memorandum of charge sheet dated 13.11.2008 to the applicant as per the draft prepared by the vigilance, without exercising his discretion to modify the proposal of vigilance.

2.6. The charge sheet was issued after a delay of eight long years from the date of the incident. The charge sheet appears to

be very confusing in that the calculations shown in the article of charge appears to be arithmetically incorrect.

2.7. From the imputation of misconduct it appears that the receipts of auction done during the period from 1996-97 to 2006-07 are taken into account to arrive at the shortage figure. However, all the employees posted as DMS-III in scrap yard, Mahalaxmi during 1998-2007 were not issued charge sheet and only two persons namely Shri. Nehru Manickam and applicant were singled out. No disciplinary action was initiated in respect of the employees posted after 2000, although the shortage is arrived at on the basis of receipt and issue of scrap cable during 1998-2007.

2.8. It appears from the charge sheet that shortage and excess in stock had been a regular affair in the scrap yard during the entire period from 1998-99 to 2006-07 in that there can be shortage/excess in each year. However, the respondents contend that there was maximum variation during 1997-98

and 1999-2000 during the period that applicant and Shri. Nehru Manickam were on the post of DMS-III and were selected for issuance of charge sheet.

2.9. The applicant submitted his application dated 26.11.2008 for supply of fifteen documents for preparation of his defence. However, by letter dated 06.08.2009, R-3 refused to provide the said documents to the applicant stating that the same would be supplied on its receipt from the concerned officer and the applicant was asked to submit his reply to the charge sheet. The applicant thereafter submitted his reply to the charge sheet on 18.08.2009 stating that as per the duty list, DMS-I was responsible for formation of fresh lots, reformation of old lots and putting up the same to survey committee for auction being overall in-charge of the scrap yard.

2.10. The DA left with no discretion by the Vigilance, had no option but to nominate IO and PO to conduct enquiry against the applicant, although, the officer who was

nominated by the vigilance for appointment as IO was apparently repatriated. Hence, after seeking fresh nomination from SDGM and CVO/CCG, the DA appointed a different IO and PO vide letters dated 01.01.2010 and 11.02.2010 respectively. At the end of the enquiry, the PO submitted his defence brief on 07.09.2010. The IO thereafter submitted his report on 29.10.2010 to the DA. The IO held that the charges leveled against the applicant were proved.

2.11. The DA was not satisfied with the enquiry conducted by the Enquiry Officer and with the findings recorded in his report. By letter dated 03.06.2011, the DA raised two queries. Firstly, he pointed out that the IO did not examine how the shortage of material, which was detected only in 2007, is attributable to the applicant, who relinquished the charge of DMS III in 2000. He considered that this needed to be examined by calling further records/witnesses. Secondly, he pointed out that he would need to examine if

'segregation and formation of lot' for receipted material is same as 'putting up for auction', which includes formation/reformation of lots putting up to survey committee, convening the survey committee, survey sheet etc and whether these two aspects are same.

2.12. The DA therefore sent the report back to the IO vide letter dated 03.06.2011. The applicant was not supplied copy of the letter dated 03.06.2011, which was finally received under RTI Act, much later. The IO wrote to the DA on 16.06.2011 stating that his findings were based on oral/documentary evidence and not on matters outside the records. It was stated that there was preponderance of probability attributed to the applicant for shortage of material detected in stock verification conducted in 2007. It is stated that proper segregation of receipted scrap material, formation of lot, reformation of lot, putting up to survey committee etc. are various steps taken to put material for auction for

expeditious disposal of scrap material.

2.13. The DA recorded his provisional views to the effect that the charge against the applicant was not proved. The applicant was not provided with the said provisional views of the DA recorded on the file. The DA sent a letter dated 09.09.2011 annexing report of the IO, DA's letter dated 03.06.2011, IO's letter dated 16.06.2011 alongwith his provisional views to the vigilance department as per procedure. The Vigilance vide letter dated 02.01.2012, requested the DA to reconsider the case and impose suitable penalty in line with advice of Vigilance. The SDGM and CVO-CCG came to the conclusion that the charge against the applicant was proved holding that though the shortage was detected in 2007 and that, if all the DMSs handling the portfolio were careful and had discharged their duties properly, shortage of this magnitude would not have occurred.

2.14. The DA reconsidered the case after vigilance advice and once again came to the

conclusion that charge against the applicant was not proved and that the charge sheet should be dropped. The DA arrived at this conclusion on the basis of the findings that as per the duty list of DMS-III, the applicant was not responsible for lot formation and could not be responsible for not putting up the cable aluminium/copper for auction for which the responsibility was solely on DSM-I. It was further held by the DA that during 1999-2000 and 2007-2008, many had worked DSM-III in the scrap yard, that shortage of high value ought to have been brought to the notice of administration, while taking over the charge by employees within two months and that the employees taking over charge in 2007 should be held responsible as per stores instructions No.185 dated 16.07.1974. The DA held that DMS staff working in 2007 alone can be held responsible.

2.15. The DA therefore proposed to pass a speaking order for exoneration of the applicant to Vigilance vide letter dated

04.04.2012. The Vigilance however disagreed with the views of DA and continued pressurizing the DA for holding that the applicant was responsible and repeated the observations earlier made in the letter and directed the DA to issue notice of penalty vide letter dated 24.05.2012.

2.16. The DA ultimately gave up because of repeated pressure of the vigilance and issued penalty order dated 04.01.2013 holding the applicant guilty of a part of the charge. The DA continued to hold that the applicant was not responsible for putting full quantity for auction as it was not a part of his duty as well as for any shortage detected in the year 2007. But, to satisfy the vigilance, he also held that the only charge proved against the applicant was not getting the scrap material verified in time, which in any case, was not of serious nature. The DA therefore imposed the penalty of stoppage of increment for one year with future effect.

2.17. The applicant preferred an appeal

dated 25.01.2013 to R-2. Vide order dated 22.06.2013, R-3 rejected the appeal of the applicant holding that it was purely a system failure rather than individual failure. The AA however held that the applicant failed in performing his duty of timely segregation of material for further formation of lots. But, held that applicant cannot be held responsible for shortage during stock verification for the year 2007. The AA has vaguely stated that 'I hereby impose same penalty on Shri A.K. Rao' holding that there was an avoidable lapse on the part of the applicant and therefore maintained the penalty given by DA. The said order of AA dated 22.06.2013 was later corrected by letter dated 09.10.2013.

2.18. The vigilance was not satisfied with the penalty of withholding of increment for one year with future effect imposed on the applicant by the DA on an erroneous assumption that the said penalty was minor penalty therefore, directed that the case of the applicant be referred to the Revising

Authority (RA) for revision of the case for imposition of major penalty on the applicant vide letter dated 08.05.2013. The applicant was not served with the copy of the said letter dated 08.05.2013.

2.19. Accordingly, R-3 sent letter dated 29.05.2013 to R-2 forwarding the file of the applicant for taking revisionary action for enhancement of penalty imposed on the applicant. However, the applicant was not served with any show cause notice from the Revising Authority for enhancement of the penalty.

2.20. Therefore, it appears that the case of the applicant was put up for review before R-1 as desired by the SDGM and CVO for enhancement of the penalty. However, by letter dated 22.11.2013, the R-1 refused to exercise power of suo moto revision and upheld the penalty imposed on the applicant by the DA. The applicant received copy of the said letter dated 22.11.2013 under RTI.

2.21. The grounds on which the impugned orders dated 04.01.2013 and order dated

22.06.2013 are challenged are as follows:-

(i). Handing over the discretion by the DA to the Vigilance while taking decision in the case of the applicant.

(ii). The Vigilance had no jurisdiction to disagree with the views of the DA or to direct DA to impose penalty even though the DA was of the view that the charge was not proved.

(iii). The DA imposed the penalty only to satisfy the wishes of the Vigilance and felt helpless and thought that exonerating the applicant despite two directives of vigilance may amount to showing favouritism to the applicant and out of fear the DA imposed such a penalty.

(iv). The DA, acted on the dictates of the SDGM and CVO. The DA has not exercised the discretion but it is SDGM and CVO who has exercised the power of punishing the applicant in violation of rules. The Hon'ble Supreme Court in the **Indian Railway Construction Company Ltd. Vs. Rajay Kumar (2003) 4 SCC 579** held that Vigilance can

disagree but DA cannot be compelled to exercise his discretion in a particular manner. Discretion must be exercised only by the authority to which it is committed and where an authority hands over its discretion to another body, such act is ultra-virus.

(v). Similar view has been taken by the Hon'ble Supreme Court in **Nagaraj Shivarao Karjagi Vs. Syndicate Bank (1991) 2 SCC 219** where orders passed by the Disciplinary Authority under dictation of CVC was set aside.

(vi). The DA held that the charge as levelled against the applicant was not proved in the penalty order dated 04.01.2013. The only fault found by the DA against the applicant is for not getting the scrapped material verified in time from accounts department. However this was not the charge levelled against the applicant in the charge-sheet. Hence, applicant has been punished in respect of an allegation which was not a part of the charge-sheet and on this ground the impugned penalty imposed on

the applicant deserves to be quashed and set aside.

(vii). Even otherwise the penalty or stoppage of increments for one year with cumulative effect is shockingly disproportionate to the alleged misconduct in not getting scrap material verified from accounts department in time, which the DA himself has held as not being of a serious nature.

(viii). The penalty imposed on the applicant is also discriminatory in that the respondents have imposed lesser penalty of reduction by 2 stages for six months without further effect on Shri Nehru Manickam, who was predecessor to the applicant on the same post of DMS-III with same responsibility and was issued with identical charge-sheet. Hence, while Shri Nehru Manickam suffered loss of wages only for 6 months and his pay was, thereafter, restored, the applicant will have to permanently bear loss of one increment. The penalty of stoppage of increment for one year with future effect

will have severe financial effect on the applicant permanently.

(ix). The applicant has 13 years more service left before his retirement. Hence, this penalty may have effect of loss of wages of about 7-8 lakhs over the period of next 13 years and on pension thereafter.

(x). The charge-sheet was issued after a period of 9 long years on 13.11.2008 questioning the applicant's conduct during the year 1999-2000. It is impossible for any person to recollect the happening of events with precise certainty. Therefore, on the ground of delay also the charge-sheet and the consequent penalty order deserves to be quashed and set aside.

(xi). The respondents in the present case were merely out to fix responsibility on some persons in the alleged shortage found in the year 2007. The applicant was made a scapegoat in the entire matter. By conducting stock verification in the year 2007, the respondents wanted to somehow create a record that somebody was found

accountable for shortage and punished in the matter to shield the actual guilty persons.

(xii). The DA himself has held in the impugned penalty order that the applicant cannot be held responsible for shortage detected in the year 2007. Hence, when this finding was recorded, the sole charge leveled against the applicant got disproved and the applicant ought to have been exonerated. The DA also held that the applicant cannot be held responsible for putting up full quantity received by him as it was not his duty as per the duty list and no documents were produced to show the applicant's clear signature on any receipt voucher. Hence, both the elements of charges of failure to put up total quantity of scrap and shortage in stock were held to be disproved. Therefore, the penalty imposed on the applicant is not maintainable and deserves to be quashed and set aside with all consequential benefits.

(xiii). The order of the AA is cryptic and does not deal with the grounds raised by

the applicant in the enquiry process. The applicant raised specific plea in his appeal, that both the element of charges were held to be disproved and that he was punished on a new charge which was not a part of the charge-sheet and on which he was not given any opportunity for defence. However, the AA has not dealt with this ground in the appeal and has rejected the appeal by recording general findings. Hence, the AA has committed the same illegality which the DA committed to punish the applicant on fresh charge of not doing timely segregation of material.

(xiv). The DA has recorded a finding that though applicant was solely responsible for putting up lower quantity in auction, it was an avoidable loss on his part which is unbecoming of government servant in the Railway Service (Conduct) Rules, 1966. This finding is contra to his own findings that the applicant cannot be held responsible for putting up full quantity received by him as it was not his duty as per the Duty list.

3. In the reply to the OA, the contentions in the OA have been disputed and denied. The respondents have relied upon the judgment of Hon'ble Supreme Court in the case of **State of Tamil Nadu vs. S. Subramaniam reported in AIR 1996 SC 1232** wherein it was held that the Tribunal has no power to trench on the jurisdiction of statutory disciplinary authorities to appreciate the evidence and to arrive at its own conclusions. The judicial review is not an appeal against a decision, but a review of the manner in which the decision is made. It is the exclusive domain of the DA to consider the evidence on record and record findings whether the charge has been proved or not. It is equally settled law that a technical rule of evidence has no appreciation for the disciplinary proceedings and the authority is to consider the material on record.

3.1. In the case of **Govt. of Tamil Nadu Vs. K.N. Ramamurthy reported in 1998 (1) SLJ (SC) 63** the Hon'ble Supreme Court held that

the Tribunal cannot interfere in findings if there is no flaw in the procedure.

3.2. The respondents have stated that at every stage the applicant was given reasonable opportunity to defend his case and even personal hearing was granted. Hence, there is neither procedural flaw nor violation of the statutory rules. The punishment imposed on the applicant is commensurate with the gravity of the misconduct proved and hence the OA is devoid of merit and therefore liable to be dismissed.

3.3. The respondents have relied upon the following judgments also in support of their contentions:-

> ***(i).1997 (1) SCSLJ 227 Govt. of Tamil Nadu vs. S. Vel Raj.***
> ***(ii).JT 1998 (4) SC 2366 Commissioner and Secretary to the bGovt. Vs. S. Shanmugam.***
> ***(iii).1998 (1) SCSLJ 74 Union of India Vs. B.K. Srivastava.***
> ***(iv).1993 (1) SCSLJ 78 Union of India Vs. A. Nagamalleshwari.***
> ***(v).JT 1998 SC 61 Apparel Export Promotion Council Vs. A. K. Chopra.***
> ***(vi).AIR 2014 SC 766 (2013) 10 SCC 106 Deputy Commissioner, KVS vs. J. Hussain.***
> ***(vii).(2011) 15 SCC 310 Panchmahal Vododara Gramin Bank and Others vs.***

D.M. Parman.
(viii).(2013) 12 SCC 372 Lucknow Kehetriya Gramin Bank Vs. Rajendra Singh.
(ix).(2014) 1 SCC (L&S) 641 Stanzen Toyotetsu Indian Pvt. Ltd. Vs. Girish V. & Ors.
(x).(2014) 1 SLJ (SC) 273 State of West Bangal Vs. Sanker Ghosh.
(xi).(2011) 8 SCC 695 Oriental Bank of Commerce Vs. R.K. Uppal.
(xii).AIR 2014 SC 766 Dy. Commissioner KVS Vs. J. Hussain.

3.4. In the case of **Govt. of Tamil Nadu vs. S. Vel Raj (Supra)** the Hon'ble Supreme Court held that while re-examining a case for reduction of penalty imposed by DA, such power is ordinarily not available to a Court or Tribunal. The scope of judicial review is permissible and interference is permissible only when the punishment is shockingly disproportionate.

3.5. In the case of **Govt. of Tamil Nadu Vs. K.N. Ramamurthy (Supra)** the Hon'ble Supreme Court has held that Judicial Review Courts should not be guided by misplaced sympathy as a factor in judicial review while examining quantum of punishment. Similar view has been taken in **Dy. Commissioner KVS Vs. J. Hussain (Supra).**

3.6. In the case of **Panchmahal Vadodara Gramin Bank & Others vs. D.M. Parmar (Supra),** the Hon'ble Supreme Court has held that non supply of those documents did not result in violation of principles of natural justice. It has been further held that as long as there is sufficient evidence and material in support of said findings, the High Court cannot interfere therewith in the exercise of powers of judicial review under Art.22-Courts of the Constitution of India.

3.7. In the case of **Lucknow Kshetriya Gramin Bank vs. Rajendra Singh (Supra),** the Hon'ble Supreme Court held it is in the exclusive jurisdiction of DA/AA to determine the quantum of punishment.

3.8. As regards the facts of the case, the respondents have stated that a Press Clipping appeared in the News Paper "Lok Mat" dated 11.04.2007 related to the stock verification report of Non-ferrous cables and armoured cables conducted by Accounts Dept in scrap yard and Godown for two P.L.Nos.98414215 and 98414150 (pertaining to

applicant's case) and the report was called for by the General Manager's Office. After investigating into the matter, the then DCMM, Mahalaxmi gave his detailed report on 10.05.2007 giving complete details of the Receipts, Issues, Quantity put up for disposal/auction during the period 1996-97 to 2006-07 and shortage found therein.

3.9. Thereafter, a joint check was conducted by Vigilance and Accounts Department in the year 2007 during which huge shortage of 50487.47 kgs of cable was found. The Vigilance department therefore recommended for issuance of major penalty charge-sheet to the applicant. The applicant was posted in scrap yard, Mahalaxmi during the period from 19.01.1999 to 12.04.2000. As per the Duty list dated 29.07.1999 issued by the then District Controller of Stores (G), Western Railway, Lower Parel, as the DMS-III of Scrap Yard, he was the custodian of materials received in the yard by various modes of receipts. Hence, he was responsible

for segregation of the receipted scrap materials as per P.L. Codes in 98 Group and formation of lots.

3.10. As per the above duty list, he was also responsible for the upkeep till its disposal and also his duties included assisting DMS II Scrap Yard, Mahalaxmi in witnessing the proper delivery of sold scrap material. It is true that as per the duty list dated 07.08.1999 issued by the then DCOS (G), Western Railway, Mahalaxmi, DMS-I Scrap Yard, Mahalaxmi was the overall in charge of the scrap yard and was responsible for formation of fresh lots, re-formation of old lots and putting up the same to the survey committee. As per the last account verification of the P.L. Item No.98414215 (i.e. Cable Copper/Aluminium with insulation) done on 09.02.1998 and during the accounts verification, a difference of 14994.500 Kgs was found between the Book balance and the Ground balance. The applicant was then transferred from Scrap Yard, Mahalaxmi on 12.04.2000. In the Stock

verification conducted by the Accounts Department in the month of March 2007 i.e. on 22.03.2007, huge shortage of 51756.470 Kgs was found of the said scrap Item to P.L. No.98414215. Further, during the Vigilance check conducted on 04.06.2007, a quantity of 1269 kgs was found short. Thus, the net quantity found short after the check was 50,487.47 kgs (i.e.51756.470-1269 kgs). During the tenure of the applicant as DMS-III of Scrap Yard, Mahalaxmi during the year 1999 to 2000, fresh receipt 46856.930 kgs of Cable to P.L.No.98414215 was received by the applicant and only 8000 kgs of cable was put up for auction i.e. a quantity of 38356-930 kgs of material was not put up for auction by the applicant. The applicant therefore failed to put up the entire quantity of cable to P.L.No.98414215 i.e. 46856-930 kgs received during his tenure from 1999 to 2000 for auction and shortage of 50487.47 kgs was found during the Stock verification conducted in the year 2007.

3.11. Hence, due to negligence and

careless way of working by the custodian, i.e. the applicant, this may have led to misappropriation and leakage due to accumulation of material. Therefore, the Vigilance on the basis of material evidence and records, found by them during the joint check, recommended for issuance of a major penalty charge-sheet to the applicant vide their Confidential letter dated 30.05.2008. The charge-sheet was issued to the applicant after shortage was found after the Stock verification was conducted jointly by the Accounts and Vigilance Department on 09.02.1998. No Stock verification had been conducted after 09.02.1998 by the Accounts department.

3.12. The calculation of fresh receipts, issued during the year 1996-97 to 2006-07 of the said Item is as shown in Table-II of Annexure II of the charge-sheet and the details of the item put up for auction during the period 1998-99 to 2006-07 is as shown in Table-III of the Annexure-II of the charge-sheet (Annexure A-4). The net

shortage of 50487.47 after the Joint verification by the Accounts department & Vigilance department is shown in Table-I of Annexure-II of the charge-sheet dated 24.07.2008 and 13.11.2008. The maximum variation was found during the period 1998-99 & 1999-2000, which pertained to the tenure of Shri Nehru Manickam and applicant, who were the custodian of materials at Scrap Yard, Mahalaxmi and responsible for the upkeep of the same till its disposal.

3.13. Copies of relied upon documents were supplied to the applicant vide letter dated 06.08.2009 with reference to his application dated 26.11.2008. The additional documents which were requested by the applicant for submission of his proper defence could not be provided to him as these documents were in the custody of different officials.

3.14. As per Para 2.1.3 of Railway Board's letter No.2006/V-I/Meet/6/1 dated 13.07.2006 (RBE No.13/2008) for major penalty cases arising out of Vigilance

Investigation, where the DA proposes to exonerate or impose a minor penalty, the DA has to first record his provisional views and consult vigilance organization once, giving reasons for disagreement with vigilance advice. In the light of the above instructions and after receipt of the IO's report dated 29.10.2010 and IO's remarks to the DA's queries given vide his letter dated 16.06.2011, the provisional views recorded by the DA dated 29.08.2011 were sent to the Vigilance for seeking their comments vide Confidential letter dated 09.09.2011. However, the vigilance department vide letter dated 02.01.2012 did not agree to the provisional views of the DA and then DCMM PL with the following comments:-

> *"The DA are at variance from the Vigilance Advice. It is seen from the perusal of the Inquiry Report of the IO that Shri A.K. Rao, DMS-I/Stores P1 was custodian of material at Scrap Yard, Mahalaxmi. He was responsible for receipt of the scrap, its segregation and formation into disposable lot".*

3.15. In DAR cases arising out of

Vigilance Investigation, Vigilance Organization is only an Advisory body which can furnish its comments in such cases on the reference made by the DA. In the present case, the Vigilance department has played its role to this extent by giving its comments/disagreement to the DA's Provisional views dated 29.08.2011, 09.09.2011 and 04.04.2012. The Vigilance department has merely requested the DA to reconsider the case and impose suitable penalty in line with their vigilance advice. The Confidential letter dated 24.05.2012 of Vigilance (in response to DA's letter dated 04.04.2012) for passing speaking order merely communicates that the vigilance department stands by its earlier advice given vide letter dated 02.01.2012 and that action taken may be forwarded to the vigilance department at the earliest. The Vigilance department has not given any direction to the DA to issue notice of penalty as stated by the applicant.

3.16. The Vigilance Organization being an

advisory body cannot influence the DA's decision. The DA has to apply his own mind and arrive at his own conclusions based on the material evidence based on the records available with him. In the impugned order dated 04.01.2013, the DA has recorded that "after applying my mind, I have come to the conclusion that CO Shri A.K. Rao, DSL-I/PL have failed in his duties."

3.17. The reasons for imposing the penalty has been given in detail by the DA in the speaking order, copy of which has been given to the applicant alongwith the NIP dated 04.01.2013. Hence, the contentions of the applicant that the DA has issued the penalty order dated 04.01.2013 under the pressure of Vigilance organization has no basis. The AA and RA have taken their decision as per due process, in accordance with law. The applicant's contention that the charge of not getting the scrap material verified in time, for which the applicant is held responsible, is not levelled in the charge-sheet dated 13.11.2008 issued to him,

is not relevant now because this aspect has already been adequately addressed and covered by higher authorities while disposing off the appeal.

3.18. In the case of **Madhukar Nivruthi Mane & Others vs. Union of India & Others (O.A.No.171/2003 & 11 Others OAs)** where relying on the judgment of the Hon'ble Supreme Court this Tribunal has held that, in the case of **Kuldeep Singh vs. Commissioner of Police & Others (1999) 2 SCC 10** at para 10. The Apex Court held that:-

> *"A broad distinction has, therefore, to be maintained between the decision is arrived at on no evidence or evidence which are perverse and those which are not. If a decision which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But, if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusion would not be treated as perverse and the findings would not be interfered with."*

3.19. The Hon'ble Apex Court in the case of **N. Rajarathinam Vs. State of Tamil Nadu reported in 1991 AISLJ 10** held that standard of proof is domestic inquiry is only preponderance of probability. Court

cannot act as fact finding forum. If there is some evidence on record, the decision of disciplinary authority cannot be faulted.

3.20. In the case of **Government of Tamil Nadu & Others Vs. S. Vel Raj (Supra),** the Apex Court held that standard of proof in DAR action is not a proof beyond doubt.

3.21. In the case of **Transport Commissioner, Madras vs. A. Radha Krishna Moorthy reported in 1995 (1) ATJ 299,** the Hon'ble Apex Court held that Administrative Tribunal has no jurisdiction to go into the truth of the allegations/charges particularly at a stage prior to the conclusion of the disciplinary enquiry.

3.22. In the case of **Government of Tamil Nadu & Another vs. A. Rajapadian reported in AIR 1995 SC 561,** the Hon'ble Apex Court held that it has been authoritatively settled by string of authorities that the Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant

material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Tribunal to review the same and reach different finding than that of the DA. It is the latest view of the Hon'ble Apex Court that the Tribunal cannot sit in appeal over the findings of DA and AA. It cannot re-appreciate the evidence and substitute its own authority and cannot go into the question of sufficiency or insufficiency of the evidence.

3.23. In the case of **Damoh Panna Saar RRB Vs. Munna Lal in Civil Appeal No.8258 of 2004** it has been held that interference is not permissible unless the order is contrary to law or the relevant factors were not considered or the irrelevant factors were considered or the decision would not have been taken by a reasonable person.

3.24. In the case of **Dr. Anil Kumar vs. Union of India reported in 1998 9 SCC 47** the Hon'ble Apex Court held that even two views

based on the same material available before DA also is not a valid ground for intervention.

3.25. In the case of **B.C. Chaturvedi Vs. Union of India reported in 1995 (6) SCC page 749,** the Hon'ble Supreme Court have observed that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline.

3.26. In the case of **Government of Tamil Nadu vs. N. Ramamurthy AIR 1997 SC 3571** the Hon'ble Apex Court held "the Tribunal has no jurisdiction to go into the correctness of truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority".

3.27. In the case of **R.S. Saini Vs. State of Punjab And Others JTI 1999 (6) SCC 507** it was held that the Court while exercising writ jurisdiction cannot reverse the findings of Inquiry Authority on the ground that the evidence adduced before it is

insufficient. If there is some evidence on record for the reasonable conclusion of Inquiry Authority, it is not the function of Tribunal to review the evidence and to arrive at own independent findings.

3.28. In the case of **Bank of India vs. Digale Suryanarayanan 1999 (5) SCC page-762** the Hon'ble Apex Court held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirements of law is that allegation against the delinquent must be established by such evidence acting upon, which, a reasonable person acting reasonably and with objectivity, may arrive at the same finding.

3.29. In the case of **Shri Parmananda Vs. State of Haryana & Others SLP (Civil) No.6998 of 1988** has held as follows:-

> ***(i).*** *The jurisdiction of the Tribunal to interfere with Disciplinary matter or punishment cannot be equated with an appellate jurisdiction.*
>
> ***(ii).*** *The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or perverse.*
>
> ***(iii).*** *If there has been an enquiry consistent with the rules and in accordance with the Principles of*

Natural Justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

(iv). *If the penalty can be lawfully imposed and is imposed on the proof of misconduct, the Tribunal has no power to substitute its own discretion.*

(v). *The adequacy the penalty, unless it is malafide, is not a matter for the Tribunals to be concerned with.*

4. In the Rejoinder, the applicant has denied the contentions of the respondents and reiterated the contentions of the OA specifically stating that the applicant is not urging this Tribunal to reassess the evidence on record. But the applicant has raised a vital point about interference by Vigilance in the exercise of discretion vested by law in the DA. The law point raised is also in respect imposing punishment based on a charge which was never levelled against him. Hence, all the judgments relied upon by the respondents are inapplicable in the fact and circumstances of the present case.

5. The Tribunal has gone through the O.A. alongwith Annexures A-1 to A-18 and

Rejoinder filed on behalf of the applicant.

6. The Tribunal has also gone through the Reply along with Annexure R-1 and the original file records filed on behalf of the respondents.

7. The Tribunal has heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

8. The first issue to be considered is whether any of the disciplinary authorities were subjected to pressure from the Vigilance and whether of the impugned orders were passed. The second issue is whether the charge held proved by the DA and in which penalty was imposed was not part of the Article of Charge. Thirdly, whether principles of natural justice were adhered to.

9. The Article of Charge reads as follows:-

"***Article of Charge***:-

Shri. A.K. Rao, the then DMS III while working as such, at Scrap Yard MX, under DY. CMM/MX was found to have committed gross misconduct during the period 1999-2000, in as much as that:-

Shri. A.K. Rao had ***failed to put up the total quantity of scrap Copper/*** *Alluminium cable to PL No. 98 41 4215* ***received by him during the period of 1999-2000,*** *and the same was* ***found short*** *50487.47 Kgs during stock verification conducted in the year of 2007. In the year* ***1999 to 2000 he had received*** *46856.930 Kgs of Cable Alluminium/ Copper to PL No. 98414215 and* ***against which*** *8500 Kgs,* ***was put up for auction by him.***

By the above act of misconduct, Shri. A.K. Rao, has failed to maintain absolute integrity devotion to his duty and acted in a manner of unbecoming of a Railway servant and thereby contravened Rules 3.1 (I), (ii) & (iii) of Railway service Conduct Rules 1966."

10. The IO after detailed analysis of oral and documentary evidence found that the charge was proved against the applicant in the course of the inquiry proceedings. The DA disagreeing with the findings of the IO raised the following queries vide letter dated 03.06.2011:-

"EO has ***not examined how the Shortage of material which was***

> ***detected in 2007 is attributed to the Charged Employee who relinquished the charge in 2000. This needs to be examined by calling further records/ witnesses.***
>
> *EO to examine if* ***"segregation & formation of lot" for receipted material is same as "putting up for auction" which includes formation/ reformation of lots, putting up to Survey Committee, convene Survey Committee, Survey sheet, etc. Are these two aspects "same"?"***

11. The IO replied by letter dated 16.06.2011 to the DA's queries stating that his conclusion rested on evidences produced during the enquiry and not on matters outside the record. The DA duly conveyed his provisional views, in continuation of his expressed disagreement with the IO to the Vigilance along with all others relevant documents on 09.09.2011. The Vigilance department vide letter dated 02.01.2012 replied to the DA disagreeing with the DA for holding that applicant was not responsible, whereas Vigilance had **"established"** that there was failure on the part of applicant in discharging his duty as a **"Custodian"** of the material, and therefore

responsible for non-segregation, non-disposal which led to shortage (not-detected) and not putting up the material for auction. The Vigilance sought that penalty be imposed **"in line with Vigilance's advice"**. The letter dated 02.01.2012 reads as follows:-

> *"The DA are at variance from the vigilance from the vigilance advice. It is seen from the perusal of the inquiry report of the IO that Shri. A.K. Rao, DMS-I/Stores/PL was custodian of material at scrap yard-MX. He was responsible for receipt of the scrap, its segregation and formation into disposable lot.*
>
> *It is also clearly established that while he received 46856.930 kg of scrap cable aluminium/ copper to PL No. 98414215 in his tenure, he put up only 8500 kg for auction. The IO has also discussed the issue of role of DMS/III & DMS/I in the formation of lots in his report accepted by the DA. While the shortages could be detected only in the year 2007 during the vigilance check, it is clear that if the DMSs handling the portfolio were careful and had discharged their duties properly, shortages of this magnitude could not have occurred.*
>
> *In view of the above, DA may be requested for reconsidering the case and impose suitable penalty in line with Vigilance advise.*

12. Based on the letter dated 02.01.2012 of the Vigilance, the DA further reconsidered the vigilance advise. Asserting his discretion based on RB letter dated 24.01.2008, he stuck to his stand for dropping the charge-sheet and exonerating the applicant. The stand of the DA dated 04.04.2012 reads as follows:-

> *"As desired by Vigilance Department I have again reconsidered this case a fresh. However, the charges viz.... are not proved due to following reasons:-*
>
> ***1.*** *As per the Duty List of DSK (III) custodian of materials of scrap yard MX dt. 29th july, 1999 (Exh. PD12) at CP 97/99, DSK (III)* ***is not responsible for Lot formation of preparation of Lot Register etc. Hence, DSK (III) should not be held responsible for not putting up the cable Aluminium/ Copper for Auction.***
>
> *DSK (I) is solely responsible for putting up the material for auction as per duty list at CP 11 para 3 & 4.*
>
> ***2.*** *It is very clear that* ***since 1999-2000 to 2007-2008 many DSK-III's have worked in the Scrap*** *Yard, MX. During handing over/ taking over, shortage of High Value items should be brought to the notice of Administration by charge taking over employee, within two months. Charge taking over employee should be held responsible, after this period, as per S.I. No. 185*

dt. 16.07.1974 (CP 176). ***Hence, the responsibility for shortages found in the year 2007, is not of CO, who was working in the year 1999-2000, but of DSK working in 2007*** *only, when shortage is found actually as per Laws of natural Justice.*

3. It is also surprising that copies of Bin cards for the period 1999-2000 & upto 2007 are not placed on record to prove the actual receipt & issues during those periods, Exb. P4 *is the only document relied upon by EO. The Conf DO letter of DY. CMM/MX, is not the correct/ acceptable documents to prove the actual receipt & issues of cable Copper/ Aluminium to PL No. 98414215 for such long period of seven years.* ***Bin card is the only document to prove it.***

4. Without credible evidence of bin cards, duly verified by stock verifier of Accounts department, the actual receipt & issues of PL No. 98414215 cannot be established. *It is stated that, the last accounts verification of this item is done by Accounts Department on 09.02.1998 (Exb. P4). However, no* ***Bin card is available in this case, showing this fact.***

Considering the above points, the charges are not proved. ***The charge-sheet should be dropped."***

13. In reply to the DA's letter dated 04.04.2012, the Vigilance reiterated its earlier stand vide letter dated 24.05.2012 as follows:-

> *"With reference to your letter under reference, it is informed that Vigilance stands by their earlier advice as communlcate vide this office letter of even no dated 02.01.2012. Action may be taken accordingly.* ***A copy of the NIP issued to the above named employee may be forwarded to this office at the earliest."***

Enclosing the comments of the Vigilance department on the provisional speaking order of the DA, the comments further reads as follows:-

> *"Provisional views of the DA are at variance from the vigilance advice. It is seen from the perusal of the inquiry report of the IO that Shri. A.K. Rao, DMS-I/Stores/PL was custodian of material at scrap yard-MX. He was responsible for receipt of the scrap, its segregation and formation into disposable lot.*
>
> *It is also clearly established that while he received 46856.930 kg of scrap cable aluminium/ copper to PL No. 98414215 in his tenure, he put up only 8500 kg for auction. The IO has also discussed the issue of role of DMS/III & DMS/I in the formation of lots in his report accepted by the DA. While the shortages could be detected only in the year 2007 during the vigilance check, it is clear* ***that if the DMSs handling the portfolio were careful and had discharged their duties properly, shortages of this magnitude could not have occurred.***
>
> *In view of the above, DA may be requested for reconsidering the*

case and impose suitable penalty in line with Vigilance advise."

14. It is evident that the vigilance only repeated their earlier comments dated 02.01.2012 (at para 11 of this order) holding that what they had **"established"** in investigation is the fact that DA should have gone by. There was no discussion about other issues raised by the DA, especially, with regard to non availability of Bin Cards etc.

15. It was under these circumstances that the impugned order of the DA dated 04.01.2013 was passed which reads as follows.

"I have gone through the article of charges framed against Shri A. K. Rao,....

CO in the written Brief have pointed out that the charges are not proved as no clear cut documents have been produced by the prosecution, like original receipt documents duly signed by the CO. The material is received in the year 1999-2000 and shortages are detected in the year 2007. ***The receipts, issues and closing balance for the period 1996-2007 is based on RUD No.4. However, Shri Prateek Goswami, Dy. CMM/MX who***

has written this letter is neither cited as a prosecution witness nor he has been allowed to be cross examined during the course of enquiry.

During 1999-2000, CO was working as DSK-III and as per RUD No.12, ***his duty does not include putting up of lots (Material) for Auction.*** *It was the Duty of DSK-I to arrange Survey Committee for putting material for Auction Site.*

EO in his findings have stated that as per Duty list all receipts of scrap material are taken by DSK-III. He should segregate it as per P.L. Codes in 98 group and form lots of disposable mature. He will attend annual/verification of items under his custody and clear the VRS immediately, if made and outstanding in consultation with DSK(X). Even if it is considered that, DSK-I, who is overall incharge of Scrap Yard/MX had failed to supervise and guide his DSK-III for proper segregation of receipted scrap material for formation of lots and putting up for timely survey, this does not absolve DSK-III, i.e. CO, for his duty.

After applying my mind, *I have come to the conclusion, that CO, Shri A.* ***K. Rao, DSK/PL have failed in his duties, as much as, he should have got these items verified by Accounts Department on time.*** *He cannot be held responsible for (I)* ***Putting up of full quantity received by him, as it was not his duty, as per Duty list and no documents have been produced to show his clear signature on the receipt voucher. (ii) Any shortages detected in the year 2007.***

The only charges proved against him are not getting scrap material

> ***verified in time. This charge is not of serious nature.*** *He has violated service conduct rules, 3.1(i)(iii), considering the circumstances of this case, I am of the opinion that the ends of justice seems to meet in the Penalty "Stoppage of increment for one year with future effect." is imposed on the D.E. I hereby impose the same penalty on Shri A. K. Rao"*

16. The DA did not find the charges specifically stated in the article of charge as fully established against the applicant. But he held that had applicant done timely verification the charge would not have arisen. Clearly, this was not what Article of Charge had to state. This was something that vigilance was saying. The imposed minor penalty, rather than major penalty, which is what the Vigilance wanted. This did not "please" the vigilance, on the one hand. The applicant also found cause to appeal, on the other.

17. The applicant filed appeal on to the AA. He stated in his appeal dated 25.01.2013 to AA as follows:-

> *"Sir, the first part of the article of charge in the allegation is "I failed to put up the total quantity of scrap/*

Alluminium cable" Which has been disproved by the DA. The second part of the allegation says that a shortage of 50487.470 kgs was noticed during the stock verification. Sir, as per the DA I cannot be held responsible for it.

Sir, ***Since none of the charges leveled against me are proved in the opinion of the Disciplinary Authority it would be incorrect to impose a penalty for a fresh charge which is not a part of the Article of charge and for which I have not been given an opportunity to defend.*** *Sir,* ***this would be against the principles of natural justice.***

The DA has in his speaking order has clearly indicated that all charges are found to be "Not true". ***Getting accounts stock verification was not part of the original charges and hence a charge which was not a part of original charge sheet.*** *Hence, penalty is legally null & void. Accounts department conducts verification of items as per laid down time table. Sir, I cannot be held responsible for dereliction of duty of not getting scrap material verified in time.*

I would therefore request you, with folded hands to consider my appeal in the correct perspective and bestow justice by setting aside the penalty and exonerating me for which I would always remain obliged."

18. If charges as stated in the Article of Charge was not held proved by DA, then the DA should have exonerated the applicant.

Instead he unearthed up another charge not specifically mentioned in the Article of Charge and held the applicant responsible for failure to perform duty, which applicant "alone" was responsible to perform and imposed minor penalty. If it was his duty, to do timely verification, which he failed to do, then the Article of Charge should have specifically stated so. In fact, since applicant was among many others, who had to work in a team and under proper guidance and supervision of DSK II and DSK III etc., it would have been appropriate to while framing say so the Article of Charge itself. The focus would rightly have also been on applicant's "role" and "responsibility" and well as on shortages etc. There is no doubt that the CO had discussed the issue of the duty of timely verification by application as per Duty List in his report at P.10, but that was simply not made part of the charge.

19. Hence, we have no doubt that the impugned order was, in fact, self contradictory as stated in the appeal of the

applicant and the DA traversed beyond his competence to deduce a charge not specifically stated in the Article of Charge. In fact, the DA, not finding the charges proved echoed what was stated by the Vigilance in their letter of 02.01.2012 and repeated on 24.05.2012 that had applicant handled his portfolio dutifully the magnitude of shortage would not have arisen or would have been detected. The comment of the vigilance led the DA to hold that applicant failed in his duty by not carrying out "timely verification of the material. The view was practically, too close for comfort to the view of the vigilance and the DA took this view as an escape route and as a way of factoring in vigilance advice into his order of penalty, although such a charge was not specifically stated in the Charge-sheet.

20. The applicant also, not happy with the order of DA, filed an appeal. The detailed order of the AA dated 19.06.2013 reads as follows:-

"I have carefully gone through the case including article of charges, findings of Enquiry Officer, NIP issued by Disciplinary Authority and appeal given by the Charged official, I conclude that the ***reason given in the NIP for imposing penalty i.e., Employee's failure to put up items verified by Accounts Deptt is not correct since this has never been in the article of charges.*** *However, as per the duties of dealing DMS this is also correct that charged official is fully responsible for receiving and segregation of scrap material so that such segregated material can be put up after formation of lot for further disposal. It was during his tenure very meagre quantity was put up for auction.*

However, this also a fact that stock verification has been conducted in the year 2007 concluding shortage during the year 1999-2000. ***Enquiry Officer could not prove shortage was due to CO only.*** *Moreover such late investigations will not give correct picture as* ***in between there are many other officials who have been changed and their role also need to be thoroughly checked which has not been done. Based on documents, it appears to be more a system failure rather than individual failure. At the same time, there is no doubt that there is also a lapse in performing duty on the part CO which he could not prove otherwise during course of enquiry.***

Speaking Order:-

Based on above and documents available, I have come to conclusion that CO Shri. A.K. Rao

has failed in performing his duties as timely segregation of material for further formation of lot resulting only 8500 kgs was put up for auction against receipt quantity of 46856.93 kg. Of Cable Aluminium/ Copper to PL No. 98414215 but he cannot be held responsible for shortage of 50487.47 kg. During stock verification in year 2007. Even for ***lower quantity to be put up in auction he is not solely responsible but definitely a avoidable lapse on his part to*** *performing his duty and acted in a manner of unbecoming of a Railway servant under service conduct Rules 3.1. (I), (ii), (iii) of Railway Service Conduct Rules, 1966. I am of the opinion that the end of justice seems to meet if the penalty given by DA as per NIP dt. 04.01.2013 is maintained i.e., "Stoppage of increment for one year with further effect" is imposed on the CO. I hereby impose same penalty on Shri. A.K. Rao."*

21. The Appellate Authority's conclusion, by and large, matched with the views of DA. But on the very vital point raised in the appeal petition by the applicant, he disagreed with the DA in the very first para of his order. He stated that the charge of timely non verification of material held by the DA was not part of the

Article of Charge. The AA's order was a case of approbation and reprobation, sometimes agreeing sometimes disagreeing with DA. The contradictions persisted in the AA's order, also. One thing is clear that the AA was not in agreement with the view that the Charge of not verifying the stock in time was part of the Article of Charge. To this extent, the appeal petition was upheld by the AA. If this was so, on the one hand and if AA had no disagreement with the DA that charges as in the charge-sheet was not proved, on the other, then there was nothing left in the matter to continue with the proceeding as the sale charge stood disproved. The AA, in any case, had the power to remand the matter, negate or modify the penalty imposed by DA. But the AA, after some flip-flop, finally confirmed the penalty imposed by DA. There is, however, no direct evidence that the AA came under the influence of vigilance when he confirmed the penalty imposed by the DA. There is nothing on record to show any direct communication between the vigilance

and AA. In fact the vigilance approached the Revisionary Authority on 08.05.2013, while the AA's order was passed, subsequently on 19.06.2013. There was application of mind, but the order suffers from an inherent lack of logic in his analysis/ conclusions.

22. On 09.10.2013 the Appellate Authority revised his order in view of the technical error at the concluding part of his order by stating that he confirms the penalty imposed by the DA while in the order dated 19.06.2013 he has incorrectly stated that he imposes the same penalty as imposed by the DA on the applicant. This technical error was revised based on the advice of the Revisionry Authority (RA) to the AA.

23. In the meantime, even as the AA was examining the appeal, the Vigilance sought the intervention of RA in the light of the non acceptable order of DA. They did not wait for the orders of AA. The said communication of vigilance dated 08.05.2013 addressed to the RA reads as follows:-

> *"In reference to above, the competent Authority has not agreed with the decision of DA & Dy. CMM/PL to impose penalty of withholding of increment for a period of one year with future effect" (i.e. Minor Penalty) as it* ***does not commensurate vis-a-vis gravity of charge.***
>
> *Therefore, case of Shri. A.K. Rao, DMS/I/PL may kindly be referred to Revisionary Authority for revision of the case* ***and taking a prudent decision in appreciation of vigilance advice of "Major Penalty".*** *Please ensure revisionary action may please be taken prior to expiry of reviewed period. (i.e. 03.07.2013)."*

24. Again the vigilance failed to discuss the merits of the order of DA, but only insisted on a certain outcome I.e. major penalty while taking up the matter with Revisionary Authority.

25. Accordingly, all the records including the order of AA dated 19.06.2013 were sent to the Revisionary Authority for deciding the matter. The RA, being the General Manager reviewed the case. Disagreeing with the vigilance advice, the RA passed a cryptic order that no change is required in the order of the DA i.e. imposing the minor penalty with future

effect. On the face of it, it appears that RA did not come under the pressure of Vigilance. The order of RA also meant that RA agreed with the findings of the DA as well as the penalty imposed i.e. in toto. It also could mean that he agreed only with that part of the order of AA where the penalty of DA was confirmed by AA. But the order does not show that he even considered the areas of disagreement/ conflicting interpretations of applicant's role and responsibility. Yet he proceeded to confirm the penalty imposed by the DA. The order of the RA should have resolved the conflicting interpretations about applicant's responsibility by IO, DA, AA, Vigilance and applicant himself as per the duty list with reference to the Article of Charge and within the purview of the Article of charge. He failed to discuss the other vital area of disagreement between the DA & AA i.e. whether the charge held proved by DA is extraneous to the charge-sheet itself [To this extent the applicant's appeal petition

even stood upheld by the AA]. Not having resolved the glaring contradictions/ disagreements between/ among the Vigilance and DA and between DA and AA, the RA passed a cryptic order simply confirming the penalty imposed. The DA's order having merged into the RA's order, the latter became the final order. The order dated 22.11.2013 of RA has not been challenged specifically in this OA, in Clause 8.

26. On the face of it, it seemed that the RA did not succumb to the pressure of Vigilance to impose major penalty. But there was no discussion in his cryptic order, whether and why the minor and not major penalty as imposed whether as per the Duty List applicant was solely responsible for the charge or not, whether imposition of penalty was based on a charge not part of the Article of Charge and if not, could at still be held proved etc. Hence, the findings of the Tribunal that the DA succumbed to pressure, has to apply to the RA's findings which upheld the penalty

through a cryptic order then a speaking order. The only difference is that the order of DA has been challenged but not the order of RA, into which the order of DA has merged.

27. It is set procedure in all Government bodies that the Vigilance branch has to be consulted in vigilance cases at every stage of the case. The vigilance branch acts as a recommending body and the DA has to act independently while taking a decision after considering the recommendations of the vigilance. DA cannot play second fiddle to Vigilance, being a statutory authority.

28. The RBE Circular No. 93 of 2001 regarding the procedure of consultations for dealing with non-CVC Vigilance cases, arising out of Vigilance investigation, pertaining to Group C and Group D employees read as follows:-

> *"The role of Vigilance Organization in the non-CVC disciplinary cases, which arise out of their investigations... as*

under:-

(i) Appointment of (Inquiry Officer is the prerogative of the Disciplinary Authority.....
(ii) However, in some cases, the Vigilance would forward a panel of Inquiry Officers....
(iii) In terms of this Ministry's letter No.78/V-I/CVC/1/2 dated 17.03.1989, the disciplinary authority may, give due regard to the advice of the Vigilance Organization and strive to remove / reduce areas of disagreement, if any, with the Vigilance, by mutual consultation and discussion. However, ***if there is still a disagreement the disciplinary authority is free to take an independent decision on the case.*** *In partial notification of the Ministry's aforesaid letter dated 17.3.1989, it has been decided that if, in a case, the Vigilance has recommended* a major *penalty and the disciplinary' authority proposes to exonerate* or *impose a minor penalty, the disciplinary authority* ***should first record his provisional order and then consult Vigilance Organization once.*** *However, if, after such consultation, the Disciplinary Authority* is not *in agreement with the views of Vigilance,* ***then he/ she is free to proceed and pass speaking order about the penalty. The vigilance Organization may, if they so consider, seek revision of the penalty by the appropriate authority.***
Likewise, where a major penalty has been imposed by the disciplinary authority in agreement with the recommendations

> *of the Vigilance but the appellate/**revisionary authority proposes to exonerate or impose a minor penalty, the appellate/revisionary authority may first record provisional decision and consult the Vigilance Organization once. After such consultation, the appeltate/revisionary authority is free to take final decision in the matter and record his/her views about penalty through speaking order.***
>
> *2. It has been observed that, in many cases, disciplinary/ appellate/ revisionary authority invariably refer all the disciplinary cases arising out of vigilance investigation to the Vigilance Organization, before taking a final decision in the case. **It, is advised that consultation with Vigilance is required only in those cases where they intend to impose/modify the penalty at variance with Vigilance's advice of major penalty.***
>
> *3. The Disciplinary Authority may ensure that the copy of notice Imposing Penalty (NIP) is sent to Vigilance promptly on issue, so that they can take necessary action to process for revision, if considered necessary."*

29. A similar circular relied upon by the respondents in the OA dated 24.01.2008 reads as follows:-

> *2.1.1. In minor penalty cases, vigilance clearance for a particular case would be given once*

the Disciplinary Authority (DA) has finalized the DAR action and a punishment notice (NIP) had been issued. No consultation is necessary with Vigilance even if, DA differs with the first stage advice or DA exonerates the charged official. DA is only required to send a copy of NIP/ exoneration advice along with its speaking order and reasons for disagreement to Vigilance promptly, say within a week. In the cases of deviation, Vigilance can seek a revision by referring the case to Revising authority (RA) if considered necessary. Such revision would however not come in the way of vigilance clearance of staff.

2.1.2. For major penalty cases, the vigilance case will get closed once the DA has imposed any of the major penalties and sends copy of NIP along with its speaking order to Vigilance Organization. No consultation with Vigilance is necessary where DA intends to impose penalty in accordance with first stage advice of Vigilance Organization. However, ***where punishment is not considered adequate, the vigilance organization can later seek a revision by referring the case to RA as per extant procedure.*** *Such revision would however, not come in the way of vigilance clearance of staff.*

2.1.3. For major penalty cases, where DA proposes to exonerate or impose a minor penalty, consultation with vigilance would be necessary. In such cases DA has to first record his provisional views and consult Vigilance organization ONCE giving reasons

> ***for disagreement with Vigilance advice. Vigilance Organization should examine and furnish their comments to DA on such references, Vigilance organization should*** *furnish their comments to DA within two weeks of receipt of such references.* ***Even if after this consultation, DA is not in agreement with views of Vigilance then DA is free to proceed and pass speaking order for exoneration/ imposition of penalty.*** *Copy of the NIP exoneration advice is required to be* ***promptly sent by DA to Vigilance along with its speaking order and the reasons for disagreement within a week of passing such orders.*** *Vigilance organization may seek a revision by referring the case to RA, if considered necessary. However, such a revision would not come in the way of vigilance clearance of staff.*
>
> ***2.1.4. The procedure for consultation with Vigilance once as described in Para 2.1.3. would also be applicable in major penalty cases when appellate/ revising authority proposes to exonerate or impose a minor penalty."***

30. In view of the above, there were two procedural incorrectness in the formal consultations which went on between the vigilance and the disciplinary authorities. The DA was to consult the Vigilance only **once**. The RA was also to consult vigilance

on its provisional view, only once, in case RA proposes to impose minor penalty as against major penalty advised by vigilance. In this case, DA consulted vigilance on 19.09.2011, to which vigilance sought reconsideration on 02.01.2012. DA should have passed his speaking order, thereafter. Instead the DA did what was not mandated by consulting vigilance again on 04.04.2012, this time specifically saying that he is going to exonerate the applicant. This means that he had decided not to accept the advice of vigilance, even when they pointed out that applicant had not done his duty. In the reply to DA dated 24.05.2012, vigilance said nothing new or different from the letter of 02.01.2012 to dent DA's view that exoneration would meet the ends of justice. Neither did the vigilance discuss any of the details referred by the DA on 04.04.2012. Hence, on the same/ persisting/ insisting view of the Vigilance, DA decided through **a non-mandated second stage advise** to impose penalty and that too by straying

beyond Article of charges.

31. The respondent's contention is that the AA used the term in the impugned order "after applying his mind". This is of no help. The application of mind leaned in favour of Vigilance by "showing" to have established some minimal charge was met with some minimal punishment, since DA could not go full pay with the or Vigilance advice. There is no scale or concept of "minimum" or "maximum" charge/ punishment. Charge is self standing either amenable to punishment or no punishment. There is no concept of some punishment for some other charges, if the charge as in the Article of charge did not stand proved. Therefore, impugned order of DA was not a decision independent of vigilance pressure. The use of this word "applying my mind" is a formality but, in spirit, it lacked substance. The nature of communication between the DA & vigilance was such that the vigilance exercised pressure and the DA succumbed to the pressure.

32. It is to be noted that the language employed by the Vigilance showed their pre-disposition for not dropping the charges and in fact was unalloyedly in favour of imposing major penalty. The language used in the letter dated 24.05.2012 in reply to the letter dated 04.04.2012 shows that the vigilance was bent upon getting an order of major penalty imposed, when it is stated in the letter dated 24.05.2012 that ***"a copy of the NIP issued to the above named employee may be forwarded to this office at the earliest".*** As per procedure the NIP has to be marked to the Vigilance as a matter of course in a discip1inary proceeding. This shows that according to the Vigilance imposition of penalty, leave alone major or minor, was a foregone conclusion. Hence, the DAs provisional views and subsequent stand to exonerate the applicant were simply not acceptable to Vigilance. In this case the language employed shows the intent of the vigilance to somehow get a major penalty order issued by the DA. When they failed,

they unambiguously sought major penalty order from the RA.

33. The RB circular of 2008 permits the vigilance department to take up the matter seeking revision of penalty with the Revisionary Authority. In this case the revision was sought for increasing the minor penalty to major penalty. The language used again shows the mind set of the vigilance. In the letter dated 08.05.2013 to the RA, if the Vigilance had restricted itself to para 1 extracted at para 12 of this order, it would have been within their purview to do so. However, the contents at para 2 of the above letter dated 08.05.2013 definitely shows that the decision to impose minor penalty was not "prudent" and only a major penalty according to "vigilance advice" would meet the expression of "prudence". The vigilance wanted "major penalty" as a specific outcome and nothing short of major penalty and wanted the RA to pass such an order, where they failed with the DA in a manner that Vigilance wanted.

34. The question that next arises is whether the RA also came under the above pressure of the vigilance. As per the RB instructions since RA agreed with the DA, despite specific disagreement of vigilance with the DA and the vigilance escalated the matter to RA and not AA i.e. one level higher, the RA was bound to show his provisional view **once** to vigilance. Had he done this as mandated, many of the areas of disagreement/ contradictions between DA & AA, the self contradictory order of DA and AA and the mutual disagreement between DA & vigilance should have get addressed and clarified in the manner that RA considered appropriate. The RA passed a Cryptic order, instead, without application of mind, where the situation visibly warranted his application of mind by passing a speaking order. Further, he was required to consult the vigilance once. The above mandated single stage consultation never happened in the present case. The RA went ahead and passed a cryptic order without any

discussion on the contradiction/ disagreeing/ agreeing views between/ among DA/RA/Vigilance. Hence, it might appear that by passing an order confirming the penalty imposed by the DA, the RA did not come under the pressure of vigilance. This conclusion was possible only if RA had communicated his provisional views, using this opportunity to take all views/ arguments/ counter arguments into account at this stage penultimate of the quasi judicial proceedings. By merely agreeing with the findings of DA, without any explanation, which order itself, we have established to have been passed under pressure of vigilance, it cannot be confirmed or less easily denied that RA did not come under pressure of vigilance in the course of which he violated vigilance instructions also of not sending his provisional order even once. He avoided any outright confrontation with vigilance.

35. The applicant has contended that before passing the order dated 22.11.2013, the RA should have also issued

notice to the applicant and heard him, since vigilance had sought enhancement of penalty. There is merit in this contention, since the AA had also held that the charge held proved by the DA was not part of the article of charge. To this extent he was in agreement with the appeal petition. But the RA did not issue show cause notice to applicant, as required under Rules, before he decided to confirm the minor penalty, challenged by the applicant. The RA did not exercise the powers of Revision vested in him, by issuing the SCN. Further, in this case because of vigilance's decision to escalate the matter to RA, the applicant was denied the opportunity of responding to the order of AA, which would normally have happened i.e. if vigilance had not raised the matter to the level of RA. Then applicant would have had the opportunity come in revision against the order of AA, if he was not satisfied with the order of AA. We hold that this amounts to violation of principles of natural justice. It is clear that in the

course of confirming the penalty of DA, in the above manner i.e. by not following the mandated procedures and instructions of the executive by not issuing a SCN on the AA's order to the applicant, in accordance with law or procedure established under law, violation of principles of natural justice also took place.

36. At this juncture, it must be stated that applicant never raised the issue of pressure by Vigilance resulting in the impugned order of DA. This issue is being brought afresh in this OA. But this must be seen from his averment in the OA that the communication between the Vigilance and the Disciplinary Authorities were not in his knowledge. As per para 4.7 of the OA the reply to DA's queries to the IO, vide letter dated 03.06.2011 was received by the applicant under RTI, later. The IO's reply to the DA dated 16.06.2011 was also obtained under RTI, subsequently. The provisional views of the DA dated 09.09.2011 was also not provided (para 4.8. of OA). At para 14

and 15 of the reply to OA, none of these contention at para 4.7 & 4.8. of the OA has been specifically or even generally denied by respondents. This means that applicant was in the dark, about the vital communications between Vigilance and DA having adverse impact and having a real and potential case of causing prejudice, was available with applicant much later only. Till then only the disciplinary authorities remained privy to all the correspondences between Vigilance and the disciplinary authorities. This is so, even if applicant has not as to when he got the replies to the RTI i.e. during the proceeding or afterwards. In fact, had RA issued a show cause notice to the applicant to reply to the order of AA and in view of vigilance's letter to enhance penalty, then applicant could have taken up the issues relating to the role played by the vigilance. Hence, denial of natural justice in this respect also added to the prejudice caused to the applicant. This resulted in the applicant

not being able to challenge the impugned order on the ground of interference by vigilance, which we have established to be true in the OA.

37. Hence, we are not bound to take a view that what was not agitated in the proceeding before the authorities cannot come up for the first time before the Tribunal, since what was not known to applicant could not find a place in the appeal petition. What was available to the applicant when he filed the appeal was the impugned order of DA and not the other documents or communication between IO & DA or DA and the Vigilance. Whether the issue that these were to be given to the applicant or not in the course of the proceeding pales into insignificance in the face of the cumulative and overwhelming evidence of prejudice caused to applicant. The principles of natural justice did stand violated by not following due procedures, in the course of which, facts relating to vigilance interference was not known to

applicant. But, by accessing these documents under RTI, subsequently, he has employed them before the Tribunal to establish that prejudice has been caused on account of Vigilance interference. The RTI instrument has come in caused in the course of this OA.

38. Hence, even though the order of RA dated 22.11.2013 has not been specifically challenged, (this issue has not been raised by respondents themselves) it can only be seen as a technical error as compared to the violation by the discip1inary authorities, when they failed to adhere to the rules/ procedures before imposing penalty.

39. Since the impugned orders are liable to be set aside, we do not consider it necessary to go into the issue of discrimination qua Shri. Nehru Manickam. This issue has come up for the first time before the Tribunal and never came up when applicant filed appeal before the AA. No further details regarding the case of Shri. Nehru Manickam has been pleaded before us

apart from the only fact that he has been granted lesser punishment for the same charge. In view of the above, we have not gone into the issue of discrimination.

40. Keeping in view the above discussions and analysis, it is clear that most of the judgments relied upon by the applicant will not add any weight to the contention of the respondents since it was not applicant's case that evidence should be re-appreciated by the Tribunal. Nor has the Tribunal embarked upon re-appreciating evidence. Hence, we do not see any requirements to deal any further with the plethora of case laws cited by the respondents.

41. However, the learned counsel for the applicant has rightly relied upon para 15 to 20 of the judgment of the Hon'ble Supreme Court in **Nagaraj Shivarao Karjagi (Supra)** of which reads as follows:-

> *"15. We are not even remotely impressed by the arguments of counsel for the Bank. Firstly, the Bank itself seems to have felt as*

alleged by the petitioner and not denied by the Bank in its counter that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations; one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advise lesser punishment to the petitioner. Apparently, those representations were not accepted by the Commission. The disciplinary authority and the appellate authority therefore have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advice was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executive of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed, they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril.

16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed

upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanors except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to

Article 320(3) of the Constitution. The Article 320 (3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Commission, as the case may be, shall be consulted-on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in A.N. D'Silva v. Union of India, [1962] Suppl; 1 SCR 968 has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

18. Secondly, the Ministry of Finance, Government of India has no jurisdiction to issue the impugned directive to Banking institutions. The government may regulate the Banking institutions within the power located under the banking Companies (Acquisition and Transfer of Undertakings Act, Act, 1970. So far as we could see, Section 8 is the only provision which empowers to the Government to issue directions. Section 8 reads:

"Every corresponding new bank shall, in the discharge of its function, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve bank, give."

19. The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of the Act

to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue direction in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. the authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters.

20. For the foregoing reasons, we allow the appeal and the writ petition quashing the directive issued by the Finance Ministry, Department of Economic Affairs, (Banking Division) dated 21 July 1984. We also issue a direction to the Chairman of the Syndicate Bank to withdraw the circular letters dated 27 July 1984 and 8 September 1986. We further set aside the impugned orders of the disciplinary authority and appellate authority

> *with a direction to the former to dispose of the petitioner's case in accordance with law and in the light of the observation made.*

42. Again the learned counsel for the applicant has relied upon para 13 of the judgment of ***Indian Railway construction Co. Ltd. Vs. Ajay Kumar (2003 SCC (L&S) 528)*** which reads as follows:-

> *"13. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. ……..... The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly*

fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires."

43. In view of the above discussions it is evident that the applicant has succeeded in establishing that prejudice has been caused to him, interalia, by the undue unwarranted interference of vigilance that led the DA & RA to impose on the penalty when he was actually in favour of exoneration of the applicant. In doing so, he imposed penalty on a charge which did not form the Article of Charge. The same was upheld by the RA. He failed not exercise the power of Review, where it was warranted instead of passing a speaking order explaining why he arrived at a conclusion that he did, without giving any opportunity to the applicant to be heard. Applicant did not know the fact of his appeal petition, nor Vigilance's advice to enhance DA's penalty. After filing appeal petition, the only information he got was the RA's order

of 22.11.2013, which upheld the order of DA. His appeal petition remained unreplied and unanswered

44. In view of the above, the impugned order deserves to be interfered with being illegal, vitiated and unsustainable under law. The OA therefore is liable to be allowed.

45. Accordingly, the OA is allowed. No costs.

(Ms.B. Bhamathi)
Member (A)

(Arvind J. Rohee)
Member (J).

srp