

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.579/2014

Dated this Wednesday, the 26th day of July, 2017

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

K.S.Deshmukh,
Presently working as Junior Ticket
Examiner
Mumbai division, Central Railway,
CST Mumbai
Residing at :
Pinkey Niwas, Near Poonam Aptt.,
Hanuman Nagar, Katemanivali,
Kalyan(E)
PIN -421306. **Applicant**
(By Advocate Shri P.H.Padave)

Versus

1. Union of India,
Through General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai-400001.
2. Officer on Special Duty (Services),
Mumbai Division,
Central Railway, DRM'S Office,
Mumbai CST,
Mumbai-400001.
3. Senior Divisional Commercial Manager,
Mumbai Division,
Central Railway,
Mumbai CST,
Mumbai-400001. **Respondents**
(By Advocate Shri V.D.Vadhavkar)

Reserved on : 09.06.2017
Pronounced on : 26.07.2017

ORDER**Per : A.J. ROHEE, MEMBER (J)**

The applicant who was working as Junior Ticket Examiner in Mumbai Division of Central Railway at CST, Mumbai approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

"(a) This Hon'ble Tribunal be please to declare that Show cause notice dated 21.03.2012 is void and accordingly quash the same.

(b) This Hon'ble Tribunal be please to declare that the impugned penalty orders dated 05/08/2013 and 20/09/2013 are illegal and accordingly quash the same.

(c) This Hon'ble Tribunal be please to direct the Respondent to reinstate the Applicant in service with all consequential benefits such as back wages, promotion and seniority at par with junior.

(d) Cost of this Original Application be provided for.

(e) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case".

2. The facts of the case which are necessary for deciding controversy involved in the matter may be stated, in nutshell as under.

3. The applicant was initially appointed as Office Boy w.e.f. 28.6.1985 with the respondents. Later on, he was selected through Departmental Competitive Examination as Junior Ticket Collector. He was then promoted as Senior Ticket Examiner vide office order dt. 22.10.2003. He secured further promotion as Head Ticket Collector in the grade of Rs.9300-34800 plu^c Grade Pay Rs.4200/- vide Office Order No.141/06/2012 dt. 29.6.2012 (Annexure-A-4). The said appointment order was issued by Senior Divisional Personnel Officer who is Junior Administrative Grade Officer with the approval of the Competent Authority.

4. On 15.3.2010, the applicant was served with a major penalty charge sheet (Annexure-A-5) on the advice of Vigilance Department, which is stated to be illegal and arbitrary. The said charge sheet was issued by Assistant Commercial Manager (ACM) as the Disciplinary Authority (who is a Group 'B' Officer). As such, the charge sheet having been issued by an incompetent authority, the entire enquiry proceeding stands vitiated.

5. It is alleged that the applicant defrauded the Railways by collecting illegal gratification of Rs.50/- from a decoy passenger and that he caused permanent loss to Railway Administration to the tune of Rs.210/- on account of his misconduct. It is, therefore, alleged that the applicant has contravened the provisions of Rule 2(1) and 2(2) of the Railway Servants (Conduct) Rules, 1966.

6. The applicant denied the charges levelled against him vide written statement dt. 27.3.2010 (Annexure-A-6). On conclusion of inquiry, the Inquiry Officer submitted report dt. 3.9.2010 (Annexure-A-7) to the Disciplinary Authority. It was then served on the applicant. However, without considering applicant's representation on said report, vide order dt. 4.11.2011 (Annexure-A-8) the Disciplinary Authority accepted the findings recorded by the Inquiry Officer and imposed penalty of reduction of applicant's pay by two stages. The applicant accepted the said penalty order since did not challenge it.

7. However, the applicant was surprised

when he was served with a show cause notice dt. 21.3.2012 (Annexure-A-1) issued by Senior Divisional Commercial Manager (R-3) calling upon him to explain as to why penalty imposed by the Disciplinary Authority should not be enhanced by exercising suo moto power of revision vested in him. The applicant submitted his explanation dt. 10.4.2012 (Annexure-A-9) to the said show cause notice. However, the respondent No.3 without considering it, illegally enhanced the penalty of reduction in pay to the reversion to initial grade as Junior Ticket Collector for a period of 10 years vide order dt. 30.6.2012 (Annexure-A-10).

8. Aggrieved by the said order, the applicant preferred an appeal to the Respondent No.2 on 30.8.2012. It was partly allowed vide order dt. 16.8.2012 (Annexure-A-11) by modifying the penalty order reducing the period of 10 years to 8 years and by confirming the order of reversion to initial grade as Junior Ticket Collector.

9. The applicant then approached this Tribunal in the previous OA No.232/2013,

challenging the orders dt. 4.11.2011, 30.6.2012 and 16.8.2012. Vide order dt. 9.5.2013 (Annexure-A-12), the said OA was allowed with a direction to the respondent No.3 to give a personal hearing to the applicant and then pass appropriate order afresh. Thereafter, the impugned order dt. 5.8.2013 (Annexure-A-2) was passed by R-3 imposing the penalty of Compulsory Retirement from service, in contravention of the Rules. This was challenged before the Appellate Authority i.e. Officer on Special Duty (Services) (Respondent No.2) in Appeal dt. 11.9.2013 (Annexure-A-14). Vide order dt. 20.9.2013 (Annexure-A-3), the aforesaid Appeal was rejected by a non-speaking order, thereby confirming the order passed by R-3. Aggrieved by it, the present OA is filed seeking the reliefs as stated in para No.1 above.

10. The reliefs sought are based on the following grounds as mentioned in paragraph No.5 of the O.A. The same are reproduced here for ready reference :-

5(I) The impugned order is bad in law being against the statutory

provisions.

5 (II) Show cause notice dated 21.3.2012 is against the proviso of Rule 25 (1) (v) (d) (a) which reads as under :-

"no order imposing or enhancing any penalty shall be made by any Revising Authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed" and on perusal of the said show cause notice it can clearly be noticed that no proposed penalty was indicated in the said show cause notice.

5 (III) No reason for the disagreement with the penalty imposed by the Disciplinary Authority was recorded in the show cause notice dated 21.03.2012. In absence of any specific reason Applicant was unable to comment on the same.

5 (IV) Penalty imposed by the Respondent No.3 is against the Article 311 of the Constitution of India. Promotion order of the Applicant was approved by an authority higher in rank than Senior Divisional Personnel Officer (Junior Administrative Grade) therefore the Senior Divisional Commercial Manager who is also a Junior Administrative Grade officer cannot impose a penalty of

Compulsory Retirement.

5 (V) Orders passed by the authorities are non speaking. The authorities have ignored instructions of this Hon'ble Tribunal to pass a reasoned order. On this ground alone the impugned orders are liable to be set aside.

5 (VI) The Revising Authority and the Appellate Authority have not functioned independently, but have been guided and coerced by the Vigilance Department in the matter of conduct of enquiry and imposition of penalty upon the applicant.

5 (VII) The Revising Authority and the Appellate Authority have imposed the punishment which is not sustainable in law.

5 (VIII) The Applicant has not committed any misconduct and therefore the punishment upon the Applicant is bad in law.

5 (IX) The whole action against the Applicant is liable to be quashed on the ground that there is a gross violation of provisions of Article 311 of Constitution of India and therefore the punishment imposed upon the Applicant is bad in law.

5 (X) The whole action is the colourful exercise of powers vested in

the authorities concerned and the punishment imposed is not a bonafide exercise of power.

5.XI) The punishment has been imposed arbitrarily without any basis and is not sustainable in law.

5(XII) Applicant state that impugned orders are not tenable in law and hence are liable to be quashed.

11. On notice, the respondents appeared and by a common reply dt. 27.4.2015 resisted the OA by denying all the adverse averments, contentions and grounds raised therein. It is stated that detailed inquiry was conducted by following the prescribed procedure and by meeting principles of natural justice by giving full opportunity to the applicant to take part and defend himself in the inquiry. It is stated that the Revisional Authority suo moto exercised power of revision by issuing a show cause notice for enhancement of the penalty imposed and there is no ambiguity or illegality in the impugned order passed by the Revisional Authority, especially considering the nature of serious charge of accepting illegal gratification made out against the applicant and since penalty

imposed by Disciplinary Authority was grossly inadequate. The applicant has not challenged the said order of punishment and hence it is not open for him to challenge the said order before the Revisional Authority or in this OA.

12. The Appellate Authority against the order of Revisional Authority in appeal has also considered all the relevant aspects of the case and passed the impugned order which is fully justified and it calls for no interference. No disagreement note by the Disciplinary Authority was necessary since it had accepted the finding recorded by the Inquiry Officer and especially when applicant has not preferred any appeal against the order of Disciplinary Authority dt. 4.11.2011 and he was satisfied with it. Hence, it is not open for him to say that the order passed by the Disciplinary Authority is against the Rules or that the said authority was not the competent authority to issue charge sheet.

13. It is stated that it is clearly mentioned in the show cause notice issued by the Revisional Authority that the penalty imposed by the Disciplinary Authority is inadequate and does

not commensurate with the gravity of the misconduct proved against the applicant, which finding remained unchallenged. As such, it was not necessary to give further reason for enhancement of punishment. It is denied that non-speaking orders were passed by the Revisional Authority and then by the Appellate Authority or that they had acted under pressure of Vigilance Department. The O.A. is, therefore, liable to be dismissed.

14. The applicant then filed a rejoinder on 19.11.2015 and denied the averments and contentions made in the reply and stuck to the grounds raised in the OA for challenging the impugned orders.

15. On 9.6.2017 when the matter was called out for final hearing, we have heard Shri P.H.Padave, learned Advocate for the applicant and the reply arguments of Shri V.D.Vadhavkar, learned Advocate for the respondents.

16. We have carefully gone through the entire pleadings of the parties and the documents produced on record. We have also given thoughtful considerations to the submissions

advanced before us by both the learned Advocates for parties.

FINDINGS

17. The only controversy involved in this OA for decision of this Tribunal is whether the order imposing enhanced penalty of compulsory retirement passed by R-3 by exercising suo moto revisional power vested in him and confirmed by R-2 the Appellate Authority are liable to be set aside as illegal, incorrect or improper on the grounds raised by the applicant.

18. The record shows that the following two Articles of Charges were levelled against the applicant viz. :-

"ARTICLE-I

He defrauded the Railways by collecting illegal gratification of Rs.50/- from decoy passenger.

ARTICLE-II

There would have been a permanent loss of Railway Administration to the tune of Rs.210/- because of his misconduct".

Thus by this above act of omission and commission jointly and individually, the applicant has failed to maintain absolute integrity, devotion to duty and has acted in a manner of unbecoming

of a Railway Servant and has thereby contravened provisions of Rule No.3.1(i), 3.1(ii) and 3.1(iii) of the Railway Services (Conduct) Rules, 1966 punishable under Railway Servants (Discipline & Appeal) Rules, 1968".

19. The record shows that the applicant contested the inquiry and after considering the Inquiry Report holding that charge no.1 levelled against the applicant is proved and charge no.2 is partly proved and representation of the applicant on the said findings, the Disciplinary Authority proposed to impose the following penalty on the applicant viz :-

"Reduction by two stages for a period of one year without postponement of future increment".

20. The matter was then referred to the Vigilance Branch for opinion in respect of adequacy of punishment, since the charge sheet was issued on the recommendations of the Vigilance Department. After considering its recommendations, the following penalty was imposed by the Disciplinary Authority viz. :-

"Reduction by two stages for a period of two years with postponement of future increments".

21. It is obvious that although serious charge of indulging in acceptance of illegal gratification was proved against the applicant, a lenient view was taken both by the Vigilance Department and the Disciplinary Authority while dealing with a major penalty proceedings. It is obvious that the applicant was satisfied with the said penalty since he has not challenged the said order before the Appellate Authority, obviously because it was beneficial to him. As such, before the Revisional Authority in suo moto exercise of power of revision, it is not open for the applicant to challenge the said finding of the Disciplinary Authority or to say that the said authority was not competent to issue the charge sheet. Further, it is not pointed out by the applicant as to who according to him was in fact the Competent Authority to issue the charge sheet. Further it is not established that any prejudice has been caused to the applicant on the alleged ground of charge sheet having been issued by the incompetent authority.

22. It is obvious from record that after

considering the reply submitted by the applicant to the show cause notice, the Revisional Authority initially has imposed the following enhanced penalty viz. :-

"Reversion to initial grade as Junior Ticket Collector i.e. Pay Band Rs.5200-20200 with GP Rs.1900 and fixing his pay at Rs.5200/- for a period of 10 years with postponement of future increments and with loss of seniority".

23. The appeal preferred by the applicant against the above referred order of penalty, resulted in slightly modifying the said penalty as under :-

"Reversion to initial grade as Junior Ticket Collector i.e. Rs.5200-20200 with GP Rs.1900/- and fixing his pay at Rs.5200/- for a period of 8 years with postponement of future increments and with loss of seniority".

24. Thereafter, since the applicant had challenged both the above referred orders in previous OA No.232/2013 in which both the above orders were set aside and the matter was remanded to the Revisional Authority for passing fresh order in accordance with law after affording sufficient opportunity to the applicant to be heard in person as expeditiously as possible and at any rate within 3 months from the date of

receipt of copy of the order. In compliance of the said order, the Revisional Authority passed the impugned order dt. 5.8.2013 after giving personal hearing to the applicant and the following penalty was imposed :-

"Compulsory Retirement from service without consequential benefits with immediate effect".

25. On appeal to R-2 (Officer on Special Duty) under Rule 18(iii) of the Railway Servants (Discipline & Appeal) Rules, 1968, the order passed by the Revisional Authority imposing penalty of Compulsory Retirement was confirmed.

26. It is thus obvious that from imposition of penalty of reduction by two stages, finally penalty of Compulsory Retirement was imposed by exercising suo moto power of revision, which is challenged in this O.A.

27. It is obvious that the Revisional Authority was of the opinion that the punishment imposed by the Disciplinary Authority was inadequate and hence proposed to enhance the said punishment, especially considering the proved charge of mis-conduct of accepting illegal gratification from the decoy passenger by the

applicant. Needless to say that it is a serious charge. Hence decision to initiate suo moto revision for imposition of enhanced penalty was perfectly justified. In the previous O.A., the orders passed by the Revisional Authority and the Appellate Authority were set aside on the ground that it were not speaking at all by any stretch of imagination and reasons should have been given for imposing enhanced punishment on the applicant. Thereafter, the Revisional Authority has passed the following impugned order on 5.8.2013 (Annexure-A-2), which reads as under :-

"I have carefully gone through the entire DAR proceeding, the enquiry report, the decision taken by DA, AA, the order dated 09.05.13 of Hon'ble CAT Mumbai in OA no.232 of 2013. DE's revision petition dated 10.04.12 and also heard DE in person along with his ARE on 23.07.13. DE did not submit any additional documents on the day of personal hearing.

I have decided to enhance the punishment imposed by Disciplinary Authority for the following reasons :

Disciplinary Authority has given benefit of doubt to DE by contending that decoy passenger and independent witness were in coach from Thane and if DE was interested in taking extra money he would have taken it at Karjat itself.

However, it is not convincing as DE himself approached and demanded Rs.50/- from the decoy passenger after LNL station and this act of DE was confirmed by independent witness.

Though DE had initially asked the decoy passenger and independent witness to detrain he avoided ensuring the same with malafide intention to demand illegal gratification after LNL.

Further, one irregular passenger was also detected in the coach manned by CE who was regularised during vigilance check by collecting proper Railway dues.

Considering the gravity of the case, I decide to enhance the penalty to "**Compulsory retirement from service with all consequential benefits with immediate effect.**

Sd/-
(**Narendra Patil**)
Sr.DCM CSTM
Revising Authority"

28. The Appellate Authority has passed a cryptic order although styled as speaking order dt. 20.09.2013, which reads as under :-

"I have carefully gone through the entire DAR case, relevant documents, enquiry report, decision taken by DA, AA, RA, the order of Hon'ble CAT Mumbai dated 09.05.13 in OA no.232 of 2013 and CE's appeal dated 11.09.13.

The evidence on record finds CE guilty of the charge levelled. The charges are of serious nature.

I have gone through Revising Authority's speaking order and CE's appeal against

the orders of the Revising Authority carefully.

I fully agree with the views of Revising Authority.

The penalty imposed by Revising Authority stands good.

Sd/-
(Rajeev Tyagi)
OSD (S) CSTM"

29. As stated earlier, perusal of the order passed by this Tribunal in the previous OA clearly revealed that the Tribunal has considered the order passed by Disciplinary Authority, impugned show cause notice dt. 21.3.2012 and reply given to it by the applicant and the order passed by the Revisional Authority thereon. Perusal of prayer clause in the previous OA shows that the applicant had challenged the initial order passed by the Disciplinary Authority and subsequent orders passed by Revisional Authority and the Appellate Authority enhancing punishment. However, previous order passed by the Revisional Authority and the Appellate Authority have been set aside on the ground as mentioned in paragraph No.7 of the order dt. 9.5.2013 passed by this Tribunal in the previous OA. The same is

reproduced herein below for ready reference :-

"7. Having perused Annexure A-2 & A-3, orders passed by Respondent No. 3 and 2 respectively, we are satisfied that these two impugned orders are liable to be quashed on a short ground. A perusal of Annexure A-2 order will show that respondent No. 3 has referred to another alleged "irregularity" committed by the applicant. According to Respondent No. 3, applicant had collected proper railway dues from an "irregular passenger" who was found traveling in a coach manned by him and he had "misutilized his official position" by his above conduct. Admittedly, applicant had never faced such a charge. Therefore, in our view respondent No. 3 was not at all justified in referring to such an alleged act of "misutilisation of official position" by the applicant. More importantly, the order passed by respondent No.3 cannot be termed as a Speaking Order at all, by any stretch of imagination. Respondent No. 3 in our view ought to have given reasons as to why the punishment imposed on the applicant was liable to be enhanced. In that view of the matter Annexure A-2 order passed by respondent No. 3 is quashed. Consequently, Annexure A-3 order will also stand quashed".

30. Consequent upon setting aside the previous orders passed by the Revisional Authority and Appellate Authority, a direction was issued by this Tribunal to pass fresh order after giving personal hearing to the applicant. Thereafter the impugned order dt. 5.8.2013 (Annexure-A-2) is passed by the Revisional

Authority imposing enhanced penalty of Compulsory Retirement from service, which order was confirmed by Appellate Authority on 20.9.2013 (Annexure-A-3), which are challenged in this OA as stated earlier.

31. It is obvious from record that, it is not open to the applicant to challenge the initial order passed by the Disciplinary Authority since it merged in the order passed by Revisional Authority and then by the Appellate Authority. In the previous OA also, show cause notice dt. 21.3.2012 which is the basis for imposition of enhanced penalty by the Revisional Authority (which was slightly modified by the Appellate Authority) is also challenged vide Ground No.IV as against the law. The said ground is also raised in the present OA as ground no.5(ii) as stated above to the effect that the said show cause notice is against the provisions of Rule 25(1) (v) (d) (a) of the Railway Servants (Discipline & Appeal) Rules, 1968.

32. It is not disputed that there is a provision of exercising suo moto power of revision by the higher authority against the

order passed by the Disciplinary Authority, if no appeal is preferred by the delinquent employee against the said order of imposition of penalty.

In the present case also since the applicant has not preferred any appeal against the order passed by the Disciplinary Authority, the Revisional Authority was justified in exercising suo moto power of revision, especially considering nature of the charges levelled against him and gravity of mis-conduct. However, show cause notice is required to be issued before exercising the said power to meet the principles of natural justice.

The text of Rule 25 (1) (v) (d) (a), reads as under :-

"no order imposing or enhancing any penalty shall be made by any Revising Authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed".

33. During the course of arguments, the learned Advocate for the respondents submitted that the above aspect of validity of show cause notice was already considered by this Tribunal in the previous OA and hence the same cannot be agitated in the present OA since it is barred by

virtue of res-judicata. However, perusal of the order passed by this Tribunal in the previous OA clearly shows that although there is a reference to this effect in the order passed by this Tribunal, the OA was disposed of with a direction to the respondent No.3 to pass a fresh order in the matter in accordance with law as stated earlier. There is no finding that the impugned show cause notice was illegal and hence the order imposing enhanced penalty is set aside. As stated earlier, the previous impugned orders passed by the Revisional Authority and confirmed by the Appellate Authority were set aside on the ground that those were not reasoned and speaking orders. As such, there being no specific finding recorded by this Tribunal in the previous OA regarding legality and validity of the show cause notice, it is permissible for the applicant to agitate the same in this OA also, while challenging the subsequent orders passed by the Revisional Authority and the Appellate Authority imposing the enhanced penalty of Compulsory Retirement.

34. Further reply given by the applicant to

the show cause notice dt. 21.3.2012 vide (Annexure-A-9) shows that he has raised grounds challenging the orders passed by the Inquiry Officer and the Disciplinary Authority at the initial stage. However, in para No.6 thereof the applicant has stated that while issuing the aforesaid show cause notice he has not been intimated about the specific reasons and gravity of mis-conduct as assessed by the Revisional Authority and as such whatever submitted above is incomplete and not to the satisfaction of the charged employee in the interest of fair play and justice before the decision is taken. In para no.7 of the said reply it is further stated that in terms of Discipline & Appeal Rules issue of above letter i.e. show cause notice is incomplete and not in order. In the appeal memo also vide Annexure-A-14 the applicant has specifically challenged the show cause notice. However, this ground was not considered by both the authorities since there is nothing to this effect in the initial or subsequent impugned orders.

35. Perusal of the impugned order Annexure-A-1 passed by the Revisional Authority in fact

shows that it was satisfied that it was an appropriate case to exercise suo moto power of revision for enhancement of the penalty imposed especially considering the serious nature and gravity of the charge. As such, it is not open for the applicant to challenge the finding recorded by the Inquiry Officer or the Disciplinary Authority holding him guilty of the charge as stated earlier. The scope of revision was restricted to imposition of enhanced penalty. However, while issuing the show cause notice, it is only mentioned therein that, "in terms of Rule 25 of Railway Servants (Discipline & Appeal) Rules, 1968 I have provisionally come to the conclusion to enhance the penalty. You are thereby advised to show cause as to why the penalty may not be enhanced" .

36. It is thus obvious that nature of enhanced penalty, such as reduction to lower scale, reversion, compulsory retirement, removal or dismissal from service is not specifically proposed by the Revisional Authority in the said show cause notice, which is clearly contrary to or in violation of the provisions of Rule 25 (1)

(v) (d) (a) of the Railway Servants (Discipline & Appeal) Rules, 1968, which specifically states that before imposing enhanced penalty by the Revisional Authority the exact penalty needs to be proposed. Without proposing any specific enhanced penalty, it is obvious that the applicant has taken it by surprise when initially the Revisional Authority has imposed penalty of reversion to initial grade and later by the subsequent order in compliance of the decision rendered by this Tribunal in the previous OA, the penalty of Compulsory Retirement. As such, it can safely be said to be contrary to the law. Had it been specifically mentioned by the Revisional Authority in the show cause notice that he proposed to impose the enhanced penalty of reversion or compulsory retirement, the applicant would have met the same in his reply to the said show cause notice by attributing more cogent and convincing reasons. In absence of proposing any specific enhanced penalty in the show cause notice, it can safely be said that strong prejudice has been caused to the applicant, since he took it by surprise when the

enhanced penalty of compulsory retirement, not proposed in show cause notice, was imposed on him.

37. From the above discussion, we are of the considered view that penalty of Compulsory Retirement imposed by the impugned orders is not in accordance with law and in fact it resulted in violation of the fundamental right of the applicant to meet the said proposed enhanced penalty by way of representation to the show cause notice.

38. As stated earlier, it is not open for the applicant to challenge the findings recorded by the Inquiry Officer and the order passed by the Disciplinary Authority. Further since show cause notice itself is not in accordance with law which is basis for imposition of enhanced penalty we are of the view that the matter needs to be remanded once again to the Revisional Authority i.e. R-3 for issuing appropriate show cause notice strictly in accordance with the provisions of Rule 25 (1) (v) (d) (a) of the Railway Servants (Discipline & Appeal) Rules, 1968 indicating proposed enhanced penalty to be imposed and then

pass appropriate order on it after considering material on record. However, in the meantime, during pendency of this OA, the applicant attained the age of 60 years and would have retired on superannuation had the penalty imposed by Disciplinary Authority had not been enhanced. We are aware of the fact that since penalty of Compulsory Retirement is imposed, the applicant will be entitled to receive pensionary and other retiral benefits and he would have been benefitted to some extent had he retired on superannuation after undergoing penalty imposed by Disciplinary Authority, without being enhanced by Revisional Authority to compulsory retirement.

39. The OA is therefore allowed, the impugned show cause notice dt. 21.3.2013 (Anexure-A-1) and the order dt. 5.8.2013 (Annexure-A-2) passed by the Revisional Authority and confirmed by the Appellate Authority vide impugned order dt. 20.9.2013 (Annexure-A-3) imposing penalty of Compulsory Retirement on the applicant are hereby quashed.

40. Since the impugned show cause notice and the impugned order passed by the Revisional

Authority and the Appellate Authority have been set aside, the matter may be remanded back to the R-3 again for issuance of fresh show cause notice to the applicant, strictly in accordance with the provisions of Rule 25(1) (v) (d) (a) of the Railway Servants (Discipline & Appeal) Rules, 1968 clearly mentioning the nature of the enhanced penalty proposed to be imposed on applicant. However, during pendency of this OA since the applicant has attained the age of 60 years and prior to that he was compulsorily retired and hence now he cannot be reinstated in service, In pursuance of the minor penalty imposed by the Disciplinary Authority, we are of the view that no fruitful purpose would be served by remanding the matter once again to adopt the same course and to reconsider imposition of proposed enhanced punishment by the Revisional Authority. While observing this, we are aware of the fact that in fact the applicant faced serious charges in a departmental proceedings, since it pertains to acceptance of illegal gratification from a decoy passenger which charge is proved. In such circumstances of the case, the

Disciplinary Authority or at the most the Vigilance Department should have proposed major penalty of at least compulsory retirement if not removal or dismissal. However, as stated earlier, since the Vigilance Department has taken a lenient view and proposed a lesser punishment which was accepted by the Disciplinary Authority, there is no question of re-instatement of applicant, at this stage, when he has already crossed 60 years of age and had he not been compulsorily retired, still he would have retired on superannuation.

41. From the above discussion, we simply set aside the orders passed by the Revisional Authority and the Appellate Authority and consequently the order passed by the Disciplinary Authority imposing the punishment of reduction by two stages for a period of 2 years with postponement of future increments will hold good. The applicant will, therefore, be deemed to be in service from the date of imposition of penalty of compulsory retirement till he attained 60 years. However, the applicant will not be entitled to get back wages for the said period since he had

not actually worked. Last pay drawn by him on the date of his retirement should, however, be fixed by granting the annual increments due to him for all those years i.e. from the date of compulsory retirement till he attained the age of superannuation.

42. The above exercise shall be done within a period of 10 weeks from the date of receipt of certified copy of this order by the office of Divisional Railway Manager, Central Railway, Mumbai and revised Pension Payment Order (PPO) be issued to him with all consequential benefits.

43. In the facts and circumstances of the case, parties are directed to bear their respective costs of this O.A.

44. The O.A. is allowed in terms of above.

(Ms .B .Bhamathi)
Member (A)

(A .J . Rohee)
Member (J)

B.

