

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00086/2017

DATED THIS THE 11th DAY OF MARCH, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. Smt. G.Padma
W/o Late Suresh Kumar
Aged about 49 years
2. G.S.Sandesh
S/o Late Suresh Kumar
Aged about 25 years

Both are r/at No.190/6
Athishaya, 8th Cross
S.S.Layout, A-Block
Davanagere.

....Applicants

(By Advocate Sri M.R.Achar)

Vs.

1. Union of India
The General Manager
Reptd. by its South Western Railway
Railway Board
Hubli-580023.
2. The Senior Divisional
Commercial Manager
South Western Railway
Hubli Division
Hubli – 580023.
3. The Additional Divisional
Railway Manager and Appellate
Authority, South Western Railway
Hubli Division
Hubli-580023.
4. The Chief Commercial Manager
and Revisional Authority
South Western Railway
Hubli Division-580023.

...Respondents

(By Advocate Sri N.S.Prasad)

O R D E R(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was appointed as Commercial Clerk on 3.4.1984 and promoted as Senior Commercial Clerk in the year 1989 and further promoted as Head Commercial Clerk in the year 1992 and selected as Commercial Inspector Grade-III in 2002 and further promoted as Commercial Inspector Grade-II in the year 2008 and thereafter he was promoted as Chief Commercial Inspector in 2013. He submits that a Departmental Enquiry(DE) was initiated against him alleging that he has committed misconduct. The Articles of charges levelled against him saying that he has demanded and accepted Rs.1000/- from decoy person as an illegal gratification for allowing decoy person to run KMF Milk Parlour at JRU station smoothly over his jurisdiction and he has taken blank cheque No.503626 of Corporation Bank, Ranibennur from Sri Rudrayya(decoy person) few days before vigilance check, whereas he is not supposed to deal in any cash/blank cheque etc. from the public.

2. He submits that the respondents appointed the inquiry officer but not appointed presenting officer. In the absence of the presenting officer, the enquiry officer had acted as a presenting officer. He had put the question not by way of clarification but to lead the evidences. Therefore, the whole proceedings are vitiated for not appointing the presenting officer. The department has examined 5 witnesses but while disposing of the case they referred to only two witnesses i.e., PW1 and PW2 whose depositions are at Annexure-A1 & A2. When the inquiry officer wanted to examine the complainant, he was not present. When the inquiry officer asked the applicant to answer the questions put forth by him, the applicant informed that he will file his statement as a defence evidence. Therefore, he had filed the detailed

statement(Annexure-A5). He has filed copy of statement made by him during the trap(Annexure-A6). He has also produced the relevant extract of the vigilance manual(Annexure-A7). The inquiry officer submitted report to the disciplinary authority holding that the demand of illegal gratification is not proved but acceptance of Rs.1000/- from decoy person is proved and violation of Rule 1 (ii) is not proved. The disciplinary authority vide order dtd.21.7.2015(Annexure-A8) communicated the report to the applicant. Thereafter the applicant has submitted his reply vide Annexure-A9. The 2nd respondent vide order dtd.15.12.2015(Annexure-A10) had imposed the punishment of compulsory retirement against which the applicant has preferred an appeal(Annexure-A11) to the 3rd respondent(appellate authority) who vide order dtd.13.5.2016 has modified the punishment by reducing from the post of Chief Commercial Inspector to the post of Senior Commercial Clerk for a period of 4 years with the effect of postponing the future increment with loss of seniority and intervening period treated as dies non(Annexure-A13). Thereafter the applicant preferred a revision petition(Annexure-A14) to the 4th respondent who disposed of the same on 2.12.2016 further modifying the punishment i.e. instead of 4 years restricted to 3 years without effecting postponing. Future period and intervening period is treated as continuity in service(Annexure-A15).

3. The applicant further submits that the whole order of punishment is unsustainable in law for the reason that the important material witness i.e. the complainant was not examined and on the contrary, the preliminary statement made by the complainant was considered as one of the evidences. Therefore, the whole order is vitiated for want of no evidence. According to the vigilance manual, the trap witness must be within the range of hearing. In the instant case, the trap witness admits that

he did not witness the transaction that took place between the charged employee and decoy person. The disciplinary authority imposed the punishment on the basis of the statement of PW1 and PW2 along with the statement made by the applicant during the preliminary statement. He submits that all the documents are not produced and marked through witnesses. It was taken only as documents on the first date of sitting. Therefore, acceptance of documents without assistance of the witness and relying upon the same and imposing the punishment is irregular and illegal. Having regard to the cross examination, the authorities totally ignored the evidence collected during the course of cross examination. Therefore, it is a clear case of non consideration of the evidences collected during the examination of the witness. He submits that P10 was taken on record without confronting to the applicant. Therefore, acting and relying upon the preliminary statement of the applicant and exhibit P10 and imposing the punishment is not justified in law. The inquiry officer had rightly come to the conclusion that the demand has not been proved but at the same time he ought to have held acceptance was not proved. The authorities are not correct and justified in holding the applicant has failed to prove the acceptance of Rs.1000/- as a hand loan. The complaint is usually the basis on which the disciplinary proceedings are initiated. It is necessary to produce the complainant during the inquiry and also to examine the complainant. In the absence of the examination of complainant holding that the applicant is guilty of charge of acceptance of money is unjustified in law. Both respondents 3 & 4 have not considered materials on record. Hence, the enquiry is vitiated. The penalty imposed on him is too hard, unreasonable and excess. Therefore, the applicant has filed the present OA praying for setting aside the Annexures-A10, A13 & A15 dtd.15.12.2015, 13.05.2016, 2.12.2016 passed by the respondents 2 to 4 respectively.

4. The respondents, on the other hand, have submitted in their reply statement that this Tribunal had dismissed the OA.No.712/2015 in a similar case of redhand trap wherein the enquiry officer also has done the role of presenting officer since there were no infirmities in the proceedings and procedural rules. Not appointing a presenting officer is not a ground for vitiation of the proceedings since the applicant has not come out with any such questions posed by the inquiry officer which has led to extraction of any information from the witnesses. Departmental proceedings are based on preponderance of probabilities unlike proof beyond reasonable doubt in criminal proceedings. The cogent evidence of PW1 and PW2 are sufficient to arrive at the conclusion that the applicant is guilty of the charge. There is no legal infirmity in not considering the evidence of other witnesses though they were pointing out towards guilt of the applicant. The complainant in this case is a Milk Stall Vendor and not a Railway employee and the inquiry officer made every effort to secure his presence. The inquiry officer could not compel issue of summons or warrant as the inquiry officer is not empowered under the D&AR Rules, 1968 to do so. The complainant has in un-categorical terms lodged a complaint against the applicant for demanding bribe for allowing him to run the Milk Parlour and that the Vigilance have laid a trap and caught the applicant accepting bribe from the complainant and further, the circumstantial evidence was so cogent that the guilt of the applicant was proved beyond doubt by prosecution witnesses and it is reiterated that the proof required in the departmental proceedings is based on preponderance of probabilities and the evidence of prosecution witnesses are sufficient to prove the other charges. The fact that the complainant remained absent in the case does not in any way support the case of the applicant and he cannot take this ground alone for being acquitted of the charge. The applicant admitted that he has accepted the

money from the complainant as currency notes were used as marked currency for laying trap and the denomination were also recorded by the Vigilance authorities in the test check memo. The applicant has clearly answered that he had taken hand loan from the complainant. As per EX.PD-3(Annexure-R1), the applicant has produced a personal cash of Rs.6504/- at the time of trap and this clearly goes to prove that the applicant was having money at his disposal and the statement of the applicant that he has taken a hand loan of Rs.1000/- from the complainant does not make any sense and logic and therefore, all other averments of the applicant remain an afterthought. The inquiry officer was right in holding that though demand of illegal gratification is not proved, the acceptance of amount as illegal gratification is proved. The applicant has filed his defence brief at the end of the enquiry proceedings and the averments in these paras are only an afterthought. Nothing prevented the applicant from raising these objections during the course of enquiry proceedings before the inquiry officer. The applicant was given due opportunity to cross examine the prosecution witness to elicit the truth. The applicant having miserably failed in doing so in cross examination is coming out with one after the other defects in the proceedings which will not help his case. The presence of the complainant could not be secured and enforced by the inquiry officer and since there was enough evidence available as to the acceptance of bribe money by the applicant, the inquiry officer was fair and just in arriving at the conclusion and giving the findings that the applicant had accepted the money which was marked by the test check memo. The inquiry officer was right in proving that the applicant was guilty of the charge of accepting bribe. The appellate authority and revisional authority have taken note of the service of the applicant and reduced the punishment so as to get back to his original position after 3 years and will get all the

increments due to him as per the revisionary authority's order. There is no illegality and invalidity in the orders passed by them. Hence, the OA is liable to be dismissed.

5. Applicant has filed rejoinder reiterating the submission already made in the OA and further submits that when the case is criminal in nature, disciplinary authority will nominate presenting officer for presenting the case in a justified manner and helps IO to conduct enquiry smoothly and he also would have got an opportunity to cross examine the witness Sri Rudraiah based on whose statement charge sheet has been framed. Therefore, non-appointing of presenting officer is definitely violation of principles of natural justice. Natural justice dispenses with technicalities but abhors decision on suspicion. The inquiry officer cannot give his finding on assumptions of facts and circumstances not supported by any evidence on record. In the present case, the inquiry officer was found to have merely indulged in an exercise of speculation and conjecture and it had recorded a finding of guilt upon evidence which was wholly ambiguous without any clinching factor to show the probability and thus his finding was held to be perverse and such as could not have been arrived at by any reasonable person on the basis of evidence on record. In case of *Shri Raj Singh vs. Delhi Administration, Delhi & Ors.*, reported in *SLJ 1998 (3) p.140*, the CAT, Principal Bench held that charges cannot be proved on mere suspicion and conjectures and where there is no proof to establish the charge, it was a case of no evidence. The statement of the respondents that the inquiry officer cannot issue summons or warrants against the complainant is not acceptable. The allegation was made behind and at his back which requires to be sustained in the departmental enquiry. If for any reason the complainant is not attending the enquiry, the statement given by him shall be treated as dismissed or cancelled and the case to be treated as case of no evidence and the benefits should be given to the

charged employee. The Hon'ble Supreme Court in the case of *Ministry of Finance and Anr. vs. S.B.Ramesh*, reported in *SLJ 1998 (2) SC, p.67* held that findings cannot be based on surmises when there is no evidence, and in the case of *Central Bank of India vs. P.C.Jain*, AIR 1969 SC 983 held that a finding of domestic Tribunal would be perverse if it is not supported by any legal evidence. As per rule No.09(17) of DAR, prosecution witness i.e. Complainant has to be called to attend the enquiry, examined by the examination-in-chief and further charged employee has to be given an opportunity to cross examine the prosecution witness. Taking hand loan of Rs.1000/- from the complainant was not disputed. The purpose of taking Rs.1000/- was to clear the bank loan for which he received a notice from the bank. This fact he has brought out very clearly during the investigation and also during the course of DAR enquiry. Whereas, this fact was not at all considered. He was supposed to pay Rs.6000/- whereas he had only Rs.5000/- on hand cash. Therefore, he requested the complainant to give loan of Rs.1000 and accordingly, he has taken Rs.1000/- from the complainant. He submits that he never knew that Rs.1000/- which was given to him as hand loan were currency notes used as marked currency for laying trap. Had the complainant been made available in the departmental enquiry, he would have definitely taken out the truth from him and proved his innocence. Therefore, it is clearly established that reasonable opportunity was not given for cross examination of Sri Rudraiah, complainant and one of the prosecution witnesses in DAR enquiry. It is true that departmental enquiries are quasi-judicial in nature and preponderance of probability is enough to prove the charges levelled against the employee. But even in quasi-judicial cases the minimum requirement of principles of natural justice should be there to establish the charges levelled against the employee. The reason for arriving at the conclusion to

prove one charge based on preponderance of probability is not correct because there does not exist preponderance of probability instead it is only imaginary, fabricated and illusionary. Disciplinary authority has not applied its mind while imposing the penalty of compulsory retirement because there were so many lapses in the DAR inquiry report.

6. The respondents have filed additional reply statement wherein they submit that the case is not a criminal in nature but it is purely a departmental/domestic proceedings and charge sheet is issued as per Railway Servants (D&A) Rules, 1968. The enquiry officer is competent authority to call any witness and to do complete justice. The enquiry officer has granted all opportunities to the applicant during the course of enquiry proceedings and the findings of the enquiry officer in detail speaks about the abundance of principles of natural justice and is writ large on the face of the findings. The applicant is harping on not cross-examining the complainant who is not a railway employee and the enquiry officer has made effort to secure his presence. The enquiry officer under the Discipline & Appeal Rules, 1968 does not have any powers to compel the attendance of any outside witness. The applicant also admitted having accepted the money from the complainant which was marked currency notes. PW-1 also correctly deposed the facts during the enquiry. These facts have been brought out in the findings of the enquiry officer. The disciplinary authority after conducting inquiry, has imposed the penalty of compulsory retirement as per rules by taking into consideration the offence committed by the applicant and the appellate authority has modified and reinstated the applicant as Sr.Commercial Clerk for a period of four years with the effect of postponing of future increments. And revisionary authority also duly considering his left over service has modified the penalty to that of three years without the effect of

postponing his future increments. The penalty imposed upon the applicant will complete well before his retirement and the applicant's pay will be restored after the completion of the penalty and he is entitled for all the benefits. In view of the above, the action taken by the above authorities is in order and the penalty imposed on the applicant is justified and reasonable.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The short point in this case is whether the disciplinary proceedings will get completely vitiated in view of the fact that the complainant and one of the listed witnesses who also was taken as the decoy person by the vigilance team was not enquired and the applicant did not have an opportunity to cross-examine the person. The applicant has cited a number of orders from various Benches of this Tribunal relating to the fact of vitiating of the disciplinary proceedings due to the non-examination of a crucial witness. In fact, in the impugned order at Annexure-A15, the Chief Commercial Manager, South Western Railway who is the revisionary authority has also clearly stated that the principle of natural justice has been seriously compromised by the failure of the vigilance team to ensure the attendance of the listed witness who is the complainant. However, the explanation of the applicant that he took the alleged money from the decoy person as a hand loan for repaying the bank loan appears to be an afterthought since he was already in possession of extra cash with himself and it defeats logic as to why a railway official with more than 30 years of service should take an interest free hand loan from the spouse of a milk parlour licensee in a Railway station. We, therefore, can safely conclude that while there was no proof of the demand of bribe as such established by anything other than the complaint, it is clear that there was an exchange of money between the person who was the

spouse of the milk parlour licensee and the applicant in the rank of a Chief Commercial Inspector. The respondents would state that the punishment has been systematically reduced by them and the final order is passed reducing the applicant to the post of Senior Commercial Clerk for a period of 3 years without the effect of postponing the future increments and that he would get back all the benefits after the expiry of the 3 years term which started from December 2016. Unfortunately, the applicant has expired on 07.03.2018 during the period of currency of the punishment and as such the family pension and other dues for which he was eligible would all be based on the reduced pay band based on the final orders in the disciplinary proceedings.

8. Having considered all the aspects of the case, we deem it appropriate to direct the respondents to modify the punishment order in such a way as to ensure that the currency of punishment is stopped before the death of the applicant so that the family need not suffer the consequences of his being in reduced pay band at the time of his death. This they may do so within a period of two(2) months. OA is disposed of as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00086/2017

Annexure A1: Proceedings of the Regular hearing
Annexure A2: Copies of the deposition of PW2
Annexure A3: Copies of the proceedings
Annexure A4: Copy of the cross examination of applicant by I.O.
Annexure A5: Copy of the defence statement
Annexure A6: Copy of the statement along with typed copy
Annexure A7: Copy of the Circular
Annexure A8: Copy of the show cause notice along with E.O. report
Annexure A9: Copy of the reply
Annexure A10: Copy of the punishment order by the DA
Annexure A11: Copy of the Appeal Memo
Annexure A12: Copy of the Commercial Department certificate
Annexure A13: Copy of the Appellate order
Annexure A14: Copy of the Revision Petition
Annexure A15: Copy of the Revision authority order

Annexures with reply statement:

Annexure-R1: Typed copy of Ex PD-3
Annexure-R2: Typed copy of cash check memo
Annexure-R3: Typed copy of recovery memo

Annexures with rejoinder:

-NIL-

Annexures with reply to the rejoinder:

-NIL-
