IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No. 1323 of 2013

Reserved on: 15.02.2019

Pronounced on: 06.03.2019

Between:

B.J.A. Jaya Raj, S/o. late B.M. Rajaratnam,
Aged about 53 years, Occ: Retd. Dy. Station Superintendent/ Tenali,
Tenali Railway Station, Vijayawada Division,
South Central Railway, Vijayawada.

… Applicant

And

1. Union of India, Rep. by the General Manager,
South Central Railway,
Rail Nilayam, III Floor,
Secunderabad – 500071.

2. The Chief Passenger & Traffic Manager,
South Central Railway,
Rail Nilayam, II Floor,
Secunderabad – 500 071.

3. The Additional Divisional Railway Manager,
Vijayawada Division, SC Railway,
Vijayawada.

4. The Senior Divisional Operations Manager,
Vijayawada Division, SC Railway,
Vijayawada.

… Respondents

Counsel for the Applicant … Mr. K. Sudhakar Reddy
Counsel for the Respondents … Mr. N. Srinivasa Rao, SC for Rlys

CORAM:
Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed against the penalty of compulsory retirement imposed by the disciplinary authority, which was confirmed by the appellate authority as well as the Revision authority respectively.

3. Applicant while working as Station Master in the respondents organisation at Donakonda was subjected to a decoy check conducted by the vigilance branch. Based on the check, applicant was placed under suspension and thereafter on revocation of the suspension he was transferred to Vijayawada. Applicant was served with a charge memo dt. 18.11.2010 containing 3 articles of charge. First charge was that applicant collected Rs.227 in excess of the prescribed freight charges for booking of a Motor cycle and for issue of ordinary tickets, from Sri G.Naresh decoy passenger. The second one was for booking the motorcycle as parcel beyond business hours and the third was about the applicant having Rs.169 excess in Railway cash and Rs 300 excess in personal cash. Applicant replied to the charge memo with the customary and conventional denial of all the charges in the wake of which regular inquiry entailed and the Inquiry officer submitted a report wherein the first and third charges were held to be 'proved' while the second one as 'not proved'. The Disciplinary authority imposed the penalty of compulsory retirement vide order dt. 20.12.2011 which was confirmed by the appellate authority vide order dt. 16.11.2012 and the revision authority vide order dt. 10.04.2013. Hence the OA.

4. Applicant contends that the vigilance inspector of the vigilance wing was appointed as the Inquiry Officer who conducted the inquiry in a biased manner and arrived at the conclusion based on surmises and conjectures. The evidence tendered in response to question number 60, 61, 71 and 74 were in his favour establishing his innocence. Inquiry officer conveniently skipped evidence which was in his favour. Despite there being no evidence that there was a demand for bribe, disciplinary authority has imposed the penalty of compulsory retirement which is disproportionate and harsh. On appeal, appellate authority has issued a non speaking order and when represented for revision, the revision authority

disposed of the revision petition mechanically. Besides, decoy deployed is a habitual bribe giver and a tutored witness. As per railway board circular E63 VGI -142 dt March 1970 the amount that can be spent on secret services shall not exceed Rs.500 per annum but in the instant case Rs 1500 is alleged to have been incurred. Applicant did not want to take extra money from the decoy and the witness as they claimed to be students but they left without collecting the balance. Presenting officer was not appointed. Observations made by this Tribunal in OA 938/2009 dt 9.10.2012 in regard to Presenting officer donning the role of Inquiry Officer are in his favour.

5. In stark contrast, respondents state that the applicant was proceeded for misconduct while on duty as Station Master for collecting excess amount from a decoy passenger for booking a Motor Cycle as a parcel and collecting excess fair for issuing tickets. Charge memo was issued on 18.11.2010. Inquiry was conducted wherein 2 articles of charge were held to be proved. Based on the inquiry report, disciplinary authority ordered compulsory retirement of the applicant which was upheld by the appellate and the Revision Authorities with due application of mind. The grounds for imposing for such a penalty is that the applicant admitted in his own statement after the vigilance check that he has collected excess cash from the decoy passenger and that he had excess personal cash since he collected money from passengers over and above the prescribed rate/fare. Deposition of the decoy passenger and the witness passenger confirmed that the applicant has demanded Rs.500 for booking of Motor cycle and Rs.7 towards excess collection of fare. Inquiry officer did not skip any evidence. After admitting the irregularity committed immediately after the incident and thereafter denying the same is an afterthought. Penalty to be imposed in such cases should be removal or dismissal but on humanitarian grounds compulsory

retirement was imposed so that he gets retirement benefits. The amount for secret services has been enhanced Rs.500 to Rs.25,000 and that it is not understood as to how it will help the applicant to clear himself of the charges levelled against him. Appointing Presenting Officer is the discretion of the Disciplinary Authority.

6. Heard both the counsel. We have gone through the documents as well the material papers submitted.

7. There are many issues raised by either side which deserve comprehensive study to arrive at a justifiable decision.

i) Ld. applicant counsel raised the objection that a Gazetted officer was not associated with the vigilance check and that rules 704/705 of Railway Manual in respect of trap cases have been violated.

At the very outset, it has to be kept in view that the Apex Court has explained the scope and character of the provisions of Rules 704 and 705 of the said Railway Manual in the case of **South Central Railway vs G. Ratnam (2007) 8 SCC 212** which has to be kept in view while examining the case of the applicant and the same is as under:-

> ***19.*** *We have carefully gone through the contents of various chapters of the Vigilance Manual. Chapters II, III, VIII, IX and Chapter XIII deal with Railway Vigilance Organisation and its role, Central Vigilance Commission, Central Bureau of Investigation, investigation of complaints by Railway Vigilance, processing of vigilance cases in Railway Board, suspension and relevant aspects of Railway Servants (Discipline and Appeal) Rules, 1968 as relevant to vigilance work, etc. Paras 704 and 705, as noticed earlier, cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any legally enforceable rights on*

any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the delinquent even if any of the directions is ignored, no right would lie. Their breach may expose the subordinate authorities to disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari.

Again, perusal of Provision 518.4 of Vigilance Manual would answer the objection which states as under:

"518.4 -- In addition, the Investigating Officer/Inspector should immediately arrange one or more officials (gazetted or non-gazetted or a combination of gazetted & non-gazetted) to act as independent witness/witnesses. It is imperative that all Railway employees should assist and witness a trap, whenever they are approached by the Vigilance branch. Refusal to assist or witness a trap without sufficient reason can be construed as breach of duty, making the person liable to disciplinary action."

Therefore, it is not mandatory to detail a Gazetted officer in the vigilance team as per cited provision of the vigilance manual. Intrinsic feature that carries the day in a vigilance check is the credentials of the officials involved. Those with good credentials are often deployed in vigilance checks. They can be Gazetted and non Gazetted officials. More than the rank, the main thrust is the commitment to stand by the vigilance till the case fructifies and not being an interested witness with expected degree of independence. Respondents, therefore, exercised discretion in selecting the witness. Further, as seen from the inquiry report, procedure referred to in the cited rules 704/705 have been largely followed. Any deviations from the same which would weigh in favour of the applicant have not been noticed, to be taken note for avoiding any miscarriage of justice.

ii) Applicant claimed that the decoy is tutored witness and has been engaged as a stock decoy who was used frequently which is against rules.

Applicant gave evidence of one case wherein the employee concerned has been used as a decoy. Being used once in the past does not mean that the individual has been used frequently as a stock decoy.The Apex Court in the case of ***State of Punjab v. Harbans Singh, (2003) 11 SCC 203*** has held as under:-

> *"we do not think merely because some of the prosecution witnesses have appeared in a large number of cases earlier for the prosecution, ipso facto their evidence becomes liable to be rejected, but we think certainly such evidence will have to be considered with great caution."*

In the case of ***Nana Keshav Lagad v. State of Maharashtra, (2013) 12 SCC 721 :***the Apex Court has again held in the same manner endorsing the Trial Court judgment when it has pointed out, "*merely because the said witness had tendered evidence in another case, it cannot be held that on that score alone his evidence should be rejected*." and held that if the version is acceptable and is corroborated, there was no reason to reject the version of the said witness. The same ratio holds good in the case of the so called "stock decoy" as well. Thus, this contention of the applicant is liable to be outrightly rejected.

iii) Applicant has stated that Presenting Officer not being appointed has vitiated the Inquiry proceedings. He has also cited the judgment in OA 938/2009 delivered by this Tribunal on 9.10.2012, to support his averment. Rule 9 of Railway Servants (Disciplinary & Appeal) Rules 1968 states as under:

> *"9[9](a)(i) On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.*
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> *XXXX*
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> *(c) Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it **may**, by an order in writing, appoint a railway or any other Government servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.*

A Division Bench of Hon'ble Madras High Court in the case of the **Central Board of Central Excise and Customs vs K.S. Mahalingam, W.A. No.809 of 1985** had occasion to interpret the provisions of Rule 14(5) of the CCS (CC&A) Rules, 1965, which is *pari materia* with the provisions of Rule 9 (C) of the Railway Servants (Disciplinary and Appeal) Rules 1968, wherein it has held as under:-

> *"Cl. (c) of the R. 14(5) merely enables the disciplinary authority to appoint a presenting officer. But such appointment of a presenting officer is not at all obligatory. There is therefore no question of there being any breach of R. 14(5)(c) of the C.C.A Rules."*

As per the said rule, Disciplinary authority has the discretion to appoint a Presenting officer. In the absence of the Presenting officer, the Inquiry officer can don the role without compromising his role as an Inquiry Officer. We have gone through the Inquiry report. The I.O has conducted the proceedings as an independent fact finding authority. The very fact that the I.O has held that the second charge as not proved is a pointer in this direction. The applicant has also not moved any bias petition against the I.O is one another feature which acclaims the fact that the Inquiry findings were not compromised due to the absence of the Presenting Officer. As recently as 2 July, 2018, Hon'ble Supreme Court in ***Union Of India vs Ram Lakhan Sharma, in CA 2608 / 2012, 6745/2013,9373-9374/2013 & 1800/2014*, in regard to appointing a Presenting officer, has held as under:**

> *"14. Learned counsel for the appellant submits that Rule 27 does not mandate the appointment of Presenting Officer to hold disciplinary inquiry. It is further submitted that even if it is assumed that while non-appointment of Presenting Officer, principles of natural justice have been violated, respondents have to show what prejudice has been caused due to non-appointment of the Presenting Officer in the department enquiry. No prejudice having been caused to any of the respondents, they were not entitled for grant of relief as has been granted by the High Court.*

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27. When the statutory rule does not contemplate appointment of Presenting Officer whether non -appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Inquiry Officer acting as the prosecutor against the respondents. The Inquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceed to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

28. Justice M. Rama Jois of the Karnataka High Court had occasion to consider the above aspect in ***Bharath Electronics Ltd. vs. K. Kasi, ILR 1987 Karnataka 366****. In the above case the order of domestic inquiry was challenged before the Labour and Industrial Tribunal. The grounds taken were, that inquiry is vitiated since Presenting Officer was not appointed and further Inquiry Officer played the role of prosecutor. This Court held that there is no legal compulsion that Presenting Officer should be appointed but if the Inquiry Officer plays the role of Presenting Officer, the inquiry would be invalid. Following was held in paragraphs 8 and 9:*

> *"8. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry See: Gopalakrishna Reddy v. State of Karnataka (ILR 1980 Kar 575). It is true that in the absence of Presenting Officer if the Inquiring Authority plays the role of the Presenting Officer, the inquiry would be invalid and this aspect arises out of the next point raised for the petitioner, which I shall consider immediately hereafter.*
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32. The Division Bench after elaborately considering the issue summarised the principles in paragraph 16 which is to the following effect:

> "16. We may *summarise the principles thus:*
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> *(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.*
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> *(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry."*

Applying the legal principles laid down by the superior judicial forums, we observe that in the present case, statutory RS (DA) Rules 1968 do not make it mandatory to appoint a presenting officer. The Inquiry Officer, though he had to play the dual role of a Presenting Officer and an Inquiry Officer, did not conduct the inquiry in a manner detrimental to the interests of the applicant. There has been no bias alleged against the Inquiry officer. The applicant was allowed to examine the documents and cross examine the witnesses. The impartiality of the Inquiry Officer is reiterated by the fact that he did not hold the 2nd charge as proved. It was free and fair. Therefore, objection raised does not have much steam in it. Besides, based on the above, cited OA 938/2009 does not come to the rescue of the applicant.

iv) The learned counsel for the applicant has raised an objection that the Inquiry officer earlier worked for the Vigilance wing of the respondents Organisation and hence he would have a subtle bias in favour of the vigilance wing.

The above contention has no substance at all. Again, the applicant, at no stage of the inquiry, has taken any objection on this ground against the I.O. In fact, the I.O has held that the 2nd article of charge as not proved. If applicant, had any reservation about the I.O he could have moved a bias petition. Not doing so

and raising an objection at this stage does not carry any weight. There is no statutory rule which prohibits appointing officers from vigilance wing as Inquiry officers. It is more a presumption of the applicant. The system does provide for checks and balances at different levels all the way from the disciplinary authority to the revision authority, to analyse the Inquiry report and take a view. The very fact that the applicant himself presented his case without a Defence Asst. is a measure of the confidence he had in the Inquiry officer.

v) The applicant has dealt about the tendering of evidence by different prosecution witnesses, claiming that they are in his favour and that the Inquiry officer has skipped evidence which was in his favour.

The evidence ushered in by different witnesses were discussed at length by the Inquiry officer and well answered by the respondents in the reply statement. Decoy passenger, PW-1, PW-5 and PW-6 have tendered overwhelming evidence which goes against the applicant. PW-3 and PW-4(Q-60 &71), stated that the applicant desired to return the balance amount but the two individuals i.e. decoy and PW-1 left without taking the balance amount. If they were so clear then it is not known as to why PW-3 and PW-4 did not indicate the balance amount that the applicant desired to return. Inquiry report confirms that applicant has admitted in his statement that he collected excess amount of Rs.220 and Rs.7 excess while booking the motorcycle and issuing the tickets respectively. In addition, applicant is on record that he gave the statement of admission without being under any duress. In regard to Q (61 & 67), the issue is about applicant collecting more than what he was supposed to legally collect which tantamount to gross misconduct. This is corroborated by documents of excess cash in the possession of the applicant. There may not be a demand but the excess collection made exposes the illegal intent of the applicant. Though the

decoy has committed a mistake by claiming that he did not participate in any previous decoy check but that does not in any way change the outcome of the inquiry given the abundance of evidence mounted against the applicant. The stigma that his integrity is at stake could not have changed because of some technical lapses. Core allegation remains intact and proven. Inquiry Officer has indeed weighed the pros and cons of the evidence tendered comprehensively and arrived at a fair conclusion. We find no substance to discuss them once again. This Tribunal cannot evaluate evidence. It has to be seen as to whether the I.O has acted as an independent adjudicator based on the documents and evidence let in by the witnesses cited. If the role of the I.O has been compromised and he acts on behalf of the respondents then the Tribunal can step in. We do not find any reasons to do so.

vi) Ld applicant counsel submitted that the punishment is harsh and is disproportionate.

Respondents have been fair enough to let off the applicant with compulsory retirement so that he would get pension and terminal benefits, albeit it was open to them to either remove or dismiss him. Disciplinary/Appellate authority and revision authority after careful consideration of the facts of the case have imposed the penalty in question. Revision authority has also extended personal hearing to the applicant. Thus the respondents have been fair in dealing with the issue at every level and did give reasons as to why they arrived at the conclusion of imposing the penalty of compulsory retirement. In fact, this Tribunal is precluded from intervening in regard to quantum of punishment as per Hon'ble Supreme Court judgment in **Union of India vs Kulamoni Mohanty (1999) 1 SCC 185,** wherein it has been held as under:-

> ***4.*** *We have no doubt that the Tribunal had exceeded its power and jurisdiction in interfering with the quantum of punishment imposed on the respondent. It was not even within the discretionary powers of the Tribunal to have done so, particularly on the facts of this case. We, therefore, hold that the Tribunal has gone wholly wrong in interfering with the quantum of punishment.*

Ld Counsel repeatedly harped on the point that the amount involved was insignificant and the punishment is disproportionate. The question is not about the quantum, but about the integrity of the applicant. While working in a public institution like the respondents organisation absolute integrity to duty is an essential prerequisite because it engages lakhs of employees with extensive financial powers and operational freedom. Financial transactions transacted by the respondents organisation in a day are phenomenal and astronomical. Respondents organisation can progress based on the trust it reposes in its employees that they will act as per rules and further the interests of the organisation. Discharging duty in a deviant manner as seen in the present case is belying the public trust reposed in the institution. Indeed, respondents organisation is a prestigious Public institution of National importance which needs to be strengthened for public good. Employees should safeguard the humungous institution by promoting its vital interests and definitely not the way the applicant conducted himself. Individual rights of the applicant are undoubtedly important. But equally important is the Organisational interest for bringing the offender to book and for the system to send the right message to all in the organisation- be it the rule abiding employee or the potential offender. Rights are not only that of the applicant but, extent apart, also of the respondent organisation, the most valued public institution which transports millions by the day carrying one and all including goods of vital economic interests, for the betterment of our country. It is pertinent to mention that the Apex Court has

held in the case of **Mithilesh Singh vs Union of India (2003) 3 SCC 309** as under:-**:**

> ***9.*** *The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. Reference may be made to a few of them. (See: B.C. Chaturvedi v. Union of India, State of U.P. v. Ashok Kumar Singh, Union of India v. G. Ganayutham, Union of India v. J.R. Dhimanand Om Kumar v. Union of India.)*

In fine, the records perused reveal that there is no deficiency or legal lacuna in the decision making process adopted by the respondents and thus, judicial interference is least called for in this case. The quantum of penalty imposed also is not shockingly disproportionate to the gravity of the proved charges.

Therefore, from the aforesaid it is evident that the applicant failed to make out a case in his favour. Respondents acted as per rules and within the frame work of law. Hence the OA is devoid of any merit and therefore is dismissed, however, with no order as to costs.

(B.V. SUDHAKAR) **(JUSTICE R. KANTHA RAO)**
MEMBER (ADMN.) **MEMBER (JUDL.)**

Dated, the 6th day of March, 2019

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