

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/1052/2017

Reserved on: 07.03.2019

Pronounced on: 11.03.2019

Between:

B. Sumanth Kumar, S/o. B. Shankar,
Aged 39 years, Occ: Inspector of Central Tax,
O/o. The Deputy Commissioner of Central Tax,
Nagole Division, 3rd Floor, CLS Building,
Nampally Station Road, Abids, Hyderabad.

... Applicant

And

1. Union of India, represented by
The Chairman, Central Board of Indirect Taxes,
North Block, New Delhi.
2. The Chief Commissioner of Central Tax & Customs,
Hyderabad Zone, GST Bhavan, Basheerbagh,
Hyderabad – 500 004.
3. The Commissioner of Central Tax & Customs,
Tirupathi Commissionerate,
9/86-A, Amaravathi Nagar,
West Church Compound, Tirupati.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mr. Pavan Maitreya, Advocate for
Mr. R.V. Mallikarjuna Rao, Sr. PC for CG

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER

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

2. Applicant has filed the OA challenging the penalty of stoppage of increment imposed by the disciplinary authority vide order dt 23.9.2015 and upheld by the Appellate authority vide order dt 1.12.2016.

3. Applicant while working as Air Customs officer, which is in the rank of Inspector, at Shamshabad Airport, Hyderabad, the Central Bureau of Investigation conducted a Joint Surprise Check (JSC for brevity) during intervening night of 21/22.10.2013. CBI based on the check prepared Joint Check Proceedings and issued FIR by registering a crime under Crime No.RC 21(A)/2013 on suspected offence of abuse of official position and acceptance of illegal gratification by the applicant. After investigating the matter CBI closed the FIR and recommended departmental action for imposition of major penalty. Accordingly, 3rd respondent issued charge memorandum dt 29.5.2014 alleging that the applicant has accepted illegal gratification of Rs.6000 from a passenger Mr.Kondur Prabhu who arrived from Sharjah on 22.10.2013 for allowing dutiable imported Sony T.V without levying prescribed custom Duty of Rs.9,639 thereby causing loss to the Public exchequer. Applicant denied the allegations. Inquiry was conducted and inquiry report was concluded that there is a bit of suspicion against the applicant. Differing with the inquiry officer's report, Disciplinary Authority imposed the penalty of reduction of pay by one increment for a period of one year without recurring effect. On appeal, appellate authority confirmed the penalty. Applicant claims that without evidence the applicant has been penalised. Aggrieved over the same OA has been filed seeking justice.

4. The contentions of the applicant are that he had no knowledge of the purported passenger available with dutiable goods. Competent disciplinary authority has not imposed the penalty. The Sarjah passenger who is the main witness cited in the charge sheet did not appear before the inquiry officer. Inquiry officer has not given a conclusive finding. The amount of Rs.6000 purported to be collected by the applicant was produced by Mr.B. Papa Rao,

Superintendent but he was not mentioned as a witness. Similarly Mr.G.BalSingh the supervisor of the applicant was not cited as a witness. CBI officers who drafted the Joint proceedings and are important to the episode are not figuring as witness. Even the CCTV footage claiming that the applicant was in conversation with the Sarjah passenger was also not made a part of the inquiry. The disembarkment slip not figuring in the total process implies that the applicant could have passed through the green channel. This deduction is based on the fact that neither the amount of Rs.6000 alleged to be illegally collected from the passenger nor the customs duty of Rs.9639 due to be officially collected from the passenger were credited to the Govt. Account. There were many lapses committed by the checking officials during the course of Joint Surprise Check proceedings. Disciplinary Authority pointed out the lapses committed by the inquiry officer and the presenting officer and wanted a re-inquiry to be done which was not agreed to by the inquiry officer. Without the lapses pointed out being cured, the disciplinary authority proceeding and imposing the penalty is unfair. The inquiry officer has not examined the applicant as per sub rule 18 of Rule 14 of CCS (CCA) Rules, 1965. Appellate Authority confirmed the penalty without application of mind. Imposing the penalty on the applicant was violative of Articles 14 and 16 of the Constitution. Therefore the orders of the disciplinary authority and that of the appellate authority have to be quashed.

5. Respondents in their reply state that, if the applicant desired to examine the CBI officers as witness, he could have requested the IO to summon them under rule 11 (ii) of Rule 14 CCS (CCA) Rules 1965. The penalty was imposed by the Commissioner who has been designated as the appointing authority/disciplinary authority for the Inspector grade vide CBEC order dt

22.12.2009 and 13.7.2010 respectively. Lapses claimed to have occurred during the joint surprise check proceedings are not borne out of facts. The applicant claiming that he has not interacted with the passenger Mr.Kondur Prabhu is incorrect, since he himself admitted interacting with the passenger in his statement to CBI officers and the passenger too did identify the applicant before JSC officers. CO has not denied his statement before CBI. It is a fact that the applicant should have been examined under sub rule (18) of rule 14 of CCS (CCA) rules 1965 but since he has been provided with all the documents and reasonable opportunity to defend himself during the inquiry, there was no injustice done to him during inquiry. Disciplinary authority disagreed with the inquiry report and that the disagreement note was sent to the applicant and thereafter on receiving the reply, a decision was taken which is in accordance with rules on the subject. Applicant's claim that the Inquiry report is not conclusive does not hold ground since the inquiry report only assists the disciplinary authority to come to a logical conclusion and that the disciplinary authority has discretion to disagree with the report and come to an independent conclusion. Further applicant's claim that the cash was not recovered from him is disproved by the fact that applicant himself has informed the JSC team through Sri B. Papa Rao, Supdt. as to where the money was hidden. Besides, non issue of disembarkation slip does not mean that the applicant did not pass through the customs counter and that this issue was discussed at length by the disciplinary authority/Appellate Authority. Moreover, Sri Y. Nagarjuna witnessed the proceedings of the JSC and there can be no doubt on this count. Serving the JSC copy on the applicant under pressure does not stand to reason as the applicant could have refused the copy in writing. Non recovery of customs duty is no ground that the applicant exhibited lack of integrity. Intrinsic feature is the

conduct of the applicant. Penalty has been imposed after major penalty proceedings on the principle of preponderance of probability. JSC proceedings and evidence of witness are vital and adequate to prove the guilt of the applicant. Further appellate authority did not rely on statements recorded by CBI but based his findings on CCTV footage, witness statements, panchanama and the recovered cash. The charge sheet was not issued based on suspicion as is being attempted to be made out by the applicant but on solid evidence. Disciplinary and appellate authorities have issued reasoned orders in imposing and upholding the penalty respectively and hence the OA deserves to be dismissed.

6. Heard both counsel at length. Perused documents and material papers submitted in detail.

7. I) The issue is about alleged illegal gratification of a sum of Rs.6000 accepted by the applicant from a passenger Mr K.Prabhu from Sharjah and therefore proceeded under Rule 14 of CCS (CCA) rules for lack of integrity and unbecoming of a Govt. servant. There are many issues raised by either side which require a sizzling analysis keeping the legal issue in the fore, to arrive at a fair and equitable decision. The legal principles are laid down by the Hon'ble Supreme Court in regard to disciplinary proceedings. These principles are to be followed in letter and spirit. Hence it would be in the fitness of things to telescope the legal principles set by the Hon'ble Supreme Court on to the decisions of the Respondents to evaluate their validity or otherwise.

II) Generally Tribunal would not interfere in disciplinary matters unless there are procedural deficiencies and violation of rules/law. In regard to judicial review of disciplinary proceedings, Hon'ble Supreme Court has observed as under:

Judicial review is a review of the manner in which the decision is made. to ensure that the individual receives fair treatment The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case (B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749)

III) Now let us look at the case as to whether it is in consonance with the observation of the Hon'ble Supreme Court. To begin with the essential elements of charge sheet are the articles of charge, statement of imputation, list of witnesses and documents. In major penalty proceedings an independent inquiry is conducted in order to provide a fair opportunity to the delinquent official to prove his innocence. Standard operating procedure is to introduce the documents in the inquiry through the author of the documents so that it is established that the author is in the know of things as to what he has stated in the statement and substantiate the same during the process of examination and cross examination. Witnesses cited are expected to tender evidence to substantiate the charges by appearing before the inquiry officer. In the present case the Sharjah passenger Mr. Kondur Prabhu, the key witness to the entire case did not attend the inquiry. The case emerged on the allegation that Mr K. Prabhu has allegedly given Rs. 6000 as illegal gratification to the applicant to allow him to take the Sony TV brought by him without paying the prescribed customs duty. Therefore, his absence has disabled the applicant to confront Mr K. Prabhu about the incident to extract the truth. Thus the main foundation on which the charge is to be proved is weak. Going a step further, the other witness Sri Y. Nagarjuna depositions were inconsistent. JSC proceedings were not introduced

by the leading author of the document. CCTV footage which has been relied upon has not been a part of the disciplinary proceedings. Thus the disciplinary proceedings had many shortfalls which violate rules and Principles of Natural Justice, thereby making the proceedings incongruent with the observations of the Hon'ble Supreme Court observation cited supra, warranting an intervention by this Tribunal. True to speak the purpose of judicial review is to ensure that the individual receives fair treatment as held by Hon'ble Supreme Court in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312. This Tribunal is not looking into the decision but at the decision making process so that justice is rendered. The decision making process has to be fair, just and equitable in order to enable the decision to stand the scrutiny of law. Hon'ble Apex court has observed while commenting on judicial scrutiny of disciplinary proceedings in Ranjit Thakur v. Union of India (1987) 4 SCC 611 that

“Judicial review generally speaking, is not directed against a decision, but is directed against the ‘decision-making process’.”

The tribunal would subject the decision making process to scrutiny in the following paras to examine as to whether respondents decision of imposing the punishment in question is valid.

IV) The respondents started the process by issuing a charge sheet indicating the witnesses supporting the charge. Two witnesses were cited in the present case. The main witness Mr K.Prabhu was not available for inquiry by the inquiry officer. The other witness SW-1 namely Y. Nagarjuna depositions were inconsistent. Therefore the disciplinary proceedings began with a major weakness of the key witness being unavailable for inquiry and the other witness depositions were not helpful to the prosecution. An inquiry was conducted and

the Inquiry Officer has made some vital observations which are critical to the case.

V) The pertinent observations made by the I.O are that the sole witness Mr.Y.Nagarjuna S.W-1 has agreed that there were certain discrepancies in the JSC proceedings. CCTV footage was not a document cited in the charge sheet and hence cannot be relied upon. I.O has expressed doubts about the way JSC was conducted. The IO goes on to say that there is no evidence to confirm that Mr. K. Prabhu has produced the TV for assessment and that the disembarkment slip was not examined. Neither was there any other evidence presented to prove that Mr K. Prabhu, the passenger, has paid the duty. The counter in-charge is Mr Balsingh, Superintendent who is the competent authority to levy duty and therefore, the applicant cannot deal with the passenger Mr. K. Prabhu independently. The role of Mr. Balsingh, which is critical to the case, was not examined by JSC. The money alleged to have been collected from the passenger was recovered from Mr. Papa Rao, Superintendent and not from the applicant. SW-1 namely Mr. Y. Nagarjuna, has stated that Mr Papa Rao has informed the JSC that the money was given to him by the applicant but surprisingly Mr.Papa Rao was not cited as a witness to examine him. As per JSC the passenger remembered the serial numbers of the notes he has given to the applicant but SW-1 claimed it was difficult to remember the serial numbers. Based on the above, the IO concluded that the alleged offence is not established, yet the evidence on record leaves a bit of suspicion.

VI) As can be seen from the inquiry report the inquiry officer has expressed reservations about JSC proceedings, Superintendents Mr Balsingh and Mr. Papa Rao who were crucial to establish the charge were not cited as witness, CCTV footage which was not part of the charge sheet was relied upon,

money was from Mr Papa Rao and not from the applicant, no evidence of the Passenger Mr K.Prabhu having paid the duty and above all he did not present himself for inquiry.

VII) The Disciplinary authority (DA for short) observed certain lapses on part of the Inquiry officer and the presenting officer and desired that the Inquiry officer look into the same but the later did not agree. Without curing the defects noticed the DA proceeded to impose the penalty. The proper course would have been to drop the charge sheet and issue a fresh one with all the defects rectified. It is strange that the DA went ahead after he himself detected certain lacunae which would come in the way of proving the charge. The decision of the DA to disagree with the findings of the Inquiry officer is within his competence. Proper care has been taken by the DA to send the note of disagreement to the applicant. Nevertheless, it is incumbent on part of the Tribunal to examine the observations of the DA for assessing as to whether they are proper and relevant. DA observed in the disciplinary proceedings that the IO should have called for the CCTV footage since a mention of the same was made in the charge sheet. The I.O usually relies on the documents submitted to conduct the inquiry. It was for the Prosecution to ensure all the documents required to prosecute the case are furnished. The I.O is an independent adjudicator and hence cannot act on behalf of the respondents. Therefore DA finding fault with the I.O for not seeking CCTC footage as evidence is incorrect. DA has also stated that the statement of SW-1 was taken on record and he was examined by the I.O and that other statements were not examined. The I.O examined only S.W-1 because he was available. Other sole witness ie Mr K.Prabhu did not appear and hence there was no scope to examine or consider his statement in his absence. The norm is that the statements enclosed to the charge sheet are to be introduced by those

who made them for proper evaluation of the evidence. Unless the statements are marked they lack the force and the base to consider. Otherwise it would be not known as to who has given the statement and in what context it was given as well as the purpose. Hon'ble Apex Court has held in *Roop Singh Negi v Punjab National Bank and ors* that reported in CA 7341 of 2008 that "Mere production of documents is not enough. Contents of documentary evidence has to be proved by examining witnesses". DA while contesting the statement of SW-1 has stated that passengers carrying dutiable goods are directed to the counters to pay duty but there is no evidence brought on record to confirm that the passenger Mr K.Prabhu was directed to the counter manned by the applicant. D.A has harped on the fact that the applicant admitted that he has interacted with the passenger before JSC and that other witnesses corroborated the same before officers of CBI. Evidence collected during investigation is no evidence unless it is tested and proved in an inquiry. In the present case the main witness Mr K.Pabhu has not appeared before the inquiry officer. The only other witness S.W-1 gave evidence which was inconsistent and did not further the cause of the prosecution. Interestingly the DA in the disciplinary proceedings admits at para (x) that the presence of money in tea room does not clearly establish receipt of illegal gratification by the applicant. Therefore, the DA being aware of the inadequacies tried to justify the imposition of penalty by depending on aspects which cannot be depended upon as expounded above.

VIII) One another issue related to the Disciplinary authority is whether he is competent to impose the punishment. Respondents clarified that the Commissioner has been designated as the Appointing Authority/disciplinary authority vide CBEC orders dated 22.12.2009 and 13.7.2010, consequent to classification of the post of Inspector as Group B Non Gazetted. However, the

Presidential approval communicating the above orders was signed by the Under Secretary to the Govt. of India vide letters dated 22.12.2009 and 13.7.2010. However, as per clause (f) of the Authentication (Orders and other Instruments) Rules, 1958 framed as per power vested under clause (2) of Article 77 of the Constitution, the authority competent to communicate the orders in question from the Ministry of Finance is the Finance Officer, Deputy Assistant Financial Advisor, Controller and the Deputy Controller of Capital issue. These rules were published in the Gazette of India on 3.11.1958. Communication of orders by any other authority, other than those specified in the Authentication rules would infringe the statutory Authentication Rules, as is seen in the present case. Therefore the communication sent by the Under Secretary, G.O.I lacks legal force, putting a big question mark on the competency of the disciplinary authority to deal with the issue dealt.

IX) On appeal preferred by the applicant, appellate authority observed that the appellant cannot distance himself from the cash found in the tea room. However, there are two aspects which the appellate authority has not considered namely the cash was not recovered from the applicant and that Mr. Papa Rao, Superintendent who produced the cash was not cited as a witness to examine him to get to the truth. Appellate authority claims that the passenger identified the applicant. The said passenger not presenting himself before the Inquiry officer to verify this aspect overrules the contention of the appellate authority. Another assertion of the appellate authority is that the applicant admitted to the JSC that he did interact with the passenger Mr. K.Prabhu. Incidents noticed during investigation have to be proved in the inquiry, otherwise the very purpose of conducting the inquiry is defeated. Albeit non collection of duty is no ground to negate the interaction of the applicant with the passenger as

stated by the appellate authority, but definitely it does enthrone one to know as to why there is no evidence of the duty being collected, since the very cause for imposing the penalty is for not collecting the customs duty. We do not find an answer given by the respondents on this count. This raises the question as to why it was ignored even after the elaborate check being done. Appellate Authority while admitting that SW-1 was inconsistent in his depositions yet CCTV footage and the passenger identifying the applicant were sufficient grounds to prove that the applicant interacted with the passenger. When CCTV footage was so important it is not known as to why respondents failed to enclose it as a document appended to the charge sheet so that it could be examined in detail. It is also not understood as to why the respondents failed to make the passenger Mr K.Prabhu appear before the inquiring authority. Appellate Authority also states that there are other evidences to prove the charge but did not venture to state what they were. The Appellate Authority has to examine in deciding an appeal as to whether rules have been followed and law violated. The findings of the disciplinary authority are in accordance with the evidence on record. If any deficiencies found he has the power to remit the case back to the DA. Even though, many inadequacies were noticed as stated supra the Appellate Authority has failed to notice them and exercise the power vested in him appropriately. Thus even the observations made by the appellate authority are illogical and arbitrary. Further, the Appellate Authority decision to confirm the penalty goes against the spirit of the observation of the Hon'ble Supreme Court as under:

The appellate authority shall apply his mind to the entire case and ascertain to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence

on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same. Ram Chander v. Union of India, (1986) 3 SCC 103 , Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713 Apparel Export Promotion Council v. A.K. Chopra

X) In addition to the above, respondents responded to the objection raised by the applicant that CBI officers were not being cited as witness by stating that the applicant could have examined them under sub rule 11 (ii) of Rule 14 of CCS (CCA) Rules. The charge was laid by the respondents and hence it is their responsibility to prove the charge by ushering in the witnesses required and not the other way round. Respondents adduced in the reply statement that the important point to be looked into is not about disembarkation slip being issued or not to the passenger Mr K.Prabhu, but what is to be scrutinized is as to whether the applicant has accepted the illegal gratification. Disciplinary authority has answered this at para (x) of disciplinary proceedings that the presence of money in the tea room does not clearly establish receipt of illegal gratification by the applicant. Respondents claimed that preponderance of probability would suffice in disciplinary proceedings. Yes it does, but only by following rules and legal processes prescribed, in regard to which we find many unexplainable gaps.

XI) Reverting to the conclusion of the I.O it is an unusual finding. An inquiry is conducted to conclude as to whether the charges are proved or otherwise. There cannot be anything via media like in the present case wherein the Inquiry Officer has concluded that the alleged offence has not been established, yet the evidence on record leaves a bit of suspicion. Obviously one cannot be proceeded against on grounds of suspicion. In regard to suspicion being the ground to proceed against Govt. Servants, Hon'ble Supreme Court has observed in Union of India vs H.C Goel in 1964 AIR 364 & 1964 SCR (4) 718 as under:

“ Though we fully appreciate the anxiety of the appellant to root out corruption from Public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings , but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.”

XII) Indeed Hon,ble Supreme Court in Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570, has held that the Inquiry officer has to come to a conclusive finding and that the evidence collected during investigation by itself should not be treated as evidence. The finding of the I.O that there was some suspicion pointing towards the applicant is against the tenets laid down by the Hon’ble Supreme court. Disciplinary and Appellate Authority have relied mostly on the evidence gathered during investigation which is incorrect. The contents of the documents tendered have to be proved. JSC proceedings were filed but the contents therein need to be proved. Officers who drafted the proceeding were not made witness and they were not examined to arrive at fair and just conclusion. As the Inquiry officer has stated that the offence was not proved but added a line of suspicion in his conclusion, the respondents had two options open. One was to close the case based on the offence being not proved and the other one was to drop the charge sheet and issue a fresh one if they desired so. Instead respondents proceeded to impose the penalty being fully aware of the severely infected disciplinary process. In fact, the actions of the respondents to the extant described are against the vivid observation of the Hon’ble Apex Court in Roop Singh Negi, given here under:

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The

purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

18. Suspicion or presumption cannot take the place of proof even in a domestic enquiry.

XIII) Moving forward, respondents have relied heavily on the CCTV footage but that was not made a part of the charge sheet. It is extraneous material brought in to substantiate the charge. Moreover, Inquiry officer has pointed out inherent contradictions in regard to the timings shown in CCTV footage related to the interaction of the applicant with the passenger Mr K. Prabhu and his exiting the airport. I.O. has cast doubts in regard to the contents of the JSC proceedings itself. Primarily, relying on CCTV which was not part of the charge sheet is unfair. This is in violation of the Hon'ble Supreme Court observations extracted hereunder:

And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? (Kashinath Dikshita vs Union of India (1986) 3 SCC 229)

A document not confronted to the delinquent cannot be relied upon for establishing the fact that the delinquent is guilty of a misconduct (see Nicks (India) Tool vs Ram Surat, (2004) 8 SCC 222 at page 227.)

XIV) Going forward it is seen from records that the applicant is facing a serious charge of illegal gratification and the punishment could be severe if proven. In such a charge of serious nature inquiry has to be conducted meticulously. Mandatory provisions are to be strictly adhered. As per rule 14 (18) of CCS (CCA) rules, after the prosecution closes its case, it is mandatory to

examine the applicant by the IO in regard to any adverse findings/facts that go against the applicant. The Inquiry officer has skipped this important step which makes the inquiry justifiably incomplete. Respondents claim that he was given all the required records and that reasonable opportunity was provided during the inquiry to prove his innocence. Therefore not following rule 14 (18) of CCS rules should not be taken too seriously. This is a statutory provision which has to be adhered to. More so when they claim that it is a serious charge. Hon'ble Supreme Court has made pointed observation in this regard as presented below, which the respondents need to bear in mind to meet the ends of justice.

The mandatory requirement of the inquiry officer asking the questions on the circumstances appearing against the charged officer after the prosecution closes its evidence when the charged officer himself does not enter the witness box, vide Rule 14(18) of the CCS(CC&A) rules, 1965 and corresponding provisions in the Railway Servants (Department and Appeal) Rules, has to be properly should be fulfilled to in strict sense. (Moni Shankar v. Union of India, (2008) 3 SCC 484, wherein the Apex Court has held)

Evidently the mandatory provision has been given a go by violating the well established legal principle laid by the Hon'ble Apex Court.

XV) Lastly, the decision of the respondents comprehensively fails the Wednesbury test. As discussed in the above paras, there were procedural improprieties. The relevant aspects were ignored and the irrelevant aspects were considered by the disciplinary and the appellate authority. There were many legal principles violated in the decision making process. The Wednesbury Test has been referred to by the Hon'ble Supreme Court in *Union of India v. G. Ganayutham*, (1997) 7 SCC 463 as under:-

To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no

sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

XVI) The sum and substance of the case is that the respondents failed to produce the key witness before the inquiring authority, depositions of the sole witness were inconsistent, DA and Appellate authorities relied mostly on evidence collected during investigation, issues extraneous to the charge sheet were relied upon, inquiry officer found that the offence was not established but made the fatal mistake of scribing a line of suspicion compromising the purpose of inquiry, mandatory provisions of rule 14 were violated, required witnesses were not cited in the charge sheet, disciplinary authority noticed the lapses but did not get them rectified, Appellate authority review was not what it ought to be and above all the JSC findings were suspect. Many observations of the Hon'ble Supreme Court have been infringed as explained in paras supra. We started the examination as not to question the decision of the respondents but examine the decision making process of the respondents. We find from the afore said that the decision making process has suffered from non observance of rules, legal principles and fairness. Hence an intervention on behalf of the applicant is warranted.

XVII) Therefore, based on merits of the case and the relevant observations of the Hon'ble Supreme Court, the action of the respondents is against rules, illegal and arbitrary. The OA fully succeeds. Therefore the impugned orders dt 23.9.2015 and 1.12.2016 issued by the disciplinary and the

appellate authority respectively are set aside. Consequently respondents are directed to grant all consequential benefits to the applicant as if the penalty was not imposed. However, it is open to the respondents to proceed against the applicant by following rules and law. With the above direction the OA is allowed with no order as to cost

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 11th day of March, 2019

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