

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA/021/00148/2012

Date of CAV : 18-09-2018  
Date of Order : 08-10-2018

Between :

Md.Nayeemuddin S/o Md.Kasimuddin,  
Aged 32 years, Oc : Ex Head Travelling Ticket Examiner,  
South Central Railway, Guntakal,  
R/o H.No.4-8-109, Hari Nagar, Purna,  
Parbhani (Dist.), Maharashtra State-4531511. ....Applicant

AND

1. Union of India represented by  
The General Manager,  
South Central Railway, Rail Nilayam,  
Secunderabad.
2. The Chief Commercial Manager (PS),  
South Central Railway, Rail Nilayam,  
Secunderabad.
3. The Additional Divisional Railway Manager,  
South Central Railway, Guntakal Division,  
Guntakal.
4. The Senior Divisional Commercial Manager,  
South Central Railway, Guntakal Division,  
Guntakal.
5. The Senior Divisional Commercial Manager,  
South Central Railway, Nanded Division, Nanded.
6. The Divisional Railway Manager,  
South Central Railway, Hyderabad Division,  
Secunderabad. ....Respondents

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

Counsel for the Respondents : Mr. N. Srinatha Rao, SC for Rlys

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CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER  
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

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This application is filed under section 19 of the A.T.Act, 1985, for the following relief : -

“ to call for the records pertaining to the Order No. N/CON/C/33/08.V, dated 05.06.2010 issued by the 4<sup>th</sup> respondent; Order No. N/CON/C/33/08.V, dated 15.03.2011 issued by the 3<sup>rd</sup> respondent and the Order No.SCR/P.HQ/425(a)/ DAR/C1 /GTL /MN /69/2011, dated 10.11.2011 issued by the 2<sup>nd</sup> respondent and declare that the orders of penalty of compulsory retirement from service imposed on the applicant as null and void, illegal, arbitrary and is in violation of principles of natural justice and is in violation of the law already settled, and consequently set aside and quash all the above said orders with a direction to the respondents to reinstate the applicant in the post of Head Travelling Ticket Examiner forthwith with effect from 05.06.2010 and grant all consequential benefits as if no penalty was imposed on the applicant and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The brief facts of the case are that, the applicant was working as HTTE / Sleeper, Nanded and working on a Train No.7058 SC-CSTM Devagiri Express on 24.9.2008 between Nanded and Manmad Railway Stations, a Vigilance check was conducted by the Railway Vigilance officials in the said train and as a sequel to the said check, the applicant was issued with a major penalty charge memorandum dated 24.11.2008 b the 5<sup>th</sup> Respondent with the two Articles of charge mentioning that the applicant had demanded and collected an amount of Rs.140/- towards difference of fare from a decoy passenger and another person holding second class ticket to

travel in a sleeper class and did not grant any receipt for the amount so collected and gained pecuniary advantage and that the applicant had produced an amount of Rs.290/- an unaccounted excess cash in his Railway sash holdings. Subsequent to the said check, the applicant was placed under suspension by the 5<sup>th</sup> respondent on 25.9.2008 which was revoked on 24.11.2008. The applicant submitted a representation dated 8.12.2008 to the 5<sup>th</sup> respondent seeking a copy of the complaint / source of information which lead to the check against the applicant, relevant provisions of para 304 and 305 of Indian Railway Vigilance Manual (IRVM), and copies of the paras 2430, 522 (a), 201 of Indian Railway Commercial Manual (IRCM) for proper understanding of the allegations against him and submission of reply to the Charge Memorandum to the 5<sup>th</sup> Respondent.

3. Thereafter, the applicant was transferred to Guntakal division of S.C. Railway and became amenable to the disciplinary powers of the 4<sup>th</sup> respondent. The 4<sup>th</sup> respondent vide order dated 20.5.2009 appointed one Sri N. Subbarayudu, Enquiry Inspector, headquarters of Vigilance branch as Inquiry Officer in the disciplinary case against the applicant. The applicant was aghast to receive the order of appointment of Inquiry Officer in his case. The applicant on 2.6.2009 submitted a representation to the 4<sup>th</sup> respondent mentioning that appointment of Inquiry Officer prior to receipt of written statement of defense of the charged employee is in violation of Rule 9(9) of Railway Servants (D&A) Rules, 1968 and the appointment of Inquiry Officer is invalid and non est in the eye of the law. The 5<sup>th</sup> respondent was also requested to appoint an uninterested / unbiased person to function as an Inquiry Officer apprising him that the Inquiry

Officer is ex. Vigilance Inspector who is functioning under the direct control of Sr. Deputy General Manager, vigilance and he can do little justice as an Inquiry Officer. The 4<sup>th</sup> respondent chose not to give any reply to the representation dated 2.6.2009 submitted by the applicant and the Inquiry Officer proceeded with the conduct of inquiry.

4. The applicant further states that, the surprise check conducted by the vigilance Inspectors by sending a Decoy Passenger was not in accordance with the procedure prescribed for conducting the said check in the Vigilance Manual, is evident from the fact that the Vigilance Inspector who had conducted the check, admitted during the inquiry that he had not followed the procedure envisaged in Para 307 (3) and 307 (6) of IRVM, thus the check against the applicant was not in accordance with the Rules and was not based on any complaint / source of information, therefore, any disciplinary action arising there from is a nullity in the eye of the law.

5. None of the prosecution witnesses had supported the allegation levelled against the applicant in the Charge Memorandum on the contrary the prosecution witness No.1 and 2 admitted during the inquiry that they were not enlightened about the official conversion charges to be paid to travel in sleeper class by the Vigilance Inspector (PW.5) and that the applicant had not granted receipt to them as the transaction was not over and they were due to pay Rs.2/- to the applicant to complete the transaction. Both PW.1 and PW.2 unequivocally admitted that the applicant had returned Rs.10/- to the passengers out of Rs.150/- paid to the applicant

and that Rs.2/- was due from them. From this it is evident that the applicant who was manning 6 coaches at a time had not even collected the actual conversion charges and awaiting to get the requisite charges for granting a proper receipt as the transaction was deliberately kept incomplete by the decoy passenger. The check conducted by the PW.5 was premature and not in accordance with the Rules, ignoring the fact that the applicant was manning additional coaches and was required to attend to a host of passengers. It came on record during the inquiry that the fund that was utilized by the PW.5 was in excess of the sanction available for the said purpose under the Rules and thus the amount utilized does not have any official sanctity. The actions leading to the check and the conduct of check, is not supported by the independent witness and any other prosecution witness during the inquiry. On the contrary, the defense witness supported the contention of the applicant that he had paid a sum of Rs.150/- to the applicant to get him a presume bottle which is available at Manmad Railway station and the Inquiry Officer during the cross examination could not impeach the credibility of the above statement of the defense witness, lending credence to the fact that the excess amount of Rs.290/- available with the applicant was Rs.140/- paid by the decoy passenger and Rs.150/- paid by the defense witness. Thus, both the Articles of charges remain unsubstantiated during the inquiry, however, the Inquiry Officer gave a perverse finding in his report proving the charges against the applicant as mentioned in Article-I and of the Charge Memorandum. The Inquiry Officer came on record that there was inconsistency in deposition f the PW.1 and PW.5 during the inquiry and ignored the fact that Exh.P.4 (statement of the

applicant given to the PW.5) during investigation was obtained under duress. In spite of the said categorical assertions made by the witnesses, the Inquiry Officer ignored the fact which came to light during the inquiry and abdicated his role as a quasi-judicial authority, functioned as a prosecutor in violation of the rules and proved the charges under an obligation as he is functioning under the administrative control of the Senior Deputy General Manager (Vigilance), under whose control the vigilance organization which contemplated the disciplinary proceedings against the applicant is also functioning.

6. The applicant on 24.04.2010 submitted a detailed representation to the 4<sup>th</sup> respondent against the Inquiry Officer's report highlighting the facts narrated supra, mentioning that both the Articles of charge remained unsubstantiated during the inquiry and that the Inquiry Officer gave perverse finding, holding the applicant guilty of charge. However, the 4<sup>th</sup> respondent brushed aside the defense putforth by the applicant branding the same as an afterthought and was swayed by the findings of the Inquiry Officer, ignoring the fact that the same was perverse and that none ;of the prosecution witness had supported the prosecution case against the applicant during the inquiry and proceeded with imposing the penalty of compulsory retirement from service on the applicant vide Memorandum dated 05.06.2010 which was not only shockingly disproportionate, but also lacked the authority.

7. The applicant has further claimed that he was appointed on compassionate grounds in Hyderabad division of S.C. Railway as Ticket

Collector by the 6<sup>th</sup> respondent, as can be seen from the letter dated 31.07.1997 issued by the Sr. Divisional Personnel Officer, Hyderabad division. Hence, an authority who is equal in rank to the Divisional Railway Manager alone can impose the penalty of compulsory retirement but not the 4<sup>th</sup> respondent who is lower in rank and status. Therefore the penalty of compulsory retirement imposed by the 4<sup>th</sup> respondent on the applicant is null and void and liable to be set aside on this count alone.

8. The 3<sup>rd</sup> respondent chose not to answer any of the specific points raised by the applicant in his appeal dated 23.07.2010 and brushed aside all the submissions made with an observation that there was no reason to consider to modify the penalty imposed by the 4<sup>th</sup> respondent on the applicant and by order dated 15.03.2011 confirmed the penalty of compulsory retirement on the applicant. The 3<sup>rd</sup> respondent for the reasons best known to him chose not to answer the contention of the applicant that the 4<sup>th</sup> respondent lacked authority in imposing the punishment of compulsory retirement on the applicant.

9. Aggrieved by the order dated 15.03.2011 passed by the 3<sup>rd</sup> respondent confirming penalty of compulsory retirement on the applicant, the applicant submitted a Revision Petition against the orders of the 3<sup>rd</sup> respondent to the 2<sup>nd</sup> respondent on 02.05.2011 making specific submissions which remained unanswered during various stages of the disciplinary proceedings against the applicant with a fond hope that the 2<sup>nd</sup> respondent being an apex authority in the disciplinary process would take

cognizance of valid and relevant submissions of the applicant and relieve him of the punishment. The applicant was surprised to receive the order dated 10.11.2011 issued by the 2<sup>nd</sup> respondent confirming the penalty of compulsory retirement from service imposed by the 4<sup>th</sup> respondent and upheld by the 3<sup>rd</sup> respondent. The genesis of the check, the manner and conduct of the check, subsequent disciplinary action against the applicant, conduct of the inquiry and ignoring of the evidence adduced during the inquiry by the Inquiry Officer, the manner in which the order of 4<sup>th</sup> respondent who lacked the authority to impose the penalty was issued, the action of the 3<sup>rd</sup> respondent and the 2<sup>nd</sup> respondent in passing the orders at various levels / stages of the disciplinary proceedings against the applicant, it is clear that the authorities have scant regard to the rules / law. In the circumstances of the case of the applicant being dealt with in a mechanical manner with a prejudice to punish the applicant, in the circumstances of the vigilance conducting a check in violation of the rules / law when there was neither any complaint nor any source of information to the vigilance to conduct a check against the applicant and that the check was conducted in violation of the provisions contained in IRVM, the penalty is liable to be interfered with.

10. The evidence recorded in the inquiry clearly brought on record that the decoy deployed for the check does not know as to how much requisite charges he should pay towards the difference of fare; decoy disappeared from the place of occurrence without paying the entire fare and accordingly did not wait to receive the receipt from the applicant; the independent

witness confirming the fact that the applicant was detailed to work six coaches on the day of check, which occupy considerable time to come back to the decoy for completing the transaction, which remained incomplete on account of the improper payment made by the decoy; the witness who signed on the relied upon documents does not know as to when the said documents were prepared; Another independent witness i.e. P.W made an assertion that the statement of the applicant was dictated by the Vigilance Inspector and the witnesses were forced to sign all the papers without allowing them to go through the contents; persons who were not witnesses to the check were also made to sign the documents seized during the check; the Vigilance Inspector conducted the check by violating the provisions at para 307.5 and 307.6 of the Vigilance Manual, the defense witness deposed about the reason for holding excess cash. However, the IO did not function as an independent quasi judicial authority and he being an Ex-Vigilance Inspector, he acted as a prosecutor and given perverse finding based on assumptions and presumptions in the absence of any evidence in support of the charge. The Disciplinary Authority who is not competent to inflict the penalty of compulsory retirement on the applicant as the applicant was appointed by a higher authority, agreed with the aid finding of the IO and imposed a penalty. Thus, the subsequent confirmatory orders passed by the Appellate Authority and the Revising Authority would also be null and void like the penalty imposed by the Disciplinary Authority. Hence this application is filed for the above stated relief.

11. Respondents have filed reply statement stating that, as per the

entries in the service register, the appointment of the applicant as Ticket Collector is dt.20.08.1997 and the same is signed by Assistant Personnel Officer, Hyderabad Division. Hence the approval by an authority and appointment order issued by the competent authority are different and an authority approved the appointment would never become the appointing authority more particularly in compassionate ground appointment approval of various authorities in the hierarchy is required as per the scheme and some times General Manager and Railway Board has to approve such appointment.

12. Consequent to a vigilance check in the train he was working on 24.09.2008 a Memorandum dt.24.11.2008 was issued to him with 2 articles of charge by the 5<sup>th</sup> respondent. Subsequent to his transfer to Guntakal Division, the 4<sup>th</sup> respondent being the disciplinary authority issued orders appointing enquiry officer. All the documents referred by the department to substantiate the charges in Annexure III of the memorandum were received by him. Applicant made representation seeking copy of the complaint / source of information and provision of vigilance manual. Applicant was suitably replied that such information is confidential and same cannot be divulged.

13. The Respondents further state that, as the applicant has not submitted any defense statement even after 6 months, the disciplinary authority appointed enquiry office to inquire into the allegations against the applicant by proceeding dt.20.5.2009 as per para 5 of the said

memorandum. Applicant also submitted a bias petition against the enquiry officer before commencing the enquiry and the same was also dealt by the competent authority by proceeding dt. 11.09.2009 rejecting his request with the following observations.

- (a) Nomination of the Inquiry officer is the prerogative of the Disciplinary authority;
- (b) No specific bias has been brought out in the representation against the enquiry officer,
- (c) Vigilance department is an integral part of the Railway administration and previous work in the said department cannot be a ground to construe bias and
- (d) No valid ground is brought out while alleging bias.

Hence the contention of the applicant in this para are without any merit and liable to be rejected.

14. The Respondents further state that the contention of the applicant that the disciplinary authority without considering his representation against the enquiry report imposed the punishment of compulsory retirement is not correct. The said authority considered the material available on record and found the reason given by the applicant for not issuing the receipt for the amount received by him is not acceptable and excess amount found with him during the check over and above the personnel cash declared by him has no explanation. The contention of the applicant that the punishment imposed is shockingly disproportionate is also incorrect as in such financial irregularities affecting the revenue of the Government; minimum penalty is either dismissal or removal.

15. It is further stated that, the contention of the applicant there was no evidence in support of the charges in the enquiry is incorrect. The fact of receiving the amount and not issuing receipt is proved and the amount is recovered from the possession of the applicant. Another amount of Rs.150/- was also found excess with the applicant excluding his declared personnel cash and applicant could not give any explanation for such excess amount. The other contention based on provisions of Vigilance Manual has no relevance when the applicant was found with the amount which is not accounted. As already stated applicant is not appointed by the DRM of the division and the said authority only approved his appointment and as such punishment imposed by the 4<sup>th</sup> respondent is in order.

16. The enquiry officer in the present case belongs to the enquiry organization in the Head Quarters designated for said purpose and there is no infirmity in appointing him as enquiry officer as per the rules. The contention of the applicant that the enquiry officer is under obligation to prove the charge is denied as the charges are to be proved by evidence on record. The disciplinary authority is only competent to pass orders and rules provides even if enquiry officer decide otherwise, said authority can disagree. Appointing presenting officer is also discretion of the disciplinary authority and the applicant could not show any prejudice caused to him by not appointing. Hence there is no procedural illegality or irregularity in the proceedings under challenge.

17. The Respondents further state that, the contention of the applicant

that till he submit defense statement no enquiry officer to be appointed by the disciplinary authority is far fetches. Applicant was given enough time to give his statement. He sought for the source information mentioned in the charge Memorandum and the same is rejected by the competent authority as the same is confidential. Other documents sought by the applicant are referred by him in all the proceedings and as such the contention based on is liable to be rejected. Further during the preliminary hearing applicant denied the charges and as such enquiry officer fixed time for further enquiry. Applicant has not shown any prejudice caused to him by such action more particularly the statement was denial of charges. Further contention that statement of the employee is obtained under pressure is also incorrect and an after though as no one applied pressure on the applicant as he only narrated the events culminating detection of excess amount and non issue of receipt to the decoy passenger.

18. The Respondents in the reply statement further state that, the contention that the decoy passenger disappeared is also incorrect as the said decoy in reply to question No.19 during cross examination by the applicant stated that he was allotted berth No.10 and 11 in S-8 coach and travelled upto Mandad (MMR). Further to question No.22 said witness stated that he intimated the vigilance after the checking of S-8 by the applicant. There was not even a suggestion in the examination in regard to passengers not present in the coach.

19. The respondents also state that, the authority imposed the

punishment is competent under the rules being equivalent in rank to the Senior Divisional Personnel Officer and the approving authority is not the authority appointed the applicant. The appellate and revising authority considered all the submissions and found no interdiction to the orders of the disciplinary authority as such same is confirmed. In view of these submissions, Respondents pray for dismissal of the OA.

20. We have heard Mr.KRKV Prasad, learned counsel for the applicant and Mrs.N.Srinatha Rao, learned Standing Counsel for Respondent Railways.

21. Learned counsel for the applicant, in support of his contentions, relied upon the following decisions :

- (i) Criminal Petition No.5068/2015, decided on 11-03-2016 in the case of Rafiq Ahmed Vs. The State, CBI, Hyderabad, represented by the Spl. Public Prosecutor, CBI, High Court of AP, Hyderabad;
- (ii) WP No.26790/2015, decided on 14-09-2015 in the case of UoI Vs. A.R.Rakesh & Anr by the Hon'ble HighCourt of Judicature at Hyderabad;
- (iii) Order of the Hon'ble High Court in WP No.11851/2001 in UoI Vs. S. Rama Rao, decided on 1.3.2011;
- (iv) Order of the Hon'ble Calcutta High Court [ 1976 ILR (2) Cal 316] ;
- (v) AIR 2007 SC 381 Mathura Prasad Vs. UoI & Ors ;
- (vi) Order of this Tribunal in OA No.938/2009, decided on 09-10-2012
- (vii) Order of this Tribunal in OA No.809/2009 in K. Srinivasa Rao Vs. UoI & Ors., and various other decisions.

22. There is much force on the submissions of the learned Counsel for the applicant that the Divisional Commercial Manager in Senior Time Scale was not competent to pass order of removal from service as the said

authority is sub-ordinate to the Appointing Authority ie Divisional Personnel Officer. No Presenting Officer was appointed for conducting enquiry on behalf of the Department although major penalty has been imposed. Thus it is seen that the Disciplinary Proceedings are vitiated due to non compliance of the statutory provisions in question and the same has caused serious prejudice to the applicant. The Enquiry Report submitted by the Enquiry Officer is perverse, being based on no legally admissible evidence. The learned counsel for the applicant placed reliance on **Moni Shankar Vs. UoI & Another [ 2008 (3) SCC 484 ]**. Learned counsel for the applicant also relied on the decisions of Hon'ble Supreme Court in the case of **K.C.Bajaj & Others Vs. UoI & Others [ 2014 (3) SCC 777 ]**, in CA No.10530 of 2014, decided on 24.11.2014, and **Balsara Hygiene Products Ltd. Vs. The Appellate Authority**, dated 24.08.2001 by the Hon'ble High Court of Delhi [**2002 (92) FLR 676**] wherein it has been held that :

“10. We may at the outset notice that with a view to protect innocent employees from such traps, appropriate safeguards have been provided in the Railway Manual. Paras 704 and 705 thereof read thus :

“704. Traps – (i)-(iv) \* \* \*

(v) When laying a trap, the following important points have to be kept in view :

- (a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.
- (b) The transaction should be within the sight and hearing of two independent witnesses.
- (c) There should be an opportunity to catch the culprit re-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.
- (d) The witnesses selected should be responsible witnesses

who have not appeared as witnesses in earlier cases of the Department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are government employees and of other departments.

(e) After satisfying the above conditions, the investigating officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the SP, SPE, is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the SPE or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

(vi)-(vii) \* \* \*

705. Departmental traps.- For departmental traps, the following instructions in addition to those contained under Para 704 are to be followed.

(a) The investigating officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilised.

All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch should detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause / without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to be defaulting officers / employees as bribe money on demand. A memo should be prepared by the investigating officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the GSC notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the investigating officer/Inspector. Another memo, for returning the GD notes to the decoy will be prepared for making over the GC notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and investigating officer/Inspector. The independent witnesses will stake up

position at such a pace wherefrom they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the investigating officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.”

23. The Hon’ble Supreme Court in the above referred decision has held that the purpose of sub Rule-21 of Rule-9 of the Railway Servants (D&A) Rules, 1968 was to afford an opportunity to explain the circumstances appearing against him. In the present case the applicant has been totally denied the said opportunity. Thus the manner in which the enquiry proceedings were conducted has to be considered by this Tribunal. It is seen that the trap was not conducted in terms of Manual. The Inquiry Officer did not comply with sub-rule-21 of Rule 9 of the Rules. Accordingly this Tribunal has gone into the said aspect as to whether the statutory requirement has been complied with or not. While appreciation of evidence is not within the domain of the Tribunal, the manner in which the trap was laid, the legality of the enquiry proceedings which were part of the decision making process can be considered by this Tribunal. For the said purpose paras 704 and 705 of the Manual has also to be looked into. Substantial compliance of the said paras was necessary as held by the Hon’ble Supreme Court in the case of Moni Shankar Vs. Union of India (

2008 (3) SCC 484 ). Admittedly instructions in this regard cannot totally be ignored. This Tribunal is entitled to take the same into consideration along with other material brought on record, as already discussed for the purpose of arriving at a decision as to whether the normal rules or instructions have been complied with or not.

24. The trap was laid by the members of the Railway Protection Force (RPF). It was a pre-arranged trap. It was, therefore, not a case which can be said to be an exceptional one where two gazetted officers as independent witnesses were not available.

25. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. This Tribunal is entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. This Tribunal thus is entitled to arrive at its own conclusion that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, do not meet the requirements of standard of proof, namely, preponderance of probability.

26. Test check memo dated 28.07.1998 was not signed by the Decoy passenger and the witnesses before initiation of test check, the recorded GC notes indicated in the test check memo cannot be accepted as proper

currency notes. The Disciplinary Authority and Inquiry Officer ignored the evidence given by the defence witness. Inquiry Officer refused to admit the vital evidence viz rough Journal where in the vigilance Inspector himself signed evidencing that private cash declared was Rs.250/-. Objective consideration of the grounds raised by the applicant and giving reason for the decision arrived at by them are required under Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968. The inquiry officer played the role of prosecutor in the absence of the presenting officer. As the appointment of the presenting officer was mandatory specially in Decoy check and vigilance cases the entire inquiry proceedings are vitiated in the absence of the presenting officer having been appointed. It is settled law by the Apex Court that the orders of the Disciplinary Authority, Appellate Authority and Revising Authority concluding that the charges are proved without establishing no correlation between the findings and the evidence showing the application of mind are not reasoned orders and are liable to be quashed. The inquiring authority, after the closure of case, has not questioned the applicant on the circumstances appearing against him in the evidence for the purpose of enabling the Applicant to explain any circumstances appearing in the evidence against him which is mandatory and hence the inquiry proceedings are liable to be quashed.

27. The cumulative effect of the illegalities / irregularities committed by the concerned authorities while dealing with departmental enquiry against the applicant completely vitiates the said proceeding.

28. The alleged incident took place in the year 2008. The allegation that the applicant had illegally received an amount of Rs.140/- from decoy passenger has not at all been proved by any legally acceptable evidence and the finding given by the Inquiry Officer is virtually based on 'no evidence'. In these circumstances, this Tribunal is not of the opinion to remand the case back to the Inquiry Officer as the same will cause undue hardship to the applicant.

29. Accordingly the impugned orders dated 05.06.2010 of Respondent No.4 the Disciplinary Authority, order dated 15.03.2011 of the Appellate Authority Respondent No.3 confirming the penalty of compulsory retirement from service and order dated 10.11.2011 of the 2<sup>nd</sup> Respondent confirming the said penalty of compulsory retirement from service are set aside. There is no proof that the applicant was not gainfully employed during the period in question. Accordingly the applicant is deemed to be in service with effect from the date he was removed from service. The said period will be calculated for pensionary benefits and other service benefits, but he will not be entitled to back wages for that period.

30. In the circumstances of the case, there shall be no order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

Dated : 08<sup>th</sup> October, 2018.

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