

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 587 of 2015

Date of order: 7.1.2019

**Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**Sri Kartik Chandra Bhattacharyya,
Son of Sri Dulal Bhattacharyya,
Working as Enquiry-cum-Reservation Clerk,
Eastern Railway, Bally,
Residing at Narua Panchanantala Bye-Lane,
Narua Chandannagar,
District - Hooghly, PIN - 712 136.**

... Applicant.

Versus

- 1. Union of India
through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001.**
- 2. The Senior Divisional Commercial Manager,
Eastern Railway,
Howrah - 711101.**
- 3. The Divisional Commercial Manager,
Eastern Railway,
Howrah - 711101.**
- 4. Sri A. K. Bandyopadhyay,
Enquiry Officer, Headquarter,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001.**

... Respondents.

**For the Applicant : Mr. M.S. Banerjee, Counsel
Mr. T.K. Biswas, Counsel**

For the Respondents : Mr. S. Banerjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

Relief

"(a) For an order quashing and/or setting aside the order of Suspension dated 17.10.2012 as also the entire Disciplinary Proceeding including Memorandum of Charge-sheet dated 15.4.2013, Report and Finding of the Enquiring Officer dated 29.11.2013, Punishment Notice dated 7th July, 2014 and Appellate Order dated 25.11.2014 made Annexures "A-1" coll, "A-3", "A-10", "A-13" coll. And "A-15" respectively to this application and further directing the respondents to give the applicant all such service benefits which he would have got had he not been placed under suspension and disciplinary proceeding was not initiated against him on the basis of the Memorandum of Charge-sheet dated 15.4.2013.

(b) For any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

Written notes of arguments have been furnished by Ld. Counsel for the applicant citing decisions in T.A. No. 4 of 1985 of Central Administrative Tribunal, Calcutta Bench dated 4.4.1986 as well as in *Moni Shankar v. Union of India & anr.* (2008) (3) SCC 484.

3. The applicant's case, in brief, is that the applicant was holding the post of Enquiry-cum-Reservation Clerk at Chandannagar Railway Station. On 16.10.2012, there was a Vigilance Check upon which nothing incriminating was found against the applicant. Vide order dated 17.10.2012 issued by the Divisional Commercial Manager, Eastern Railway, Howrah, however, the applicant was placed under suspension and the said suspension order was later revoked on 21.12.2012.

On 15.4.2013, the applicant was issued a memorandum of chargesheet under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968. The applicant represented against such major penalty chargesheet and that a preliminary hearing was held on 1.8.2013. Regular hearings were held from 30.9.2013 onwards and that the Enquiry Officer closed the enquiry hastily without giving any opportunity to the applicant to substantiate his defence as contemplated under Rule 9 (19) and 9 (20) of the Railway Servants (Discipline & Appeal) Rules, 1968 and that the Enquiry Officer did not comply with the mandatory provisions of Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968 in allowing the applicant to explain any of the circumstances against

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him. Based on the enquiry report, the disciplinary authority imposed a punishment of reduction of pay by two stages lower for a period of two years with cumulative effect. The applicant preferred an appeal and, although the appellate authority reduced the period of penalty to one year with cumulative effect, he failed to consider the appeal in terms of provisions as contemplated in Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968.

Hence, being aggrieved, the applicant has approached the Tribunal in the instant O.A.

In his pleadings, the applicant has raised the following points for consideration:

- (i) That, the applicant was not guilty of violation of any rules and, hence, the allegations of misconduct were baseless.
- (ii) The Enquiry Officer had examined independent witnesses in violation of the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968.
- (iii) The applicant was not permitted to substantiate his defence at the enquiry whereby the provisions of Rule 9 (19), 9 (20) and 9(21) of Railway Servants (Discipline & Appeal) Rules, 1968 were violated.
- (iv) The order of the disciplinary authority was not based on evidence and exhibited non-application of mind.
- (v) The Appellate Authority did not act in terms of provisions of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968.

4. The respondents, on the other hand, argued that, during a preventive check conducted by the Eastern Railway vigilance team at PRS/CGR office at about 9:50 hrs. on 16.10.12, the team took note of the persons who were in queue for purchase of tatkal tickets. At about 10:00 hrs., the vigilance team noticed that the on duty Reservation clerk accepted 05 requisition slips from a person who was at Serial No. 1 in the queue at that time and started generating tickets on the said requisition slips. At about 10.03 hrs, one of the vigilance

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members went inside the PRS counter and found two live tatkal JCRTs having PNR No. 651-4059241 and 670-7714218 in the possession of on duty ECRC, Sri K.C. Bhattacharyya, ECRC/CGR namely, the applicant. It was noticed that above said Tatkal tickets were generated by the applicant continuously without tearing them separately.

Apart from the above, three non-transacted filled up requisition slips were also found in the possession of the applicant.

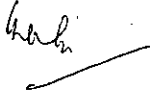
Further, the applicant produced Rs. 39,688/- as his govt. cash against his DTC cash of Rs. 39,690/- i.e. Rs. 02/- was found short in his govt. cash.

Also, no claimants of the two live JCRTs detected from the possession of the applicant turned up at PRS/CGR office till the completion of the vigilance check at 11:25 hrs. on 16.10.2012. So the said two Tatkal JCRTs were taken in possession of Eastern Railway vigilance department by serving a memo to the applicant and he was directed to send the claimants, if any, to GM/Vig./ER office. But no claimants approached the GM/Vig./ER office thereafter.

Photocopies of relied upon documents were forwarded to the applicant along with SF-5 charge sheet dated 15.4.2013 and the applicant concerned inspected the original relied upon documents as per Annexure III of the charge-memorandum on 24.5.2013 under his clear signature.

As per RSDA Rule 9(2), an Inquiry Officer was appointed vide letter dated 1.7.2013 to conduct the DA enquiry. The concerned Enquiry Officer examined all the three charges with indepth analysis and, the disciplinary authority and the appellate authority passed their orders in accordance with law and hence, according to the respondents, the application deserves to be dismissed as there are no procedural violations in the case of the applicant.

5. The point of determination in this matter is whether there has been any violation of natural and procedural justice in the context of the instant disciplinary proceedings.



6. The applicant has raised two major objections, namely,

That, natural justice as well as procedural justice has been violated inasmuch as that no misconduct was proved against the applicant and also that there has been a blatant violation of Rule 9(19), 9(20) and 9(21) as well as Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968.

The argument of the applicant is that misconduct has not been made out from the charges. As decided in TA. 4 of 1985 (*Sankari Pada Mukherjee v. Union of India & ors.*), relied upon by the applicant, this Tribunal is not to examine the value of evidence adduced but to only establish as to whether, prima facie, any misconduct can be said to have been made out or not.

Herein we rely on the following definition and judicial decisions:-

The *Law Lexicon* of *Shri P. Ramanathan Iyer* (Third Edition, page 3027), the term 'misconduct' implies a wrongful intention and not a mere error of judgment.

In *Union of India v. J. Ahmed AIR 1979 SC 1022-1027*, it has been held, that gross or habitual negligence in performance of duty may not involve mensrea but may still constitute misconduct for disciplinary proceedings.

In the *State of Punjab v. Ram Singh, AIR 1992 SC 2188*, it has been held that the term misconduct may involve moral turpitude but it must be improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of some established and definite rule of action or code of conduct but nor mere error of judgment, careless or negligence in performance of duty and that the act complained of bears forbidden quality or character.

In *Indian Minerals Co. v. The Northern India Lime Marketing Association AIR 1958 All. 692*, it was held that misconduct not amounting to moral turpitude is called misconduct and has a very wide meaning. Legal misconduct means misconduct in judicial sense and includes failure to perform

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essential duties as well as irregularities of action which are not consonant with general principles of equity and good conscience.

The applicant is a public servant. The essence of public service being the sense of discipline to which all Government employees are subject to, entitle them to privileges in general. These aspects of entitlement and discipline are covered by the CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965. Accordingly, the Government servant who comes under CCS (Conduct) Rules, 1964 can be imposed, for good and sufficient reasons, any of the penalties provided in Rule 11 of CCS (CCA) Rules, 1964. Similarly, Railway employees are required to adhere to certain standards of conduct particularly in the official capacities and such parameters of conduct are laid down in Railway Servants, (Conduct) Rules, 1966. Rule 3(i), of Railway Service (Conduct) Rules, 1966 reads as follows:-

- “3. General: (1) Every railway servant shall at all times—
- (i) maintain absolute integrity;
 - (ii) maintain devotion to duty;
 - (iii) do nothing which is unbecoming of a railway servant.

The fundamental requirement of the conduct rules are therefore integrity, honesty, efficiency and good behavior of public servant. Most of the disciplinary proceedings arise from the breach of these rules apart from charges of lack of integrity and abuse of official position. Devotion to duty is another important aspect. A public servant, who habitually fails to perform tasks assigned to him, shall be deemed to be lacking in devotion of duty. Conduct unbecoming of a government servant has been left to the discretion of the Government with the mandate that a government servant should not bring discredit to the service. Violation of the above code of conduct are dealt by the Railway Servants (Discipline & Appeal) Rules, 1968.

The Hon'ble Apex Court in *D.V. Kapoor v. Union of India* 1990 AIR 1923 has distinguished misconduct from very grave misconduct stating that

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assessment of gravity of the offence is necessary in order to determine the quantum of punishment.

In the instant case, the applicant was acting as a Reservation Clerk and accepted five requisition slips from a person who was Sri. No. 1 in the queue and started generating tickets on the said requisition slips at about 10:00 hrs. Three minutes later, one of the vigilance members went inside the PRS Counter and found two live tatkal JCRTs having PNR No. 651-4059241 and 670-7714218 in the possession of the applicant who was the on duty ECRC. The said tatkal tickets were generated by him without tearing them separately. Besides, the above three non-transacted filled up requisition slips were also found in his possession. The applicant also produced his official cash in which Rs. 2/- (Rupees Two only) was found as short in government cash. No claimant of the two live JCRTs turned up till 11:25 hours and inspite of instructions did not approach the officials of GM/Vig/ER to procure the same. According to the respondents, all the three charges against the applicant were proved.

The chargememo issued to the applicant (A3 to the O/A.) is as under:-

Annexures to Standard Form NO.5
Memorandum of Charge Sheet under Rule 9 of the RS (D & A) Rules, 1968.

Statement of Articles of Charge framed against Shri K.C. Bhattacharyya, ECRC/CGR
(name and designation of the Railway Servant) _____

Article -I

That the said Shri K.C. Bhattacharyya, ECRC/CGR while functioning as such during the period on 16.10.12 at about 10.00 has committed the following irregularities (here enter definite and distinct article of charge).

A preventive check was conducted by Eastern Railway vigilance Department at PRS/Chandannagar Office on 16.10.12 at about 10.00 hrs. and following irregularities detected on the part of Sri K.C. Bhattacharyya, ECRC/CGR who was manning the only widow of PRS/CGR office.

1. Sri K.C. Bhattacharyya, ECRC/CGR accepted 05 (five) requisition slips from one person for generation of Tatkal JRCTs.
2. Two live tatkal JCRTs having PNR No. 651-4059241 & 670-7714218 were detected from possession of Sri. K.C. Bhattacharyya, ECRC/CGR for which there were no claimants.
3. Three filled requisition slips were found from Sri K.C. Bhattacharyya, ECRC/CGR for which no applicant was present.



By the above act of omission and commission Sri K.C. Bhattacharyya, ECRC/CGR failed to maintain absolute integrity, devotion of duty and also acted in a manner of unbecoming of a Railway Servant at contravention to Rule No. 3.1(I),(II)&(III) of R.S.C. Rule 1966 as amended from time to time.

Article-II

That during the aforesaid period and while functioning at the aforesaid office, the said Shri _____ (here enter definite and distinct article of charge).

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri _____ (here enter definite and distinct article of charge).

Statement of Articles of Charge framed against Shri K.C. Bhattacharyya, ECRC/CGR (name and designation of the Railway Servant) _____

Divl. Comml. Manager
Eastern Railway, Howrah

Statement of imputations of misconduct or mis-behaviour in support of the Articles of Charge framed against Sri K.C. Bhattacharyya, ECRC/CGR (name and designation of the Railway Servant) _____

A preventive check was conducted by Eastern Railway Vigilance Department at PRS/Chandannagar Office on 16.10.2012 at about 10:00 hrs and following irregularities detected on the part of Sri K.C. Bhattacharyya, ECRC/CGR who was manning the only window of PRS/CGR office:-

Vigilance team reached out the PRS/CGR office at about 9.50 hrs. on 16.10.2012 and took note of the persons who were in queue for taking their tatkal tickets. At about 10:00 hrs. vigilance team noticed that on duty Reservation Clerk accepted 05 (five) requisition slips from a person who was at Serial No. 1 in the queue at that time and started generating tickets on the said requisition slips. At about 10.03 hrs. one of the vigilance member went inside the PRS counter and found two (02) live tatkal JCRTs having PNR No. 651-4059241 & 670-7714218 in the possession of on duty ECRC Sri K.C. Bhattacharyya, ECRC/CGR. It was noticed that above said Tatkal tickets were generated by Sri K.C. Bhattacharyya, ECRC/CGR continuously without tearing them separately. Besides above, 03 (three) non-transacted filled up requisition slips was also found in the possession of Sri Bhattacharyya, ECRC/CGR.

- (a) At about 10:10 hrs. Sri K.C. Bhattacharyya, ECRC/CGR was requested to produce his personal cash and Govt. cash. Accordingly, Sri K.C. Bhattacharyya, ECRC/CGR produced Rs. 220/- i.e. an accurate personal cash.
- (b) Sri K.C. Bhattacharyya, ECRC/CGR produced Rs. 39,688/- as his govt. cash against his DTC cash of Rs. 39,690/- i.e. Rs. 02/- was found short in his govt. cash.
- (c) No claimants of the 02 live JCRTs detected from the possession of Sri K.C. Bhattacharyya, ECRC/CGR turned up at PRS/CGR office till the completion of the vigilance check at 11:25 hrs. on 16.10.2012. So the said two Tatkal JCRTs were taken in possession of Eastern Railway Vigilance Department by serving a memo to Sri K.C. Bhattacharyya, ECRC/CGR and he was directed to send the claimants, if any, to GM/Vig./ER office subsequently.

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By the above act or omission and commission Sri K.C. Bhattacharyya, ECRC/CGR failed to maintain absolute integrity, devotion to duty and also acted in a manner of unbecoming of a Railway servant in contravention to Rule No. 3.1 (i), (ii) & (iii) of RSC Rule 1966 as amended from time to time.

Article II

Article III

Divl. Comml. Manager
Eastern Railway, Howrah"

Next, the findings of the Inquiry Officer (Annexure A-10 to the O.A.) are extracted hereinbelow:-

"9.0 FINDINGS

Considering all the D&A Proceedings, Representation of the CO, RUDs Defence Brief, aforesaid analysis etc. the undersigned is of the opinion that the charges of -

(a) Reg-Charge :- Sri K.C. Bhattacharyya, ECRC/CGR accepted 05 (five) requisition slips from one person for generation of Tatkal JCRTs.....

----- Lack of Devotion to Duty and 'Acted in a manner unbecoming of a railway servant' and thereby violation of Rule No. 3.1 (ii) & (iii) of Railway Service Conduct Rule, 1966 is ---- Proved.

(b) Reg-Charge :- Two live Tatkal JCRTs having PNR651-4059241 & 670-7714218 were detected from the possession of Sri K.C. Bhattacharyya, ECRC/CGR for which there were no claimants

----- 'Lack of Devotion to Duty' and 'Acted in a manner unbecoming of a railway servant' and thereby violation of Rule No. 3.1(ii) & (iii) of Railway Service Conduct Rule, 1966 is - Proved.

(c) Reg-Charge : Three filled requisition were found from Sri K.C. Bhattacharyya, ECRC/CGR for which no applicant was present.

----'Lack of Devotion to Duty' and 'Acted in a manner unbecoming of a railway servant' and thereby violation of Rule No. 3.1(ii) & (iii) of Railway Service Conduct Rule, 1966 is --- Proved."

Hence, the first issue that no misconduct was proved against the applicant as he did not violate any Rules falls through, as because Rule 3(1)(i)(ii) and (iii) are inherent provisions of Railway Service (Conduct) Rules, 1966 and the applicant, in failing to discharge his duties with devotion and acting in a manner unbecoming of a Railway servant, was accordingly held guilty of misconduct.



Hence, we are of the considered view that the charge-sheets, while alleging failure to maintain absolute integrity, devotion to duty and actions in a manner unbecoming of a government servant, did establish appropriate reference to misconduct as per Railway Servants (Conduct) Rules, 1966.

Further the Inquiry Officer, in his conclusion, had found that the charges on "lack of devotion to duty" and "acting in a manner unbecoming of a Railway Servant" were proved.

Accordingly, in terms of provisions of Railway Servants (Conduct) Rules, 1966 and as guided by judicial pronouncements on the subject of misconduct, we are of the opinion, that, prima facie, misconduct was made out by the charges.

(b) We next examine the issue as to whether the applicant/charged official was denied natural justice at any stage of the enquiry. It is not disputed that the applicant had received the order of suspension (Annexure A-1 and A-2 to the O.A.) dated 17.10.2012 which was revoked subsequently on 21.12.2012. The applicant/charged official had also admitted that he had received the memorandum of charges as he had represented against the same (Annexure A-3 and A-4 to the O.A.).

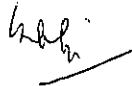
In the context of conduct of enquiry, the applicant/charged official was present during the preliminary hearing (Annexure A-6 to the O.A.). During the first regular hearing held on 29.8.2013 the enquiry officer has recorded as follows:-

" During PH, CO, in reply to Q.No. 7, stated that – "the name, address and controlling officer of my Defence Helper will be intimated before the start of the Regular Hearing (RH). The consent letter of the DH duly approved by DA will be submitted before starting of the 1st RH.

But on date, at the starting of the 1st RH the CO submitted an application stating

"... I would like to inform you that I have nominated Sri Gautam Goswami, staff and WI/ER, SDAH, controlling office, Sr. DPO/SDAH and my appeal has been submitted to the DA i.e. DCM/HWH on 27.8.2013 for his approval. But the approval of the DA has not yet been received. Hence, I request you to kindly re-fix the date of RH."

In keeping in view the principles of natural justice, the request of the applicant/charged officer to re-fix the date of regular hearing was accepted by the



Enquiry Officer to give him adequate opportunity to defend his case appropriately and it was clarified to the applicant/charged official that in case his defence helper fails to participate, regular hearing will be proceeded as per Railway Rules (Annexure A-7 to the O.A.).

Again on 30.9.2013, when the next date was fixed for regular hearing (Annexure A-8 to the O.A.), the applicant/charged official stated as follows, which is on record:-

" During PH, CO, in reply to Q.No. 7, stated that – "the name, address and controlling officer of my Defence Helper will be intimated before the start of the Regular Hearing (RH). The consent letter of the DH duly approved by DA will be submitted before starting of the 1st RH.

In this regard, the CO stated that "I have nominated Sri Gautam Goswami, staff and WI/ER, SDAH, controlling office, Sr. DPO/SDAH" and the necessary approval of the DA has been received by this office on 23.9.2013. In reply to Q. No. 6 of the PH regarding Demand of Defence Documents and Defence Witness, CO stated that "At this stage, I am not in a position to say about the Defence Document and Defence Witness. My Defence Helper will intimate the issue before starting of the Regular Hearing". As such, IO advised the CO/DH to clarify their position on the issue of Defence Document and Defence Witness. CO/DH stated that no Defence Document and Defence Witness are required by them."

Hence, once again the applicant /charged official declined to forward any defence witness or defence document on the second date of regular hearing.

It is also recorded there in that the applicant/ charged official/Defence Helper stated that no defence document and defence statement are required by the applicant/Charged official. The applicant/Charged Official has, therefore, forgone the opportunity of availing of defence document or defence witness. As the statement is signed by the applicant / charged official, he is obviously a party to the recordings.

The next regular hearing was held on 6.11.2013 (Annexure A-9 to the O.A.). Therein it is noted that "at the background of the enquiry the applicant/charged official stated that "as his defence helper will not be able to attend today the applicant/charged official will personally examine /cross examine the witness." It is also seen that question nos. 25 to 38 have actually been posed by the applicant / charged official while cross-examining PW2. (Annexure A-9 to the O.A.)

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While closing regular hearing on 6.11.2013, the IO concluded by stating as follows:-

"CO have been advised to submit his defence brief within 15 days positive."

Hence it does not transpire from any of the records of Inquiry that the applicant/ Charged Official was denied the opportunity of furnishing defence document, defence witness or defence brief.

In the enquiry report (Annexure A-10 to the O.A.) the enquiry officer has noted in para 6 that no defence witness had been nominated by the CO who has categorically stated on 30.9.2013 (RH), that no Defence Witness were required by him.

Hence, we do not find that, at any stage right from issue of memorandum of chargesheet to the finalization of enquiry report, there are any instances whereby natural justice was denied to the applicant/charged official.

(c) The applicant has raised an issue that examination of the independent witness was violative of Rule 9 of Railway Servant (Discipline & Appeal) Rules, 1968. According to the IO, the said independent witness was called as because the independent witness, the BSI/CGR, had signed on the Joint Check Memorandum dated 16.10.2012 (RUD1) and hence, he was called for the sake of natural justice /reasonable opportunity to the CO. The applicant /charged officer did not object to calling of the independent witness during the stage of enquiry/RH and also cross-examined him availing of the opportunity of natural justice and reasonable opportunity. The IW was cross-examined by the applicant/charged official on 6.11.2013 (RH) raising question No. 45 to 49 to the independent witness.

Hence, it is seen that, although alleged in the pleadings that the IO had violated procedural justice by calling an independent witness not enlisted in the original list of witnesses, the applicant/charged official availed of the opportunity of cross-examining such independent witness and had not objected to IW's presence at the time of RH.

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We further refer to Rule 9(18) of Railway Servants (Discipline & Appeal) Rules, 1968 which states as follows:-

"9(18) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer, if any, to produce evidence not included in the list given to the Railway servant or may itself call for new evidence or recall and re-examine any witness and in such cases the Railway servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Railway servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Railway servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice."

The Enquiry Officer, therefore, has been authorized under the Rules to allow the Presenting Officer to produce evidence not included in the list given to the Railway servant or to itself call for new evidence and recall or re-examine any witness.

The Railway servant was also entitled, on demand, to seek a copy of the list of further evidence and an adjournment of the inquiry. The applicant/charged officer has not produced any document before us to substantiate that he had made any such demand and hence, objecting to the independent witness called by the Enquiry Officer is not legally tenable.

Rule 9(19) calls for the statement of defence orally or in writing. Such opportunity was given to the applicant/-charged officer by the enquiry officer. Under Rule 9(20), the applicant/charged officer was permitted to advance evidence on his behalf which he chose not to by clearly stating that he will not be requiring defence document or defence witness. Hence, there has been no violation of this provision either in the case of the applicant/charged officer.

Regarding Rule 9(21), the enquiry officer, before closing the proceedings did provide an opportunity to the applicant /charged officer to say anything more on the entire episode relating to the DA. The applicant's response was as follows:-

"What more I want to say, I shall explain the same in my defence brief."

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At this stage, therefore, the applicant / charged officer cannot take the stand that he was not allowed to explain circumstances in the evidence against him.

Hence, we do not find any procedural violations in terms of Rule 9(19), 9(20) and 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968.

(d) The disciplinary authority has, in the preamble to his order, referred to the charge-memorandum, relied upon documents, proceeding of the DA enquiry, defence brief of applicant/charged officer, the enquiry report and findings of IO as well as applicant/ charged official's submission against enquiry report. We therefore find no reason to question his findings either on the ground of procedural lapses, on the ground of consideration of extraneous evidence or on grounds of violation of principle of natural justice.

(e) Hereafter, the appeal of the applicant /charged officer is reproduced below:-

"To,
The Sr. Divisional Commercial Manager,
(Appellate Authority),
Eastern Railway,
Howrah.

Sub: Submission of appeal against Punishment
Order No:- COM/CC/88/CGR/12/VO dt. 7.7.2014.

Respected Sir,

In reference to the above, at the beginning of it, I would like to state that I am not able to express myself in English comfortably as I am weak in that language.

Sir, on that very day, there were two person, though vigilance team had seen only one mischievously, who submitted their requisitions with the request that that we were related to each other and going to same place by same train and kindly issue JCRTs only once, so that we would get our berths in same compartment.

And I accepted two requisitions from two persons as per rule and not from one person.

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Sir, my counter is situated in West Bengal. Had I accepted two requisitions from a single person, person in the queue would have sent me in hospital even by beating till death. It is the beauty of this State whole country knows.

To unearth the truth, vigilance team found nothing, not a single copper extra except 2(two) unseparated JCRTS and as per them for which there was no claimant.

Sir, what does vigilance team want to say by saying no claimant?

Was it GOD send?

At least one person had submitted that, as per them, though it is the fact that there were two persons not one.

Why did those persons not claim the JCRTSs It is a mystery. Had vigilance team take any other step from there end to unearth the truth though they were in receipt of so many clues?

Is there job to find only minor and filthy mistake of non separation of two JCRTs generated by ECRC?

Sir, fertile imagination is not only my birth right. Vigilance team members are also having it By founding un-separated JCRTs they smell a rat.

They allowed me to work from 10.03 hrs to 10.12 hrs. Why? To buy the time for placement of 3(Three) more requisitions to trap me?

Sir, had they found a large sum of money or an ATM card from my possession i.e. from pocket, from my wallet or from my carry bag, they would have declared that I was buying JCRTs on behalf of passengers and was working as financier.

But as I was not keeping ATM card for which they were looking for, fortunately I was saved from another blame of misconduct. They tried their best to add or make short of Govt. Cash of mine and also comfortable placement of 3(three) non-transacted requisitions but it did not happen due to strict and hard watch of mine.

Sir each member of vigilance team did not elaborate possession. They failed to satisfy and also justify 'the POSSEION'.

But by going through the language of E.O. in his finding I became sure that he is very learned and extreme qualified person. He knows everything except the meaning of 'POSSEION'. If said by vigilance team it means only possession and nothing more is required to be said.

But in case of C.O. it means whole universe. Anything found in any nook and corner of universe it is in the possession of C.O.

Fantastic, I would like to salute this learned man!

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My reply was childish as per E.O. As he is entrusted with the job of E.O. and qualified enough, he thought that he had been given license to say anything against C.O. even in indignified manner.

What an arrogance?

It is not acceptable to him that personnel of vigilance team may be dishonest and conspirator. He is of the view that all vigilance staff are belonging to family of Satyawadi Harish Chandra and all commercial staff are belonging to family of Rajas, chavans and Kalmadis.

I am amazed about his incredible ability to provide all possible and also even impossible safety umbrella to them.

In last, I would like to ask again some question of which I did not get any answer from anyone involved regarding this case.

1. What is the meaning of 'POSSESSION' in this case?
2. Why the E.O. as well as D.A. did not assign a single reason for accepting their logic regarding 'POSSESSION'?
3. What truth was unearthed after so much labour of about 2(two) years?
4. What corruption did take place? Why they are silent to reveal or say clearly in this regard?
5. Why they had allowed me to work upto 10-12 hrs though JCRTs were generated at 10.03hrs?

Sir, I do hope that you will be kind enough to exonerate me.

Thanking you, in anticipation.

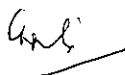
Yours faithfully,

Sd/-

(KARTIK CHNANDRA BHATTACHARYYA)
ECRC/SKG"

Date:- 21.08.2014

Not only has the applicant/charged officer deviated from the charges and findings of the disciplinary authority but has rambled incoherently without submitting any factual or legal grounds to substantiate his appeal. The appellate authority did however, consider the appeal and concluded that, keeping the humanitarian aspects in view, the period of penalty be reduced to one year from two years.



Hence, in the entire above matter and, in adherence to the requirement, that Administrative Tribunals are entitled to determine whether relevant evidence was taken into account and wherein test of proportionality has been satisfied as held in *Moni Shankar v. UOI & anr. (2008) 3 SCC 484*, as relied upon by the applicant, we find that there has been no violation of natural justice or procedural justice. The allegation of misconduct is also well established.

Hence, following the ratio held in *Ranjit Thakur v. Union of India (1987) 4 SCC 611*, *Union of India v.G. Ganayatham (1997) 7 SCC 463*, *Om Kumar v. Union of India (2005) 2 SCC 386*, *B. C. Chaturvedi v. Union of India (1995) 6 SCC 749*, *Director General RPF v.Ch. Sai Babu (2003) 4 SCC 331* and *Apparal Export Promotion Council v. A. K. Chopra (1999) 1 SCC 759*, and having examined the applicant's case in the context of legal position held therein, we dismiss the O.A., not finding any valid ground or little scope of judicial review of the order of the respondent authorities and we also do not deem it fit to intervene in this matter so as to upset the material orders under challenge.

Accordingly, the O.A. is dismissed.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP