



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00962/2014

Date of order: 20. 02. 2019

M.A. 350/00106/2016

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

1. Smt. A. Rajeswari,
Wife of late A.K Rao, @ A. Kameswar Rao,
Ex -Head Clerk, in the office of the
Sr. Divisional Commercial Manager,
Kharagpur, South Eastern Railway,
Since Removed from service w.e.f. 31.03.2011
Aged about 49 years,
by occupation : House wife,
Residing at : Railway Quarter No. LM-7,
Unit-I, Mitra Type,
P.O. - Nimpura, Kharagpur,
District : Paschim Medinipur,
Pin : 721 304.
2. A. Venkata Sesha Sai @ A.V. S. Sai,
Son of late A.K. Rao,
Aged about 20 years,
by occupation : Student,
Residing at : Railway Qr. No. LM/7,
Unit-I, Mitra Type,
P.O. - Nimpura, Kharagpur,
District : Paschim Medinipur,
Pin : 721 304.

... Applicants.

Versus

1. Union of India,
Through General Manager,
South Eastern Railway,
11A, Garden Reach Road,
Calcutta - 700 043.
2. The Divisional Railway Manager,
Kharagpur Division, Kharagpur,
South Eastern Railway,
District : Paschim Medinipur - 721 301.
3. The Sr. Divisional Commercial Manager,
Kharagpur Division, Kharagpur,
South Eastern Railway,
District : Paschim Medinippur - 721 301.
4. The Divisional Commercial Manager,
Kharagpur Division, Kharagpur,
South Eastern Railway,

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District : Paschim Medinipur – 721 301.

**5. The Additional Divisional Railway Manager,
Kharagpur Division,
South Eastern Railway, Kharagpur,
District : Paschim Medinipur – 721 301.**

... Respondents.

For the Applicants : Mr. K. Chakraborty, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has a chequered past and this Tribunal has been approached in third stage litigation.

The original applicant had also passed away during pendency of the O.A., and, with the approval of the Tribunal, his legal heirs were substituted who continue to pursue the proceedings and to seek the following relief:-

"A) To file and prosecute the instant application jointly under Rule 4(5)(a) of the A.T. (Procedure) Rules, 1987 since both the applicants have prayed for the same reliefs arising out of same cause of action;

B) Do issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and withdraw the purported;

- i) Charge Memorandum dated 26.9.2008 being Annexure A-1 hereto;**
- ii) Enquiry Report dated 14.9.2010 being Annexure A-8 hereto;**
- iii) Order of the Disciplinary authority dated 31.3.2011 being Annexure A-10 hereto;**
- iv) Order of the Appellate authority dated 24/27.9.2013 being Annexure A-14 hereto and not to give any or further effect or effects to the same;**
- v) Order of the Revisioning authority dated 30.4.2014 being Annexure A-18 hereto and not to give any or further effect to the same;**

C) Do issue mandate upon the respondents, their men and agents each of them to forthwith declare the said A.K. Rao @ A. Kameswar Rao to be reinstated in his service w.e.f. 31.3.2011 notionally and pay all the arrear salary wages, dues allowances including Pension of the said A.K. Rao to the applicants, Family Pension to the applicant No.1 and all other benefits to the applicants as admissible to the said A.K. Rao to the applicants forthwith with 18% interest on the total sum thereon;

D) Grant cost of this proceeding in favour of the applicants;

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E) Pass such other or further order or orders, mandate or mandates as may appear to be fit and proper; "

3. Heard both Ld. Counsel, examined pleadings, documents on record. Ld. Counsel for the applicant would rely on the following judgments and orders in support of his claim:-

- (i) *A.R.S. Choudhury, Petitioner v. The Union of India & others, 1956 Calcutta 662(S) AIR V 43 C 187 Dcc.*
- (ii) *Amal Kanti Bose v. The West Bengal State Co-operative Bank Ltd. & ors. (2000) 1 CLJ (Cal.) 166.*
- (iii) *Sri Bikash Kumar Banerjee v. UOI & ors. [M.A. 202 of 2010 with O.A. 414 of 2008].*
- (iv) *Khagendra Barik v. Union of India & ors. (2016) 5 WBLR (Cal) 240.*

4. The case of the applicant is that her deceased spouse, A.K. Rao, while working as Head Clerk in the office of the respondent No. 3, was issued a major penalty charge sheet on 26.9.2008 for alleged misconduct during 1999 to 2001.

That, the enquiry against the deceased employee was conducted exparte and the disciplinary authority passed a penalty order removing the said ex-employee from service w.e.f. 31.3.2011 and the said orders of the disciplinary authority were upheld by the appellate authority as well as the revisional authority.

That, the deceased employee, in his life time, had earlier approached the Tribunal in O.A. No. 265 of 2014 on the issue of illegal conduct of the entire disciplinary proceedings, which was disposed of by the Tribunal on 8.4.2014, directing the revisional authority to dispose of the pending revisional application within a given time frame. The revisional authority thereafter rejected the petition. Since the employee passed away on 25.5.2014, the instant application was filed by the legal heirs of the deceased employee.

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The applicants have, inter alia, advanced the following grounds in support of their claim:-

(a) That, the proceedings were conducted in violation of the principle of natural justice when the deceased employee was not allowed to cross-examine the most vital witness namely, the Sr. Divisional Commercial Manager, Kharagpur, that the enquiry being held ex parte on 9.8.2010, 11.8.2010 and 12.8.2010, the deceased employee was denied the right to cross-examine the crucial PW-I and that the enquiry was closed in haste.

(b) That, the statutory and mandatory provisions relating to the procedure of holding enquiry proceedings have been violated.

(c) That, the charge-memorandum having been issued nine years after the date of occurrence is not permissible under the provisions of law as applicable to the respondent authorities.

5. Per contra, the respondents have argued as follows:

That the husband of the applicant, one Late A.K. Rao, an ex-employee / CO, while working as Head Clerk in Comm'l Deptt. at Kharagpur, was issued with a Major Penalty Chargesheet dt. 26-09-2008 as per the vigilance enquiry report on the allegation of committing a grave misconduct in as much as he had connived to manipulate the contract agreement of M/S. Dynamic International after its execution, that he had changed the tenure period in the original agreement to more than 20 years and that he also gave contradictory statements to vigilance deptt. with deliberate intention to misguide vigilance investigation. The said ex-employee/CO submitted his representation denying the charges and attended the enquiry on certain days along with his defence helper. The enquiry officer found the ex-employee/CO guilty of the charges levelled against him and the ex-employee/CO submitted his defence statement to the enquiry report. The disciplinary authority, after considering the entire D&A proceedings, passed an order for removal from service with immediate effect i.e. from 31-3-2011.

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Thereafter, the ex-employee/CO preferred an appeal to the appellate authority. The appellate authority, after considering the appeal, upheld the punishment. The ex employee/CO thereafter moved the Tribunal in OA No. 1244 of 2011 and the Tribunal disposed of the same with a direction upon the appellate authority to delve into the points raised in the appeal and to pass an order on the appeal in accordance with Rule 22 of RS(D&A) Rules, 1968. In obedience with the order, the appellate authority passed a fresh order. A Revision Petition was thereafter preferred to the Revisioning Authority. While the revision petition was pending, the ex-employee/CO/husband of the applicant, further moved the Tribunal in OA No. 350/00265/2014 and the same was disposed of by the Tribunal with the direction to dispose of the revision petition within 4 weeks. The Revisional authority rejected the revision petition. Meanwhile, the ex-employee/CO passed away and his legal heirs have filed the instant OA before the Tribunal agitating their claim, which, in the opinion of the respondents, does not merit consideration.

6. The point of determination herein is whether the disciplinary proceedings are vitiated by violation of principles of natural justice and procedural justice and also non-adherence to settled provisions of law.

7.(1) At the outset, we refer to the enquiry conducted by Vigilance Branch and the clarificatory statement of the then Dy. CCMPS, who was functioning as Sr. DCM, KGP at the material point of time (Annexure A-1 to the O.A.) and extract the following statements as below:-

"Clarificatory statement of Sri M.L. Appa Rao, Dy. CCM (PS), S.E. Rly., 14, Strand Road, Kolkata – 700 001 recorded in the Vigilance Branch on 16.10.2006.

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Q.3 Please confirm whether the erasing, using of white ink and re-typing as visible in the agreements available at page No. 11 in File No. Com/G-18/2/M-C/HRML and at page No. 88, & 90 in File No. Com/G18/2/M/CFF-BK were within your knowledge.

Ans : It is not at all in my knowledge and it appears to be an act of tampering, manipulations and interpolations in the agreements by some vested group in connivance with the dealer who is the custodian of the files.

[Signature]

Xxxxxxxxxx

Q.8 : Please see Sr. DCM/KGP's File No. Com/G.18/2/M/C/BK-Pt., File No Com/G.18/2/M/C/-KGP-BK-Pt and File No. Com/G.18/2/M/C/-#7 wherein you have put two signatures at the last page of the agreement. Please justify the reason why you have put two signatures?

Ans : While the agreement were put up to me for my signature, I can remember that I had also been insisted by the dealer as well as the MRR/KGP to put an additional signature parallel to the signatures of the witnesses. They convinced me that this additional signature was required for attestation of the signatures or me witnesses. They also put the stamp of Sr. DCM/K/KGP at that place for getting my signature there at.

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Q.No.13 : The agreements executed with M/s Dynamic International in file No. Com/G18/2/M/C/CFF-BK on 22/3/2001 valid from 01/4/2001 to 21/12/2021 and in file No. Com/G18/2/M-C/HRML on 01/6/2001 valid from 01/6/01 to 31/12/2021. It is also seen that there are erasing, using of white ink and re-typing of the words relating to validity of the agreement and the corrections were also countersigned by you in addition to the typed remarks.

"N.B: white ink applied in 3 places, one in first line, 2 in para 18" in case of the 1st agreement and there is erasing, using of white ink and re-typing at para '9 in the 2nd agreement supported by typed remarks "N.B. white ink applied in one place at page No. 2 of clause 9 of the agreement" above your last signature. Please state whether the catering contracts can be executed for such a long period.

Ans : So far as I know, generally the validity of catering contracts can be for a maximum period of 5 years. The smaller contracts like the questioned cases were for even shorter term. I am sure that the agreements in question have been tampered subsequently and the corrections were done in order to extend benefit to the contractors by some group of people of vested interest. After execution of these question agreements the files of papers were also scrutinised by my successor Sr. DCM Sri Vivek Srivastava and food samples collected and the contractor was asked to meet CCM/Catg. for further terms and conditions in addition to the conditions agreed in the original agreement. If the contract is given by me for such a long period i.e upto 2021, they would have certainly pointed out such abnormality that means originally such long time contract was not executed by me. It is an attempt by the vested group in dominance with the dealer Sri Kameswar Rao and the Catering Manager Sri Narendra Prasad for their advantage. I am enclosing the file notings and approval of CCM/Catg. alongwith this statement. In this regard such abnormality and interpolation were reported to me by Smt. Archana Srivastava present Sr. DCM/KGP dated 21/2/2006 in connection with the Court case filed by the contractor. I have screened the files and submitted my personal affidavit to the Hon'ble High Court/Kolkata (enclosed). On the basis of my annexures affidavit DCM/KGP Sri B.N. Singh submitted the main agreement to the Hon'ble High Court/Kolkata (enclosed). The case was disposed of by the Hon'ble High Court vide

- 3) Judgement Copy
- 4) Agreement Copy in the custody of the contractor which was examined by the Hon'ble High Court/Kolkata.
- 5) File notings pertaining to the review and scrutiny of the contracts by Sri Vivek Srivastava, Sr. DCM/KGP (pages - 3)
- 6) Intimation of the abnormality in this contracts by present Sr. DCM/KGP Smt. Archana Srivastava (Page-I)

Annexure A-1 to the O.A. is incomplete from this point.

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From the above, it is inferred as follows:-

- (a) That, the insertion of the revised date and erasing using white ink and retying (as visible in the agreement) were not within the knowledge of the Sr. DCM/KGP and, according to him, it appeared to be an act of tampering, manipulation and interpolation by some vested group in connivance with the dealer, who was the custodian of the file.
- (b) That, the dealer as well as the MRR/KGP had insisted that the then Sr. DCM/KGP put an additional signature parallel to the signature of witness for attestation of signature of the witnesses and had marked his signature with the stamp of Sr. DCM/KGP below the same.
- (c) That, such insertion of the year 2021 extending the tenure of the contract by 20 years were against norms as, the maximum period is only five years and this could only be done with the connivance of the dealer and the Catering Manager.
- (d) None of the successor Sr. DCMs had reported the abnormality and interpolation thereafter.
- (e) The then Sr. DCM/KGP also referred to the directions of the Hon'ble High Court wherein the original agreement had been produced but as the orders of the judgment of the Hon'ble High Court are not in the pleadings, it is noted that the findings of the Hon'ble High Court have not been produced before us by any of the parties.

(II) We next examine the Articles of Charges which were forwarded to the ex-employee/Charged Officer vide memorandum dated 26.9.2008:

"Article-I"

Shri A.K. Rao, Hd. Clerk/KGP being the dealer and custodian of all catering files is directly responsible for keeping the files in his custody. No. manipulation in the contract agreement with M/s. Dynamic International could have taken place without his direct connivance, knowledge and complicity with M/s. Dynamic International and Shri Narendra Prasad, MRR/KGP now at IRCTC/KDL. Short term contracts were signed by N/s. Dynamic International with Sr. DCK/KGP for supply of fact food through departmental catering unit/KGP on commission sharing basis of 75:25 ratio. Such contracts were executed during December 2000 to June 2001 and the validity of such catering contracts was generally for a maximum period of 5 years, Shri A.K. Rao in connivance with Shri N. Prasad and M/c.

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Dynamic International had put up the contract agreements for signature to them, Sr. DCM with interpolated period of validity with a view to extend illegal favour to M/s. Dynamic International and got additional signatures signed by the Sr. DCM in the agreements which were pre planned in order to establish the future manipulations as legal. He had used his close proximity with the Sr. DCM so that while the agreements were put up to Sr. DCM for signature the dealer Shri A.K. Rao along with Shri N. Prasad, MRR/KGP at IRCTC/KOL insisted and convinced the Sr. DCM to put an additional signature parallel to the signature of the witnesses for attestation of the signature of the witnesses. This was done with a prompt mind to establish the legality of pre-planned manipulations to be made in the agreements in future.

2. In two of the contract agreements with M/s. Dynamic International, alterations with white ink with fresh typing embossed had been made whereby the agreements were made valid for more than 20 years. The 1st agreement regarding supply/sale of fast food was made valid with effect from 01.04.2001 to 31.12.2021 and the 2nd agreement regarding supply/sale of Haldiram products was made valid with effect from 01.06.2001 to 31.12.2021. These alterations were authenticated vide 'NB' and the then Sr. DCM/KGP viz. Sri M.L. Appa Rao, at present CCM (FM) had signed below the authentication. It is for sure that Sri A.K. Rao, Head Clerk, Sr. DCM's Office/KGP and Sri Narendra Prasad, MRR/KGP now at IRCTC/KOL had ulterior motive to manipulate the agreements later and that is why they cunningly obtained the additional signatures of Sr. DCM/KGP in the agreements to render undue privilege to the contractor authenticating the corrections against the signature of SR. DCM/KGP.

3. His contradictory statements prove his complicity in the matter. He had stated that he handed over the catg. Files to Sri Narendra Prasad, MRR/KGP now at IRCTC/KOL as and when Sri Prasad asked for the same. Being the custodian of Catg. Files and Catg. agreements he tried to pleaded ignorance in his first statement dated 06.02.2006 regarding manipulation done in two agreements. Sri A.K. Rao, Head Clerk/Sr. DCM's Office/KGP after getting the files containing manipulation in the agreements of M/s. Dynamic International did not bring the irregularities of obliterations and re-inscriptions in the agreements regarding the abnormal period of contracts for more than 20 years to the notice of the then Sr. DCM/KGP or to any other concerned officials. However, in his subsequent statement dated 20.11.2006 he had contradicted his earlier stand by stating that he had brought the change of tenure in the contract to the notice of Sr. DCM. As a dealer, safe keeping of the file was his responsibility. His contention that he handed over the files on verbal instruction and accepted manipulated files on verbal assurance is not acceptable.

4. Thus by the above act he extended undue benefit to the contractor M/s. Dynamic International in connivance with Sri Narendra Prasad, MRR/KGP now at IRCTS/KOL By handing over the catering files to Sri Narendra Prasad, MRR/KGP now at IRCTS/KOL, Sri A.K. Rao helped him to manipulate in the period of contracts in the agreements for more than 20 years. During clarification Sri M.L. Appa Rao categorically mentioned that the contractor in connivance with Sri A.K. Rao tampered the agreements.

5. The statement of Shri M.L. Appa Rao, the then Sr. DCM of Kharagpur categorically suggests that the act of tampering, manipulation and interpolation in the agreements was done by Shri A.K. Rao with vested interest in connivance with Shri Narendra Prasad and M/s. Dynamic International.

6. Thus it is established that Shri A.K. Rao had connived with Shri Narendra Prasad, MRR/KGP now at IRCTC/KOL and the contractor M/s. Dynamic International and manipulated the agreements with an ulterior motive of personal gain and thereby committed grave misconduct and irregularity in the contract agreements.

[Signature]

Article-II

Sri A.K. Rao was the dealer and custodian of the catering files throughout the tenure of Sri M.L. Appa Rao as Sr. DCM/KGP. During that period Shri Appa Rao, had executed some short term contracts with M/s. Dynamic International for supply/sale of various food items through departmental catering unit at Kharagpur Station on commission sharing basis in the ratio of 75:25. Such contracts were executed during December-2000 to June-2001. Abnormalities were noticed in the tenure of contractual period of the agreements of two contracts namely, (i) Agreement for supply/sale of 'Haldiram Madam Lal' and haldiram products and (ii) Agreement for supply/sale of Fast food, Chinese food and South India dishes through departmental Catering stalls and trolleys on re-sale basis at Kharagpur Railway station of S.E. Railway.

In his statement dated 06.02.06, Sri A.K. Rao, Head Clerk/Sr. DCM's office/KGP stated that as per verbal order of Sri M.L. Appa Rao, the then Sr. DCM/KGP, he handed over 4/5 files along with the file No. Com/G-18/2/M-C/HRML to Sri Narendra Prasad, the then MRR/KGP and the same file (bearing No. Com/G-18/2/M-C/HRML) was returned after 2/3 days by Sri Narendra Prasad with the copies of the agreement enclosed in the file. Sri A.K. Rao admitted in his statement that as the file came from Sr. DCM/KGP through the then MRR/KGP he did not check the contents of the file and even did not notice the date of execution of agreement, validity of agreement or any other formalities of the agreement. In summary Sri Rao vide his statement dated 06.02.06 pleaded that he was totally unaware of the contents in the file, execution of agreement etc.

However, in his subsequent statement dated 20.11.06, Sri A.K. Rao stated that as per verbal order of Sri M.L. Rao, the then Sr. DCM/KGP, he handed over both the agreement files bearing Nos. Com/G-18/2/M/CFF-BK and Com/G-18/2/M-C/HRML to Sri Narendra Prasad, the then MRR/KGP. Sr.DCM/KGP returned the files to him about a month later after execution of agreement. In file No. Com/G-18/2/M/CFF-BK, the validity period of the agreement in the contract was from 01.04.2001 to 31.12.2021 and in the file No. Com/G-18/2/M-C/HRML, the validity period of the agreement with the contractor was from 01.06.2001 to 31.12.2021. Sri A.K. Rao stated that when he brought this to the notice of the then Sr. DCM/KGP, HE (Sr. DCM) told him that agreement for more than 20 years was executed, on an experimental basis for the benefit of Railways.

This Sri A.K. Rao's second statement dated 20.11.06 was contradicting his earlier statement dated 06.02.06 regarding

- i) The period after which the files were returned to him.
- ii) The person to whom he returned him the files.
- iii) The personal verification of the contents of the agreement executed by Sr. DCM/KGP.

As such, the contradiction in statements is considered as an after thought statement by Sri A.K. Rao in order to escape his liability for the manipulation in the agreement and also to shift the responsibility for the same to Sri M.L. Appa Rao the then Sr. DCM/KGP.

By the aforesaid acts, Sri A.K. Rao, Head Clerk/Sr. DCM's Office/S.E. Railway, Kharagpur committed grave misconduct and irregularity and thus failed to maintain absolute integrity and devotion to duty. Thus he acted in a manner unbecoming of a Railway servant in contravention of Rule No. 3.1 (i), (ii) & (iii) of the Railway Services Conduct Rules 1966 and thus rendered himself liable for disciplinary action in terms of Railway Servants D&A Rules, 1968 as amended from time to time.

Sd/-
Divl. Commercial Manager,
S.E. Railway/Kharagpur."

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Annexure B to the said memorandum also enlisted the relied upon documents as under:-

"ANNEXURE - III

Relied upon documents to substantiate the charges framed against Sri. A.K. Rao, Head Clerk/Sr. DCM's Office/S.E. Railway, Kharagpur.

1. Statement of Sr. M.L. Appa Rao, the then Sr. DCM/KGP in 1 sheets.
2. Statement of Sri A.K. Rao, Head Clerk/ Sr. DCM's Office/ KGP dtd. 06.02.06 in 5 sheets.
3. Statement of Sri A.K. Rao, Head Clerk/Sr. DCM's Office/KGP dtd. 20.11.06 in 4 sheets.
4. Copies of two contract agreements in question – in 5 sheets.

Sd/-
Divl. Commercial Manager
S.E. Railway/Kharagpur.

It transpires from the pleadings that the list of witnesses was not annexed with the memorandum of charge.

It is seen that the Article I of charge entirely relies on the statement of Sr. DCM/KGP before the vigilance that he was convinced to put an additional signature parallel to the signature of the witness purported for attestation of signature of the witness.

Article II of the charge also is based on the allegations that the deceased employee/charged officer had issued contradictory statement on 6.2.2006, pleading his ignorance of contents of the file or execution of the agreement as against a subsequent statement dated 20.11.2006 when the ex-employee / charged officer admits to have pointed out the anomaly to the then Sr. DCM, who reportedly advised him that the 20 years tenure was for an experimental basis for the benefit of the Railways.

(III). Next we refer to the deposition made by the ex-employee/Charged Officer, PWI and PWII and examine in detail the participation of the ex-employee/charged officer therein.

The process of hearing has been documented in the Presenting Officer's brief (Annexure A-7 to the O.A.) which states that preliminary hearing was held on 8.5.2009 wherein the ex employee/CO had inspected all the documents (cited

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as RUDs) and that the first regular hearing was held on 12.6.2009 when the CO, DC & PO attended the enquiry. As PW-2, Shri B. Pal, who is the CVI (C)/GRC failed to attend, the regular hearings were adjourned to 17.7.2009, to 28.8.2009, to 28.8.2009 and thereafter fixed on 24.9.2009. We note here that in all the regular hearings so cancelled and adjourned on account of the absence of PW2, the Presenting Officer has noted the presence of the ex employee/charged officer. Ultimately, PW 2 was examined on 24.9.2009 and cross-examination continued in further hearings.

At this point, we further note, that although PW1, who was the then Sr. DCM/KGP and the most vital witness, and whose statements formed the basis of the charges framed against the ex-employee /CO, was not called upon to depose at the first instance during the regular hearing. It is also noted that despite the ex-employee/CO being present in all these regular hearings, as the PW1 was not called to depose during the initial dates of hearing, the ex-employee/CO did not get an opportunity to cross-examine PW1.

The second regular hearing was held on 26.3.2009 and, upon being dissatisfied with the proceedings, the CO requested for a change of IO on allegation of bias. The competent authority, however, rejected the allegation and instructed that enquiry be continued and if the CO did not find his DC cooperating with him, he could nominate another DC.

Accordingly, the subsequent regular hearings were fixed on 9.8.2010, 10.8.2010 and 11.8.2010. Herein we find that although the ex-employee/charged officer had been granted leave by his competent authority, the IO proceeded with the enquiry ex parte without any intimation to the ex-employee/CO notifying the intent to proceed ex parte. It is also noted that it is during these crucial days and especially during the absence of the ex-employee/CO on 11.8.2010, that the PW1 rendered his deposition. He could not be cross-examined as the ex-employee/CO was on leave. The IO closed the proceedings on 11.8.2010 itself.

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The PO concluded his Presenting Officer's brief, (Annexure - 10 to the O.A.) stating as under:-

"6. In view of the above it is substantiated that:-

- i) That Sri A. Kameswar Rao (CO) was the catering dealer at the material time.
- ii) The C.O. had dealt with the case of execution of agreement between M/s Dynamic International and Railways.
- iii) The C.O. was always in close proximity of the MRR/KGP, Sri Nagendra Prasad.
- iv) Their exists interpolations and use of white ink in the agreement of M/s Dynamic International for which primary responsibility lies with Sri A. Kameswar Rao (CO) as the dealer and custodian under whom the files are kept under lock & key.
- v) He had given contradictory statement regarding:-
 - (a) The period after which the files were returned to him.
 - (b) The person who returned him the files.
 - (c) His personal verification of the contents of the agreement executed by Sr. DCM/KGP.

Considering the above, the Article - I & Article - II of charge against Sri A. Kameswar Rao is hereby proved to be correct and stands substantiated.

*(A. Bhattacharjee)
CVI/C/GRC &
Presenting Officer"*

While the statements at (i), (ii) and (v) are statements of fact, the conclusions at (iii) and (iv) could not be said to have been conclusively substantiated on account of the non-deposition and the lack of opportunity to cross-examine the vital witness by the CO.

(IV) The Inquiry Officer submitted his report proving both charges. While analyzing the evidence and arriving at his conclusion, it is seen that Para 7.7 of the Inquiry Report is nothing but a repetition of the conclusions arrived at by the PO, almost entirely based on the statement of PW1. The IO in his report Para 7.8 has stated that the CO has avoided to examine PW1. This surprises us as the ex-employee / CO was not given a notice of exparte enquiry and also the PW1 who is the most vital witness in this matter, was not invited to depose in the early days of hearing wherein the ex-employee/CO was present consistently and without fail.

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(V) We also find the examination of PW1 by the PO to be rather cursory and the enquiry was immediately closed thereupon. The PO's examination of PW 1 is produced verbatim as under:-

"No. EQO/AKR/D&A/KGP/10/154

Dated 11.08.2010

Place: CCM(G)'s Office/Kolkata

Sub: DE against Sri A. Kameswar Rao, Hd. Clerk under Sr. DCM/KGP

Present :

- 1) Sri A.K. Halder EO/GRC
- 2) " A. Kameshwar Rao - CO (absent)
- 3) " M.V.D. Satyanarayana - DC (absent)
- 4) " A. Bhattacharjee, CVI(C) - PO
- 5) " M.L. Appa Rao - PW-1

Regular hearing of the above case - PW-1 is hereby advised to speak truth before the enquiry

Examination of PW-1 by the PO

Q.No. 1 - Kindly disclose your identity.

Ans - I am M.L. Appa Rao, Ex. Sr. DCM/KGP, now working as CCM(G)/S.E. Rly./Kolkata.

Q.No.2 - Please peruse and confirm your signature in RUD-1.

Ans - Yes.

Q.No.3 - In what capacity was Sri A. Kameshwar Rao working under you during your tenure as Sr. DCM/KGP?

Ans - Sri Kameshwar dealing in-charge Catering.

Q.No.4 - Who was the dealer/custodian of the catering files including the file of M/s Dynamic International during your tenure as Sr. DCM/KGP?

Ans - Sri A. Kameshwar Rao, Hd. Clerk.

Q.No.5 - Who had put up the agreement marked RUD-4 to you for further action?

Ans. - The dealer, Sri A. Kameshwar Rao, had put up this paper stating that all rules have been complied.

Q.No.6 - Please state whether Sri Narendra Prasad, the then MRR/KGP, had come to you along with Sri A. Kameshwar Rao, dealer of the file, when he put up the same to you.

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Ans. - I remember MRR, Sri N. Prasad invariably accompanied along with dealer specially dealing this case of M/s Dynamic International.

Q.No.7 - Please go through your answer to Q. Nos. 4, 9 & 13 of your clarificatory statement dt. 16.10.2006 (RUD-1) and state whether you still stand by to the answers you had already given.

Ans - Yes.

Examination of PW-1 by PO is over.

Read over and found correctly recorded.

X	X	Sd/-	Sd/-
CO	DC	PO	PW-1
			EO"

At this point, it is also worthwhile to reproduce the extracts of the deposition of PW2 as under:-

Cross examination of PW-2 by DC

x x x x x

Q.No.19 - In RUD No. 4 the signature of Sr. DEE (G) is absent. It was unilater decision of the signatory incumbent of the post of Sr. DCM, during the material time. Do you have contradicts the statements?

Ans. - I do not know about the unilateral decision of Sr. DCM or otherwise.

xxxxxx

Q. No. 22 - In Annexure II, Para. 2 line No. 2 it is seen "fresh typing". Pls. adduce in the enquiry how can you establish that RUD No. 4 was typed by the C.O. ?

Ans to Q. No. 22

It cannot be established that the C.O. has done the fresh typing but since he was custodian of the documents therefore he should have been aware of the "fresh typing".

xxxxx

Q.No.24 - As per Law of the land the onus lies on the signatories of RUD No. 4 only. Do you admit ?

Ans - Yes, I admit.

Q.No.25 - Did you find the signature or for that matter initial of the C.O. anywhere on RUD No. 4 ?

Ans - No.

Q.No. 26 – The signatory of RUD No.1 was not novice or illiterate since the ~~incumbent of post of the Sr. DCM which contains ambiguous, preveritative and baseless version on recorded proof, WHO USED HIS POSITION OF "INVESTIGATED",~~ convinced so on and so forth at several places. Do you have contradictions?

Ans to Q.No.26

At some places at RUD No.1 it is seen that the signatory has done things mentioned in the Questions.

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Q.No.28 – Why did you not verify the cash remittance voucher during the course of investigation to establish the involvement of the C.O. in this case?

Ans - As because, I concluded during the investigation that sufficient material, documents was there to establish the involvement of the C.O."

This deposition, as extracted, is conjectural, based on surmises. It is not understood either, as to how PW2, who was the CVI(C)/GRC, arrived at his conclusion based on materials that he failed to substantiate.

(VI) The ex-employee/Charged Officer replied against the enquiry report as also the PO's brief in which he reportedly insisted that the enquiry should be resumed with both PWs and that he was deprived of the scope of cross-examining the PW1. His prayers were not considered as the authorities hurriedly closed the enquiry.

(VII) Next, we examine the disciplinary authority's order at Annexure A-10 of the O.A. as reproduced below, with emphasis supplied:-

SOUTH EASTERN RAILWAY

Office of the
Divl. Railway Manager
Kharagpur
Date : 31.3.2011

No. DS/CON/2802

To:

Sri A. Kameswar Rao,
Hd. Clerk, under Sr. DCM/KGP.

// Through : Ch. OS (Comml.)-KGP//

Sub : Penalty under RS (D&A) Rules.
Ref : Charge Memo No. DS/CON/2802 dtd. 26.8.2008.

I have gone through the charge sheet, case file in depth alongwith report of Enquiry Officer in which Main allegations against you are as under:

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- i) That you had connived to manipulate the contract agreement of M/s Dynamic International after execution and changed the tenure of the original agreement to more than 20 years to extend undue favour to M/s Dynamic International for personal gain.
- ii) That you gave contradictory statements to Vigilance on two dated i.e on 06.02.06 and 20.11.2006 with deliberate intention to misguide Vigilance investigation. Enquiry Officer has proved both the charges in his enquiry report.

You have not co-operated in the enquiry and was evasive to attend the enquiry citing failing reasons. Ultimately, EO has submitted his report on the basis of evidences came on record during investigation. You were given all reasonable opportunities in order to extend natural justice to submit your final representation on IO's report, but you did not do so though ample time and DOSs dtd. 26.3.2010 and 11.8.2010 were supplied to you as requested and received by you also.

As regards Charge No.1:

- 1. The copies of two contract agreements are available in case file cited as Relied Upon Documents (RUDs) indicates that the contract period has been tampered and made for more than 20 years period, by using white ink.
- 2. The then Sr. DCM/KGP has submitted that the period of contract had been manipulated/ interpolated by you and then MRR/KGP. The additional signatures of the then Sr.DCM/KGP in last two pages of agreements had been obtained for the attestation of signatures of witnesses and were fraudulently utilized by interpolation.

You had admitted to the reply of Q.No.19 dated 06.02.2006 that contract period was upto 31.12.2021. Your have shown your ignorance about the manipulation made in agreement by using white ink.

As regards Charge No.2:

You in your statement dated 06.02.2006 have submitted that on verbal order of the then Sr.DCM/KGP you handed over the file to then MRR/KGP and was returned back after 2/3 days with the copies of agreements. You have shown your unawareness about the manipulation made in agreement.

- 2. You in your statement dated 20.11.2006 have stated that on verbal order of then Sr.DCM/KGP you handed over the file to the then MRR/KGP and was returned back one month later after execution of agreement.
- 3. You in your statement dated 20.11.2006, to the reply Q.No.7 & 8, have submitted that you had brought it into the notice of the then Sr.DCM/KGP that the agreement is beyond normal period, who told that agreements for more than 20 years were on experimental basis and this for the benefit of Railways.
- 4. Keeping in view of the above, it is amply clear that you were involved in this fraudulent documentation.
- 5. Any staff involved in fraudulent activity cannot be retained in service.
- 6. Considering the above, I accept the findings of Enquiry Officer and hold you responsible for violation of Rule 3.1 (i)(ii) & (iii) of Railway service (Conduct) Rules 1966 as amended from time to time.

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7. In view of the above, I have decided to impose the following punishment in order to commensurate with the gravity of offence and to meet the ends of justice:

8. "You are hereby removed from Railway Service with immediate effect as a measure of Disciplinary action without any compassionate allowance".

9. If you wish to prefer any appeal, you may do so in writing before the Sr. DCM/KGP within 45 days from the date on which this Notice is served on you in a polite and decent language.

10. You are to acknowledge receipt of this Notice.

Encl : Nil

Sd/-
Divl. Comml. Manager/KGP
&
Disciplinary Authority"

Hence, while establishing the Charge I, the disciplinary authority had entirely relied on the submissions of the then Sr. DCM/KGP.

(VII) The appellate authority under the specific directions of the Tribunal, revised his cryptic order and passed a more detailed order (Annexure A-14 to the O.A.) wherein the appellate authority concluded that the CO had been given full opportunity to defend his case during the enquiry. Such conclusions ignored the lacunae in the proceedings, the absence of ex-employee/CO during subsequent days of hearing, denial of opportunity of cross-examination, non-issue of notice of ex parte hearing and rushed closure of an Inquiry partly conducted as ex parte without notice.

The revising authority also did not enter into the purported denial of natural justice and procedural justice to unilaterally conclude that the CO took no interest in submitting his defence even though all opportunity was given to him which indicates that he had nothing to submit in support of his defence.

During hearing it was made known that the Sr. DCM / KGP had been penalized with a minor penalty charge whereas the ex-employee/CO, who was only the dealer/Head Clerk was removed from service. It is undisputed that it was the Sr. DCM/KGP who had attested the over-writing with his signature. The fact that the enquiry was closed in a hurry, that the Sr. DCM/KGP was not examined in detail, that the CO/DC was not allowed to cross-examine the PW1 and no

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notice of ex parte enquiry was issued to the CO speaks of violation of procedural and natural justice.

In this, we refer to the provisions of RS (DA) Rules, 1968 and, particularly,

Rule 25 of the same (emphasis supplied):

"Rule-25 'Revision:- (1) Notwithstanding anything contained in these rules:-

- (i) the President; or
- (ii) the Railway Board; or
- (iii) the General Manager of a Railway Administration or an authority of that stats in the case of a Railway servant serving under his control; or
- (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred; or
- (v) any other authority not below the rank of a Deputy Head of a Department in the case of a Railway servant serving under his control *Words is bracket (may at any time – and may) apply to all the sub-clauses (i) to (v) and not to sub-clause (v) only vide E(D&A) 84 RG 6-44 of 22.11.90, RBE 216/90 [may at any time, either on his or its own motion or otherwise, call for the records of any inquiry ad revise any order made under these rules or, under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary and may]*

- (a) confirm; modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or imposed any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit;"

It is noted that the Revisional Authority was well within his rights to remit the case back to the authority to make such further enquiry as was required during the life time of the CO and, particularly, when the CO had demanded a re-enquiry with both PWs.

The respondent authorities, however, appeared to be in a great hurry to close the matter. The enquiry was closed ex parte on 11.8.2010, the PO's brief was submitted on 31.8.2010, the enquiry report was submitted on 14.9.2010 and the disciplinary authority passed his final orders on 31.3.2011 without even referring to the prayers for re-enquiry by the ex-employee / CO (Annexure A-9 of the OA). The appellate authority, too, based his findings on depositions of PWs and documentary evidence, stating as follows:-

"5. On the basis of inquiry report and findings, the DA imposed punishment "Removal from service without any compassionate allowance." After pursuing the disciplinary case in depth, I find that the charges levelled against you are based on the documentary evidence and the said charges have been proved in the inquiry by the EO on the analysis of such

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evident documents and on the basis of the depositions of the prosecution witness. The DA has applied his mind while imposing punishment after satisfying that the charges levelled against you are proved."

The Revisional Authority in his orders, observed as under:-

"2. After that nominated inquiry officer duly conducted inquiry into the charges under Rule 9 of RS (DA) Rules, 1968. During the inquiry on 26.3.2010 your defence helper interrupted repeatedly in spite of being advised by the EO not to do so and left the venue. As a result EO wanted to proceed to finalize the enquiry report after taking your final defence brief. But you took no interest in submitting your defence in this respect even though all opportunity was given to you, which indicates that you have nothing to submit in support of your defence. Thus EO had finalized the enquiry report on the basis of evidences on record. As per EO's report dtd. 14.9.2010 all the charges framed against you have been proved. From the above it is clear that no natural justice is denied."

The conduct of the disciplinary proceeds leads us to believe that reliance was placed on the statements of the official, on whom the entire onus on attestation of fake entries would lie, namely, the then Sr. DCM/KGP, without conclusively meeting the requirements of burden of proof and preponderance of probability.

VIII) Ld. Counsel for applicant has challenged the proceedings on grounds of delay. In **Secretary to Government, Prohibition & Excise Department v. L. Srinivasan**, JT 1996 (3) SC 202, however, it was held that quashing the proceedings for mere delay in initiation of the enquiry would not be proper exercise of the powers of judicial review. In this case, we note that time was taken to conduct a preliminary enquiry by the vigilance followed by the major penalty charge sheet and hence we hold that the proceedings are not vitiated on grounds of delay.

Ld. Counsel for the applicant would cite this Tribunal's order dated 1.10.2010 in **O.A. 414 of 2008 (Sri Bikash Kumar Banerjee v. U.O.I & Ors.)** wherein the Tribunal was of the view that disciplinary proceedings should not be started "at this late stage." In the instant matter, the proceedings stood as concluded.

IX) On the merits of the issue at hand, we refer to the ratio of the Hon'ble Apex Court in **Moni Shankar v. Union of India**, (2008) 3 SCC 484, which has held that, while strict rules of evidence are not applicable in the case of disciplinary proceedings, the disciplinary authority should be satisfied, while exercising his

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powers, that the evidence adduced is relevant or irrelevant or whether the evidence adduced is correct in its entirety and meets the requirement of burden of proof, namely, preponderance of probability.

The disciplinary authority must also consider whether the evidence is sufficient to establish guilt of the employee and whether the doctrine of proportionality has been satisfied. There is not an iota of convincing argument of the disciplinary authority to establish the guilt of the ex-employee /CO. Rather the disciplinary authority had almost entirely relied on the statement of PW1 namely, Sr. DCM/KGP before vigilance. In particular, we refer to para 2, under Charge 1 of the orders of the disciplinary authority (A-10 to the OA).

"The then Sr. DCM/KGP has submitted that the period of contract had been manipulated/interpolated by you and then MRR/KGP. The additional signatures of the then Sr. DCM/KGP in last two pages of agreements had been obtained for the attestation of signatures of witnesses and were fraudulently utilized by interpolation."

The Hon'ble Apex Court has also held in *Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570* that the enquiry has to be conducted according to principles of natural justice and, that, in relation to persons holding civil posts under the Union, the Constitution itself ensures compliance with the principles of natural justice if the proposal is to dismiss/remove him from service.

According to the Hon'ble Apex Court, a finding of an enquiry report is perverse until the evidential material is such that it amounts to the guilt of the employee in respect of the charge against him with some degree of definiteness as held in *Nand Kishore Prasad v. State of Bihar, AIR 1978 SC 1277* and that the conclusion must be based on existent and relevant material as held in *Iswar Chand Jain v. High Court of Punjab & Haryana, (1988) 3 SCC 370*.

The Courts have been cautioned that, while exercising powers of judicial review, the Courts cannot embark upon an appreciation of evidence and arrive at a conclusion of his own on the sufficiency of evidence or the correctness of the conclusion which is based on such evidence [(*High Court of Judicature at*

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Bombay v. Shirish Kumar Rangrao Patil, (1997) 6 SCC 339. At the same time, non-examination of vital witnesses may be a ground for setting aside a departmental enquiry (**Hardwari Lal v. State of UP (1999) 8 SCC 582**).

The Hon'ble Apex Court has also held in **State of UP v. Saroj Kumar Sinha, (2010) 2 SCC 772** that action of Enquiry Officer in preparing reports ex parte without supplying relevant documents or preparing perverse report results in miscarriage of justice. In **A.R.S. Choudhury v. U.O.I. & ors. 1956 Calcutta 662 (S) AIR V 43 C 487 (Dec)**, relied upon by the applicant, it was held that where witnesses were examined in the absence of the petitioner, and he was confronted with only some of them, the enquiry is rendered defective.

In **State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364** the Hon'ble Apex Court has summarised the principles in relation to disciplinary proceedings as follows:-

"4(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that at it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in **B. Karunakar**. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called."

It was also held therein that the Court or the Tribunal should make distinction between 'no opportunity' and 'no adequate opportunity' i.e. between 'no notice'/'no hearing' and 'no fair hearing'. The relevant portion of the said judgment is quoted as under:-

"(a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for

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the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query."

The Hon'ble Apex Court in *G.Vallikumari v. Andhra Education Society*, (2010) 2 SCC 497 has held that removal from service without recording reasons and by simply referring to findings of enquiry officer, has been held to have vitiating the punishment on the ground of breach of principles of natural justice.

The Hon'ble Apex Court in *State of UP v. Sheo Shanker Lal Srivastava*, (2006) 3 SCC 276 has held that the real test is whether the absence of cross-examination renders the decision unfair in all the circumstances. The Hon'ble Supreme Court in *Union of India v. T.R. Verma*, AIR 1957 SC 882, also recognised that opportunity of cross-examination was a requirement of natural justice. In *S.C. Gicotra v. United Commercial Bank*, (1996) 1 LLJ 10 (SC), it has been held that if opportunity for cross-examination of documents and certificates on which reliance is placed by the disciplinary authority is denied, there will be denial of reasonable opportunity. In *Mangal Singh F. Poon v. State of Gujarat*, 1992 (2) SLJ 66 (Guj.) the Hon'ble Apex Court has held that reasonable opportunity is denied when witnesses examined in the absence of the delinquent are not recalled for cross-examination in spite of a request to that effect. Ld. Counsel for the applicant has cited the decision in *Khagendra Barik v. UOI & ors.* (2016) 5 WBLR (Cal) 240, wherein it was held that absence of opportunity to cross-examine amounts to breach of the principle of natural justice.

The Hon'ble Apex Court has justified exparte enquiry where the employees' conduct establish that he was intentionally evading enquiry. Herein, the ex-employee/CO had regularly attended initial hearings which kept getting postponed on ground of non-appearance of PW2 and hence we cannot hold that he intentionally evaded enquiry. In *Amal Kanti Bose v. The West Bengal State*

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Cooperative Bank Ltd. & ors. reported in (2000) 1 CLJ (Cal) 166, the Hon'ble Court held that if there is no evidence that the delinquent was informed of the dates of proceedings, the principle of natural justice stands violated.

In *Punjab National Bank v. Kunj Behari Misra*, (1998) 7 SCC 84, the Hon'ble Apex Court held that it would not be in the interest of justice to remand the case to the disciplinary authority for proceeding afresh when one of the charged employees had died during the pendency of the case before the Court. In this case also, as the ex-employee/co had expired during the pendency of his matter before the Tribunal, we cannot direct a fresh enquiry but can only remand the matter back to the Revisional authority for re-examination of the issues, re-appreciation of evidence and to decide the proportionality of the punishment as meted out to the ex-employee.

8. Accordingly, we deem it fit to remand the matter back to the Revisional authority to examine the fact that no scope was given to the ex-employee/CO to re-examine/cross examine PW1, that the enquiry was closed exparte and that the ex-employee/CO's prayers for re-enquiry were not heeded. The Revisional authority will thereafter re-consider the quantum of punishment in the light of the fact that the Sr. DCM/KGP who actually attested the fraudulent entries suffered a minor penalty only. Rightfully, the ex-employee/CO deserved similar treatment. As the ex-employee/CO has expired, the scope of further enquiry does not arise and hence, the Revisional Authority is directed to apply his mind and pass reasonable orders, particularly, on the quantum of punishment which, is in our view, is grossly disproportionate as charges against the ex-employee/CO could not have been conclusively proved without adhering to principles of natural and procedural justice. Once the quantum of punishment is suitably revised as per law, all consequent benefits should be released to the widow of the deceased employee as per rules.

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The entire exercise should be concluded within eight weeks of receipt of this order.

9. The O.A. is allowed to the extent of the above directions. No costs.

M.A. No. 106 of 2016 praying for release of family pension and other dues with interest is disposed of accordingly.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP