

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.465/2013

Dated this Tuesday the 9th April, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Vijay Kumar Upadhyay
Son of Shri Ganesh Upadhyay,
Age: 48 years, (Date of Birth: 02.01.1965),
Worked as Ex-Head Booking Clerk,
under Chief Booking Supervisor,
Wadala Road Station,
Central Railway, Mumbai Division,
Mumbai and Residing at: Flat No.17,
D-Wing, Vardhaman Nagar, Ambernath
(E), District - Thane - 421 501,
State of Maharashtra. **Applicant**
(By Advocate Shri Pawan Pandey)

VERSUS

1. The Union of India,
Through General Manager,
Central Railway,
Headquarters Office,
CSTM, Mumbai - 400 001.

2. Chief Commercial Manager,
Headquarters Office,
Central Railway, CSTM,
Mumbai - 400 001.

3. Office on Special Duty
(Suburban), OSD(S)
Central Railway,
Divisional Office,
Commercial Branch,
CSTM, Mumbai - 400 001.

4. Sr. Divisional Commercial
Manager, Divisional Office,
Commercial Branch,

Central Railway, CSTM,
Mumbai - 400 001.

5. Shri P.Y. Kadam,
Chief Inquiry Inspector,
Headquarters Office,
Central Railway, CSTM,
Mumbai - 400 001.

6. The General Manager (Vigilance)
Headquarters Office,
Central Railway CSTM,
Mumbai - 400 001. **Respondents**

(*By Advocate Shri R.R. Shetty*)

O R D E R

Per: Ravinder Kaur, Member (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) This Hon'ble Tribunal may be pleased to call for the records of the case which led to the issuance of the impugned chargesheet/punishment orders (Annexure "A-1" to "A-4) and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same with full consequential benefits of salary, difference of salary, seniority and promotion etc.

(b) This Hon'ble Tribunal may be pleased to order and direct the respondents to restore the applicant as Sr. Booking Clerk immediately and with full back wages/pay fixation, arrears of pay, increment, seniority, promotion from the date of her junior etc. and other consequential benefits."

2. The brief facts are that the applicant was appointed on the post of Junior Booking Clerk in the Central Railway on 09.07.1992. While he was working as Head Parcel Clerk at Lokmanya Tilak Terminus Station (in short 'LTT Station'), he was issued major penalty chargesheet dated 13.05.2011 containing serious allegations of corruption against him while functioning as Head Parcel Clerk at LTT, Kurla on 22.02.2011.

2.1 As per the chargesheet issued, the vigilance team had conducted a pre-planned trap on the applicant on 22.02.2011. As per the statement of Articles of charges of misconduct/misbehavior (Annex A-1), there was source information that the luggage cum parcel clerks working at LTT station were habitually charging the passengers over and above the Railway dues while booking TV, scooter, etc. Consequently a decoy check was planned on 22.02.2011. For this purpose the services of Shri Mukesh Kumar Pandey were utilised as decoy passenger. Shri Santosh Kumar Singh was joined as independent witness. As per the instructions, the decoy passenger approached the applicant and

asked him to book the TV on owners charge. Initially, the applicant informed them that TV will be booked in Brake-Van only and demanded Rs.550/-. Thereafter, the applicant asked the whereabouts of Shri Mukesh Kumar Pandey and then booked the TV vide luggage receipt No.B 263356 on owners charge amounting to Rs.320/- on journey ticket No.K01777113. The decoy passenger as per the demand handed over marked GC notes of Rs.600/- i.e. one currency note of Rs.500 denomination and one currency note of Rs.100 denomination to the applicant who accepted only Rs.500/- and returned Rs.100/-. He handed over the luggage receipt alongwith the journey ticket to the decoy passenger.

2.2 The allegation is that the applicant being luggage clerk over charged the decoy passenger by Rs.180/-. The decoy money i.e. currency note of Rs.500 denomination in question was not found in the Railway cash of the applicant. During the proceedings one person namely Shri Guddu Yadav was intercepted near luggage booking office who was loitering suspiciously and from his possession, the currency note of Rs.500 denomination referred to

above was recovered. The allegation is that the applicant with an intention to destroy the evidence, had exchanged the decoy money with Shri Guddu Yadav. It is further alleged in the chargesheet that the applicant had prepared luggage receipt No.B 263355 dated 22.02.2011 in Brake Van ex-LTT to DBG which was later on cancelled by him but to this effect no forwarding note was available. When he was questioned about the reason for cancelling the said luggage receipt and non availability of the forwarding note, he stated that one passenger had booked TV through one agent. On submission of forwarding note, he had prepared receipt No.263355 without verifying packing condition of TV. After preparing the receipt, he asked about the packing condition and was informed by the passenger that he had wrapped the TV in cloth. Since the packing conditions were not followed, he cancelled the receipt.

2.3 In the chargesheet it is alleged that the said act of the applicant was irregular as he was required to check the packing condition before preparing the luggage ticket and also that as per his own admission he had admitted

the fact that he accepted the forwarding note from one agent and prepared the luggage ticket referred to above whereas Railway had not authorised any person to book any consignment as luggage or parcel.

2.4 It is further alleged in the chargesheet that when Shri Guddu Yadav was intercepted, the tainted currency note of Rs.500 denomination was recovered from his possession which as per his statement before the vigilance team was given to him by Shri V.K. Upadhyay, the present applicant and in lieu of the same had exchanged it for another currency note of Rs.500 denomination.

2.5 The applicant has denied all the above allegations and has claimed that no such transaction ever took place neither the decoy passenger nor the independent witness ever approached him for booking of any parcel at all. To the contrary, it is claimed that on that day at about 11:55 hrs. one agent working under M/s. Jai Ganesh Parcel Agency i.e. Shri Guddu Yadav approached him to book one TV set for Darbhanga by 11065 Dn. The applicant booked TV in Brake Van, but after seeing the manner in which it was

packed, he stopped it and cancelled the receipt, since this luggage was a sophisticated and breakable item. After sometime Shri Guddu Yadav alongwith two persons approached the applicant again for booking it in owner charge. Accordingly, he booked it in owner's charge on the same ticket which was produced earlier for booking in Brake Van. The applicant issued luggage receipt of Rs.320/-.

2.6 It is alleged by the applicant that for conducting the pre-planned vigilance trap, specific provisions have been set out in the Vigilance Manual but the vigilance team flouted the procedure laid down in Rule 307 and there is no evidence at all that the applicant demanded or accepted any amount as bribe to book the parcel. Further that the charges levelled against the applicant in the chargesheet are false and malicious. It has been claimed that no amount was recovered from the applicant nor the vigilance team intercepted the passing of money by the applicant to any other person or agent. The entire chargesheet is based on the statement of one Shri Guddu Yadav who was intentionally left out from the list of prosecution witnesses.

The entire chargesheet was based on the concocted story involving Shri Guddu Yadav whereas he was never produced during the course of the inquiry. The statement of Shri Guddu Yadav relied upon in the chargesheet was neither exhibited nor marked in the course of inquiry proceedings and the applicant was never given an opportunity to cross-examine him which violated principles of natural justice. That the statement of so-called Shri Guddu Yadav could not be relied upon to punish the applicant.

2.7 It is further submitted that no excess amount was recovered from the applicant either in his private cash or Railway cash. Instead there was Rs.2/- short in his Railway cash at the time of the check.

2.8 The applicant has further alleged that the chargesheet was prepared by the vigilance department itself and that the Disciplinary Authority had only put his signature thereon without application of mind. That even the Inquiry Officer was appointed by the Disciplinary Authority under the direction of vigilance department. That the Inquiry Officer was biased against the applicant as allegedly he

was acting on behalf of the vigilance.

2.9 The applicant made representation dated 08.08.2011 for change of the Inquiry Officer but the same was rejected by the Senior Divisional Commercial Manager vide order dated 28.02.2012. He made another representation dated 09.03.2012 for change of the Inquiry Officer but he did not receive any reply from the respondents. It is claimed that the Inquiry Officer Shri P.Y. Kadam being member of the vigilance department was not independent Inquiry Officer.

2.10 The applicant has further stated that he had submitted his defence brief dated 23.07.2012 (Annex A-10) before the Inquiry Officer but it was ignored. Further that the Inquiry Officer did not appreciate the contradictions in the statements of the prosecution witnesses which were highlighted by him with written statement (Annex A-11) but the same were not taken into consideration and vide order dated 10.10.2012, the disciplinary authority imposed punishment of removal from service. It is stated that the impugned order dated 10.10.2012 is cryptic and non-speaking with regard to the issues raised by the applicant in his written statement dated

10.09.2012. That he raised all these issues before the Appellate Authority also vide his appeal dated 28.12.2012 but the appeal was also dismissed by a cryptic and non speaking order dated 13.02.2013. Even his revision before the Revisionary Authority was dismissed.

2.11 Applicant further submits that the punishment orders were also issued only as per the direction of the vigilance department and the same is bad in law and is liable to be quashed and set aside.

3. The respondents have filed detailed affidavit in reply and have contended that as per the major penalty chargesheet, the applicant overcharged the decoy passenger by Rs.180/- and tried to destroy evidence by passing on the decoy money to an agent, besides having been found involved in illegal earning in connivance with the unauthorised parcel booking agent. That the applicant initially created sense of fear in the mind of decoy passenger by threatening to book his T.V. set in the Brake Van whereby the probability of his TV set reaching its destination in one piece would become remote. By creating this fear psychosis in the mind of the

decoy passenger, he thereafter issued him a luggage receipt allowing him to carry the TV set alongwith him in the passenger compartment and overcharged Rs.180/- which he retained for his personal gain. It is claimed that the charge against the applicant has been conclusively proved. The evidence led against the applicant in the inquiry proceedings more than meets the requirement of preponderance of probability and the grounds raised by the applicant are merely an attempt to try and persuade this Tribunal to come to a conclusion contrary to the one arrived at by the Inquiry Officer, Disciplinary Authority as well as the Appellate Authority.

3.1 The respondents have also stated that the applicant did not exhaust the departmental remedies available to him as despite advised by the Appellate Authority vide letter dated 13.02.2013, he did not prefer revision petition and thus the OA is premature and is liable to be dismissed on this ground itself.

3.2 It is further contended that after receipt of major penalty charge memorandum on 03.06.2011, the applicant did not submit his representation in reply till 14.06.2011.

Thereafter, the Disciplinary Authority (Senior DCM) nominated Shri P.V. Kadam, CEI (HQ) as Inquiry Officer in this case and the DAR case file was sent to him on 15.06.2011.

3.3 The applicant did not attend the preliminary enquiry on 01.07.2011 and 07.07.2011. He attended the preliminary enquiry only on 15.07.2011 and requested for 10 days time to nominate his ARE. Regular hearing was fixed on 28.07.2011 and 09.08.2011. Though the applicant attended the inquiry but it was postponed as he had failed to nominate his ARE. The proceedings were adjourned to 16.08.2011 when again the applicant absented himself and did not even nominate his ARE. However, he moved application dated 16.08.2011 for change of Inquiry Officer on the ground of bias. This application was rejected vide order dated 21.02.2012 by the Revising Authority (CCM).

3.4 The respondents contend that the allegations of bias against the Inquiry Officer were without any basis as in fact no inquiry had taken place in any of its sessions. It is alleged that the applicant was merely trying to delay the inquiry.

3.5 After completion of DAR inquiry, the Inquiry Officer submitted his report alongwith his findings which was made available to the applicant on 23.08.2012 to which he submitted his representation dated 10.09.2012. After considering the entire evidence available on record and points raised by the applicant, the Disciplinary Authority imposed the penalty of removal from Railway service with immediate effect vide order dated 10.10.2012. This order was confirmed by the Appellate Authority vide order dated 13.02.2013.

3.6 With regard to the contention of the applicant that the order of Appellate Authority being a non speaking order, it is submitted that since the Appellate Authority agreed with the Disciplinary Authority, no elaborate order was required to be passed. With regard to the averments of the applicant that he was having unblemished service record, it is stated by the respondents that he had been issued a number of chargesheets, the details of which are given as below:-

- “A) SF-11 no.BB.C.DAR.MI.98.05 dated 06.02.1998*
- B) SF-11 no.BB.C.DAR.MI.00.09 dated 02.06.2000*
- C)SF-11 no.BB.C.DAR.MI.2001.15 dated 08.01.2001*
- D)SF-11 no.BB.C.DAR.MI.2002.776 dated 28.10.02*

*E)SF-11 no.BB.C.DAR.MI.2004.186 dated 17.08.2004
F) SF-11 no.BB.C.DAR.MI.128.06 dated 13.06.06
G)SF-11 no.BB.C.DAR.MI.188.06 dated 17.08.06
H)SF-11 no.BB.C.DAR.MI.104.07 dated 17.03.07
I)SF-5 no.BB.C.CON.48.2006.48 dated 26.07.2006"*

3.7 It is denied by the respondents that while conducting the inquiry proceedings, there was violation of any provisions of Vigilance Manual regarding non examination of Shri Guddu Yadav. It is stated that it is the discretion of Disciplinary Authority to decide on the basis of which documents and witnesses the charge is required to be proved. Further that the applicant was at liberty to call Shri Guddu Yadav as his defence witness. It is stated that the applicant in his statement dated 22.02.2011 admitted that he booked the TV on o/c (overcharge) when Shri Guddu Yadav and party approached him.

3.8 It is claimed that all the points raised by the applicant in his defence brief were taken into account by the Inquiry Officer while recording his findings. The allegations that Shri Guddu Yadav was beaten up by the vigilance team are denied. It is also stated that no complaint or FIR was lodged by Shri Guddu Yadav in this regard. It is denied that the applicant

had filed any revision before the Revisionary Authority. It is denied that there was any pressure from the vigilance department over the Disciplinary and Appellate Authority as claimed by the applicant. It is also denied that the Inquiry Officer was appointed as per the choice of the vigilance department.

4. In rejoinder the applicant has reiterated his claim as per the Original Application. In addition it is stated that the applicant and his defence counsel had orally requested the Inquiry Officer to call Shri Guddu Yadav but he refused to do it. That in the defence brief he has specifically raised the point of Shri Guddu Yadav of not being a part of prosecution witness and the vigilance dropped his name deliberately against the principles of natural justice.

5. We have heard the arguments of Shri Pawan Pandey, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents and perused the material available on record. We have also gone through the records produced by the respondents.

6. It is argued by learned counsel for the applicant that in the present case the

Investigating officer did not join Gazetted official/s as independent witnesses/s and has thus violated clause 307.4 of the Vigilance Manual.

7. Learned counsel for the respondents has drawn our attention to the fact that in the present case during the trap two class IV employees who were Non Gazetted Officials were joined in the proceedings and this is sufficient compliance of clause 307.4 of the Vigilance Manual. The perusal of clause 307.4 referred to above clearly finds mention that the Investigating Officer should join the Gazetted or Non-Gazetted Officers/officials to act as independent witnesses in the trap case and therefore by joining class IV employees in the trap proceedings, there is no violation of clause 307.4 as claimed by the applicant.

8. It is the contention of the learned counsel for the applicant that since class IV employees were joined in the trap proceedings, there was every apprehension that they would be under the influence of vigilance department. It is further submitted that as per clause 307.5 of the Vigilance Manual, proper execution of trap

is very important and the points mentioned therein must be kept in view. Clause 307.5 of the Vigilance Manual is reproduced as follows:-

“ 307.5 Proper execution of the trap is very important. The following important points should be kept in view:

(i) One or more responsible and impartial witness/witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification. This would squarely meet the likely defence of the accused that the money was actually received as a loan or something else.

(ii) The transaction should be within the sight and hearing of the independent witness/witnesses.

(iii) There should be an opportunity to catch the culprit red-handed immediately after the bribe money has changed hands so that the accused may not be able to get rid of it.

(iv) The witnesses selected should not have appeared as witnesses in earlier cases of the department. It is safer to take as witness a Government employee who belongs to some other department.

(v) It is preferable to take a written complaint from the decoy. The complainant must specifically give the name of the person receiving the money, motive for receipt, the actual amount, date, time and place of the transaction.”

9. It is observed that in the present case, two independent witnesses namely Shri Mukesh Kumar Pandey as decoy customer and PW-2 Santosh Kumar Singh as an independent witness to overhear the conversation between PW-1 and the applicant, were joined in the trap proceedings. The perusal of the statement of both these witnesses before the Inquiry Officer shows that they both are colleagues and were joined in the

present proceedings on 22.02.2011 to assist in the vigilance check. Shri Mukesh Kumar Pandey acted as decoy-customer and as referred to above Shri Santosh Kumar Singh had heard the conversation between the decoy-customer and the applicant. Thus there was no deviation from Rule 307.5 of the Vigilance Manual as both the witnesses joined were impartial and the transaction involved in the case was done in their presence. The applicant has failed to point out that these witnesses in any manner were biased against him or were under the influence of vigilance team. He has also failed to point out any prejudice caused to him by joining of these two witnesses in the trap proceedings.

10. The perusal of statement of both the above referred witnesses made before the Inquiry Officer shows that Shri Mukesh Kumar Pandey requested the applicant for booking of TV from LTT to Darbanga for which the applicant demanded Rs.550/-. However, he handed over Rs.700/- to him out of which the applicant returned Rs.200/- and handed over receipt of Rs.320/-. This entire transaction took place in the presence of

independent witness Shri Santosh Kumar Singh. The contention of the learned counsel for the applicant that there is contradiction in the statement of both PW-1 Shri Mukesh Kumar Pandey and Shri Santosh Kumar Singh regarding the amount handed over to the applicant by Shri Mukesh Kumar Pandey, is of no consequence as what is important in the present proceedings is to find out as to what are the charges for booking TV. Admittedly, the charges are Rs.320/- for which the receipt was issued by the applicant against actual receipt of the amount of Rs.500/- from Shri Mukesh Kumar Pandey. The demand of Rs.550/- against the amount of Rs.320/- itself leads to the inference that the excess amount demanded by the applicant was towards bribe which he later on accepted when he retained Rs.500/- against the due amount of Rs.320/- and thus accepted bribe of Rs.180/-.

11. It is also contended by the learned counsel for the applicant that both the witnesses were under the influence of the vigilance department. However, the perusal of cross-examination of both these witnesses conducted by the applicant clearly shows that no

such suggestion was given to either of the witnesses that they were pressurized by the vigilance department to depose against the applicant. From the cross examination of both these witnesses, nothing material could be extracted by the applicant so as to disbelieve their statements. No doubt, the tainted currency note of Rs.500/- was not recovered from the possession of the applicant. The applicant claims that since he had not accepted any bribe, as no recovery was effected from his possession and that he has been falsely implicated. It is observed from the statement of both the decoy-customer Shri Mukesh Kumar Pandey and independent witness Shri Santosh Kumar Singh recorded by the Inquiry Officer that during cross-examination, none of these witnesses was suggested by the applicant that he had neither demanded Rs.550/- for booking of TV nor that he had not accepted Rs.500/- in lieu of the receipt issued for Rs.320/-. In the absence of cross-examination of both these witnesses to this effect, the case of the respondents stands proved to the effect that the applicant had demanded Rs.550/- for booking of TV but had

accepted Rs.500/- and issued receipt of Rs.320/- only.

12. The other argument of learned counsel for the applicant is that the tainted currency note of Rs.500/- denomination could not have been recovered from the possession of agent Shri Guddu Yadav as the applicant had no opportunity to hand over the said currency note to him. However, this argument is without any force as Shri Mukesh Kumar Pandy during his cross-examination in answer to the question No.20 stated that after he got the receipt, he approached the vigilance team at platform only. In his Chief examination, he categorically stated that after the applicant handed him over receipt of Rs.320/- he approached the vigilance team and handed over Rs.200/- alongwith receipt of Rs.320/- and thereafter on being informed by independent witnesses, the vigilance team approached the office of the applicant. During the period when the independent witnesses approached the vigilance team on getting receipt of Rs.320/- from the applicant to inform about the transaction and till the arrival of the vigilance team to the office of the applicant,

there was sufficient time and opportunity with the applicant to hand over the tainted currency note to Shri Guddu Yadav. No doubt, as per clause 307.5 of the Vigilance Manual, there should be an opportunity to catch the culprit red-handed immediately after the bribe money has changed hands so that the accused may not be able to get rid of it, has not been complied in the present case as at the relevant time vigilance team was present at some distance from the spot of incident and after the transaction was over, the independent witnesses went to inform the vigilance team. Consequently, the applicant could not be apprehended red-handed. It is for this reason and coupled with the fact that Shri Guddu Yadav was not examined during the departmental inquiry, the factum of recovery of tainted currency note from possession of Shri Guddu Yadav coupled with his statement dated 22.02.2011 that the said currency note was handed over to him by the applicant cannot be taken into consideration against him. However, merely for this reason, the other material evidence available on record regarding the initial demand of Rs.550/- by the applicant for

booking TV and then accepting Rs.500/- instead of Rs.320/- the actual booking charges, also cannot be ignored. Both PW-1 and 2 have corroborated the statement of each other on the aspect of demand and acceptance of bribe by the applicant. Their respective statement before the Inquiry Officer has not been rebutted in any manner so as to say they were procured or false witnesses or were under the influence of the vigilance department. Rather they have corroborated statement of each other on material particulars barring few inconsequential contradictions which are bound to occur naturally.

13. So even if we ignore that recovery of Rs.500 tainted currency note was effected from Shri Guddu Yadav, there is sufficient material on record from which the *mens rea* of the applicant can be inferred as he first booked the TV in the Brake Van and then again booked it on owner charge. In fact initially he was creating grounds for demanding bribe as no sane person would book TV in the brake Van at the risk of damaging the same. The fact also cannot be ignored that the applicant had initially issued

luggage receipt No.B263355 dated 22.02.2011 to book TV in Brake Van ex-LTT to DBG which was later on cancelled and it is thereafter, he issued receipt No.B263356. The issuance of receipt No. B263355 itself shows the intention of the applicant to create circumstances to demand bribe from decoy-customer.

14. The applicant in his appeal has claimed that on 22.02.2011 Mr. Guddu Yadav, a representative of Ganesh Parcel service/Agency had approached the luggage office for booking of a T.V. at 11.55 am by 1061 DN Pawan express and tendered a forwarding note for B/V booking to the applicant. That on payment of Rs.215/- by Shri Guddu Yadav receipt No.263355 for Brake Van booking of TV was handed over to him by the applicant. It is also pleaded in the appeal that due to improper packing of TV B/V booking was cancelled and on request the TV was again booked in owner charge on same travelling ticket vide LT receipt No.263356. However, during the cross examination of both PW-I and PW-II during inquiry proceedings, no such suggestion was given to the witnesses and the defence taken by applicant appears to be afterthought.

15. Besides, though in the appeal, it is mentioned that Shri Guddu Yadav had tendered forwarding note for Brake Van booking but no such forwarding note was either recovered from the possession of the applicant nor it was produced before the vigilance team by the applicant himself.

16. We have perused the RUD 17 dated 22.02.2011 i.e. the statement of the applicant recorded by the vigilance department and it is found recorded therein that the applicant during the trap proceedings had identified both PW-1 and PW-2 that they had come to him alongwith Shri Guddu Yadav for booking of TV in the Brake Van and when he was told that the TV was wrapped in cloth, he cancelled the luggage receipt No.263355 due to improper packing. Regarding the forwarding note he stated that the party had taken the same after the cancellation of receipt No.263355. Further that the concerned party alongwith Shri Guddu Yadav again approached him for booking TV in owner charge and he issued receipt of Rs.320/- after collecting the said amount from Shri Guddu Yadav. The said statement of the applicant is

contrary to the contents of the appeal wherein he has stated that it is only Shri Guddu Yadav who had approached him for booking of TV whereas in the statement dated 22.02.2011, he has mentioned that Shri Guddu Yadav alongwith PW-1 and PW-2 had approached him for booking of TV in Brake Van. For the reasons best known to the applicant, he has taken different stands in his different statements. In the appeal he has also not taken any grounds that his statement dated 22.02.2011 was not correct or he was forced by the vigilance team to make any such statement.

17. Learned counsel for the applicant has argued that in the present case, the chargesheet issued itself is illegal. The Inquiry Officer was also appointed by the Disciplinary Authority as per the dictum of the vigilance department and the inquiry was conducted as per the whims and fancies of the vigilance department inasmuch as on 10.05.2011 directions were issued by the vigilance department to the Disciplinary Authority through DRM(C) (CSTM), Mumbai to issue major penalty chargesheet against the applicant whereas the Disciplinary Authority of the applicant was senior DCM and not the DRM (C).

Further even the draft chargesheet submitted by the vigilance was the final chargesheet and issued to the applicant. He has drawn our attention to Annex RJ-A4 the letter dated 10.05.2011 issued from the office of GM's Office, Vigilance Branch to DRM(C) CSTM. The perusal of this letter shows that this pertains to preventive check conducted on the applicant on 22.02.2011. No doubt vide this letter the draft major penalty chargesheet for issue to the present applicant with a view to impose a penalty was sent to DRM(C) CSTM by the Vigilance Branch. However, it is specifically mentioned therein that if the Disciplinary Authority comes to a conclusion on receipt of defence statement from the applicant that the inquiry is required, only then he may appoint Inquiry Officer of his choice.

18. It is also categorically mentioned therein that the Disciplinary Authority must ensure that the Inquiry Officer to be appointed is of sound integrity and possesses adequate knowledge of rules and procedure in regard to conduct of inquiry. In this letter, the Vigilance Branch also suggested the names of two

Inquiry Officers to be appointed i.e. Shri P.B. Kale and Shri P.Y. Kadam. As such, the Disciplinary Authority was given free hand to choose as per requirement, to appoint the Inquiry Officer of his own choice or out of the names suggested by Vigilance Branch, which in our opinion do not amount to any interference on the part of the Vigilance Branch.

19. Here we take note of the fact that the powers of the Tribunal for judicial review are limited. It is settled law that in judicial review the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial Review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the Court or Tribunal. It is held by the Hon'ble Apex Court in the case of *State of T.N. And Another Vs. S. Subramaniam, 1996 STPL 1373 SC* that when the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power to re-

appreciate the evidence and to come to its own conclusion on the proof of charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. In the present case, the conclusion reached by the concerned authorities is based on evidence on record and as such needs no interference.

20. Similarly, the contention of learned counsel for the applicant that as mentioned in this letter dated 10.05.2011, the Disciplinary Authority was put under pressure by the Vigilance Branch, as the dictates were issued that in case the Disciplinary Authority on receipt of Inquiry report finds or is of the view that any or all of the charges are not fully proved, he is required to consult the Vigilance Branch before serving the report of Inquiry Officer upon the charged employee. It is observed that this only amounts to consulting the Vigilance Branch before serving the report of Inquiry Officer upon the charged employee as it is categorically mentioned in this letter in

the following paragraph that :-

"If the Disciplinary Authority comes to a conclusion after consideration of defense statement/Inquiry Report which is at variance with the Vigilance advice of major ppenalty vide para-1 above, he should only record his provisional orders and remit the case to the Vigilance branch. However, if after such consultation, the DA is not in agreement with the views of Vigilance, then he is free to proceed and pass speaking orders and communicate his decision to the CE, in other than CVC cases."

21. Similar consultation is required by the Appellate Authority/Revisionary Authority in case the major penalty had been imposed by the Disciplinary Authority in agreement with the recommendation of the Vigilance but the Appellate/Revisionary authorities proposes to exonerate or impose a minor penalty. The perusal of entire contents of the letter under consideration shows that there is no pressure being exercised by the Vigilance organisation upon the Disciplinary Authority, Appellate Authority/Revisionary Authority and it is only a consultation with the Vigilance organisation before arriving at final conclusion and the final conclusion has to be of the Disciplinary Authority, Appellate Authority and Revisionary Authority and not of the Vigilance Organisation.

22. Thus, in view of the above discussion, we do not find any infirmity in any of the impugned orders and are of the opinion that at no stage of the inquiry against the applicant, the principles of natural justice have been compromised. We find no justification in the claim of the applicant that the impugned chargesheet was wrongly issued or the order of the Disciplinary Authority imposing major penalty of "Removal from service with immediate effect' is illegal. The applicant has failed to point out any discrepancy in the impugned order of the Disciplinary Authority and impugned order of the Appellate Authority. We do not find any justification in the claim of the applicant that the issuance of the chargesheet and conduct of disciplinary proceedings against him were on account of bias and with a view to harass him. Rather as pointed out by learned counsel for respondents, we find from record that the applicant did not attend the preliminary enquiry on 01.07.2011 and 07.07.2011. He attended the preliminary enquiry on 15.07.2011 and requested for 10 days time to nominate his ARE. Regular hearing was fixed on

28.07.2011 and 09.08.2011. Though the applicant attended the inquiry but it was postponed as he had failed to nominate his ARE. The proceedings were adjourned to 16.08.2011 when again the applicant absented himself and did not even nominate his ARE. It is thereafter that he moved an application for change of Inquiry Officer on the ground of bias whereas since he never attended inquiry proceedings, therefore, on what basis he claims that the Inquiry Officer was biased, has not been explained.

23. We also do not find any substance in the allegations that the Disciplinary Authority passed the punishment order without application of mind. The punishment awarded vide order dated 10.10.2012 has also been confirmed by the Appellate Authority vide order dated 13.02.2013. The applicant has though claimed that he filed Revision Petition against the order of the Appellate Authority, however, this fact has been denied by the respondents and the applicant has failed to bring any document on record to suggest that he had preferred any Revision Petition against the order of the Appellate Authority and that the Revision

Petition was also dismissed. It is also noticed that the applicant has not challenged any order of the Revisionary Authority vide which he claims that the order of the Appellate Authority was confirmed.

24. In view of the above facts and circumstances, we are of the considered view that the Original Application is devoid of merits and is liable to be dismissed.

25. The Original Application stands dismissed. Parties are directed to bear their respective costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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