

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE  
ORIGINAL APPLICATION NO.170/00517/2018  
DATED THIS THE 22<sup>nd</sup> DAY OF AUGUST, 2019  
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER  
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

H.V.Manjunath  
S/o Sri Late Venkatramanappa  
Aged about 38 years  
Working as Senior Section Engineer  
o.o: Senior Section Engineer(CDO)  
South Western Railway  
Yashwantpur  
Bangalore.

....Applicant

(By Advocate Shri Izzhar Ahmed)

Vs.

1. Senior Divisional Mechanical Engineer  
South Western Railway  
Bangalore Division  
Bangalore-23.
2. Senior Deputy General Manager &  
Chief Vigilance Officer  
Department of Vigilance  
(Head Quarter)  
South Western Railway  
Gadag Road  
Hubli-20.
3. Union of India  
Through the General Manager  
South Western Railway  
Gadag Road  
Hubli.

...Respondents

(By Advocate Sri N.Amaresh)

**OR D E R**  
(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that while working as Senior Section Engineer, he was placed under suspension vide letter dtd.14.7.2014(Annexure-A3) in terms of Rule 5(2) of Railway Servant (Disciplinary & Appeal) Rule 1968 following criminal offence under investigation by the CBI. The CBI lodged FIR dtd.29.6.2014(Annexure-A1) under Section 120-B r/w 420, 420 IPC and Section 8 and 13(2) r/w 13/1 (d) of Prevention of Corruption Act-1988 regarding criminal conspiracy, cheating and criminal misconduct against the accused persons who have abused their official position and entered into criminal conspiracy with others in the matter of getting illegal appointments in Railways by leaking/providing the question papers and answer key and to facilitate the candidates to get recruitment by obtaining huge bribe amount from them. On 30.6.2014(Annexure-A2), the CBI filed application for remand of other accused wherein the applicant's name is also included, under section 167 of Cr.CP. The applicant's suspension was revoked on 8.4.2015 as per clause (c) of Sub-rule (5) of Rule 1968(Annexure-A5). Thereafter, the Senior Division Mechanical Engineer-Disciplinary Authority (1<sup>st</sup> respondent) submitted sanction order dtd.14.9.2015 to the CBI in terms of RC.11(A)/2014 advising to constitute the offences punishable under Section 120-B r/w 420, 420 IPC and Section 8 and Section 13(2) r/w 13/1 (d) of Prevention of Corruption Act 1988 against the applicant along with other accused persons. Relying upon the same, the CBI submitted charge sheet(final report) to the Hon'ble Court of XXI Addl.Civil & Sessions Judge for CBI cases at Bangalore vide RC.11/2014 dtd.28.9.2015(Annexure-A7) wherein the applicant's name is listed at Sl.No.11.3. Then the 1<sup>st</sup> respondent initiated major charge sheet on the applicant vide dtd.5.12.2017(Annexure-A8) under Rule 9 of Rule 1968 on the following charge:

**Article of charge:**

Shri H.V.Manjunath, while working as Senior Section Engineer, Carriage and Wagon, CDO/Office, Yeshwanthapur Railway Station, Bangalore, during the month of June 2014, conspired with Shri Katta Narasimha Rao, CLI/SBC division, Shri B.Hanumanthappa, Driver/dy.CE/CN/BNC (On contract basis) and Shri Munigangaiah., OS/CDO/O/YPR, and some other candidates to leak the question paper for the RRB examination scheduled to be held on 29.06.2014 at Bangalore in order to illegally help some candidates to pass the said RRB exam. In pursuance of the conspiracy, abusing his official position, Shri H.V.Manjunath along with Shri B.Hanumanthappa and Shri Munigangaiah attempted to leak the question paper of the RRB examination scheduled on 29.6.2014. In pursuance and as a part of the conspiracy Shri H.V.Manjunath along with other conspirators offered the question papers to some candidates including Smt.Nagashree, Shri.Keerthi, Shri.Kiran Kumar and Shri.K.Balakrishna taking illegal gratification. All this was done with an intention to cheat Railway Recruitment Board (RRB), Bangalore and other genuine candidates, who were appearing for the said examination. This action of Shri H.V.Manjunath caused bad name to RRB, Bangalore and South Western Railway.

Thus, by the above acts of omission and commission, Shri H.V.Manjunath, the then Senior Section Engineer, Carriage and Wagon, CDO/O/Yeshwanthapur Railway Station, Bangalore has failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant in contravention to Rule 3(1) (i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966.

2. The applicant submits that the charge memo issued by the 1<sup>st</sup> respondent is delayed by 1 year 7 months and 27 days as per calendar prescribed by the Railway Board to finalize the departmental proceedings on vigilance/CBI cases. The Railway Board has not delegated powers to the DA to take action beyond the limitation and the document No.4 dtd.7.7.2014 relied upon by the DA along with charge memo is a proceeding sheet prepared by the CBI which is under judicial scrutiny and it cannot be reopened if it is the document of CBI against the accused. The applicant submits defence reply dtd.21.12.2017(Annexure-A9) requesting to hold back the proposed disciplinary proceedings being pending in criminal court on the same set of facts. But the 1<sup>st</sup> respondent rejected the same vide order dtd.4.1.2018(Annexure-A10) stating that there is no bar to initiate

departmental proceedings where criminal prosecution is already in progress on the same charges. He submits that the 1<sup>st</sup> respondent has not considered his own sanction order which is kept pending for criminal proceedings and he cannot impose major penalty as he has only delegated powers to exercise under Rule 14 of Rule 1968. The applicant filed representation dtd.19.1.2018(Annexure-A11) for supply of relevant documents related to Annexure:III of charge memo dtd.5.12.2017, but the same was denied by the 1<sup>st</sup> respondent vide letter dtd.2.2.2018(Annexure-A12). The applicant filed another representation dtd.24.2.2018(Annexure-A13) against the letter dtd.2.2.2018 requesting to reconsider to supply of documents related to the representation dtd.19.1.2018. The 1<sup>st</sup> respondent issued a letter dtd.3.3.2018(Annexure-A14) referring Rule 9(7) of Rule 1968 stating that 'no new/additional documents can be given at this stage' and advised the applicant to submit the defence reply to the major charge memo within 10 days, which is against the rule. The 1<sup>st</sup> respondent nominated presenting officer and the inquiry officer from the 2<sup>nd</sup> respondent's office on vigilance complaint vide order dtd.4.5.2018(Annexure-A15). The 1<sup>st</sup> respondent has not considered FIR dtd.29.6.2014 wherein Sri S.Mahesh, Chief Vigilance Inspector in the office of 2<sup>nd</sup> respondent is accused No.2.

3. The applicant further submits that when he sought information through RTI dtd.10.4.2018(Annexure-A16) regarding 1<sup>st</sup> stage advice by vigilance for taking departmental proceedings and the preliminary inquiry before issuance of charge memo, the 1<sup>st</sup> respondent furnished information dtd.9.5.2018(Annexure-A17) stating that 'no such documents available in their office' but the charge memo dtd.5.12.2017 has the document number which he mentioned in his RTI application. The major charge memo was initiated by the advice of the 2<sup>nd</sup>

respondent without following procedure in Chapter-II of Vigilance Manual-2012(Annexure-A18). In the charge sheet of the CBI dtd.28.4.2015, the name of the applicant was added as accused and there was no 1<sup>st</sup> stage advice of the 2<sup>nd</sup> respondent for departmental action from 28.4.2015 to 5.12.2017 and even not conducted preliminary inquiry to differentiate the evidence/records to the criminal case. Therefore, there is no separate evidence in the charge memo to prove the allegation of charges by the inquiry officer. In the case of the applicant no 'vigilance angle' is found in terms of Railway Board order dtd.6.10.2015(Annexure-A19). Hence the departmental proceedings on 'vigilance complaint' in terms of para 5.2 of Vigilance Manual-2012 and the action in the absence of 1<sup>st</sup> stage advice is against the Railway Board's order dtd.7.4.2006(Annexure-A20). The Railway Board issued a circular No.110 dtd.3.12.2014 regarding 2<sup>nd</sup> stage consultation in disciplinary cases(Annexure-A21). As per records, there is no 1<sup>st</sup> stage advice to the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent has not conducted preliminary inquiry. Then the 2<sup>nd</sup> stage advice is not permitted for proposed penalty violating the Railway Board's order dtd.11.12.2014(Annexure-A22). According to the applicant, the 1<sup>st</sup> respondent has not followed procedure prescribed under Rule 9 of Rule 1968 in the major departmental proceedings, Rule 9(2) to (5) the preliminary inquiry on 1<sup>st</sup> stage advice, 9(6) issuing departmental proceedings, 9(7) supply of relevant additional documents on the allegation of charges, 9(8) to submit the defence reply against the charge memo, 9(9)(a) the DA shall decide whether inquiry should be proceeded or not and 9(10) of Rule 1968 appointment of inquiry officer. Extract of Rules 9 of RS(D&A) rules 1968 is enclosed at Annexure-A23. He submits that the presenting and inquiry officers cannot prove the charges

beyond reasonable doubt as the departmental proceedings are not criminal proceedings. In terms of Rule 9(10) of 1968, the 1<sup>st</sup> respondent is unable to impose any major penalty under Rule 6 of Rule 1968 on the inquiry report which is against the sanction order (Annexure-A6) which is pending for judicial scrutiny in the criminal proceedings. The 1<sup>st</sup> respondent has not exercised Rule (4) of 1968 as common proceeding if more than two officers are involved in criminal proceedings by the different disciplinary authorities and the accused are related to the allegation of leak of question papers of RRB in terms of Rule 1718 of IREC-1, 1971(Annexure-A24) following FIR and the charge sheet of the CBI. The 1<sup>st</sup> respondent has delegated powers to exercise Rule 14 of Rule 1968 and then exercising his power under Rule 9 of Rule 1968 is against his sanction order. The Railway Board has clarified vide order dtd.18.7.1956 that 'in such cases even issue of charge sheet is not necessary and the penalty may be imposed straightaway on conviction of the employee'. The same was not considered while initiating the major departmental proceedings. 1<sup>st</sup> respondent states that there is no bar for departmental proceedings on pending criminal proceedings without reading of Para 18 of Master Circular 67 of the Railway Board as per which the charges should be similar both in the departmental and criminal proceedings to initiate and conclude the departmental action simultaneously(Annexure-A25). It is admitted by the 1<sup>st</sup> respondent under RTI that there is preliminary inquiry to understand the different evidence for major departmental proceedings. As per the Railway Board order dtd.30.10.1950(Annexure-A26), the order of removal/termination on the conviction should not be with retrospective effect. The major penalty under Rule 6 of 1968 in terms of major departmental proceedings under Rule 9 of 1968 should not be retrospective during the pendency of criminal

case. Then the Rule 14 of 1968 is applicable on conviction in criminal court. The 1<sup>st</sup> respondent has not considered para 4 of the Railway Board's order dtd.6.2.2009(Annexure-A28) while using Rule 3 (1) (i) (ii) & (iii) of conduct Rule 1966 which is against the guidelines of the Railway Board. The applicant relied on the judgement of Hon'ble Apex Court in the case of *Girish (2014) 3 SCC 636, Capt M.Paul Anthony (1993) 3 SCC 679 & Karnataka SRTC vs. MG Vittal Rao (2012) 1 SCC 442* in support of his contention. Therefore the action of the 1<sup>st</sup> respondent for departmental proceedings is against the prescribed procedure as laid down by the Hon'ble Apex Court and the respondents have violated Articles- 14, 309 & 311(2) of the Constitution of India. Therefore, he filed the present OA seeking the following relief:

- i. *Set aside the impugned orders No.B/M.227/MC/H.V.M/01/17 (Vig) dtd.5.12.2017 (Annexure-A08) and No.B/M.227/MC/H.V.M/01/17 (Vig) dtd.4.1.2018(Annexure-A10) as illegal, no separate ingredients the offence charges in criminal proceedings, no separate evidence the standard of proof, no misconduct while using both clauses 3(1) (i) and (ii) of conduct Rule 1966 and also against the Sanction Order dtd.14.9.2015 (Annexure-A6) and against the parameters of the rule of law.*
- ii. *Direct the respondent-01 to withdraw the major charge memo dtd.5.12.2017 (Annexure-A8) till the outcome of the criminal case considering the Sanction Order issued by the DA (respondent-01) dtd.14.9.2015 (Annexure-A06) relying by the CBI in the charge sheet dtd.28.9.2015(Annexure-A7) as pending for judicial scrutiny in the criminal proceedings and wrongly exercised powers under Rule 9 of Rule 1968 instead of Rule 14 of Rule 1968 (Annexure-A23) within the stipulated time and*
- iii. *Grant relief or reliefs as deemed fit and proper, with costs, in the interest of justice and equity.*

4. The respondents, on the other hand, have submitted in their reply statement that the applicant was suspended from duty from 8.7.2014 in terms of Rule 5(2) of Railway Servants (Discipline & Appeal) Rules, 1968. A three member committee has been formed for reviewing the suspension and had recommended for extension of suspension which was approved by competent authority. Subsequently, the suspension was revoked on 8.2.2015. There is no legal bar to

the initiation of departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency/misconduct in criminal prosecution and departmental proceedings as well as the standards of proof required in both case are not identical. A charge sheet in standard form SF-5 was issued to the applicant on 5.12.2017 and the applicant has submitted representation to the 1<sup>st</sup> respondent to keep the disciplinary proceedings in abeyance. Then the 1<sup>st</sup> respondent has given reply dtd.4.1.2018 stating that there is no legal bar to initiate departmental proceedings where criminal prosecution is already in progress. The applicant was advised to submit his explanation within 10 days. After submission of explanation by the applicant, inquiry officer was nominated and the inquiry proceedings are under progress. Applicant has made allegation of bias against inquiry officer. Then the case filed was forwarded to Railway Administration for taking necessary decision. Inquiry proceedings are not completed and hence there is no question of imposing of penalty at this stage. As per para 18 of Master Circular 67, the departmental proceedings should continue independently unless they are stayed by a court of law. In the present case, there is no stay by court. The question of conviction/acquittal is not arising at this stage as the trial under criminal court is under process and not finalised. This is not a regular departmental disciplinary case and the applicant was charged by CBI and vigilance department under Sec.120 B, r/w 420, 420 IPC and Sec.8 and Sec.13(2) r/w 13/1 of Prevention of Corruption Act, 1988 which are serious and grave in nature and criminal case is pending in court.

5. The respondents submit that as per para No.606(4) of Indian Railway Vigilance Manual and Railway Board's letter dtd.5.1.1960, a railway servant shall intimate the fact of his arrest and the circumstances attended thereto to his office on bail. On receipt of such information, the departmental authorities should decide whether the facts and circumstances of the case warrant the suspension of the railway servant. Failure on the part of the railway servant to inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from any action that may be called for on the outcome of the police case against him. It is not necessary to stay proceedings only because a criminal case is pending in a court of law on the same charges. Each case can be considered individually on its facts and circumstances. In criminal cases, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings, proof based on preponderance of probability is sufficient for holding the charges as proved. What might however, affect the outcome of the subsequent proceedings may be the contradictions which the witness may take in their depositions in the said proceedings. It is, therefore, necessary that all relevant matters be considered in each individual case and conscious view taken whether disciplinary proceedings may not be started alongside criminal prosecution. In a case whether the charges are serious and the evidence strong enough, simultaneous departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the public servant and a final decision can be taken about his further continuance in employment. In the case of *Delhi Cloth & General Mills Ltd. vs. Kushal Bhan (AIR 1960 SC 806)*, the Hon'ble Supreme Court held that 'it cannot be said that principles of natural justice require that an

employee must wait for the decision at least of the criminal trial court before taking action against an employee'. The disciplinary authority has not imposed any major penalty and only charge sheet was issued and the proceedings are under process. The principles of natural justice are being followed as per Railway Servants (Discipline & Appeal) Rules, 1968. In terms of para 313.3 of Indian Railway Vigilance Manual-2006, CBI forwards its report to the concerned Disciplinary Authority. No further departmental fact-finding should normally be necessary in such cases. However, if any clarification/additional information is required, CBI may be requested to furnish it. Respondents submit that as per para-303 of IRVM-2006, CBI can take up investigation based on the information collected by it. The case of alleged leakage of question papers of the RRB examinations conducted on 29.6.2014 and related matters were taken up by CBI accordingly. Based on the findings of their investigation, CBI processed for prosecution of certain people including the applicant. As sought by CBI, sanction for prosecuting employee concerned including the applicant was given. Accordingly, prosecution is on progress at CBI court and on the basis of their investigation, it had recommended Regular Departmental Action(RDA), with the approval of relevant authorities in SWR and with the approval of competent authority in Railway Board Vigilance(RBV). Accordingly, Railway Board Vigilance has conveyed 1<sup>st</sup> stage advice vide letter dtd.12.5.2017(Annexure-R1) for initiating major penalty action against the employees involved. Vigilance Department had conveyed the draft charge sheet through CPO to Sr.DME/SBC through office letter dtd.10.10.2017(Annexure-R2). The charge sheet is based on the CBI's investigation report, draft articles of charges, statement of imputations, list of relied upon documents and witnesses provided by CBI which is as per para

No.315 of IRVM, 2006. The SWR, Vigilance has adopted the correct procedure and the same is as per rules. Accordingly, the DAR action was initiated by the DA. In terms of para 313.3 of IRVM, when regular departmental action is initiated against CBI advice, there is no need for the vigilance or DA to make any investigation before recommending/initiating such regular departmental action. Hence the recommendation by vigilance to initiate DAR action against the applicant is in order and DAR action initiated by the DA is also in order. In terms of para 207.2(b) of RBV No.05/2015, in case, action has been recommended against Group 'B', it shall be sent by Zonal Railway to Railway Board Vigilance(RBV) for obtaining 1<sup>st</sup> stage advice of Railway Board. This being composite case involving Group 'B' officers and Non Gazetted staff, RBV was the competent authority to render 1<sup>st</sup> stage advice under the heading of cases required to be sent to Railway Board but may not be sent to CVC where senior most officer is Group 'B' officer(Annexure-R3). In terms of para 206.3 of IRVM(Annexure-R4), in cases where it concludes that the lapses do not attract vigilance angle, however, it does not imply that concerned official is not liable to face the consequences of his action. Necessary disciplinary action will have to be taken by the concerned DA under Railway Services Conduct Rules, 1966 as deemed appropriate. The competent authority has decided presence of vigilance angle in this case. There is no impact on the amount of penalty under DAR as whether departmental proceedings initiated due to vigilance angle or in absence of vigilance angle. As a matter of fact every charge sheet and penalty is based on the evidence.

6. As far as 2<sup>nd</sup> stage advice is concerned, the respondents submit that only after the DA action initiated based on the 1<sup>st</sup> stage advice is over and the DA proposes

to take a decision which is at variance with the 1<sup>st</sup> stage advice, the question of 2<sup>nd</sup> stage advice arises. In terms of para 2.2 of RBV No.13/2006 dtd.19.7.2006(Annexure-R5), in major penalty cases, all cases are required to be referred to CVC for second stage advice after completion of inquiry along with inquiry officer's report, provisional views of DA and vigilance comments. Vigilance case is closed once DA imposes penalty in accordance with CVC's second stage advice and furnishes a copy of penalty advice order to Vigilance for onward submission to CVC. However, if DA differs with CVC's second stage advice, case is again required to be referred to CVC for reconsideration along with reasons for disagreement by DA and vigilance comments. If DA still differs with CVC's reconsidered second stage advice, he can pass speaking orders and issue penalty advice order. A copy of same along with reasons of disagreement is required to be sent to RBV for onward submission to CVC. CVC can include this case in its annual report that is submitted to Parliament and can be discussed by Hon'ble MPs. In terms of para 2.3.1 of RBV No.13/2006, in composite cases involving Group 'C' and 'D' staff along with Group 'B' officers, same procedure as prescribed for CVC composite cases would be applicable except that the case would be decided at the level of AM(Vig) and would not be referred to CVC. In the OM dtd.1.8.2007 cited by the applicant at Annexure-A29, it is stated at para-5 that 'it is, therefore, clarified that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme court as mentioned in the paragraphs'. As the charges levelled against the

applicant are serious and grave in nature, the departmental proceedings cannot be stayed. The respondents have not violated Article 14, 309 and 311(2) of the Constitution of India as alleged and as per the Hon'ble Supreme Court judgments in (1994) 2 SCC 615, 2006 7 SCC 212, AIR 1963 SC 1723, AIR 1957 SC 82 etc., the role of the Tribunals/Courts to interfere in departmental proceedings is limited to overseeing that whether there is some malafide or disregard of statutes and that whether the procedures have been followed. Therefore, the OA is bereft of any merit and is liable to be dismissed in limine having without cause of action.

7. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the respondents knowing that the Railway Board had issued revised edition of Indian Railway Vigilance Manual-2012(IRVM-2012), have referred para-606(4), 313(3), 303, 303(4), 206(2) & (3), 315, 202, 2.3.1 and 315 of IRVM-2006 and have not produced copies of the said paras of IRVM-2006 in the reply statement. As such the respondents have violated the Railway Board's order dtd.24.6.1992 and hence the reply is not maintainable. The respondents have not filed any rule/manual/code stating that the respondent No.1 has delegated powers to initiate major departmental proceedings against the applicant under Rule 9 of 1986. The respondents have not applied their mind that the custodian of the question paper is Additional Divisional Railway Manager(ADRM) and it is admitted that there is no leak of question paper before the examination and the examination was conducted smoothly and the select panel by the RRB was accepted by the Chief Personnel Officer (CPO) and the selected candidates were appointed on the basis of select panel. When the ADRM was exonerated by the CBI, then the applicant is also eligible to be exonerated because there is no lapse in leak of question papers. The nature of

misconduct does not support the impugned charge sheet dtd.5.12.2017 and letter dtd.4.1.2018. The respondents have admitted that the original cause of action arises from 10.10.2017 while issuing the charge sheet dtd.15.12.2017 which is under the revised edition of IRVM-2012. The 1<sup>st</sup> respondent while issuing sanction order to the CBI has not applied mind and the select panel of RRB was accepted by the CPO and the selected candidates were appointed against the vacancies. The 1<sup>st</sup> respondent issued major charge sheet on the advice of the vigilance department in terms of letter dtd.10.10.2017 and has violated the prescribed procedure under Rule 9 (2) to (5) of 1968 while constituting a committee of preliminary enquiry on the 1<sup>st</sup> stage advice. He has no delegated powers to frame the charges beyond the time limit as prescribed by Railway Board. It is not clear as to how one employee Shri Hanumanthappa can be a prosecution witness on behalf of the CBI in the CBI's charge sheet dtd.28.9.2015(Annexure-A7) because the said employee and the applicant are accused in the criminal court. The 1<sup>st</sup> respondent did not state any reason for disagreement note on the defence reply of the applicant against the impugned charge sheet. It is very clear that the 1<sup>st</sup> respondent has not provided any documents for filing defence reply and pressured to submit the defence reply without any document which is in violation of principles of natural justice. The Railway Board's order dtd.12.5.2017 mentions the name of one employee Sri Amaragundappa, Deputy Chief Engineer, Construction, Cantonment, Bangalore but nowhere in the FIR, Petition, Sanction Order and the final report of CBI, his name is mentioned. It is not clear as to what departmental action was initiated by the competent authority against the said employee. The contention of the respondents that the Railway Board order dtd.6.10.2015 is applicable for Group-

B, is incorrect as it is stated in that order that 'in all cases, including Group-A' which denotes for all groups from Group-D to A. The statement of the respondents that 'there is no need for DA to make any investigation before initiating such regular inquiry' is in violation of Rule 9 of Rule 1968 as per which the decision of DA to initiate the major penalty proceedings upon the applicant dtd.5.12.2017 is final and the 1<sup>st</sup> respondent is bound to follow the procedure prescribed in terms of Rule 9 (2) (5) of Rule 1968 on 1<sup>st</sup> stage advise. He is not bound by the 2<sup>nd</sup> respondent's advise but to examine the relevancy of the misconduct in terms of Railway Board's order dtd.6.12.1993 referred in letter dtd.10.10.2017 of the 2<sup>nd</sup> respondent. The respondents failed to clarify the guidelines of the Railway Board's order dtd.30.10.1950 that whether the penalty under Rule 9 of 1968 is applicable retrospectively. The judgments referred by the respondents have not been enclosed to the reply. In the case of *S.K.Dutta vs. UOI(Railway)* reported in *SLJ 2013 (1) 361*, the Bombay Bench of this Tribunal held that 'the DA exercises quasi-judicial power to appreciate the evidence of finding of each charges and to arrive independent conclusion'. In the present case, the 1<sup>st</sup> respondent(DA) admitted that there is no preliminary inquiry before issuing the impugned charge sheet and stated that the said charge sheet is based on CBI only. In the case of *Oriental Bank of India vs. S.S.Shekhand & Anr. In Civil Appeal No.3081/2006(SLJ 2014(2) 96 SC)* the Hon'ble Supreme Court vide order dtd.26.2.2014 held that 'the copy of CVC advise must be given'. In the present case, the 1<sup>st</sup> respondent has not provided 1<sup>st</sup> stage advise of the vigilance as per Railway Board guidelines and also accepted in the reply to RTI that 1<sup>st</sup> stage advice is not available. Thus the 1<sup>st</sup> respondent knowingly has made serious irregularity while issuing major charge sheet to the applicant.

8. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. In this case, the charge against the applicant was that of conspiring with certain other individuals and candidates to leak the question paper for the RRB examination to be held on 29.6.2014 in order to illegally help some of the candidates to pass the said RRB examination. The charge memo specifically mentioned that the applicant along with other conspirators offered to give the question papers to some candidates including four persons named in the charge sheet in exchange for some illegal gratification. This was apparently done with an intention to cheat RRB, Bangalore and other genuine candidates who were appearing for the said examination. The applicant was charged to have failed to maintain absolute integrity, exhibited lack of devotion to duty and acting in a manner unbecoming of a Railway servant in contravention to Rule 3(1) (i) (ii) & (iii) of the Railway Services (Conduct) Rules 1966. The statement of imputation in support of the charge mentioned about the telephonic contacts made by the applicant, securing of some candidates, keeping them in certain premises, collecting of model questions and answers and preparing a question paper with key answers apparently to dupe the candidates appearing for the RRB examination scheduled on 29.6.2014 and accepting an amount of Rs.5.4 lakhs from the candidates which was seized from the residence of the applicant and the applicant instructing one of the other persons charged in the case Shri Munigangaiah, Office Superintendent who was an invigilator in an examination centre to remove a question paper from the RRB question booklet after the examination and collecting the same. The respondents have also attached the disclosure statement of one of the persons involved in the case namely Sri B.Hanumanthappa who was alleged to have handed over an amount

of Rs.4 lakhs on behalf of another person who had procured the candidates. They have also disclosed the disclosure statement of the applicant himself which corroborated the organisation of the whole issue in terms of attempting to leak the question papers and gain monetarily from the candidates. There is also a document to confirm the seizure Rs.5.4 lakhs from the residence of the applicant on 7.7.2014. Apparently the applicant and other persons involved in the case could not get actual question papers for the said examination and could collect from a few persons certain amounts in advance for leaking the said question paper. The applicant would contend that a separate criminal case is also on trial and as was ordered by this Tribunal in OA.No.594/2017 dtd.7.1.2019 directing the respondents to pass final orders in the departmental inquiry after completion of criminal trial should be ordered in this OA also. He also would contend that the advice from the vigilance was not forwarded to him and certain documents which have been requested have not been furnished and that the respondents are keen on going ahead with the disciplinary proceedings knowing fully well that the statement of witnesses and other findings in the disciplinary proceedings might prejudice the case of the applicant in the criminal trial. The applicant has also cited certain lacunae in terms of certain Railway Board circulars relating to the initiation and conduct of the disciplinary proceedings and issue of the final orders in the case. At this stage, we would not like to go into the question of the various proceedings before a criminal court and it is well established in a catena of cases that the disciplinary proceedings relate to the conduct of the individual irrespective of the fact whether any loss has been caused to the respondent organisation, whereas in the criminal court, the charges of conspiracy and cheating along with other offences as per the charge sheet have to be proved

beyond reasonable doubt with concrete evidence. However, in the case of departmental proceedings, the respondents have to proceed in taking action against their employees who crossed the line of duty and indulged in certain practices which will go against the interest of the organisation. In this case, the Railway Recruitment Board is entrusted with the job of conducting the examination in a fair, transparent and open manner to select the best possible candidates for the respondent organisation which undertakes a very important task in the country i.e., transporting millions of passengers and millions of tons of cargo in thousands of trains on a daily basis. It is a fact that the applicant and others involved in the case could not get the question papers and the examination was held as scheduled and apparently the selection was also done based on the examination. It is also a fact that the applicant and some of the other persons involved in the case were not directly in charge of question papers or the conduct of the examination. However, from the details made out in the case, it is apparent that an attempt was made to help certain candidates with leaked question papers thus enabling them to pass the examination when they certainly do not deserve to do so while at the same time enriching the persons involved in the conspiracy monetarily. It is for the respondents to arrange for supply of any documents which are in their possession and which are germane to the case of the applicant to defend the charge made against him in an effective manner. It is also the bounden duty of the respondents to follow the procedures prescribed for finalising the proceedings and issuing of final orders thereon.

9. Apart from the above, we do not find any merit in the OA. The OA is therefore dismissed. No costs.

(C.V.SANKAR)  
MEMBER (A)

(DR.K.B.SURESH)  
MEMBER (J)

/ps/

**Annexures referred to by the applicant in OA.No.170/00517/2018**

- Annexure-A1: A copy of FIR dtd.29.6.2014
- Annexure-A2: A copy of application dtd.30.6.2014
- Annexure-A3: A copy of suspension order dtd.14.7.2014
- Annexure-A4: A copy of letter dtd.16.2.2015
- Annexure-A5: A copy of revocation order dtd.8.4.2015
- Annexure-A6: A copy of Sanction order dtd.14.9.2015
- Annexure-A7: A copy of charge sheet of CBI dtd.28.9.2015
- Annexure-A8: A copy of charge memo dtd.5.12.2017
- Annexure-A9: A copy of defence reply dtd.21.12.2017
- Annexure-A10: A copy of letter dtd.4.1.2018
- Annexure-A11: A copy of representation dtd.19.1.2018
- Annexure-A12: A copy of letter dtd.2.2.2018
- Annexure-A13: A copy of representation dtd.24.2.2018
- Annexure-A14: A copy of letter dtd.3.3.2018
- Annexure-A15: A copy of office order dtd.4.5.2018
- Annexure-A16: A copy of application under RTI dtd.10.4.2018
- Annexure-A17: A copy of information under RTI dtd.9.5.2018
- Annexure-A18: A copy of paras of Vigilance Manual-2012
- Annexure-A19: A copy of Railway Board's order dtd.6.10.2015

Annexure-A20: A copy of Railway Board's order dtd.7.4.2006  
Annexure-A21: A copy of Railway Board's order dtd.3.12.2014  
Annexure-A22: A copy of Railway Board's order dtd.11.12.2014  
Annexure-A23: A copy of extract Rule 9 of Rule 1968  
Annexure-A24: A copy of Rule 1718 of IREC-I, 1971  
Annexure-A25: A copy of Para 18 of Master Circular-67  
Annexure-A26: A copy of Railway Board's order dtd.30.10.1950  
Annexure-A27: A copy of Railway Board's order dtd.7.6.1995  
Annexure-A28: A copy of Railway Board's order dtd.6.2.2009  
Annexure-A29: A copy of Railway Board's order dtd.9.10.2007

**Annexures with reply statement:**

Annexure-R1: 2014/V4/SWR/RRB/9 dtd.12.5.2017  
Annexure-R2: G.180/Vig/Misc/Vol.VI dtd.10.10.2017  
Annexure-R3: RBV No.05/2015  
Annexure-R4: Para 206.2 & 206.3 of IRVM, 2006  
Annexure-R5: RBV No.13/2006

**Annexures with rejoinder:**

Annexure-Re.30: A copy of Railway Board's order dtd.24.6.1992

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