

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE  
ORIGINAL APPLICATION NO.170/00519/2018  
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**

Munigangaiah  
S/o Sri Late Thimmahanumaih  
Aged about 60 years  
Working as Chief Office Superintendent  
Mechanical Department (C&W)  
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)  
O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The factual matrix of the case is as follows:

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. Thereafter, the applicant who was working as Office Superintendent, was removed from service by the Senior Divisional Mechanical Engineer-Disciplinary Authority (1<sup>st</sup> respondent) vide sanction order dtd.11/14.09.2015(Annexure-A3) whereby the CBI is advised in terms of RC.11(A)/2014 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 following criminal offence under investigation by the CBI. 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-A4) wherein the applicant's name is listed at Sl.No.11.5. Then the 1<sup>st</sup> respondent initiated major charge sheet on the applicant vide dtd.5.12.2017(Annexure-A5) under Rule 9 of Rule 1968 on the following charge:

**Article of charge:**

Shri Munigangaiah, while working as Office Superintendent at the office CDO/Yeshwanthapur, Bangalore, during the month of June 2014, conspired with Shri H.V.Manjunath, Senior Section Engineer, CDO/O/Yeshwanthapur,

Bangalore and in pursuance of the conspiracy, Shri Munigangaiah, who was an invigilator for the RRB exam scheduled to be held on 29.06.2014 at Block no.2, AMC college of Engineering, Bannerghatta Road, Bangalore has removed a question paper pages no.09 to 22 from the RRB question booklet no.7224717 while counting, tallying and sealing the question booklets of the said exam in order to hand it over to Shri H.V.Manjunath, SSE/CDO/O/YPR, as asked by him, handed over the same to Shri H.V.Manjunath by taking huge pecuniary advantage with an intention to cheat Railway Recruitment Board (RRB), Bangalore. This action of Shri Munigangaiah caused bad name to RRB, Bangalore and South Western Railway.

Thus, by the above acts of omission and commission, Shri Munigangaiah, Office Superintendent at the office of CDO/Yeshwanthapur, 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 name of the conspirator Sri.H.V.Manjunath is also accused in the charge sheet by CBI and the advice for removal from service under Rule 9 of 1968 as per the Sanction Order by the 1<sup>st</sup> respondent is not applicable after his retirement. The list of document at Annexure-III is based on the CBI's report only which are pending before criminal proceedings. In Annexure-IV the list of the prosecution witnesses is from the CBI. Therefore, the charge memo does not show the separate gradient of facts in the departmental proceedings to the criminal case and there is no pecuniary loss to Railways. The Chairman, Railway Recruitment Board(RRB), Bangalore issued a letter dtd.16.2.2015 to CBI regarding status of the examination scheduled on 29.06.2014 and further stated that ADRM is in charge in receipt and distribution of Cartons/boxes containing question papers and there was no leak of question paper and the key answer as submitted by the ADRM and the examination was not cancelled and the candidates were appointed on the merit list prepared by the RRB. The applicant submitted defence reply dtd.28.12.2017(Annexure-A6) 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.22.2.2018(Annexure-A7) 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 in which it is proposed for removal from service under Rule 9 of Rule 1968 after retirement of the applicant which is not applicable. The applicant had filed representation dtd.12.3.2018(Annexure-A8) requesting for additional documents relating to the charge memo dtd.5.12.2017. The 1<sup>st</sup> respondent without any disagreement note had nominated presenting officer and the inquiry officer from the 2<sup>nd</sup> respondent's office considering the vigilance case on vigilance complaint vide order dtd.4.5.2018(Annexure-A9).

3. The applicant further submits that when he sought information through RTI dtd.10.4.2018(Annexure-A10) 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.10.5.2018(Annexure-A11) 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-A12). 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-A13). 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-A14). The Railway Board issued a circular No.110 dtd.3.12.2014 regarding 2<sup>nd</sup> stage consultation in disciplinary cases(Annexure-A15). 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-A16). 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-A17. 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-A18) following FIR and the charge sheet of the CBI. The 1<sup>st</sup> respondent has delegated powers to exercise Rule 9 of Pension Manual-1993(Annexure-A19) on pecuniary loss only and to exercise his power under Rule 9 of Rule 1968 is against the law after retirement of the applicant. 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-A20). The 1<sup>st</sup> respondent has not considered para-2 of the guidelines issued by the Railway Board dtd.7.6.1995(Annexure-A21) as per which if the ingredients of the delinquency misconduct in criminal prosecution and departmental cases as well as standard of proof required in both cases are not identical, then there is no legal bar for initiation of departmental disciplinary action where criminal prosecution is already in progress. The sanction order dtd.14.9.2015 is relied by the CBI in charge sheet before the criminal proceedings. The respondent No.1 prepared sanction order dtd.14.9.2015 and proposed punishable offence before the criminal proceedings and on the same allegation of charge, he had imposed the major penalty under Rule 9 of 1968 without waiting the outcome of the criminal proceedings. The 1<sup>st</sup> respondent has not considered para 4 of the Railway Board's order dtd.6.2.2009(Annexure-A22) while using Rule 3 (1) (i) (ii) & (iii) of conduct Rule 1966 which is against the guidelines of the Railway Board. There is no preliminary inquiry to conclude the separate gradients to the criminal proceedings in terms of the Railway Board's order dtd.9.10.2007(Annexure-A23). The applicant has relied on the judgements of Hon'ble Apex Court in the cases 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/M/35/17 (Vig) dtd.5.12.2017 (Annexure-A05) and No.B/M.227/MC/M/35/17 (Vig) dtd.22.2.2018(Annexure-A07) 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-A07) as pending for judicial scrutiny in the criminal proceedings and wrongly exercised powers under Rule 9 of Rule 1968 instead of Rule 9 of Pension Manual-1993 (Annexure-A19) 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 issued with charge sheet under SF-5 Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 dtd.5.12.2017. 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 cases 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.22.2.2018 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. The applicant submitted request to DA to furnish

additional documents vide his letter dtd.12.3.2018 for which the DA has sent reply stating that the relevant documents through which each article of charges to be sustained has already been given. The applicant has submitted reply dtd.2.5.2018 to the 1<sup>st</sup> respondent to conduct enquiry. The enquiry officer and presenting officer were nominated on 4.5.2018 and the inquiry proceedings are under progress.

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(Annexure-R1). The sanction order is not a proposal to remove the applicant from service and it is only a sanction order for prosecution of the applicant under 19(1)(C) of Prevention of Corruption Act, 1988 and Court will take cognisance of the case as per legal provision of criminal law. The Rule 9 of Railway Services (Pension) Manual, 1993 speaks about 'Right of the President to withhold or withdraw pension'. The disciplinary proceedings are initiated as per provision of Rule 9 of Railway Servants (D&A) Rules, 1968 and not by Pension Manual as averred by the applicant. In the present case, the applicant was issued with major penalty charge sheet in December 2017 whereas he retired from railway service on 31.05.2018. The case was initiated by CBI and Vigilance for the offence

committed by the applicant. The applicant has not produced any document to affirm his claim that 'ADRM is in charge in receipt and distribution of Cartons/boxes containing question papers and there was no leak of question paper and the key answer as submitted by the ADRM and the examination was not cancelled and the candidates were appointed on the merit list prepared by the RRB'. It is not necessary to stay proceedings only because a criminal case is pending in a court of law on the same charges. Due procedure had been followed by Railways as per provision of RS(D&A) Rules. There was no intentional delay. In terms of para 1003 of Indian Railway Vigilance Manual-2006, charged official is again given opportunity to inspect the relied upon documents and also additional documents with the permission of inquiry officer. If the charged official is asking for any available relied-upon documents connected to charge sheet, during inquiry, it will be given subject to some certain conditions. Accordingly, Railway Board Vigilance has conveyed 1<sup>st</sup> stage advice vide letter dtd.12.5.2017(Annexure-R2) 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-R3). 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). 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-R4). In terms of para 206.3 of IRVM(Annexure-R5), 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. The draft 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.

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-R6), 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. As per para No.823 of IRVM, 2006, it is for Railway Administration to decide whether common proceedings are to be resorted to keeping in view the circumstances of the case and that not having common proceedings would in no way adversely affect the possible defence of the charged employee. It is to be noted that CBI case involves other than railway personnel i.e. employee belonging to another department i.e. accused No.4 is from Eng.Department. Para 18 of Master Circular 67 states that 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. RBE.54/95 speaks about review of decision taken in departmental proceedings on acquittal of a railway servant in a court on the same charges whereas in the present case, the criminal case is not finalised till date and pending in Hon'ble Court. This is not a regular departmental disciplinary case and the applicant has been charged with Sec.120 B, r/w 420, 420 IPC and Sec.8 and Sec.13(2), r/w 13/1(d) of Prevention of Corruption act, 1988 by CBI and Vigilance Department and charges are grave and serious in nature, criminal case is pending in Court. The DA had followed the provisions of RS(D&A) Rules, 1968. 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), 1003, 313(3), 303, 303(4), 207(b), 206.3, 315, 313.3, 2.2 & 2.2.2 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, 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.22.2.2018. 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 and then how the said paras of IRVM-2006 is applicable in the case of the applicant while issuing charge sheet. The Railway Board letter dtd.5.1.1960 has no relevancy to the facts of the case as the

suspension is not questioned in the present case. The 1<sup>st</sup> respondent stated that the DA has powers to stop the pension under Rule 9 of 1993 but failed to apply mind that the rule 9 of Pension Rule 1993 applies after retirement by Presidential power and not by DA. And it is applicable if there is pecuniary loss to the Railways but the charge sheet is not related to pecuniary loss of Railways. The respondents have not replied the reason for delay in taking action beyond the prescribed period and the Railway Board has not delegated powers to DA under Rule 9 of 1968 for any action after the time limit. The applicant is not questioning the advice but the procedural lapse of the DA as he has not followed the Rule 9(2) to (5) of 1968 before issuing the charge sheet. The 1<sup>st</sup> respondent is bound to follow the procedure prescribed in terms of Rule 9 (2) to (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 respondent No.1 has no delegated powers to impose major penalty by his own sanction order to CBI for criminal proceedings. The question arises that under which rule the CBI has advised to the vigilance department to initiate departmental proceeding knowing the DA has submitted sanction order for cognizance in criminal proceeding which is kept pending. 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.Shekand & 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. The applicant has filed written arguments note. The charge against the applicant relates to removing a question paper pages 9 to 22 from the RRB question booklet no.7224717 while counting, tallying and sealing the question booklets of the said exam in order to hand it over to Shri H.V.Manjunath, SSE/CDO/O/YPR, as asked for by him and handing over the same to the said Manjunath by taking huge pecuniary advantage with an intention to cheat Railway Recruitment Board(RRB), Bangalore. The charge memo has stated that 'by the above acts of omission and commission, the applicant had 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'. The statement of imputation in support of the charge has mentioned about the applicant being nominated as invigilator in one of the examination centres, his removal of the question paper pages as stated above, the same being witnessed by another Jr.Clerk by name V.Reddappa and the statement by the officer in charge of the examination centre stating that the applicant and Shri Reddappa were nominated for counting, tallying and dispatching the question answer

booklets and the details of the applicant's calling Shri Manjunath and the question paper pages being seized from the residence of one Sri B.Hanumanthappa on 08.07.2014. The applicant would claim that the respondents have not followed the procedure relating to the first stage advice by the vigilance department, initiation of proceedings after a considerable delay and certain other procedural lacunae with respect to the charges being based on the mere report of the CBI with no independent enquiry conducted by the respondents and so on. The charge against the applicant is very clear and straight forward with respect to the removal of certain sheets containing the questions of the RRB examination conducted on 29.06.2014. The applicant does not deny that he was involved as a member of the invigilator team at an examination centre and that he was responsible for sealing and dispatching the question papers and the answer sheets after conduct of the examination. The question papers removed have been traced in the residence of the some other individual who was also involved in the case and the same are corroborated by the proceedings dtd.08.07.2014 in which it is stated that the question papers are found from the residence of one Sri B.Hanumanthappa. The applicant himself has enclosed in this OA the disclosure statement of one Sri Manjunath who had in fact been in touch with the applicant relating to the removal of answer sheets. The applicant would state that he has been brought in as one of the accused by the CBI in SPL/CC-555/2015 which is under trial in the Court of Special Court for CBI at Bangalore. The various points relating to Rule-9 and the Railway Board orders relating to conduct of the disciplinary proceedings would all have to be necessarily followed by the respondents before issuing the final orders. There is no merit in the contention of the applicant that his case as accused in the CBI

would be compromised by the further proceedings of the respondents. The charge memorandum is quite specific and clear and the disciplinary authority will have to weigh the evidence placed before them as well as the statement of the witnesses cross-examined by the applicant and the further proceedings in the case. The applicant has sought for certain documents and whatever is available with the respondents and germane to the case will have to be necessarily provided to him and the disciplinary authority will have to follow the necessary procedures in this regard.

9. Other than the above, we do not find any merit in the case of the applicant for stalling the disciplinary proceedings and therefore the OA is dismissed with the above orders. No costs.

(C.V.SANKAR)  
MEMBER (A)

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

/ps/

**Annexures referred to by the applicant in OA.No.170/00519/2018**

- 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 sanction order dtd.14.9.2015
- Annexure-A4: A copy of charge sheet of CBI dtd.28.9.2015
- Annexure-A5: A copy of charge memo dtd.5.12.2017
- Annexure-A6: A copy of defence reply dtd.28.12.2017
- Annexure-A7: A copy of letter dtd.22.2.2018
- Annexure-A8: A copy of representation dtd.12.3.2018
- Annexure-A9: A copy of office order dtd.4.5.2018
- Annexure-A10: A copy of application under RTI dtd.10.4.2018
- Annexure-A11: A copy of information under RTI dtd.10.5.2018
- Annexure-A12: A copy of paras of Vigilance Manual-2012
- Annexure-A13: A copy of Railway Board's order dtd.6.10.2015
- Annexure-A14: A copy of Railway Board's order dtd.7.4.2006
- Annexure-A15: A copy of Railway Board's order dtd.3.12.2014
- Annexure-A16: A copy of Railway Board's order dtd.11.12.2014
- Annexure-A17: A copy of extract Rule 9 of Rule 1968
- Annexure-A18: A copy of Rule 1718 of IREC-I, 1971

Annexure-A19: A copy of extract Rule 9 of Pension Manual-1993

Annexure-A20: A copy of Para 18 of Master Circular-67

Annexure-A21: A copy of Railway Board's order dtd.7.6.1995

Annexure-A22: A copy of Railway Board's order dtd.6.2.2009

Annexure-A23: A copy of Railway Board's order dtd.9.10.2007

**Annexures with reply statement:**

Annexure-R1: 606(4) of Indian Railway Vigilance Manual

Annexure-R2: 2014/V4/SWR/RRB/9 dtd.12.5.2017

Annexure-R3: G.180/Vig/Misc/Vol.VI dtd.10.10.2017

Annexure-R4: RBV No.05/2015

Annexure-R5: Para 206.2 & 206.3 of IRVM, 2006

Annexure-R6: RBV No.13/2006

**Annexures with rejoinder:**

Annexure-Re.24: A copy of Railway Board's order dtd.24.6.1992

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