IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/913/2013

Date of Order: 20.06.2019

Between:

K.V. Ramana Rao, S/o. Rajagopal,
Employee, Aged 58 years,
10/650/2, Anakatta Road,
Santhapet, Nellore District – 524 001.

… Applicant

And

1. The Union of India,
   Represented by its General Manager,
   South Central Railway,
   Secunderabad.

2. The Chief Commercial Manager (PS),
   South Central Railway (Revisional Authority),
   Rail Nilayam, Secunderabad.

3. The Additional Divisional Railway Manager,
   Nanded Division (Appellate Authority),
   South Central Railway, Nanded.

4. Senior Divisional Commercial Manager,
   (Disciplinary Authority,
   Nanded Division
   South Central Railway, Nanded.

5. K. Madhusudhana Varma,
   Inquiry Officer & EI,
   Vigilance Branch, South Central Railway,
   Rail Nilayam, Secunderabad.

… Respondents

Counsel for the Applicant … Mr. M.V.J.K. Kumar

Counsel for the Respondents … Mr.M. Brahma Reddy,
SC for Rlys

CORAM:
Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. Challenge in this OA is against the impugned order dated 30.4.2013 issued by the Revising Authority, confirming the penalty of "Compulsory retirement from service" imposed on the applicant by the disciplinary authority on 9.5.2009 and upheld by the appellate authority on 19.10.2010, for the alleged grave misconduct in discharge of his duties.

3. Brief facts of the case, which need to be adumbrated are that, the applicant while working as Ticket Collector in the respondents organisation was trapped by the vigilance team on 5.12.2005 for demanding and collecting Rs.80 from the decoy passenger travelling in S-8 Coach of Train No.6003, from Ankapalli towards Rajahmundry. Based on the investigation report, charge sheet was issued on 8.4.2006 and on receipt of written reply, an inquiry was conducted wherein, it was held that the charges were proved vide I.O report dated 26.03.2009. Based on the inquiry report, disciplinary authority imposed the penalty of compulsory retirement on 9.5.2009 and the same was upheld by the appellate authority on 19/20.10.2010 and by the revision authority on 30.4.2013. Aggrieved over the same, OA has been filed.

4. The spinal contentions of the applicant are that the charges were framed without citing independent witnesses; Inquiry Officer is from Vigilance Wing of the respondents organisation; Presenting Officer was

not appointed; permission to engage retired employees as defence assistant was denied; trap laid was not as per provisions contained in Paras 704 and 705 of Vigilance Manual; revising authority failed to give personal hearing before confirming the penalty; claim of the respondents that he did not cooperate with the vigilance team is irrational. In view of the aforesaid infirmities, penalty imposed requires to be set aside.

5. Respondents, *per contra*, contended that the Inquiry Officer directed the applicant to appear with the defence assistant approved by the disciplinary authority on 3 occasions but it was not heeded to. Instead, applicant moved a bias petition against the Inquiry Officer by addressing an authority other than the competent authority. Applicant was advised to approach the proper authority but since he cared not to do so, disciplinary authority directed the Inquiry Officer to proceed with the inquiry vide letter dated 22.12.2008. Several sittings took place and the applicant was asked to cooperate and appear with his defence assistant. In fact, applicant was advised to suggest names of 3 persons but applicant proposed two retired employees, who were known for delaying inquiry proceedings. Hence, their names were not agreed to by the disciplinary authority. Applicant, without proposing any other person as defence assistant, participated in the inquiry. Witnesses were allowed to be cross-examined, but the applicant refused to exercise the option. On completion of inquiry, applicant submitted his defence brief. Inquiry report was sent to the applicant on 8/17.4.2009, against which, the applicant did not make any representation. Disciplinary authority after

due consideration of the material on record, imposed the penalty of compulsory retirement on 9.5.2009. On appeal, applicant was given a personal hearing along with his defence assistant and thereafter, the penalty was confirmed on 19.10.2010. Subsequently, on filing revision petition, revising authority confirmed the penalty on 30.4.2013.

6. Heard both the counsel and we perused the documents placed on record in depth.

7. I) The charges laid against the applicant are as under:

"Article – 1:

That the said Sri K.V. Ramana Rao, TTI/SL/BZA while working as such, has committed a serious misconduct in that he has failed to grant receipt for Rs.80/- demanded and collected by him from decoy passengers travelling with II M/E Ticket No. 08693330 Ex.AKP-RJY on 05/12/05, by S8 coach (Sleeper class) of 6003 Mail manned by him. The actual chargeable difference is Rs.126/- between sleeper and II M/E from AKP – RJY whereas he demanded and collected Rs.80/- only with an ulterior motto to pocket in this amounts.

Thus, Sri K.V. Ramana Rao, TTI/SL/BZA has violated the instructions contained in para 2427 (b) IRCM Vol.II and thus failed to maintain integrity, devotion to duty and acted in a manner unbecoming of a Railway servant violating Rule No. 3(1)(i) (ii) and (iii) and Rule 26 of Railway Services (Conduct) Rules, 1966.

"Article – II:

That the said Sri K.V. Ramana Rao, TTI/SL/BZA while working as such, has committed a serious misconduct in that, he did not cooperate with the vigilance team in discharging their duties. During confrontation with the decoy, Sri Ramana Rao accepted to have demanded Rs.80/- from the decoy. When a Rs.100/- note was given by decoy, Sri Ramana Rao returned change of Rs.20/- to the decoy. This recorded GC note was not produced by him during cash proceedings. However, he told

to have concealed this note in his underwear pocket and sought permission to remove the note. Then Sri Ramana Rao, facing the window, pulled out a bunch of notes, from his underwear pocket and threw that bunch of notes out of the running train between NDD and TDD.

Thus, Sri K.V. Ramana Rao, TTI/SL/BZA has failed to maintain integrity, devotion to duty and acted in a manner unbecoming of a Railway servant violating Rule No. 3(1)(i) (ii) and (iii) and Rule 26 of Railway Services (Conduct) Rules, 1966."

The charges allege grave misconduct impinging on the integrity of the applicant and lack of devotion to duty. Respondents based on reliable information conducted a decoy check with the help of a decoy passenger and an independent witness in S-7 & S-8 Coaches manned by the applicant in Train No.6003, when it was moving from Ankapalli towards Rajahmundry. The decoy passengers had boarded the sleeper coach with 2nd class tickets. For travelling in the said coach manned by the applicant, they should pay Rs.126 towards difference of fair, instead applicant collected Rs.80 and did not issue any receipt. As per prearranged signal, vigilance team arrived on the scene and when the cash was being tallied with the records as per trap procedure in the presence of Sri S.A.K Jeelani, Train conductor, Sri T. Sheshadri, TTE of adjacent coaches and the decoy passengers, applicant threw the excess cash he had from the window of the train to erase the material evidence of his misconduct. Inquiry was ordered wherein both charges were held to be proved. Disciplinary authority, based on the inquiry report, imposed the penalty of compulsory retirement on the applicant, which was upheld by the appellate authority and the revision authority.

II) Contesting the penalty, applicant submitted that due to the following infirmities in the disciplinary proceedings, the penalty has to be necessarily set aside. We proceed to analyse each one of them to arrive at a fair conclusion in the interest of justice.

A) Charges were framed without independent witnesses.

This is not true, since 7 witnesses were listed in the annexure appended to the charge memo dated 8.4.2006 to prove the charges. The decoy check was done by utilising the services of a decoy passenger and an independent witness. Besides, the check was also witnessed by the Train Conductor Sri S.A.K. Jeelani and the adjacent Coach TTE Sri T.Sheshadri. Applicant need to be sure of the objections he is raising as to whether they are tenable or otherwise. It appears, the objection has been raised just for the sake of raising an objection without a sound basis and such objections need not be entertained as per the legal principle laid by the Hon' Supreme Court in ***Kanta Goel v. B.P. Pathak, (1977) 2 SCC 814,*** **at page 815 :**

> *6) "An objection for the sake of an objection which has no realistic foundation, cannot be entertained seriously for the sake of processual punctiliousness."*

Hence the contention of the applicant that the decoy check and framing of charges was without independent witnesses is untenable in view of the facts and the legal principle stated above.

B) Inquiry Officer was from the Vigilance Wing of the respondents wing.

The applicant has not produced any rule prohibiting the appointment of a vigilance wing official as Inquiry Officer. Besides, applicant has not pointed out any decision of the Inquiry Officer which has prejudiced his interests. On the contrary, applicant was advised to move the bias petition against the I.O. to the appropriate authority, which the applicant cared not to do. Repeatedly, the applicant was cajoled to engage defence assistant with the approval of the disciplinary authority. Thus, the Inquiry Officer was fair to the applicant. I.O. had conducted himself as a pendent adjudicator as observed by Hon'ble Supreme Court in State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772, as under:

> *"An inquiry officer acting in a quasi-judicial authority is in the position pendent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. …."*

Perusal of the inquiry report does not suggest that the IO had acted on behalf of the respondents. On the contrary, the applicant was not availing

the opportunities available to him as per disciplinary rules and procedures. Hence, applicant is estopped from taking the objection cited at this stage to exculpate himself of the charges.

C) Presenting Officer was not appointed.

Clause 9 (c) of the Railway Servants (Discipline & Appeal) Rules, 1968, (in short "1968 Rules") which is extracted hereunder, makes it explicit that the disciplinary authority has been invested with the discretion of appointing a Presenting Officer. Disciplinary authority exercised the discretion vested in him by the 1968 Rules, which are statutory in nature and did not appoint the Presenting Officer. The action of the disciplinary authority is as per 1968 Rules, which cannot be called into question.

> *"Rule 9(c) of RS(DA) Rules*:
>
> *Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a railway or any other Government servant to be known as Presenting Officer to present on its behalf the case in support of the articles of charge."*

We also rely on the observation of Hon'ble Supreme Court in its judgment in ***Union of India v Ram Lakhan Sharma*** in Civil Appeal No. 2608 of 2012 dated 2nd July, 2018, wherein it was held that the appointment of a Presenting Officer is not mandatory.

> "*It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry*."

I.O has permitted the applicant to cross examine the witnesses to seek required clarifications, if any, in tune with the directions of the Hon'ble Apex Court in Workmen in Buckingham & Carnatic Mills v. Buckingham & Carnatic Mills and Mulchandani Electrical & Radio-Industries Ltd. v. Workmen, as under:

> *"the inquiry will not be vitiated where the Inquiry Officer puts questions to the witnesses (whether prosecution witnesses or defence witnesses) to obtain; clarifications wherever it becomes necessary, provided the Inquiry Officer permits the delinquent employee to cross-examine the witnesses on such clarifications. It was made clear that this will be the position even though there is no Presenting Officer representing the employer/disciplinary authority."*

It is not known as to why the applicant failed to utilize the opportunity afforded. Hence, the contention of the applicant that absence of a Presenting Officer has marred his case does not hold water in view of the observations of the Hon'ble Supreme Court and the statutory provision referred to.

D) Permission to engage the defence assistants was denied.

Applicant was permitted to name 3 defence assistants so that the disciplinary authority could permit one of them. Applicant proposed 2

names who were "popular" as cunctators indulging in testudinal approach and for adopting dilatory tactics to virtually stall disciplinary proceedings. Hence, the disciplinary authority advised the applicant to propose a 3rd name which he chose not to. It was the mistake of the applicant in not nominating another defence assistant, though permitted. Further, each defence assistant, as per rules, is permitted to take up certain number of cases at a given instant of time. When the details as to the number of cases handled by the defence assistants proposed, were sought, they were not forthcoming. Applicant is rubbing of his mistake on to the respondents, which is not permitted as per the directions of the Hon'ble Apex Court in A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287**,** wherein it was held that:

> *"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."*

Hence the assertion of the applicant that the respondents did not permit the applicant to engage a defence assistant lacks meaningful substance.

E) Trap was not laid as per provisions of Paras 704 and 705 of the Vigilance Manual.

Applicant did not specify exactly as to which aspects of the provisos paras 704 and 705 have been violated. The trap was laid with the help of independent witness. There was demand and collection of amount which was witnessed. Interestingly, the applicant gave the pre-recorded Rs.100

note taken from the decoy passenger to the adjacent coach TTE Sri Seshadri for obtaining change and returning the balance of Rs.20 to the decoy passenger. Incidentally, the said Sri Seshadri is a witness to the later proceedings of the trap. Besides, Sri Jeelani, Train Conductor was also a part of the trap proceedings. Memos prescribed were prepared as per procedure. In fact, Hon'ble Supreme Court in the case of Chief Commercial Manager, SCR v G.Ratnam, (2007) 8 SCC 212, has held that the instructions contained in paras 704 & 705 of Vigilance Manual 1996 are procedural in nature and are not substantive. Therefore, any violation of the same by the investigating officers would not *ipso facto* vitiate the departmental proceedings. The observations of the Hon'ble Supreme court are as under:

> *"18. We are not inclined to agree that the non-adherence of the mandatory instructions and guidelines contained in Paras 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained."*

The above decision of the Apex Court has been referred to in yet another case of Mukut Bihari vs State of Rajasthan, (2012) 11 SCC 642, wherein, the Apex Court has observed as under:-

> ***"15.*** *This Court in South Central Railway v. G. Ratnam, considered the issue as to whether non-observance of the instructions laid down in Paras 704-705 of the Railway Vigilance Manual would vitiate the departmental proceedings. The said Manual provided for a particular procedure in respect of desirability/necessity of the shadow*

> *witness in a case of trap. This Court held that these were merely executive instructions and guidelines and did not have statutory force; therefore, non-observance thereof would not vitiate the proceedings. The executive instructions/orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued."*

It needs to be borne in mind while dealing with cases of grave misconduct that more than the procedure, it is to be ensured that justice is done. Substantive justice reigns supreme over procedural or technical justice. An attempt to place the rights of an accused at a higher pedestal than the rule of law and societal interest would be miscarriage of justice. Striking a justifiable balance between the two is the business of a judge. While stating so, we bank on the observations of the Hon'ble Supreme Court in Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597, wherein the Hon'ble Supreme Court opined:

> *"6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction..... The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?"*
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> *9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to*

> *corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law."*

True to speak respondents have followed the procedure prescribed and the plea of the applicant that, it was not, is not in the realm of reason. Even presuming for a moment that procedure laid has not been followed, yet the provisions 704/705 being procedural in nature, as per the axiom laid down by the Hon'ble Supreme Court, it would not vitiate the departmental proceedings.

F) Revision authority has not given personal hearing before confirming the penalty.

As per 1968 Rules, personal hearing is granted depending on the nature of the case and as per the discretion of the concerned authority. Revision authority exercised his discretion and did not grant personal hearing. There is no violation of any rule in the process. At this juncture, it must be adduced that the appellate authority has allowed the applicant to appear before him in person along with his defence assistant. Applicant availed the opportunity. In other words, respondents have been accommodating the interests of the applicant to the extent possible and in

accordance with rules. Revision authority has indeed issued a speaking order wherein the core issue of providing defence assistant was touched upon by stating that the applicant could have indicated the name of the defence assistant when given the opportunity to do so. Instead of availing the opportunity, the applicant went ahead with the inquiry on his own volition. It appears that the revision authority has come to the conclusion, based on the nature of the case, that granting personal hearing would not serve any purpose and it would turn out to be an empty formality. An empty formality need not be followed since it does not make any difference to the outcome of the issue. We state so keeping in view the observations of the Hon'ble Supreme Court made in *Haryana Financial Corpn. v. Kailash Chandra Ahuja,(2008) 9 SCC 31*, which are as under:

> *"40. In Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529 the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to M. Referring to several cases, considering the theory of "useless" or "empty" formality and noting "admitted or undisputed" facts, the Court held that the only conclusion which could be drawn was that had M been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to M."*

Thus, the averment made about being denied personal hearing by the revision authority is unsustainable in view of the facts and the legal principle expounded in paras supra.

G) Directing the applicant to cooperate with the investigating officials is irrational.

It is surprising that the applicant is making such a remark. If the applicant was not at fault, there was no reason as to why he should not cooperate with the investigating officers and during inquiry. By making such a remark, the applicant has only made his latent guilt patent. The cob has been trapped in its own web!

III) Lastly, applicant's fulcrum of defence hinges on what he claims as violation of Principles of Natural Justice in processing his case. Ample opportunities were given to the applicant at every stage of the disciplinary process beginning from the trap to imposition of the penalty but the applicant did not make use of them to prove his virtuousness, like not nominating defence assistant approved by the disciplinary authority though permitted, failure to submit his representation against the I.O. report even after receipt, refuse to cross examine the witness and so on. Failure to avail of the opportunities given, by the applicant, would not tantamount to violation of the Principles of Natural Justice as was observed by the Hon'ble Apex Court in Union of India and others vs G. Annadurai, in CA 2829 of 2009, decided on April 27, 2009, as under:

> *"Ample opportunities have been given in order to enable to effectively participate in the proceedings; Failure to avail the opportunity by the charged officer would not mean that principles of natural justice have been violated."*

Therefore this objection too is of no solace to the applicant as exposited above.

IV) It is trite that judicial review in service jurisprudence is not as to the decision but with respect to decision making process, as held by the Apex Court in a cornucopia of decisions, the latest being in the case of ***Gohil Vishvaraj Hanubhai vs State of Gujarat***, (2017) 13 SCC 621, wherein the Apex Court has held as under:

> *"18. Normally while exercising the power of judicial review, the courts would only examine the decision-making process of the administrative authorities but not the decision itself. The said principle has been repeatedly stated by this Court on a number of occasions.*
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> *(Also see All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC 614 at para 21 : (2010) 2 SCC (L&S) 293; Sterling Computers Ltd. v. M&N Publications Ltd., (1993) 1 SCC 445; State of A.P. v. P.V. Hanumantha Rao, (2003) 10 SCC 121). "*

All the grounds set out in the OA as to the decision making process by the authority, have all been elaborately discussed in the preceding paragraphs. To recapitulate, they have instituted the inquiry, gave ample opportunities to defend the case in the inquiry. It took nearly 3 years to complete the inquiry. Inquiry officer has held both the charges as proved

by going into every detail that is required to be considered. Witnesses were examined and the applicant was advised to cross examine them but he refused to do so. Relevant documents were made available. Charges proved are of grave misconduct, which indeed, poorly reflect upon the integrity and devotion to duty of the applicant. After going through the elaborate process of inquiry spread over a few years and after reckoning the defence of the applicant, penalty of compulsory retirement was imposed as per rules and law. The Penalty imposed was reviewed and confirmed by the appellate as well the revision authority, by issuing a speaking and a well reasoned order. Thus, there is little scope for us to intervene on behalf of the applicant to uphold his cause.

IV) Before we part, it is not out of place to echo the profound observation of the Hon'ble Supreme Court made in State of Bihar Vs. Kameshwar Prasad Singh, (2000) 9 SCC 94, wherein it was held that the judiciary is respected for upholding justice and not for legalising injustice on technical grounds. A replica of the said observation is extracted here under:

> *"6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

Blissfully, the applicant has chosen not to enter into the core aspect as to whether he accepted Rs.80 without issue of receipt and that he threw notes out of the window to erase evidence. Applicant was banking on the

technical hitches to seek relief rather than attacking the core charges levelled against him in all his averments. This Tribunal has to uphold justice. We have no hesitation in stating that the revered principle set by the Hon'ble Apex Court in para supra, has been upheld in letter and spirit in dealing with the issue on hand.

V) Based on the aforesaid, the OA lacking in merits, merits only dismissal, which we order, however, with no orders as to costs.

(B.V. SUDHAKAR) **(JUSTICE L. NARASIMHA REDDY)**
MEMBER (ADMN.) **CHAIRMAN**

Dated, the 20th day of June, 2019

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