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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2599/2003

This the 23rd day of March, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Tribhuvan Prasad S/O Kunj Bihari,
Chief Inspector of Tickets,
Northern Railway, New Delhi.

... Applicant

(By Shri B.S.Mainee, Advocate)

versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Chief Commercial Manager (G),
Northern Railway Headquarters,
Baroda House, New Delhi.
3. Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi. ... Respondents

(By Shri Satpal Singh, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Applicant has challenged penalty of reduction by two stages in same time scale for a period of one year with cumulative effect imposed upon him in disciplinary proceedings.

2. Learned counsel of applicant contended as follows:

- (1) The raid conducted by the vigilance inspectors was in violation of paragraphs 704 and 705 of the vigilance manual in accordance

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with which the vigilance inspectors must take two independent witnesses (gazetted officers) while conducting the raids. However, in the present case, the vigilance inspectors had violated these provisions and were not accompanied by any independent witnesses.

- (2) The enquiry officer had completely exonerated the applicant after holding the enquiry. However, the disciplinary authority issued a dissenting note without any application of mind and without following the principles of natural justice.
- (3) The impugned order Annexure A-1 dated 9.10.2001 is self-contradictory inasmuch as on the one hand the disciplinary authority has held that the applicant was not guilty of the charges, yet on the other, punishment has been imposed upon the applicant.

3. The learned counsel of respondents opposed the contentions raised on behalf of applicant and contended that principles of natural justice as also the prescribed procedure were followed by respondents in the departmental enquiry conducted against applicant. He further stated that the contentions raised on behalf of applicant are not well founded and do not merit consideration.

4. We have considered the respective contentions of both sides as also perused the material available on record.

5. Annexure A-10 are the instructions contained in the vigilance manual. Paragraphs 704 and 705 of these instructions relate to departmental traps. These instructions make it obligatory that for laying a trap, two or more independent witnesses must hear the conversation which would establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused. It is further prescribed that the investigating officer/inspector should arrange two

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gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, services of non-gazetted staff can be utilized. The records available do not establish that two independent witnesses had accompanied the vigilance inspectors during the trap against applicant. In this view of the matter, the trap was laid without keeping the above important requirements in view.

6. The enquiry officer has, on the basis of oral/documentary evidence on record and discussion made on each charge, concluded that none of the charges was proved. In the dissenting note Annexure A-5 dated 22.5.2001, instead of recording tentative reasons for disagreeing with the findings of the enquiry officer, the disciplinary authority has taken a final decision on various charges against applicant. He could not do so. In case of disagreement the disciplinary authority was required to record his own findings if the evidence available on record was sufficient for such exercise, or else to remit the case to the enquiry officer for further enquiry and report. In this regard, support is drawn from *Punjab National Bank & Others v Kunj Behari Misra*, JT 1998 (5) SC 548; *Yoginath D. Bagei v State of Maharashtra*, 1999 (7) SCC 739; and *Bank of India & Another v Degala Suryanarayana*, JT 1999 (4) SC 489. The disciplinary authority in Annexure A-5, i.e., the dissenting note, has concluded in respect of various charges that they stood proved. This dissenting note, as such, is clearly post-decisional without affording an opportunity to applicant.

7. In Annexure A-1 dated 9.10.2001, the disciplinary authority has recorded, "In the whole case there are many loose ends which prosecution has failed to tighten. No independent witnesses have been associated". "Overall it is concluded that irregular & malafide working on your part is proved on circumstantial evidence and no conclusive judgment can be reached". The disciplinary authority has accepted that no independent witnesses were associated as also that no conclusive judgment could be reached. Yet, the disciplinary

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authority has proceeded to impose the punishment upon applicant. The orders of the disciplinary authority, as such, are self-contradictory and cannot be upheld.

8. Having regard to the discussion made and reasons stated above, we find substantial merit in the OA which is allowed accordingly quashing the impugned orders as also the penalty imposed upon applicant, with all consequential benefits. No costs.


(Shanker Raju)

Member (J)


(V.K. Majotra)

Vice-Chairman (A)

23.3.05

/as/