

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

ORIGINAL APPLICATION NO.2132/2016

Dated : 24th October 2019

CORAM:- R.VIJAYKUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)

Jayendra s/o. Kirtikumar Shah, Aged about 51 years,
Occ. Sr.Ticket Examiner, Central Railway, Nagpur,
R/o. 102, Abhilasha Orchid, 7, Mansarovar Colony,
Sadiquabad, Mankapur, Nagpur-440030.

...Applicant

(By Advocate Shri M.M.Sudame)

Vs.

1. Union of India, Through it's Chariman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi-110001.
2. The Chief Commercial Manager (P.S.), Central Railway, Chatrapati Shivaji Terminus, Mumbai-400001.
3. Additional Divisional Railway Manager, Central Railway, Kingsway, Nagpur-440001.
4. The Senior Divisional Commercial Manager, Central Railway, Kingsway, Nagpur-440001.

(By Advocate Shri Alok Upasani) ...Respondents

Reserved on :- 25.7.2019

Pronounced on:- 24.10.2019

ORDER

R. Vijaykumar, Member (A)

This is an application filed on 08.12.2016
under section 19 of the Administrative Tribunals
Act, 1985 seeking the following reliefs:

"i) Quash and set aside the impugned

punishment order No.NGP/Con/C.21/Vig/DA/09/2012, dated 11/27.02.2014 issued by the Respondent No.4 (Annexue A-1), the impugned Appellate Order No.NGP/Con/C-23/VIG/DA/9/12, dated 09.03.2015 issued by the Respondent No.3 (Annexure A-2) and the impugned Revisionary Order No.P.HQ.DAR. 410.1 dated 22.12.2015 issued by the Respondent No.2 (Annexure A-3);

ii) Direct the respondents to reinstate the applicant on the post of 'Chief Ticket Inspector' in Pay Band of Rs.9300-34800 with Grade Pay of Rs.4600/- as before the impugned order of penalty;

iii) Hold and declare that the impugned Revisionary order issued by the Respondent No.2 has inherent defects and violative of Rule 6(vi) of the Railway Servants (Discipline and Appeal) Rules 1968, in as much as the reduction to the lower post has been shown as Rs.5500-20200 with Grade Pay of Rs.2400, instead of showing Rs.9300-34800 with Grade Pay of Rs.4200/- i.e. the pay scale of the lower post and grade of Dy. Chief Ticket Inspector;

iv) Hold and declare that the first punishment imposed as Compulsory Retirement from service and the second punishment by converting it to that of the reinstatement in service with downgrading to the lowest post in the minimum of the pay scale for a period of 5 years with cumulative effect whereas termed it as the downgrading in the lower post is bad in law and violative of Articles 14 & 16 of the Constitution of India;

v) Hold and declare that the punishment imposed by the Revisionary Authority i.e. Respondent No.2 is not in consonance with the orders earlier given in the similarly situated cases by letting off with a simple warning (Annexure A-23) and that the order is to be issued in case of the applicant i.e. he may be let off with a simple warning;

vi) Hold and declare the regularization of the intervening period from 27.02.2014 to 25.01.2016 by treating the said period as duty with back wages and interest @ 12% per annum;

vii) In view of long delay of several months caused by Railway Administration in disposal of the disciplinary case by Disciplinary Authority, Appellate Authority and Revisionary Authority, it is prayed this O.A. be kindly decided at earliest with reference to earlier Original Application;

viii) Grant any other relief, which this Hon'ble Tribunal deems fit in the facts and circumstances of the case.

ix) Award the cost of this application from the respondents".

Facts of the case

2. The applicant commenced service with the respondents on 14.11.1988 as Ticket Collector and in time, was promoted as Chief Ticket Inspector. On 16.10.2011, he was allotted duty in respect of coaches in Train No.12106 and in accordance with instructions in the Railway Commercial Manual Rule No.2429(b), he had a duty to report at the station officer and enter his private cash amounts (PC) in the Sign-On Register (SOR) at the station before boarding the train along with his assigned Excess Fare Ticket Book (EFT). For such duties, the applicant is expected to report 30 minutes prior to

the arrival of the train. After declaring his personal cash as Rs.959.00 in the SOR at the station at 16.30 hours on 16.10.2011 and which amount was within the prescribed citing of Rs.1500 vide orders issued as Commercial Circulars by respondents for mobile staff and increased from time to time, the applicant boarded the train at 17.15 hours and then, when a vigilance check was conducted at 1810 hours on the train, it was found that he had personal cash of only Rs.426.00 in his person and he had made no record of his personal cash in the EFT Book as required and duly verified during vigilance inspection. During this vigilance check, the following joint check report was prepared:

"

Dated:16/10/2011

Joint Check Report.

Date of Check:16/10/2011

Train No.12106

Time of Check:18.10

During the check of Train No.12106 on 16/10/2011, it is noticed that Shri J.K.Shah, CTI, has not declared his private cash of Rs.426 upto 18.10.hrs. Further, it is noticed that Shri Rajesh Dongre, conductor of AC-III not checked the coach upto 18.10.hrs. Some passengers were travelling near door in his coach. Shri A.K.Talwar, CTI who is allotted HA1, AB 1 and A2 coached has not checked one person viz Shri Rajenand Lote, I/cavd No.382086, a

Khalasi travelling in A-2 near door without any valid travelling author. Shri J.K.Shah who has not declared his PC has prepared EFT No.C523646 for AQ to BP of Rs.255/-

Joint Check was closed at 18.38 hrs."

3. The vigilance team, thereafter asked him a series of questions and he answered as below:

"Name : J.K.Shah
Design : CTI
Place of work : Nagpur Under Sr.DCM
Date of Birth : 4/10/1964
Date of App : 14/11/1988
P F No. : 07188209
Pb+Gp : (9300-34800) (4600)
Dt of Superannuation: Oct-2024

On being asked by CVI CT, I the undersigned giving my statement willingly and without any bear I will not hide any facts as this case.

Q-1: Since when you are working under Sr.DCM Nagpur?

Ans: Since the date of appointment

Q-2: What type of duty you are performing on Nagpur Division?

Ans: I perform my duties of ticket checking and general supervision of Staff working under me on train.

Q-3: Which coaches were allotted to you on 19/10/2011 of train No.12106?

Ans: At present I do not remember coach numbers allotted to me on 16/10/2011 of train no.12106.

Q-4: Please for the performing duty of ticket checking staff to resume the duties in the train?

Ans: To sign the muster and declare private cash on record of foil of EFT book in the office.

Q-5: Please state whether you have declare private cash on record foil of your

EFT book on 16.10.2011 when you have signed the muster in office before attending train no.12106 at Nagpur?

Ans: No I had forgotten to declare the private cash on EFT book.

Q-6: Do to agree that you have prepared EDT No.C 523646 of Rs.255 for passenger travelling from AQ to BD without declaring your private cash on record foil of your EDT book on 16/10/2011 in train no.12106?

Ans: Yes I have prepared EFT No. C523646 of Rs.255 as mentioned in question without declaration of my private cash in EFT book.

Q-7: Please peruse joint check report prepared on 16/10/2011 during the vigilance check in train no.12106 form whether your signature appears on it?

Ans: Yes, I confirm my signature on joint check report dt 16/10/2011.

Q-8: Please conform that you have not declared your private cash in EFT book upto 8.10 hrs on the day of Vigilance Check?

Ans: Yes.

Q-9: Please state why you have not declared Private Cash in your EFT book on 16/10/2011?

Ans: Sir, I have requested for leave to my incharge on 15/10/2011. I was told verbally that my leave will be granted if staff position permits. On 16/10/2011 when I went to office previous day's incharge/ supervisory was replaced by another gentlemen. When I requested him for leave, I was told that leave cannot be granted by him at least moments and he was not aware of my discussion with previous day's incharge. In the meantime train arrival on PF and had to proceed on my duties. I totally forgot to declare my private cash since I was in hurry due to arrival of train on platform.

Q-10: What is your reporting time to join duty?

Ans: Thirty minute arrival of train.

Q-11: Do you went to say anything more about this case?

Ans: Since I could not get leave sanctioned and I had to proceed for duty at last moment, I was very much hurry due to

arrival of train on PF. Hence in this VNIH for attending to my duties as I have to guide the passenger, I totally forgot that I have not declared my private cash.

Q-12: Are you satisfied with your statement?

Ans: Yes".

4. Thereafter, a charge sheet was issued to the applicant on 12/20.11.2012 by the Competent Authority with the following statement of Articles of Charge:

"Statement of articles of charges of misconduct/misbehavior framed against Shri J.K.Shah, CTI/NGP.

That the said Shri J.K.Shah, while working as CTI/NGP has committed following serious misconduct during the year 2011 in that:-

ARTICLE-I

He has not declared his private cash of Rs.426/- which was in his possession in his Blank paper ticket (BPT) Excess Fare Ticket (EFT) book while performing duty in train no.1206 on 16.10.2011 till 18.10 hrs. and issued BPT No C 523646 amounting Rs.255/- to a passenger travelling from AQ to BD.

ARTICLE-II

He has declared his private cash of Rs.959/- in "Sign on" register at 16.30 hrs on 16/10/2011 in his office at Nagpur which is Rs.533/- more than his private cash of Rs.426/- found in his possession of time of vigilance check in Train No.12106 on 16/11/2011 at 18.10 hrs.

By the aforesaid acts of omission and commission Shri J.K.Shah, has failed to maintain absolute integrity and acted in

manner of unbecoming of Railway Servant and has thereby contravened the provisions of rule 3.1(i) and 3.1(iii) of the Railway Service (Conduct) Rules, 1966".

The applicant responded with his written statement of defence dt. 12.1.2013 (Annexure-A8) in which he has pointed out the delay in the vigilance report of nearly nine months and also discrimination, in that other staff who had committed similar errors in different entries in the sign-on register and in the EFT book had been let off. He explains the error by way of the difference between entry made in the Sign-On Register and in the EFT book by stating that it was an accidental slip from memory due to mental tension and this was the same reason for his not entering the personal cash (PC) details in the EFT book. In particular, he has attempted to explain the difference in cash found on him as follows:

" The PC Rs.959-00 was declared by me in sign-on register at the station at 16-30 hours on 16-10-2011. the subject train arrived on Nagpur station at about 17-15 Hrs. Between these timings there was a time-gap of about 45 min, during which an exigency arose for me to deal with. A businessman friend of mine un-expectedly met me at the station. During the time gap he requested me to give him Rs.510-00 which I owed to him and he required it urgently.

I paid the amount to him at about 17-00

hours on 16-10-2011 at Nagpur station platform to discharge his obligation on me. The remaining Rs.23-00 were spent on tea and snacks with him at the Naivedhyam tea-stall on platform no.2/3

It is a common feature that other TTE staff have to meet with such exigencies and expences. Naturally, amount of expences vary according to the nature of exigencies".

5. In reference to the initial questions raised by the Inquiry Officer on 21.2.2013, he has nominated his ARE and refused to call anyone as his defence witness and has stated that he may require additional documents in the course of the inquiry and that he did not require anyone at that moment. At the conclusion of recording of evidence on 8.4.2013, the applicant requested permission to allow one Shri Mohammad Quadir, a businessman friend of his, to whom he had allegedly given Rs.510/- on 16.10.2011 before arrival of train, as his defence witness, but the Inquiry Officer has recorded that he has considered the request and was of the view that when the Charged Employee (CE) was granted opportunity at the outset, he should have made this request and this appears to be an after-thought. However, the CE was permitted to file an affidavit if he so wished along with his defence brief. The CE has accordingly filed an affidavit

of Shri Mohammed Quadir made before a Notary Public and has noted the above facts in his written defence brief filed on the conclusion of the inquiry on 21.4.2013. This aspect has been considered among other issues by the IO in his inquiry report and he has held that the affidavit was not acceptable as he considers it and its contents and claims as an afterthought. No appeal had been filed by the CE before the Disciplinary Authority in this regard prior to submission of the Inquiry Report. The CE (applicant) has responded to the communication of Inquiry Report by the Disciplinary Authority and has furnished his views on all aspects of the issue in his letter dt. 17.7.2013 including on the report. The defence of the applicant in particular reference to the claim that he had made payment of Rs.510/- to his businessman friend and associated time-gap between his reporting time of 16.30 hrs. and train departure time of 1715 hrs, is recorded as follows:

.....Regarding, the difference in amount declared in sign-on register and actually available in the train, you have said that a business man friend unexpectedly met at the station and requested you to give Rs.510/- which you have owed to him. You have paid the amount to the friend at 17.00 hrs. and also had time to spent Rs.23/- for tea and snacks at Naivedyam tea stall on

platform no.2/3. Now, this is in contrast with your statement in primary enquiry, that "I totally forgot to declare my private cash since I was in hurry due to arrival of train on platform"(Q.9), "I was in very much hurry due to arrival of train on platform hence in this rush for attending to my duties, as I have to guide the passengers I totally forgot that I had not declared my private cash"(Q.11). This indicates that the story of business man meeting you at the station and the transaction of Rs.510/- and also that of having tea and snacks with him at Naivedyam tea stall on platform no.2/3 is nothing but an imaginative story to hide the factual conditions. Even at this stage of submitting your representation wherein you have given Rs.510/- to someone whom you call your friend, you are not able to provide his name in the explanation.

It is a factual condition that you have prepared an EFT/BPT of Rs.255/- for a passenger travelling from AQ to BD before the check was conducted, and till then you have not declared your private cash in his EFT/BPT book. This has been substantiated in the entire proceedings".

6. Based on his examination, the Disciplinary Authority held that the CE's actions indicated mala fide and for the said misconduct, he imposed the penalty of Compulsory Retirement with fully pensionary benefits in his orders dt. 11.2.2014. The applicant filed an appeal on 11.4.2014, 15 days after the prescribed time and the Appellate Authority passed orders on 9.3.2015 and on the aspect of the claim of the applicant that he was not questioned on how he could explain the

difference of the amount, the Appellate Authority recorded his findings as below:

"You have further contended that you were not questioned on 19.07.2012 about spending of amount etc that is why you could not explain the difference in amount. It is a matter of record that you were specifically asked whether you want to say anything more about this case, but you have not given any clarification at that stage also. On the other hand you have clarified that you have forgotten that you have not declared private cash. This clearly proves that you have tried to conceal the private cash declared by you at the time of sign-on, especially since there is a large difference between the cash declared by you at the time of sign-on and what is detected during preventive check".

Further, the Appellate Authority referred to the contention of the applicant that there was no rule to declare private cash and recorded his views as below:

"You have made contentions that it is not a rule to declare private cash. In your own written statement before the Disciplinary Authority, you have submitted that there is provision of possessing private cash. This necessitates declaration at the time of sign-on. Therefore your present contention that there is no rule to declare private cash is false to your own knowledge. When there is a rule, it has to be followed".

On this basis, the Appellate Authority has confirmed the orders of the Disciplinary Authority against which the applicant filed a Revision Petition on 6.5.2015. The Revisionary Authority

considered all the issues raised by the applicant in detail against the orders passed by the Disciplinary and Appellate Authority and the facts of the matter and after holding that none of the contentions deserved merit, he reduced the penalty which he considered to be harsh in relation to the nature of misconduct, by taking a lenient view, and reinstated the applicant to railway service with penalty of reduction from the post of CTI in Pay Band of Rs.9300-34800 with GP of Rs.4600 to the lower post and Grade of Sr. Ticket Examiner in Pay Band Rs.5200-20200 with GP of Rs.2400, by fixing his pay at Rs.5200 in the minimum of the said Pay Band for a period of 5 years from the date of receipt of this order. Further, he ordered that this reduction shall operate to postpone future increments of his pay and he will not regain his original seniority on the expiry of the said penalty. The intervening period from the date of "Compulsory Retirement" to that of "Reinstatement in Service" were ordered to be treated as dies-non.

7. In this O.A., the applicant reiterates slippage from his memory as the reason for not declaring the personal cash of Rs.426/- in the EFT book issued to him and he further explains the

difference of Rs.533/- having been spent Rs.23.40 snacks and by giving Rs.510/- to a businessman friend at the railway platform prior to boarding the train, as dues for previous purchases made by him. He argues that there is no bar on expenditure of personal cash by such staff and therefore, possessing lower amount of cash while on the train than as entered in the Sign-On Register would not constitute misconduct but only negligence due to forgetfulness. He has also challenged the harsh character of the punishment and has further alleged that there was discriminatory treatment between his case and others who had been found with similar defects in personal cash holding. In particular, he argues that mala fide intention cannot be attributed because there are no guidelines on the upper limit for spending private cash.

8. The respondents have argued that the mala fide of the applicant lay in the fact that he had declared inflated private cash of Rs.959/- in the sign-on register and had not made any entries in the EFT book as required and as was the practice, whereas he had only Rs.426/- of Personal Cash during vigilance check. They also state that the applicant in his statement to the vigilance team on

19.7.2012 had stated that he had forgotten to declare his private cash on EFT book because he was in a hurry due to arrival of the train on the platform while he was requesting the in-charge Supervisor on his application for leave. In contrast, the applicant in his defence statement dt. 12.2.2013 has described how he has spent time of about 45 minutes on 16.10.2011 between 1630 hrs to 1715 hrs during which time he had transacted with his businessman friend and also had enough time for taking tea and snacks with him on platform no.2/3. The two statements were clearly contradictory, argue the respondents. They submit that it was the primary duty of the applicant to declare his private cash in the record foil of EFT book even in the office while entering the Muster. In regard to the defence witness that he sought, of Shri Mohd. Quadir, they state that he had not asked for any witness at the outset and his claim was totally false and frivolous. This is why the IO had recorded his view that this request was an afterthought. They distinguish the case of the applicant from others by stating that his actions i.e. the actions of recording an inflated figure in the sign-on register and no figure in the EFT book,

which was detected when he was found short by the vigilance check, indicated that the applicant acted mala fide with ulterior motive. They submit that there cannot be equality in commission of illegalities and therefore, the applicant will have to stand on his own case material. They refer to certain instructions that they state have been circulated on declaration of private cash and which has been enclosed as AnnexureA-27 by the applicant which suggests his knowledge of the matter. They deny any discrimination in dealing with the applicant with regard to the persons cited by him. In particular, they refer to the fact that the applicant himself has admitted to the vigilance that he had forgotten to record his private cash on the record foil of EFT book while assuming duties and therefore, he was well aware of this requirement and when there is a rule, it is necessary that applicant should follow the rule. They also refer to the IRCA Coaching Tariff Part-I and Circular No.18/2006 which pertains to rules and provisions for declaration of private cash for which the applicant was supplied a copy and therefore, he cannot deny the existence of rules.

9. In rejoinder, the applicant has reiterated

his allegations against the conduct of inquiry and in particular, argues that the Revisionary Authority had reduced the Grade Pay to Rs.2400/-, but there is no post which carries the GP of Rs.2400/-, whereas the post of Senior Ticket Examiner carries the GP of Rs.2800/-. Therefore, the penalty was clearly illegal and was a method of harassing the applicant.

10. During arguments, the learned counsel for applicant has reiterated various pleadings. In particular, he argues that the action of the applicant cannot be considered to fall within the definition of misconduct. He cites in support the definition of misconduct reflected in the Judgment of the Hon'ble Apex Court in **State of Punjab and Ors. vs. Ram Singh Ex-Constable (1994) 4 SCC 54**, which considered the character of misconduct as below:

5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus :-

"A transgression of some established an definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence but not negligence or carelessness."

Misconduct in office has been defined as :

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.821 'misconduct' defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its

effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. . . ."

Further, he cites **Union of India and Ors. v. J.Ahmed**, (1979) 2 SCC 286, in which an IAS Officer was held to have been negligent, against a high standard of efficiency, but such an inference of negligence would not constitute misconduct. Further in support, he referred to the discussion by the Hon'ble Apex Court in **M.M.Malhotra v. Union of India and Ors.** (2005) 8 SCC 351, in cases where the foundation for an order is partially held not in accordance with law, reconsideration of the quantum of punishment is not an invariable result. The Apex Court held it appropriate for the Court to consider the material before it concludes that the punishment awarded is not shockingly disproportionate, it can maintain the order. He also refers to the rulings of the Apex Court in **Inspector Prem Chand v. Govt. of NCT of Delhi and**

Ors. (2007) 4 SCC 566, wherein it was held that where the Police Inspector had refused the bribe but had not seized the tainted money, and the Disciplinary Authority had not recorded any finding on the fact that the delinquent Police Inspector was guilty of an unlawful behaviour in relation to discharge of his duties, it could not, therefore, hold that the Police Inspector had committed misconduct. Learned counsel for the applicant also referred to the rulings of the Hon'ble Apex Court in **A.L.Kalra v. The Project and Equipment Corporation of India Ltd.**, AIR 1984 SUPREME COURT 1361, in which it was held that the alleged misconduct was not falling under any of the acts of misconduct specifically enumerated in the rules of the respondents and which had been prescribed in Rule 5 of the Rules of those respondents.

11. He further argued that Annexure-27 which had been enclosed by the applicant from which support had been taken by the respondents had not been issued as a circular of instructions, but the Zonal Railways had been asked to examine the suggestions of the vigilance and send their recommendations and no orders have been issued

subsequently. He argued that the fact that the applicant had declared a particular figure of private cash in the sign-on register and then, during vigilance check was found with lesser amounts could not constitute misconduct because there was no rule that prevented him from spending his private cash in any manner that he wished. At the most, he urged this may constitute mere negligence but would not amount to misconduct and thereby attract the provisions of disciplinary action.

12. Learned counsel for respondents reiterated his pleadings. He referred to the provisions of Rule 2429 of the Indian Railway Commercial Manual Vol.II which reads as under:

"2429. Keeping of private cash in station safe, etc., forbidden.—Private cash should not be kept in the railway cash chest, drawers, ticket tubes, cash safes etc. If any such amount or extra cash, whether; stated to be private or otherwise, is found by the supervisory staff or inspecting official, it should be remitted to the cash office.

(b) The staff working in booking offices, parcels offices and goods sheds, whose duties actually involve cash transactions with the public, must declare in writing their private cash daily before they take up their duties in the station diary or in the cash book or in a separate register to be maintained for this purpose. The

specific categories of staff to whom these instructions apply, will be notified by the railway administrations concerned".

He also referred to the provisions of rule 2437 of the same manual which relates to official cash management and reads as under:

"2437. Handing and taking over of cash.—In all cases, when the cash is handed over and taken over by the staff, the person receiving the amount must sign for it in the relevant cash book in taken of the amount taken over, recording the amount received both in words and figures and appending his signature (and not initial), in full with time and date. Similar acknowledgement should also be given in the private memo book of the person making over the cash. These private memo books, which must be maintained by all staff dealing with cash, should always remain in the personal custody of the holder, who should take it away with him while going off duty".

He also referred to the previous orders of Ernakulam Bench of this Tribunal in OA No.320/2008 **A.V.Vasudevan Potti v. UOI and Ors.** decided on 2.6.2009, in which an amount of Rs.900/- had been declared at commencement of duty, but only Rs.220/- had been found on his person for which the delinquent officer claimed that he had misplaced the balance amount. In that case also, the applicant had urged that it was his personal matter on how much of the declared cash is available or spent and that private cash may be spent, lent or

lost and no one can insist on production of private cash originally declared. Therefore, non-production of private cash as originally declared could not constitute an offence. In that case, this Tribunal held as follows:

"5. We have heard Shri.M.P.Varkey for the applicant and Shri.Thomas Mathew Nellimoottil for the respondents. The very purpose of declaring the private cash of Ticket Checking officials of the Railways is to reduce the scope of corruption in the Railways. The Ticket Checking Staff have to give complete account of the cash in their possession while on duty. If any excess amount is found, the usual explanation of the Ticket Checking Staff would be that it is his personal cash. It is for this purpose that the Railway authorities have made the rule that the Ticket Checking Officials should declare their private cash at the commencement of their journey itself. They should also be accountable for the private cash which has been spent during the journey. Therefore, at the end of the journey the private cash in possession of the Ticket Checking Staff cannot be more than what it was declared at the commencement of the journey. In order to circumvent the above position the Ticket Checking Staff declare an amount which is much higher than the amount actually they possess so that if any money is collected unauthorisedly from the passengers, the Railway Checking/Vigilance Inspectors would not be in a position to detect it. Therefore, declaration of actual amount of private cash by the Ticket Checking Staff at the commencement of the journey and the account of its expenditure during the journey are necessary and the rule to that effect has to be followed strictly and any violation of the same is to be treated as an indiscipline and, no doubt, the Railway

authorities have to deal with them sternly by imposing penalty in accordance with the provisions contained in Indian Railway (Discipline and Appeal) Rules 1968.

6. In the present case undisputedly the applicant has declared his private cash as Rs.900/- at the commencement of the journey. When the Vigilance Inspectors conducted inspection, he could produce only Rs.220/-as private cash. His explanation that he lost the balance money and the amount which was declared at the commencement of the journey was only approximate cannot be accepted. When there is a rule, it has to be followed. We, therefore, do not find any merit in the contention of the applicant that he had not committed any misconduct which would attract the penalty imposed in this matter".

13. We have heard the learned counsel for applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

14. We first advert to the admitted facts of the matter. When the applicant reported at the station at 1630 hrs. he filled the Sign-On Register but failed to make entries in the foil of the EFT book. Thereafter, he spent 45 minutes allegedly persuading the supervisory officer to grant leave and boarded the train at 1715 hrs. Therefore, the entry in the EFT book should either have been made while filling the Sign-On Register or immediately

after boarding the train. Neither act was done. Although it would appear reasonable that the first action should have been taken, the applicant has made no observations or even the faintest of suggestion to the vigilance team at the time of their joint check that he had handed over Rs.510/- to a private individual in repayment of a previous loan. He has not even cared to mention that he had allegedly spent some money on tea and snacks. All these claims emerged from him several months after the charges were framed against him. There is no evidence placed on record by the applicant to show that he had made this declaration of the manner in which he had spent the money right at the outset when he had full opportunity to provide such an explanation and was also framed an open-ended question on whether he had anything more to say. In fact, if he had made such a claim it would have become necessary and perhaps irksome if the vigilance team had asked for details of the name of the person to whom he had paid the money and obtained the location where he made the payment including the recipient's contact details and his mobile number since such detailed facts would have opened the matter to honest and transparent

verification even at the outset and would have enabled the vigilance to terminate their further inquiry and release the applicant from the experience he has gone through. However, the applicant made no such efforts and since he failed to disclose any such reasons, there was no need for the vigilance team to inquire such details from him.

15. Another aspect of such questioning and the claim of the applicant that he paid Rs.510/- to a businessman friend for past dues would invite questions on the nature of the loan taken by him and its circumstances, including on the quantum which would invite attention of the Railway Conduct Rules. Further, if the applicant had indeed purchased some goods for which payment was due to the said friend, he was at liberty to furnish the related bills but no effort has been made by him to prove his bona fides in any manner other than to produce a belated affidavit made out before a Notary Public for the receipt of the said amount of Rs.510/-.

16. Reference to the same case law by the applicant in **Ram Singh** (supra) defines misconduct as a transgression of some established and defined

rule of action in the case of disciplinary matters, such rule of action has necessarily to be listed in some manner. However, the nature of conduct and the definition between conduct and misconduct under which are set the principles of ethical behaviour and standard of conduct are necessarily a gray area and any listing can never be exhaustive yet, the gray character of the distinction cannot be utilised to harass an individual. What remains is that if there is a ruling, it should be followed strictly and there can be no exception. That rule is guided by the objective behind the said Rule of Conduct. Such a rule of conduct particularly in relation to matters such as handling of personal cash have necessarily to be balanced and nonintrusive in its impact on personal liberty. Yet it is a context which enables oversight. What is possible in a bank in the stationary staff of the teller section with a CCTV camera may not be possible in a moving train with long coaches in regard to mobile staff such as a TTE. More significantly, the behaviour of the delinquent needs to be distinguished between actions that are taken or seem to have been taken to defeat the rule rather than to conform to the rule. An aggressive

approach to the rule would not be conducive to the discipline nor would it suggest that there are bona fides in the behaviour of the delinquent. Overlooking such aggressive approaches to rules would then only lead to generalised non-conformance in a systematic organisational operation like the railways and the only way out for such an institution to function would be to impose exemplary punishment on those persons who are detected in violation during the vigilance inspection.

17. In the present case, there is a definite rule embodied in Rule 2429(b) of the Railway Commercial Manual that the applicant has to make entries in the Sign-On Register. The applicant has filed Annexure A-27 which is a telemex circular No.TCII/2870/06/Pt dt.6.2.2008 which records suggestions of vigilance inter alia at (iii) the entire mobile staff should also declare private cash in EFT book or diary or registered or Log Book (available with them during the mobile duty), besides declaring at the time of signing for duty at the HQ station as well as at other end. Clearly, therefore, as argued by learned counsel for the applicant there appears to be no Rule

established which required the applicant to make entries in the EFT Book counter foil pending approval. However, that does not mean that the requirement of making entries in the Sign-On Register is non-existent and is not only part of the rule but we note that periodical instructions by telemaxes have been passed specifying the ceiling of personal cash and referring to instructions of 2006 now embodied in Rule 2429(6). It also appears evident from the examination of the applicant by the Inspection team that a rule of practice to make entries in the EFT book was in vogue and applicant was aware of the requirement. In any case, he is bound by declaration in the Sign-On Register and if he did not avail himself of the opportunity of recording private cash in the EFT book, a greater responsibility to respond to queries weighs on him. The learned counsel for the applicant reads Annexure A-27 in support but the relevant clause extracted above in fact asserts the requirement of the Sign-On Register and it seems, only seems to formalise use of the EFT book which was by then a norm of practice. In the present case, when the opportunity to provide full and plausible reason for discrepancy, presented itself

to the applicant before the vigilance team, he failed in his presentation of facts on every aspect of the shortage of personal cash. All the new facts that he has revealed were declared by him months later as the respondents have pointed out. On the one hand, the applicant has pleaded mental tension grave haste and hence his negligence in making the entries, on the other hand, in his later defence, he has stated that he had time to make the payment of Rs.510/- to his business man friend and then to have tea and snacks with him in the 45 minutes of time that was available to him between actually reporting for duty and entering the train. Therefore, the words and actions of the delinquent official belie his claims of his bona fide and it is clear that the act of misconduct alleged against him is proven in very clear terms by the respondents.

18. The applicant has not specifically challenged the disproportionate character of the punishment but he has stated that the punishments imposed by the various authorities are very harsh. He has also stated that the punishment imposed by the Revisionary Authority is incongruous and is based on frivolous arguments. Considering the

applicant's aggressive attempts at interpreting the rules to suit his non-conformance, the correct approach for respondents could well have been to come down very harshly in an exemplary manner on delinquents who are detected in the course of random checks made by the respondents. Therefore, it cannot be argued that the nature of the penalty is harsh especially in a country such as ours where scores of educated people are yearning for paid work especially with the Government, but failing to secure employment. With regard to the discrepancy pointed out by the applicant on the GP for a Sr. TE, it would be appropriate for the respondents to re-consider this aspect of the factual element pointed out by the applicant and then to pass suitable orders by the Revisionary Authority which, in the circumstances that there are any changes in the GP, may also involve an alteration in the view of the Revisionary Authority in any manner that he may construe appropriate. To that extent, the orders of the Revisionary Authority may require amendment.

19. The applicant relies on **Ram Singh** supra to urge that his negligence in not recording private cash in the EFT book was not an established rule of.

conduct and therefore, misconduct would not be impugned. He also argues that there is no rule barring or setting a ceiling on personal expenditure. We also refer to definitions contained in Batt's Law of Master and Servant (4th Edition, p.63) Misconduct.. "comprised positive acts and not mere neglects or failures". Ballentine's Law Dictionary (148th Edition) defines misconduct as "A transgression of some established definite rule of action, when no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness. In the present case, the applicant had made a declaration in the Sign-On Register as per rule but for Rs.959 only. He says he was negligent in not replicating this entry in the EFT book but asserts that there is no such requirement in rules. However, the issue in the present case is that even if the amount of Rs.959 has been recorded in the EFT book, the applicant had a requirement to satisfactorily explain the difference between this amount and what was actually held by him. When inquired, he had no explanation and it became plain that he had declared falsely in the SOR before boarding the

train. Therefore, there is no negligence either in action or in judgment and appraisal that invites reference to the case law cited by the applicant in **Ram Singh** supra where there was no rule established to be followed honestly and scrupulously or in the judgment involved in responding to a law and order situation in **J.Ahmed** supra. In the present case, the established rule was well known to the applicant and he had flouted it by excessive declaration, a positive act of misconduct, and which was proven when he was confronted right at the outset with the available facts and the discrepancy in accounts. There was no carelessness involved in the matter for the applicant to request mitigation of the offence. For these reasons, the other case laws cited by applicant have no relevance in respect of **Inspector Prem Chand** supra or differ on facts in **A.L.Kalra** supra. We have also taken on board observations of the Ernakulam bench of this Tribunal in **A.V.Vasudevan Potti** supra where too, no plausible explanation was given by the delinquent who had declared more private cash than was in his possession before assuming duties. That Bench also noted the developing practice of such mobile to adopt this device of

over-declaration to aggressively challenge implementation of the established Rule and as we have noted, generalise non-conforming behaviour.

20. In the circumstances, this OA lacks merits and is accordingly dismissed on all aspects of its legal submissions and pleadings. However, keeping in view the findings recorded in para 18 above in regard to the incongruity pointed to by the applicant, the orders of the Revisionary Authority are partially set aside and the Revisionary Authority is directed to revisit the orders of penalty as revised and keeping in view the observations and findings recorded in para 18 above of these orders, pass a fresh order within four weeks of receipt of a certified copy of these orders. There shall be no order as to costs.

(R.N. SINGH)
MEMBER (J)

(R.VIJAYKUMAR) -
MEMBER (A)

B.

JD
24/10/19