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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and order: 14th January 2015

+ W.P.(C) 7100/2014
UNION OF INDIA & ORS Petitioners
Through: Mr. J.K. Singh, Advocate
versus
V.C. SAXENA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER
% **14.01.2015**
KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No. 16649/2014 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 7100/2014 & C.M. Appl. No. 16648/2014 (stay)

1. By this petition filed under Article 226/227 of the Constitution of India, the petitioners seek quashing and setting aside of the impugned order dated 22.4.2014 whereby the learned Central Administrative Tribunal, Principal Bench, New Delhi has allowed the O.A.No. 1279/2012, wherein the respondent had challenged the order dated 8.2.2001 passed by the Disciplinary Authority; order dated 26.11.2009 passed by the Appellate Authority, order dated 14.7.2010 and order dated 16.12.11 of the Revisional

Authority.

2. Mr. J.K. Singh, the learned counsel for the petitioner submits that the finding recorded by the Enquiry Officer as well as the order passed by the disciplinary authority, Appellate authority and Revisional authority are well reasoned orders and the same do not warrant any judicial interference. The learned counsel for the petitioners also argued that the learned Tribunal has wrongly held that there was a violation of para 704 and 705 of the Indian Railway Vigilance Manual (*hereinafter referred to as "IRVM"*) on the part of the petitioners and even if the same be so, the instructions being administrative in nature, had no binding effect. The learned counsel for the petitioner also argued that as per the settled legal principles the learned Tribunal or the Courts cannot interfere with the findings of the Enquiry Officer where the findings are not arbitrary or utterly perverse. The learned counsel for the petitioner also argued that even apropos the punishment, the matter exclusively rests with the jurisdiction of the Competent Authority and once the penalty has been lawfully imposed on the proven misconduct of the delinquent employee, then the learned Tribunal or the Courts would not substitute it with its own view or discretion over that of the authority unless the penalty imposed is shockingly disproportionate or in a case where the

conclusion of the Enquiry Officer are based on no evidence.

3. We have heard the learned counsel for the petitioner and gone through the contents of the present writ petition.

4. Before the Tribunal, the respondent has challenged the inquiry report of the punishment imposed upon him on the following grounds:-

i) The charge against the applicant is vague and no misconduct is made out. Hence, the charge sheet itself is not maintainable in the eyes of law as laid down by the Hon'ble Supreme Court in the case of Transport Commissioner Madras Vs. Thiru Radhi Krishana Moorthy, JT 1994(7) SC 744.

ii) Copies of relied upon documents and statements of the listed witnesses were not supplied to him along with the charge sheet. Thus, the enquiry stands vitiated as laid own in the following cases:-

Kashinath Dixit Vs. UOI, ATR 1986(2) SC 186.

Committee of Management, Kishan Degree College Vs. SS Pandey, JT 1995(1) SC 759.

Triloki Nath Vs. UOI, 1967 SLR 759.

State of UP Vs. Shaturganh Lal, JT 1986 SC 55.

State of Punjab Vs. Bhagat Ram, 1975(2) SCR 370.

iii) EO himself cross examined the respondents at length thereby acting as a Judge as well as Prosecutor. EO was biased and did not consider

the points raised by the applicant in his defence.

- iv) EO did not record the statement of witnesses and relied only on the statements which were recorded by the vigilance team at the time of the trap.
- v) The DA failed to consider the detailed representation made by the applicant against the enquiry report.
- vi) The applicant was not granted personal hearing at any stage.
- vii) There has been gross violation of paras 704 and 705 of the Indian Railway Vigilance Manual (IRVM) inasmuch as two gazetted officers were not present as witnesses during the trap. In fact, no two independent witnesses were present to witness the trap. All the four prosecution witnesses were persons involved in laying the trap itself.
- viii) Railway Board has issued a Circular that excess or shortage of amount upto Rs. 100/- should not be a subject matter of disciplinary proceedings. In the instant case, only Rs.18/- were found to be in excess. Hence, the charge itself is against the Railway Board Circular.
- ix) The EO appointed was from Vigilance Department which is not permitted in the eyes of law.
- x) All the orders are non-speaking and unreasonable.

5. The learned Tribunal has dealt with all the contentions raised by the respondent as well as the stand taken by the appellant in refutation of the same and we hardly find any ground to interfere with the well reasoned

order passed by the learned Tribunal. The learned Tribunal is correct in observing that the procedure as laid down in para 704 and 705 of the IRVM were not adhered to by the respondents and violation of the same can be taken into consideration alongwith other factors to determine the facts objectively whether the charge was proved or not.

6. The learned Tribunal placed reliance on the judgment of the Apex Court in *Moni Shankar vs. Union of India, reported as (2008) 3 SCC 484*, in support of its reasoning. We also find a brazen perversity on the part of the respondents to appoint an Enquiry Officer who himself was the Chief of the Vigilance Department. The learned Tribunal is correct in observing that with a view to be fair to the delinquent official, the Chief of the Vigilance Department should not have been appointed as an Inquiry Officer particularly when the raid was conducted at the instance of the Vigilance Department. In *State of Uttaranchal v. Kharak Singh, [2008] 8 SCC 236*, the Supreme Court while reiterating the nature of enquiry to be conducted in disciplinary proceedings, after discussing various judgments on the issue, has laid down the following principles:

"15. From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer /department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

7. It is trite that the role of the courts in the matter of departmental proceedings is very limited and the courts cannot substitute its own view and findings by reversing the findings arrived at by the Authorities on detailed appreciation of evidence and also in so far as the interference with the punishment is concerned, here again the interference is limited only where the Court considers the punishment to be shockingly disproportionate or the same on its very face, suffers from the vice of irrationality. However, having not adhered to the basic tenets of the principles of natural justice, in not observing the para Nos.704 and 705 of the IRVM and also in appointing a person as an Enquiry Officer, who himself was heading the vigilance department, we are of the view that the said tests of irrationality and perversity are fully satisfied in the facts of the present case.

8. In view of the aforesaid discussion, we find no merit in the present petition filed by the petitioners and the same is accordingly dismissed. Petitioners are directed to comply with the order dated 22.04.2014 passed by the learned Central Administrative Tribunal within a period of eight weeks from the date of this order.
9. No costs.

KAILASH GAMBHIR, J

I.S.MEHTA, J

JANUARY 14, 2015
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