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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10982/2015**

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Date of Judgment : 30.11.2015

UNION OF INDIA & ORS.

..... Petitioner

Through : Mr. Malaya Kumar Chand, Advocate.

versus

SHIV NARAYAN SHARMA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

CM APPL. 28274/2015

1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

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3. Challenge in this writ petition is to the order dated 06.07.2015 passed by the learned Central Administrative Tribunal by which the OA filed by the respondent has been allowed and the chargesheet as also the enquiry report stand quashed. The enquiry report and the orders of the Disciplinary Authority dated 23.06.2010, Appellate Authority dated 29.10.2010 and Revisional Authority dated 06.01.2012 have been quashed and it has been directed that the respondents will provide all consequential benefits to the petitioner.
4. In this case, a chargesheet was issued to the respondent. The following Articles of Charges were framed :

“Article –I

That he collected Rs.1500/- from a group of passengers holding SL Class JCRT No. 244-5797951 for allowing them to travel in AC-III coach without issuing any receipt against due fare of Rs. 2850/- without any valid reason.

Article-II

He is responsible for carrying two without ticket and four irregular passengers obviously on monetary consideration for his personal gain.

By the above act of omission and commission Shri Shiv Narayan Sharma, TTE/NDLS unbecoming of a Railway servant contravening provisions of rule No. 3.1 (I, (ii) and (iii) of Railway Service (Conduct) Rules, 1966.”

5. The case of the petitioner is that the respondent was appointed in the Railway Department. A preventive check was conducted on 26.01.2008 when the respondent was found in possession of an excess amount of Rs. 1,500/-. This amount according to the petitioner was unaccounted and undeclared money. The respondent had allowed a group of passengers to travel in AC –III tier. The respondent was issued a major penalty after he was chargesheeted on 29.05.2008. The representation made by the respondent on 06.10.2008 was rejected. The Disciplinary Authority by an order dated 23.06.2010 imposed a punishment on the respondent. An appeal filed against the aforesaid order was also dismissed. A revision filed by the respondent also met with the same fate which led to the filing of the OA before the Tribunal. The stand of the respondent before the

Tribunal was that the petitioners had failed to comply with paras 704 and 705 of the Railway Manual. The respondent had submitted that in terms of para 705, two independent witnesses were required to support the report of the vigilance team and also the Investigating Officer/Inspector was to arrange two gazetted officers from Railways to act as independent witnesses as far as possible. It is also as per the safeguards provided that in certain exceptional circumstances where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilized.

6. The respondent had complained that in the present case, there was only one witness Sh. Vivekanand Sharma who was a Vigilance Officer and he had little or no choice but to support the version of the Vigilance. The respondent had also relied upon a decision rendered in the case of *Moni Shankar Vs. Union of India and Anr. : 2008 (3) SCC 484* wherein relevance of paras 704 and 705 of the Railway Manual were highlighted. Another ground which was urged before the Tribunal and which found favour with the Tribunal was that the written statement of passenger Sh. Mandeep Singh was not proved as he was not made a witness. He was not even summoned in the departmental proceedings. Additionally, it was urged before the Tribunal that the documents had not been proved by the concerned prosecution witnesses and the witnesses who had testified had nothing to do with the listed documents.
7. Learned counsel for the petitioner has strongly urged before this Court that paras 704 and 705 of the Railway Manual are not mandatory. It is contended that the Railway Manual is not binding and thus, the

Tribunal has misread paras 704 and 705 of the Manual and in the absence of compliance thereof, has quashed the inquiry report. Learned counsel has placed reliance on para 15 of a decision rendered in case No. ***W. P. (C) 4058/2008 titled as Naresh Batra Vs. UOI & Ors.***, wherein it has been held that paras 704 and 705 of the Indian Railway Vigilance Manual 1996 are mere executive instructions and do not have the force of law akin to a Rule.

8. Learned counsel has also contended that the Tribunal has exceeded its jurisdiction and failed to note that the statement of Mandeep Singh was recorded in the presence of the respondent and Mandeep Singh having not entered into the witness box would not be fatal in the matter. Counsel further contended that at best the Tribunal could have remanded the matter back instead of quashing the enquiry report.
9. We have heard the learned counsel for the petitioner and also carefully examined the order passed by the Tribunal.
10. While relying on the judgment rendered by the Apex Court in the case of ***Moni Shankar (Supra)***, the Tribunal had held that the safeguards provided in para 705 of the Manual are to avoid false implication of a railway employee and they could not have been given a go-by. In the case of ***Moni Shankar (Supra)***, the Hon'ble Supreme Court had considered paras 704 and 705 of the Railway Manual and held that while paras 704 and 705 were not imperative in character, substantial compliance was necessary.
11. It has also been contended that departmental instructions cannot be totally ignored but the same are to be taken into consideration along with other material brought on record for the purpose of arriving at a

decision as to whether the normal rule of natural justice had been complied with or not. Paras 23 and 26 of the judgment read as under :

23. *Dr. Padia would submit that the jurisdiction of the Tribunal was limited and as some evidence was adduced, the Tribunal should not have interfered with the order of punishment imposed upon the appellant.*

The Tribunal was entitled to consider the question as to whether the evidence led by the department was sufficient to arrive at a conclusion of guilt or otherwise of the delinquent officer. While re-appreciation of evidence is not within the domain of the Tribunal, an absurd situation emanating from the statement of a witness can certainly be taken note of. The manner in which the trap was laid, witnessed by the Head Constable and the legality of enquiry proceeding were part of decision making process and, thus, the Tribunal was entitled to consider the same.

It was only for the aforementioned purpose that paragraphs 704 and 705 of the Manual have been invoked. It may be that the said instructions were for compliance of the Vigilance Department, but substantial compliance thereof was necessary, even if the same were not imperative in character. A departmental instruction cannot totally be ignored. The Tribunal was entitled to take the same into consideration alongwith other materials brought on records for the purpose of arriving at a decision as to whether normal rules of natural justice had been complied with or not.

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26. *The High Court has only noticed paragraph 704 of the Manual and not the paragraph 705 thereof. Paragraph 705 was very relevant and in any event both the provisions were required to be read together.*

The High Court, thus, committed a serious error in not taking into consideration paragraph 705 of the Manual.

The approach of the High Court, in our opinion, was not entirely correct. If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go-by.”

12. A careful reading of the observations of the Hon’ble Supreme Court in the case of ***Moni Shankar (Supra)*** would show that while paras 704 and 705 of the Railway Manual are not to be mindlessly applied but the Court must ensure substantial compliance to see that the principles of natural justice have been followed.
13. We find in this case that not a single independent witness was associated at the time of raid. We also find that the only witness Mandeep Singh whose statement was recorded, was not summoned. We also find that the Tribunal has observed that the documents were not proved by the concerned prosecution witness but by the persons who were not conversant with the documents. Applying the law laid down by the Apex Court in the case of ***Moni Shankar (Supra)***, we find that in the absence of any witness, Mandeep Singh not having been summoned, documents not having been proved by relevant witnesses and no compliance of paras 704 and 705 would show that no safeguard as provided, has been followed, the compliance of paras 704 and 705 of Railway Manual becomes relevant.
14. We may note that in case, any other independent witness or in case Mandeep Singh had entered the witness box or at least the department would have made an effort to summon him, it would have shown

substantial compliance of principles of natural justice. The submission that the matter should be remanded back in our view would not solve any purpose for the reason that for an enquiry which was conducted in the year 2008, there is nothing to show that Mandeep Singh would be available for incident of the year 2008. We find no infirmity in the order dated 06.07.2015 passed by the Tribunal. Resultantly, the present writ petition is dismissed.

CM APPL. 28273/2015 (Stay)

15. In view of the order passed in the writ petition, the present application is also dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 30, 2015

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