

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1644 OF 2014

Gautam s/o Atmaram Birhade,
Age 36 years, Occ: Nil,
r/o Gayatri Nagar, Tambepura,
Amalner, Taluka Amalner,
District Jalgaon.

...PETITIONER

VERSUS

1. The Assistant Security Commissioner,
Railway Protection Force, Western Railway,
Mumbai Central, Mumbai.
2. Assistant Security Commissioner,
Railway Protection Force, Western Railway,
Surat, State of Gujrat.
3. Senior Divisional Security Commissioner,
Railway Protection Force, Western Railway,
Mumbai Central, Mumbai.
4. Chief Security Commissioner,
Western Railway Head Office,
Churchgate, Mumbai.
5. Director General,
Railway Protection Force,
Ministry of Railways,
Railway Board, New Delhi.

...RESPONDENTS

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Mr. Swapnil S.Patil, Advocate for petitioner.
Mr. A.D.Soman, Advocate, h/f Mr. D.V.Soman,
Advocate, for respondent nos. 2 and 3.
Respondent nos. 1, 4 and 5 served.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date of reserving the judgment: 6/5/2016

Date of pronouncing judgment: 5/8/2016

JUDGMENT: (Per P.R.Bora, J.)

1. Heard. Rule. With the consent of learned Counsel for the parties, Rule is made returnable and heard forthwith.

2. The petitioner has challenged the order dated 23rd December, 2008, passed by the Senior Divisional Security Commissioner, Railway Protection Force, Western Railway, Mumbai (respondent no.3), whereby the petitioner has been compulsorily retired from the services of the Railway Protection Force. The aforesaid order was challenged by the petitioner before the Chief Security Commissioner, Western Railway (respondent No.4) by filing an appeal. Respondent no.4, vide order passed on 21st of August, 2009, dismissed the said appeal. The petitioner, then preferred a revision against the said order before the Director General of the Railway Protection Force, Ministry of Railways (respondent no.5). Respondent

no.5 rejected the revision petition so filed by the petitioner by his order dated 15.10.2010.

3. As stated in the petition, departmental action was initiated against the petitioner on the basis of one criminal case registered against him. After his acquittal from the said Regular Criminal Case No.287/2008, the petitioner again filed a Review application before respondent no.5, however, the same also came to be rejected vide order passed by respondent no.5 on 11.12.2013. Along with the original order of compulsory retirement dated 23rd December, 2008, the petitioner has also taken exception to the orders dated 21.8.2009, 15.10.2010, and 11.12.2013, passed by the respective officers as mentioned here-in-above and has prayed for quashment of all such orders. Consequently, the petitioner has prayed for his reinstatement in the service with all consequential benefits from the date of his suspension.

4. The petitioner had entered into the services of the Railway Protection Force on 9th of March, 1998, as a Constable. In the year 2008, the petitioner was working as a Constable at Nandurbar. On 24th April, 2008, the petitioner was permitted to avail weekly rest on 25th April, 2008. It is the case of the

petitioner that since his father was suffering from paralysis, the petitioner boarded Tapti Ganga Express (Train No.2945) and was proceeding towards his native place. It is the further contention of the petitioner that when he reached at Dondaicha Station, one Mr. Pagare, who was working as T.C., sought his help in apprehending passengers who were travelling without tickets and denying to pay the admissible penalty under the Rules. It is the further contention of the petitioner that he advised the said passengers to abide by the instructions of the T.C. and proceeded further towards his native place from Dondaicha. It is the further contention of the petitioner that, subsequently he was informed that FIR was lodged against him for the offenses punishable under Section 392 read with Section 34 of IPC and was arrested in Crime No.10/2008 registered on the basis of the said FIR. Since the petitioner was arrested in the aforesaid offense registered against him, respondent no.1 i.e. the Assistant Security Commissioner, Railway Protection Force, Mumbai Central, Mumbai, suspended him vide order passed on 25th April, 2008. It is the further contention of the petitioner that, thereafter, departmental proceedings were initiated against him and he was held guilty of the charges levelled against him in the said departmental proceedings. It is the further contention of the petitioner that on the basis of

the report of the enquiry held against him, the disciplinary authority passed an order dated 23.12.2008, thereby compulsorily retiring the petitioner from the services of the Railway Protection Force. It is the further contention of the petitioner that he assailed the aforesaid order before the appellate authority and eventually before the Director General of Railway Protection Force by way of revision, however, could not get any relief and both the officers did not cause any interference in the order of compulsory retirement passed on 23.12.2008. It is the further contention of the petitioner that after he was acquitted from the criminal case registered against him arising out of the same instance, though he again preferred revision / review application before respondent no.5 praying to review the earlier orders in the light of the acquittal recorded by the Criminal Court, Respondent no.5 did not accept the request so made by the petitioner and rejected the revision / review application vide his order dated 11.12.2013. The petitioner has, thereafter, invoked the jurisdiction of this court seeking quashment of all aforesaid orders and seeking his reinstatement with all consequential benefits.

5. Shri Anand Vijay Jha, working as a Senior Divisional Security Commissioner, Railway Protection Force, Mumbai

Central (respondent No.5), has filed affidavit in reply for himself and on behalf of respondent nos. 2 and 3. It is contended in the said affidavit in reply that the charges levelled against the petitioner were duly proved in the disciplinary enquiry conducted against the petitioner and having regard to the nature of the misconduct committed by the petitioner, the punishment awarded to the petitioner of compulsory retirement is proper and does not require any interference. It is further contended that merely because the petitioner has been acquitted in the criminal case registered against him, the petitioner cannot be exonerated from the charges levelled against him in the departmental enquiry, which are held to have been proved against him, in view of the settled law that the standard of proof required for holding a person guilty by a criminal Court, and in an enquiry conducted by way of disciplinary proceedings, is entirely different.

6. Mr. Swapnil Patil, learned Counsel appearing for the petitioner, submitted that without there being any independent evidence brought on record in the departmental proceedings, the order of compulsory retirement came to be passed merely on the basis of the fact that a criminal case was registered against the petitioner for the offence punishable under Sections

392 read with Section 34 of IPC. Learned Counsel further submitted that the departmental enquiry was conducted against the petitioner in utter disregard of the principles of natural justice. Learned Counsel further submitted that the witness examined in the departmental enquiry, namely, Shri I.N.Tiwari has merely reproduced the contents of the FIR registered against the petitioner and he did not have any personal knowledge as regards to the averments made in the FIR and as such, no importance can be attached to such evidence. Relying upon the judgment of the Honourable Apex Court in the case of **Roop Singh Negi v. Punjab National Bank and Ors** (cited supra), and more particularly paragraph nos. 10 and 17 of the said judgment, the learned Counsel submitted that the evidence collected by the Investigating Officer in the criminal case by itself cannot be treated as evidence in the disciplinary proceedings and more particularly, the FIR cannot be treated as the evidence unless the allegations made in the said FIR are substantiated by the independent witnesses examined in that regard.

Learned Counsel further submitted that though there are circulars issued by the Railway Board to the effect that if any employee is exonerated and / or acquitted in the criminal case registered against him, and if on the same

charges and on the the basis of the same instance, if the employee concerned would have been subjected to departmental enquiry, the employee concerned has to be reinstated in the services of the Railway Protection Force. Learned Counsel submitted that in the case of the petitioner, the said practice has not been followed though he has been acquitted from the criminal case.

7. Learned Counsel further submitted that, no action has been taken against Shri Pagare, who was co-accused along with the petitioner in the aforesaid criminal case, and he was taken back in the services immediately in the year 2008 itself. Learned Counsel further submitted that the petitioner has been thus discriminated in the matter of awarding punishment. Relying on the judgment of the Division Bench of this Court in the case of **P.M.Ratnakar Vs. UCO Bank, Mumbai and others** (2009 5) Mh.L.J.587), the learned Counsel submitted that disciplinary authority is required to act in a fair manner in the matter of awarding punishment.

8. Learned Counsel submitted that since beginning and even in the departmental proceedings, it was contention of the petitioner that he has been falsely implicated in the crime

concerned, however, the contention so raised by the petitioner was not considered by the respondents. Learned counsel, therefore, prayed for quashing the order of compulsory retirement and the further orders passed by the appellate and revisional authorities, confirming the said order.

9. Opposing the submissions made on behalf of the petitioner, Shri Soman, learned Counsel appearing for respondent nos. 2 and 3, referring to and relying upon the judgment of the Honourable Apex Court in the case of **Deputy Inspector General of Police and another vs. S.Samuthiram** ((2013) 1 SCC 598), submitted that the acquittal of an employee by Criminal Court has no impact on the disciplinary proceedings initiated by the Department. Learned Counsel submitted that the petitioner has not been honourably acquitted by the Criminal Court but only due to the fact that most of the witnesses turned hostile and some important prosecution witnesses were not examined that the petitioner has been acquitted of the criminal case.

Learned Counsel submitted that in the case of **Southern Railway Officers Association and another vs. Union of India and others** ((2009) 9 SCC 24), which was the matter

relating to the employees of Railway, the Honourable Apex Court has held that the imposition of punishment in the departmental enquiry is permissible despite acquittal in criminal case.

Relying upon another judgment of the Honourable Apex Court in the case of **Avinash Sadashiv Bhosale (D) Thr. L.Rs. v. Union of India and others** (2012 AIR SCW 5835), the learned Counsel for the respondents submitted that the criminal proceedings and the departmental proceedings are entirely different; they operate in different fields and have different objectives; the object of the criminal trial is to inflict appropriate punishment on the offender; whereas, the purpose of the departmental enquiry is to deal with the delinquent in accordance with the Service Rules. The degree of proof which is necessary to order conviction is different from the degree of proof necessary to record commission of delinquency. In Criminal Law, the burden of proof is on the prosecution and unless the prosecution is able to prove guilt of the accused beyond reasonable doubt, he cannot be convicted by the Court according to law, whereas in the departmental enquiry, penalty can be imposed on the delinquent officer on the basis of findings recorded on preponderance of the probabilities.

10. Learned Counsel submitted that though the petitioner has been acquitted of the criminal case for want of evidence, from the available material, the enquiry officer has, however, held him guilty.

11. We have carefully perused the documents pertaining to the departmental enquiry conducted against the petitioner. Following two charges were levelled against the petitioner:

" Shri Gautam Birade, Constable/NDB, E/23817 is hereby charged for leaving Coy. HQ without permission and action in a manner which brought discredit to the reputation of Force in that:

He was permitted on 24/4/2008 AN to avail weekly rest on 25/4/2008, but he left Coy. HQ NDB by train No.2945 Dn. TO An without permission and intimation. He was arrested by GRP/NDB vide CR 10/08 u/s.392, 34 IPC DTd. 25/4/2008, which brought discredit to the reputation of Force.

Thus, he violated rule 146.4 of RPF Rules 1987. "

12. We also find it appropriate to reproduce here-in-below the statement of allegation contained in the chargesheet served upon the petitioner in the departmental enquiry, which reads thus:

" As per report of IPF NDB, Constable Gautam Birade of NDB post with escorting part arrived at NDB by train No.2945 Dn on 24/4/2008. On his

request, he was permitted on 24/4/2008 AN to avail weekly rest on 25/4/2008, but he left Coy. HQ/NDB by train No.2945 Dn to AN, without intimation and permission of competent authority.

On 24/4/2008 he was brought from AX to DB by ASI/GRP-AN as ordered by PI/GRP NDB and on 25/4/2008 he was arrested by GRP/NDB vide CR No.10/08 u.s. 392, 34 of IPC dtd. 25/4/2008. He was taken on remand by GRP/NDB and recovery of loot amount Rs.2800/- was affected from his residence. He was released on Bail by Hon'ble JMFC/NDB on 28/4/2008 on the bail of cash surety of Rs.15,000/-. The aforesaid conduct of Constable Gautam Birade brought discredit to the reputation of the Force.

Thus, he violated rule 146.4 of RPF Rules, 1987. "

13. The petitioner had submitted his reply to the chargesheet served upon him wherein he has admitted the first charge levelled against him that he left the Headquarters without obtaining prior permission. The petitioner has, however, provided certain explanation to which we have referred here-in-above.

In so far as the second charge is concerned, it is the contention of the petitioner that a total false FIR was registered against him and he was noway concerned with the allegations made in the said FIR. He has further stated that in March, 2008, he had some quarrel with one PSI of GRP, namely, Shri Bhavsar and said Shri Bhavsar had threatened him that he will

teach a lesson to the petitioner and will certainly take revenge on him as and when occasion arises. According to the petitioner, the alleged FIR came to be registered at the instance of said Shri Bhavsar. In the departmental enquiry conducted against the petitioner only one witness was examined on behalf of the department, namely, Mr. I.N.Tiwari, IPF/NDV. In the report of the enquiry, the enquiry officer has referred to the evidence of said witness. On perusal of the evidence of said Shri Tiwari, it is revealed that the said witness has simply reproduced the averments in the FIR and stated the further fact that the petitioner was arrested, was produced before the concerned Magistrate and was eventually released on bail.

14. The petitioner, admittedly, did not examine any defense witness. The Enquiry Officer had framed following points for determination:

" (a) Whether D/Constable Gautam Birade left the HQ/NDB on 24/4/2008 w/o permission of competent authority ?

(b) Whether D/Constable Gautam Birade was arrested by GRP/NDB vide CR. No.10/08/ U/s 392, 34 IPC Dtd.25/4/2008 and aforesaid conduct of D/Constable Gautam Birade brought discredit to the reputation of the force ?"

The Enquiry Officer has recorded his conclusion in following words:

" In the light of evidence on record like statement of prosecution witnesses and documents, I have come to this conclusion that the charge levelled against D/Constable Gautam Birade of NDB are "PROVED".

15. The question arises, can the evidence brought in the departmental enquiry proceedings was sufficient to hold the petitioner guilty of the charges levelled against him in the said enquiry. As we have noted earlier, Shri Tiwari was not having any personal knowledge of the alleged incident. Whatever was stated by him before the enquiry officer was mere reproduction of the contents of the FIR registered against the petitioner vide Crime No.10/2008 for the offenses punishable under Section 392 read with Section 34 of IPC.

16. Though in the report of enquiry there is a reference that the statements of Head Constables Rajdhar Baisane and Kripashankar Sing were recorded, what was stated by these witnesses is not even briefly mentioned in the report of enquiry. Though it is settled law that the strict burden of proof required to establish guilt in a Criminal Court is not required in a disciplinary proceedings and preponderance of probability is sufficient, it noway means that without there being any reliable, independent evidence, the enquiry officer shall hold the delinquent before him guilty merely on the basis of the FIR

registered against the said delinquent and the statements recorded of the witnesses during the course of investigation of the said crime.

17. As held by the Honourable Apex Court in the case of Roop Singh Negi v. Punjab National Bank and Ors (cited supra), the purported evidence collected during the investigation by the investigating officer in a crime registered against the delinquent by itself could not be treated to be the evidence in the disciplinary proceedings. We find it appropriate to reproduce hereinbelow paragraph nos. 10 and 17 of the aforesaid judgment, which are specifically relied on by the learned Counsel for the petitioner:

"10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the

appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

18. In the enquiry conducted against the petitioner, admittedly, no witness has been examined to prove the contents of the FIR or the other documents having part of the criminal proceedings in the concerned criminal case registered

against the petitioner. Shri Tiwari, on whose evidence the enquiry officer has relied upon for holding the petitioner guilty, had only tendered the copy of the FIR and the related documents, however, did not prove the contents of the said documents. In fact, the FIR or the other related documents could not have been treated as the evidence. It is noticed by us that merely relying on the unproved contents of the FIR and the further undisputed fact that the petitioner was arrested in the said crime and was released on bail by the concerned Magistrate, the enquiry officer has recorded a conclusion that the petitioner brought C.R.P.F. in disrepute. It was sought to be canvassed by the learned Counsel appearing for the respondents, referring to the averments in the impugned orders that since the Central Railway Protection Force is an institute cast with the duty to take care of person, property and safety of the citizens, the employees working in the said institution must be above board and even a slight suspicion about their conduct can damage the reputation and the faith reposed by the public at large in the said institution. This contention is no doubt absolutely sound. However, as has been held by the Honourable Supreme Court, way back in the matter of **Union of India Vs. H.S.Goyal (1964 (4) SCR Page 918)**, even in such cases, the test which can be legitimately applied is: `Is

there any evidence on which a finding can be made against the delinquent holding that the charge levelled against him is proved against him'.

19. After having carefully considered the record of the enquiry conducted against the petitioner, even if the evidence laid in the enquiry is accepted as true, it does not appear to us that on the basis of such evidence, a finding could have been recorded, holding the petitioner guilty of the charges levelled against him.

20. We reiterate that filing on record the copy of the FIR was not enough to hold the petitioner guilty. On the basis of the unproved contents of the FIR in a criminal case, the petitioner could not have been held guilty in the departmental proceedings unless there is some evidence to indicate the possibility of commission of any such offense by the delinquent as alleged in the FIR. In absence of any such evidence, even the principle of preponderance of probability also cannot be applied. Admittedly, no witness was examined to prove the contents of the FIR. At least some evidence should have been brought on record to show that the petitioner had indulged in robbing the passengers, who were allegedly travelling without tickets, and were apprehended by Shri Sunil Pagare, the T.C.,

Admittedly, there was no direct evidence; even, there was no indirect evidence. We have already noted here-in-above that the only evidence which has been relied upon by the Enquiry Officer was the copy of the FIR tendered by witness Tiwari in the enquiry proceedings.

21. In the matter of **Roop Singh Negi v. Punjab National Bank and Ors** (cited supra), the appellant therein was held guilty in the departmental proceedings on his purported confession made by him before the Police. It was the contention of the said appellant that he was forced to sign on the said confession as he was tortured in the Police Station. The Honourable Apex Court, while allowing the said appeal, held that the said appellant being employee of the Bank, the said confession should have been proved, some evidence should have been brought on record to show that he had indulged in stealing the Bank Draft Book. The Honourable Apex Court has observed that the management witnesses merely tendered the document, that of confession of the appellant therein recorded by the Police but, did not prove the contents thereof. In the premise of the facts aforesaid, the Honourable Apex Court set aside the decision of the enquiry officer whereby he had held the said appellant guilty of the charges levelled against him.

22. In the instant case also, it is the contention of the petitioner that he has been falsely implicated in the alleged crime at the instance of one PSI Bhavsar with whom he had some quarrel in the past. In such circumstances, as noted by us earlier, the petitioner could not have been held guilty by the enquiry officer merely on the basis of the FIR registered against the petitioner. According to us, there was no evidence at all before the enquiry officer to hold the petitioner guilty. As has been observed by the Honourable Apex Court in the case of **Roop Singh Negi v. Punjab National Bank and Ors** (cited supra), the enquiry officer must arrive at the decision on the basis of some evidence which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceedings but the principles of natural justice are. Since the report of the enquiry officer is based on merely *ipse dixit*, as also surmises and conjectures, the same cannot be sustained. The inferences drawn by the enquiry officer, apparently, are not supported by any legally admissible evidence. Suspicion, as is well known, however high it may be, can, under no circumstances, be held to be a substitute for legal proof.

23. The petitioner cannot be held to have brought C.R.P.F. in disrepute only on the basis of registration of an

offense against him. Possibility of filing a false case against any person cannot be ruled out. Unless there is some more evidence, on the basis of which a prudent man can form an opinion, as about involvement of the person concerned in the crime registered against him, he cannot be held guilty for the offenses alleged against him in the crime concerned. We have discussed here-in-before that no such evidence was brought on record in the proceedings of enquiry. Arrest of the petitioner in the crime registered against him also cannot be given much importance and the petitioner cannot be said to have caused damage to the image of C.R.P.F. for the reason that once a crime is registered against a person for the cognizable and non bailable offense, he is bound to be arrested by the Police. As such, the conclusion recorded by the enquiry officer that registration of a crime against the petitioner and his arrest in the said crime did bring the C.R.P.F. in disrepute cannot be subscribed.

24. We have referred to the conclusion recorded by the enquiry officer here-in-before. The enquiry officer has recorded that, "In the light of evidence on record like statement of prosecution witnesses and documents, I have come to this conclusion that the charge levelled against D/Constable Gautam Birade of NDB are "PROVED". Admittedly, the evidence

adduced by the prosecution witnesses was 'hearsay'. The document which was produced on record by the prosecution witness was the copy of the FIR. The prosecution witness was not having having any personal knowledge of the alleged incident. None of the other witnesses whose names were revealing from the Police record were examined in the departmental proceedings. In the circumstances, it is quite clear that the enquiry officer has accepted the contents of the FIR to be gospel truth and on that basis held the petitioner guilty. In no case such finding can be supported.

25. Further, the disciplinary authority has also failed in appreciating that merely on the basis of a crime registered against the petitioner for an offense under Section 392 registered against him, the petitioner could not have been held guilty unless such trial of the said criminal case is culminated into conviction of the delinquent or such independent dependable evidence is brought on record in the enquiry proceedings indicating the possibility of the involvement of the accused in commission of the offenses alleged against him in the crime concerned. Though the disciplinary authority has recorded that, "I find from the relevant records that he was found indulging in corrupt practices of looting of the passengers as a result of which he was arrested by GRP/NDB vide CR 10/08

U/s. 392, 34 IPC" , from the material on record it is undisputed that the record brought in the enquiry proceedings was the copy of the FIR and other connected Police papers which were part of Crime No.10/2008 registered against the petitioner, contents of which were admittedly not proved.

26. We, thus, find that without proper application of mind, the disciplinary authority blindly accepted the report of the enquiry officer and awarded the punishment of compulsory retirement to the petitioner. Even in an appeal preferred by the petitioner with the appellate authority and eventually the revision application preferred by him before the Director General, RPF, Ministry of Railways, appears to have been passed mechanically, thereby confirming the order passed by the disciplinary authority.

27. It is a matter of record that after being acquitted from the concerned criminal case, the petitioner again approached the Director General, RPF, Ministry of Railways, with a prayer to review the earlier decision of compulsorily retiring him from the services of Cr.P.F., however, the said revision was also turned down relying upon one letter of Railway Board No.E (D & A) 95-RG.6-4, dated 7.6.1995. The said Board's letter provides that if the facts, circumstances and

the charges in the departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated / acquitted in the criminal case on merits (without benefit of doubt, or on technical grounds), then the Department case may be reviewed if the employee concerned makes a representation in this regard. In the affidavit in reply filed by the respondents, the same stand is taken by them.

The stand so taken in the aforesaid letter / circular dated 7.6.1995 appears to be contrary to the earlier communication dated 18th of June, 1985, issued by the Railway Board on the said issue, paragraph no.3 of which reads as under:

"3. The department of personnel has been consulted and it is clarified that while a distinction can be made between cases in which a court sets aside an order passed by an authority on technical grounds like failure to follow the prescribed procedure and a case in which a person is acquitted by a Court in cases of acquittal themselves, no further distinction is possible as "Hon'ble acquittal" or otherwise. An acquittal by a court is, acquittal from the charges framed against the accused and it has to be treated as such. In the circumstances, cases of acquittal by a court of law should be viewed as such and they should be distinguished from cases in which courts set aside orders of Government on technical grounds like failure to follow the prescribed procedure, failure to fulfill the requirements of article 311 of the Constitution etc. "

Otherwise also, we do not find the reasoning given by the reviewing authority to be legally sound.

28. For the afore mentioned reasons, the order dated 23rd December, 1998, whereby the petitioner has been compulsorily retired, cannot be sustained and deserves to be set aside. It is accordingly set aside. Needless to state that, once the original order of compulsory retirement is set aside, the orders dated 21.8.2009, 15.10.2010 and 11.12.2013, passed by the respective officers in appeal / revision shall be deemed to have been set aside. In the result, though we are directing the respondents to reinstate the petitioner with continuity of service, we are not inclined to grant the relief of backwages or other monetary benefits of the intervening period to the petitioner for the reason that the petitioner has approached this Court belatedly. Further, the petitioner has failed in making out any case and bringing on record any substantive evidence proving his entitlement for the relief of backwages. More importantly, during the course of hearing of this petition the learned Counsel for the petitioner, on instructions, had made a submission that in the event of his reinstatement, the petitioner would not claim the backwages or other monetary benefits of the intervening period and would be satisfied with the relief of reinstatement with continuity of service. In the circumstances, we direct the respondents to

reinstate the petitioner with continuity of service.

Rule made absolute in above terms. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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AGP/1644-14wp