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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8127 OF 2005

Union of India through
General Manager Central Railway,
Mumbai CST.

..Petitioner.

Vs.

Mr. Suresh Chadra Sharma

..Respondent

Mr. T.J. Pandian for the Petitioner.

Mr. Ramesh Ramamurthy a/w Saikumar Ramamurthy for Respondent.

**CORAM: R.M. BORDE AND
A.S. GADKARI, JJ.**

DATE: 5 JANUARY 2017.

ORAL JUDGMENT (Per R.M. Borde, J.):-

Heard.

2] The Petitioner-Union of India is raising exception to the Order dated 24 June 2005 passed by the Central Administrative Tribunal in Original Application No.246 of 2004. The Central Administrative Tribunal allowed the Original Application presented by the respondent-employee herein and remitted the matter back for reconsideration to the appropriate authority.

3] The respondent was serving in railway establishment as a Head Booking Clerk at Kalyan Station in the year 2001 and was allegedly involved in a vigilance trap and was found overcharging a decoy passenger by Rs.10/- and was detected with shortage of railway cash of Rs.175/-. A chargesheet came to be issued by the department on 6 June 2001 for two charges namely (1) overcharging the decoy passenger Rs.10/- on sale of ticket Ex-Kalyan to Barabanki and (2) was detected with a cash shortage of Rs.175/- in the railway cash.

A departmental inquiry was conducted in respect of charges framed against the respondent and according to the Petitioner, the respondent was extended full and fair opportunity to defend the charges. The Inquiry Officer tendered a report on 6 March 2002 holding that both the charges levelled against the respondent were proved and he was found guilty for the same. A copy of the inquiry report was furnished to the respondent to facilitate him to submit his representation on Inquiry Officer's report. The Disciplinary Authority after considering the representation of the respondent and after considering the entire inquiry proceedings, passed an Order on 11 June 2002 imposing major penalty of removal from service against the respondent. An appeal preferred by the respondent before the Appellate Authority came to be dismissed by an

Order dated 26 November 2002.

The respondent further represented to the Additional Divisional Railway Manager (ADRM) against the decision of the Appellate Authority. However, the Revisional Authority i.e. ADRM did not consider the representation of the respondent favourably and rejected the same. Being aggrieved by Order of the disciplinary authority as well as the Appellate Authority and Revisional Authority, the respondent-employee approached the Central Administrative Tribunal, Mumbai by presenting the Original Application bearing No.246 of 2004. The Central Administrative Tribunal allowed the Original Application partly and remitted the matter back to the appropriate authority for reconsideration which Order is impugned in the present petition.

4] The respondent has primarily raised two objections before the Central Administrative Tribunal. The first objection relates to the competence of the Disciplinary Authority who imposed the punishment and second relates to Independence of the Revisional Authority in dealing with the matter.

As far as objection as regards the competence of the disciplinary authority imposing punishment is concerned, according to the

respondent the Divisional Commercial Manager who had issued the impugned Order dated 11 June 2002 imposing the punishment of removal from service, was not competent to impose the punishment. The Tribunal found favour with the said objection raised by the respondent and held that the Divisional Commercial Manager (Coaching) who was not having independent charge as borne out from the record of Senior Divisional Commercial Manager had passed an Order dated 26 November 2002 rejecting the appeal of the respondent-employee. According to the Tribunal, since the Senior Scale Officer (Sr.D.C.M.) has no powers to impose major penalties mentioned in Col. 3(a), 3(b) 4, 5(a) and 5(b), he cannot impose the penalty of compulsory retirement and dismissal from service. The Tribunal, as such, concluded that on the aforesaid ground raised by the respondent, the Order passed by the Disciplinary Authority is liable to be quashed and set aside.

As far as the second objection raised by the respondent-employee as regards independence of the Revisional Authority in dealing with the matter is concerned, according to the petitioner the Disciplinary Authority has acted under the advise of the vigilance department. The Disciplinary Authority before issuance of Order directing imposition of punishment, had consulted the Revisional Authority. It is contended that

the Revisional Authority before proceeding to direct imposition of penalty has consulted the vigilance department and with the aid and advise of the vigilance department the punishment has been imposed. It is further contended that the authority directing imposition of the punishment has not acted independently. The Tribunal has recorded its finding in para-11 of the Judgment dated 24 June 2005 agreeing with the contention of the counsel for the original applicant that the vigilance authorities have interfered in imposing the penalty by the Revisional Authority. It is further recorded that the authorities in such circumstances cannot be expected to apply its independent mind in particular disciplinary case.

The learned counsel appearing for the petitioner-Union of India relies on the Circular dated 16 May 2001 issued by the Government of India, Ministry of Railways bearing No.RBE No.93/2001 and submitted that the procedure adopted by the railway authorities is perfectly in consonance with the procedure laid down by the Ministry of Railways in para-1 of the said Circular. The para-1 of the Circulated dated 16 May 2001 thus reads as under:

“The role of Vigilance Organisation in the non-CVC disciplinary case, which arise out of their investigations, was one of the items in the agenda of the JCM/DC meeting held

with the staff side in June, 2000. Pursuant to the discussions in the meeting and after further examination of the issues raised by the staff side, Board would like to clarify/specify as under:

(i) Appointment of Inquiry Officer is the prerogative of the Disciplinary Authority. In majority of the cases, the Vigilance Organisation will leave the choice of Inquiry Officer completely with the Disciplinary Authority. In such a case, while appointing Inquiry Officer, Disciplinary Authority may ensure that the officer being appointed by him for conduct of Inquiry is of sound integrity and possess adequate knowledge of rules and procedures in regard to conduct of inquiry, which is a quasi-judicial proceeding.

(ii) However, in some cases, the Vigilance would forward a panel of Inquiry officers, indicating the number of inquiries pending with each one of them. The Disciplinary Authority in that case may choose one out of panel and appoint him as Inquiry Officer. In cases involving more than one charged official, special care may be taken by all the concerned DAs to appoint the same inquiry officer out of the panel of I.O's sent by Vigilance.

(iii) In terms of this Ministry's letter No.78/V-1/CVC/1/2, dated 17.3.1989, the disciplinary authority may give due regard to the advice of the Vigilance Organisation and strive to remove/reduce areas of disagreement, if any, with the Vigilance, by mutual consultation and discussion. However, if there is still a disagreement, the disciplinary authority is free to take an independent decision on the case.

In partial modification of the Ministry's aforesaid letter dated

17.3.1989, it has been decided that if, in a case, the Vigilance has recommended a major penalty and the disciplinary authority proposes to exonerate or impose a minor penalty, the disciplinary authority should first record his provisional order and then consult Vigilance Organisation once. However, if, after such consultation, the Disciplinary Authority is not in agreement with the views of Vigilance, then he/she is free to proceed and pass speaking order about the penalty. The Vigilance Organisation may, if they so consider, seek revision of the penalty by the appropriate authority.

Likewise, where a major penalty has been imposed by the disciplinary authority in agreement with the recommendations of the Vigilance but the appellate/revisionary authority proposes to exonerate or impose a minor penalty, the appellate/revisionary authority may first record provisional decision and consult the Vigilance Organisation once. After such consultation, the appellate/revisionary authority is free to take a final decision in the matter and record his/her views about penalty through speaking order.”

5] It cannot be controverted that the Vigilance department is expected to conduct investigation and collect material against delinquent-employee and produce the same for consideration during the departmental inquiry proceedings. The Vigilance department represents the Railway Organisation in the proceedings initiated against the delinquent-employee. The Circular dated 16 May 2001 mandates that wherever Vigilance recommends imposition of major penalty and the Disciplinary Authority proposes to exonerate or impose a minor penalty, the disciplinary authority should first record his provisional order and then consult Vigilance Organisation once. It is further directed under the said Circular that, if, after such consultation, the Disciplinary Authority is not in agreement with the views of Vigilance, then he/she is free to proceed and pass speaking order about the penalty. The Vigilance Organisation may, if they so consider, seek revision of the penalty by the appropriate authority. An obligation cast upon the Disciplinary Authority in the departmental proceedings initiated against the delinquent-employee, before imposition of punishment, to consult the Vigilance Organisation. It is also expected from the Disciplinary Authority to prepare the provisional Order and forward it so as to facilitate the Vigilance Organisation to communicate its

response. The Disciplinary Authority is expected to consult the Vigilance Organisation before finalisation of the Order directing imposition of the penalty. In view of the said Circular, the independence of the Disciplinary Authority is severely affected and the Tribunal is perfectly justified in recording a finding that the Disciplinary Authority or the Revisionary Authority in the instant matter were not left with independence to take a decision on considering the merits of the matter, however, they were required to act as per the advice of the Vigilance Organisation though it is recorded in the Circular that the Disciplinary Authority has freedom to pass appropriate Order. However, considering the tenor of the directions issued under the aforesaid Circular, it is clearly revealed that the independence of the Disciplinary Authority or the Revisionary Authority in the matter of taking decision is severely affected.

Our attention is also invited to the Communication dated 18 March 2002 transmitted by the Senior Dy. General Manager recommending imposition of stiff major penalty. It is further recorded in para-2 of the said Communication that, if the Disciplinary Authority/Appellate Authority/Revisionary Authority does not agree with the Vigilance advice, he may record his provisional conclusions with detailed justification without communicating the same to the delinquent-employee

and remit the case to the G.M.(Vigilance) for advice. It is thus clear that, the Disciplinary Authority/ Appellate Authority/Revisionary Authority were instructed to record their provisional conclusions with detailed justification and remit the case to the G.M.(Vigilance) for his advice. The advice rendered by the Vigilance was expected to be considered by the Disciplinary Authority/ Appellate Authority/Revisionary Authority. The procedure that has been directed to be observed in the departmental proceedings by the Vigilance Department, severely affects the independence of the Disciplinary Authority/ Appellate Authority/Revisionary Authority and tends to interfere in the process of independent decision making in the disciplinary inquiry. Such a procedure of authorising the Vigilance Department which assumes role of the prosecutor to participate in the decision making process is surely in breach of the principles governing conducting of departmental inquiries. Apart from the fact that such procedure would restrict the application of the principles of a natural justice. The prosecutor or the Presenting Officer is permitted to participate in the decision making process in view of the instructions issued by the Railway Department under its Circular referred to above. The procedure that has been followed cannot be approved and therefore we are of the opinion that the Central Administrative Tribunal

was justified in remitting the matter back for reconsideration.

6] So far as the other issues raised by the Petitioner with regard to the competence of the Divisional Commercial Manager to pass such order of issuing directions imposing punishment is concerned, a reliance is placed by the respondent-employee on a Judgment dated 25 June 2008 in the matter of Union of India Vs. Mr. LC. Ahirwar passed in Civil Writ Petition No.4538 of 2005 by the Division Bench of this Court. The facts giving rise to the aforesaid matter are identical to the facts involved in the instant matter. The issue as regards the competence of the Divisional Commercial Manager who issued the Order directing imposition of punishment was also raised in the aforesaid case. However, the Division Bench was not impressed by the submissions and found that, there was no patent illegality in the view that has been taken by the Tribunal in the said matter. In the instant matter also, the Tribunal has granted liberty to the competent authority to consider the issue and impose appropriate punishment. Taking an overall view of the matter, we are also of the opinion that it will not be in the interest of justice to interfere with the Order passed by the Central Administrative Tribunal, impugned in this petition.

7] The learned counsel appearing for the petitioner strenuously urged that the relevant service rules were not taken into account by the Division Bench while passing the aforesaid Order. In any case, we are of the view that the Order of remand passed by the Central Administrative Tribunal is sustainable on the ground that the Order passed by the authorities is a result of influence exercised by the Vigilance Department and no independent decision has been arrived at by the authorities directing imposition of punishment. Thus, the Order of the Central Administrative Tribunal is sustainable in law. It would not be necessary to deal with any other grounds raised by the petitioner as regard to the competence of the Divisional Commercial Manager to pass the impugned Order. It is also noteworthy to mention that the respondent-employee is likely to attain the age of superannuation on 30 January 2017 and therefore it would be unfair to detain the matter in this Court any longer. The ends of justice would meet if the authorities higher than the Divisional Commercial Manager deals with the issues and pass appropriate order.

8] In view of the above, without prejudice to the rights and contentions raised by the petitioner, the matter shall have to be dealt with

by an authority superior than the Divisional Commercial Manager in pursuance of Order of remand passed by the Central Administrative Tribunal and we direct accordingly. We further direct the concerned authority to take its decision in the matter in consonance with the directions issued by the Central Administrative Tribunal as expeditiously as possible and preferably within a period of three months from today.

9] Rule stands discharged. There shall be no order as to costs.

10] Parties to act upon the copy of the Order duly authenticated by the Registry of this Court.

(A.S. GADKARI,J.)

(R.M. BORDE, J.)