

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Writ Petition No.10963 of 2013

1. The Chief Electrical Service Engineer,
Union of India,
Southern Railway,
NGO Annexe Building,
Park Town, Chennai - 600 003.
2. The Additional Railway Manager - II,
Southern Railway, Madras Division,
NGO Annexe Building,
Park Town, Chennai - 600 003.
3. The Senior Divisional Electrical Engineer,
Southern Railway, Madras Division,
NGO Annexe Building,
Park Town, Chennai - 600003.
4. The Divisional Electrical Engineer,
Southern Railway, Madras Division,
NGO Annexe Building,
Park Town, Chennai - 600 003. ... Petitioner

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

2.C.Nallathambi ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the entire records of the first respondent in O.A.No.515 of 2010 and quash the order, passed therein, dated 04.01.2013.

For petitioner : Mr.A.P.Srinivas

For 2nd respondent : Mr.P.Mohanraj

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this petition is to an order of the Central Administrative Tribunal, Madras, made in O.A.No.515 of 2010, dated 04.01.2013, by which, the Tribunal has quashed the order, imposing multiple punishment to the 2nd respondent-employee and directed the petitioners to grant all consequential benefits.

2. Brief facts leading to the filing of the writ petition are that the second respondent was an employee of the Southern Railway and working as an Assistant in AC Coach. When he was on duty on 9.6.1998, in Train No.6605, Blue Mountain Express, bound for Nilgiris from Chennai Central, a Vigilance check was conducted by the Chief Vigilance Inspector, viz., Mr.Murugan. During the check, it was found that the second respondent has collected a sum of Rs.800/- as fare and Rs.100/-, as tips from a passenger, namely, Mr Saravanakumar and allowed him to occupy a berth, as if, he was a companion of a freedom fighter, namely, Mr.Chinnaiah Gounder, who was traveling in the same train and handed over Rs.800/- to the freedom fighter and retained Rs.100/- with him. Upon enquiry with the freedom fighter and verification of his pass, it was found that the said Saravankumar was not his authorised companion and the said Saravanakumar was asked to pay for his journey and a ticket was issued to him and the entire amount of Rs.900/-, was recovered from the second respondent and the said freedom fighter. When the check was over and papers were prepared by the Vigilance Inspector, the second respondent, along with another attendant, namely, A.R.Vittal pleaded him not to involve the second respondent in the incident and to drop his name and quarrelled with the Vigilance Inspector and the second respondent further threatened the vigilance Inspector with dire consequences, if he proceeds further. This was witnessed by the Chief Travelling Ticket Inspector, Mr.Alagesan and one passenger, namely, Mr.Suryanarayanan, DGM, Arvind Mills Ltd. During the commotion, the Vigilance Inspector was cornered to a berth and second respondent snatched the suit case, containing the documents, from the Vigilance Inspector and tore the documents relating to the incident, including the freedom fighter's pass and in the process, the Vigilance Inspector suffered scratches and other minor injuries on his hands. For the abovesaid serious misconduct committed by the second respondent, a Charge memo was issued by the Divisional Electrical Engineer, Southern Railway, Madras Division, Chennai, fourth petitioner, in No/CON/E/1219 dated 05.11.1998, wherein two charges were framed against him. Articles of charges levelled read as follows:

"Sri C. Nallathambi, ACCAIMAS while working as such by Train No.6605 Exp, which left MAS on 9.6.1998 acted in a manner showing lack of integrity, devotion to duty and unbecoming of a Railway Servant in that

1. He prevented and obstructed Shri M. Murugan, Chief Vigilance Inspector/MAS from

performing his assigned official legitimate duties.

2. He destroyed the Railway documents which indicated that the ACCAs had, for a consideration arranged for Sri Saravanakumar to be carried as a companion to a freedom fighter Sri. Chinniaya Gounder.

Thus he violated the provision of Rule 3.1 (I) (II) & (III) Railway (Conduct) Rules, 1966."

3. The 2nd respondent denied the above charges. Thereafter, enquiry proceedings were conducted, as per the procedure and the disciplinary authority held the charges against the 2nd respondent, as proved and imposed major penalty of removal from service with effect from 30.06.2008, vide order, dated 30.06.2008. The 2nd respondent preferred an appeal on 04.07.2008, before the appellate authority and the appellate authority, vide order, dated 27.08.2008, modified the penalty of removal from service into one of reduction in rank and reverted the second respondent to the post of AC Khalasi, in the scale of Rs.2550-3200 and the said order reads as under:

"You are reverted to the post of AC Khalasi in Scale Rs.2550-3200 on pay fixed at Rs.2550/- for a period of Six years which will affect the grant of future increments & Seniority. On expiry of Penalty, you will not be restored back to original and you will earn your increment freshly in the grade of AC Khalasi. Accordingly, you are reinstated to service and reverted as AC Khalasi Helper Gr-II for a period of 6(Six) years with the effect of postponing future increments with effect from the date of joining to duty and your pay is fixed at Rs.2550/- in scale Rs.2550-3200. On restoration, you will be placed junior most to all the existing Khalasis in-date and those who have been appointed during the above period. The intervening period from 30.06.2008, to the date of joining to duty on reinstatement is treated as DIES NON".

4. Aggrieved against the said order, the 2nd respondent preferred a revision on 06.10.2008 to the revisionary authority. Additional revision petition, dated 13.10.2008, has also been filed before the revisionary authority. While the same was pending, he approached the Central Administrative Tribunal in O.A.No.1056 of 2009 and the Tribunal, vide order dated 4.11.2009, has directed to dispose of the revision, dated 06.10.2008. The 2nd respondent also submitted a representation, dated 27.11.2009. The Chief Electrical Service Engineer, Southern Railway, Chennai, revisionary authority, vide order, dated 18.12.2009, rejected the revision petition, dated 13.10.2008, by confirming the penalty imposed on the 2nd respondent. The said order of the first petitioner has been challenged in O.A.No.515 of 2010, on the following grounds:

(A) The respondents ought to have considered the various grounds raised by the applicant in his review petition dated 6.10.2008 and that the impugned order dated 18.12.2009, a non speaking and violative of rules; the respondents failed to follow the procedure contemplated under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968.

(B) The respondents have only considered the additional revision petition, dated 13.10.2008 but failed to consider the revision petition, dated 6.10.2008 wherein he raised vital points in support of his claim as per the direction of the Tribunal in O.A.No.1058 of 2009, dated 4.11.2009, wherein he raised vital points in support of his claim and thus impugned order is unreasonable and unlawful.

(C) The criminal case and the departmental proceedings against the applicant were based on the same set of facts and evidence and in the Criminal Case No.506 of 1999, the applicant was acquitted by the Hon'ble Judicial Magistrate-III, Salem holding the prosecution has not proved the guilt alleged against the applicant beyond any reasonable doubt and thus he was acquitted by order dated 9.9.2009. No appeal was preferred against the judgment. Thus the respondents proceeding against the applicant on the same set of facts is unjust and unfair.

(D) The applicant's earlier promotion order dated 31.1.2003 promoting him to the post of Technician Grade III was subsequently canceled by order dated 12.6.2003 on the ground of pendency of change memo dated 5.11.1998. Despite that now, multiple punishment have been imposed against the applicant which is grossly disproportionate to the charges leveled against him. By the impugned order he has been reverted to f0lJf stages below such as ACCAlI, ACCAlII, AC Khalasill, AC Khalasi Helper Grade II.

(E) The charge memo was issued in the year 1998, enquiry officer submitted his report in 2007 after a period of more than 9 years whereas he was acquitted in the criminal case in year 2000 itself. The applicant is to retire on superannuation on 31.7.2014 and as per the impugned punishment order, he will not see any further promotion in future service. The inordinate delay in concluding the disciplinary proceedings has caused a great prejudice which is violate of Railway Board's instruction in NO.E(D&A)69 RG-6-17 of 8.1.71 N.R., S.No.5235 according to which. a disciplinary proceedings has to be finalised within the period of 202 days. Also as per Railway Boards No.E(D&A) 70 RG-6-14 of 20-4-71, N.R., S.No.5314 the total time within which the disciplinary authority is

required to take a final decision on the enquiry report and issue notice of imposition of penalty is 55 days. However, in the instant case charge memo was issued in 1998 itself but final order was passed only in 2008 after inordinate delay of 10 years by which time the applicant had already suffered enough mental agony and sufferings, which is contrary to the Boards instructions and also the dictum laid down by the Hon'ble Apex Court.

(F) The third respondent has not issued any notice as per Railway Board's Order in NO.E(D&A) 70 RG-6-14 of 20-4-71, N.R.S.No.5314 and that reasonable opportunity was also denied thus the impugned punishment order is liable to be set aside.

(G) The findings are not based on evidence as the witnesses in the disciplinary proceedings, the complainant namely Mr.M.Murugan, the preliminary enquiry officer Mr.C.Mani, the Presenting officer Mr.P.Kasi Viswanathan and the enquiry officer Mr.V.D.Sunny were all working in the vigilance department which caused great prejudice to the applicant in the enquiry. The representation submitted by the applicant for change of enquiry officer was also not considered by the disciplinary authority.

(H) The enquiry officer has failed to consider the fact that the prosecution has not taken any steps to bring Mr.Saravana Kumar and Mr.Chinnaiya Gounder (independent Witnesses) to prove the charge framed against the applicant whose present were just and necessary before the enquiry. The names of these two persons find place in the charge memo and only on that basis charges were framed.

(I) The respondents failed to consider Exhibit S-1 which existed at the time of checking does not reveal any such alleged incident and thus the impugned order in so far as the imposition of punishment concerned is therefore liable to be set aside.

(J) Mr.Azhagesan SW-1 categorically stated that major portion in page 3 of Exhibit S-10 was not written by him but were written only because Mr.Murugan the complainant asked him to write so when the statements was given by him to C.Mani, the preliminary enquiry officer. The presenting office in his defence brief stated that the answer given by SW-1 to question NO.9 can not be accepted and it has been told in enquiry forum and thus..be retracted from his original statement given to the vigilance.

(K) The enquiry officer has given a finding based on the statement of M.Murugan and the said Murugan has no where stated in his evidence that he went for the vigilance check along with other

co staffs. The respondents have failed to consider these vital facts.

(L) The findings of the enquiry officer based on the letter and the fax message given by one V.G.Surya Narayanan is not legally acceptable one and no one has seen the said V.G.Surya Narayanan in the train and he neither appeared before the enquiry nor given any statement in person. Thus reliance on the so called letter and the fax message is highly illegal and in violation of principles of natural justice.

(M) The respondents have failed to consider the fact that the findings of the enquiry officer was based on contradictory statements given by Murugan which is highly illegal and not acceptable. No original documents were produced before the enquiry and only copy of the tom papers were produced which is not admissible as legally acceptable evidence.

(N) From the initiation of disciplinary proceedings till the date of receipt of applicant's representation dated 15.2.2008, the 4th respondent acted as disciplinary authority but the order of removal dated 30.6.2008 was issued by the third respondent (higher in rank) who is the appellate authority. No prior permission as per procedure was obtained before change of disciplinary authority.

(O) The respondents have not at all considered the above points put forth by the -applicant and that the second respondent passed the impugned order without considering the valid reasons put forth by the applicant.

(P) The charge memo issued to both the applicant and one A.R.Vittal and the criminal case lodged against both of them, order of removal was imposed on both. However, on appeal different orders were passed wherein lesser punishment of stoppage of increment was imposed on Mr.Vittal whereas the applicant is imposed with multiple punishment. The action of the respondent is highly unfair, illegal and amounts to discrimination. Accordingly he prayed that the impugned orders are liable to be set aside."

5. Before the Tribunal, the petitioners have filed a reply before the Tribunal, contending inter alia that in the criminal case, the 2nd respondent was acquitted, due to the fact that benefit of doubt, was extended and the principles governing the criminal proceedings and disciplinary proceedings, are entirely different and therefore, it was proposed to continue with the departmental inquiry. The enquiry was conducted in the year 1999 to 2007 and the disciplinary authority concluded that the 2nd respondent was guilty of the charges and penalty of removal from service was imposed. Having considered his appeal, dated 04.07.2008, the appellate

authority modified the penalty of removal to that of reduction to the post of AC Khalasi, in terms of sub rule (vi) of Rule 6 of the Railway Servants (Discipline and Appeal) Rules. 2nd respondent's revision petition, dated 13.10.2008, was considered by the first respondent, confirming the penalty already imposed by the appellate authority. While confirming the order of the second petitioner, the first petitioner has accepted all the reasons given for penalty of reduction to the post of AC Khalasi imposed on the 2nd respondent. Further, the 2nd respondent has raised the same grounds only. Inasmuch as, the 2nd respondent's revision petition has been considered in accordance with law, there is no infirmity in the impugned order passed by the first petitioner.

6. The petitioners before the Tribunal, further submitted that the charge before the criminal court is entirely different from the charges in the disciplinary proceedings and that acquittal in the criminal proceedings does not debar the department from proceeding against the delinquent in a departmental proceeding. In the criminal case, the 2nd respondent was only given the benefit of doubt, on account of the non-production of the suitcase and the medical report of the public servant. The departmental proceedings are based on the theory of probability. The petitioners further stated before the Tribunal that the charges in the departmental proceedings have been proved by the statement given by the 2nd respondent as well as by the statement furnished by the witnesses, who were present during the assault. The departmental is not debarred just because the 2nd respondent was acquitted in the criminal proceedings as has been laid down by the Hon'ble Supreme Court in Captain Paul Antony's case.

7. Before the Tribunal, the petitioners further submitted that imposition of multiple punishment, as to how, to assign seniority, as well as on restoration of the 2nd respondent, after imposition of punishment, which is in terms of sub-rule (vi) of Rule 6 of the Railway Servants (Discipline and Appeal) Rules and in accordance with railway Board's letter No.E(D&A)/2001/RG-6/58, dated 28.11.2002 and thus, the penalty ordered cannot be considered as imposition of multiple punishment. It was further stated that the gravity of the charges in the departmental enquiry are different in the case against the applicant and Mr.R.Vittal. Each case has to be decided on the merits of the case. Just because, a lesser punishment was awarded to another delinquent, it is not mandatory to impose lesser punishment on the 2nd respondent. The 2nd respondent has played a major role in assaulting the Vigilance Inspector and destroyed the Railway documents and permitted an unauthorized passenger in the reserved coach and therefore, deserves to be imposed a higher punishment.

8. After careful consideration of the rival contentions and considering the facts and circumstances of the case, the Central Administrative Tribunal, Madras Bench, Chennai, vide order, dated 04.01.2013, in O.A.No.515 of 2010, held as follows:

"6. We have heard the learned counsel for both sides and carefully perused the entire documents and relevant papers available on record. Now the question that arises for our consideration is whether the impugned order imposing penalty on the applicant dated 18.12.2009 confirming the order passed by the second respondent dated 27.8.2008 is in order and if so what orders.

7. The charge memo was issued in 1998 and the criminal case filed against the applicant in C.C.No.506/09, on the same set of facts ended in acquittal in 2000 by order dated 9.9.2000. Even though the respondents could initiate departmental proceedings, We are not able to understand as to why the respondents have taken such a long time to pass final order in the disciplinary proceedings up to 2008 i.e., for a period of 10 years which could have naturally caused prejudice in conducting free and fair enquiry. No satisfactory reason has been given by the respondent for the enormous delay in concluding the disciplinary proceedings. That apart, the applicant was given promotion as Technician Grade III in the scale of pay of Rs.3050-4590 by order NO.M/P1(ET)535/V/AC/VoI.XIII, dated 31.1.2003. However, vide order dated 12.6.2003, he was reverted back as ACCA/FC in Scale of Rs.2750-4400, on the ground that charge memo dated 5.11.1998 was pending. The respondents at the first instance dismissed the applicant from service and later on modified the punishment to that of reduction in rank. A perusal of the penalty also shows that

(i) the applicant who was working in the post of ACCA/MAS in the scale of Rs.2750-4000 was reverted to the post of AC Khalasi in the scale of Rs.2550-3200 and his pay was fixed at Rs.2550/- for a period of six years.

(ii) The respondents further imposed a penalty that on expiry of the period of penalty after six years, the applicant would not be restored back as ACCA/MAS to the scale of pay of Rs.2750-4000 and that he will not earn increment in the reverted AC Khalasi post also which according to us seems to be disproportionate punishment.

(iii) The respondents have further gone to the extent that his future increment in the reverted post of AC Khalasi Helper Grade II also was postponed without mentioning period.

Thus we find that the impugned order of penalty imposing multiple punishment on the applicant is not in accordance with rules governing the imposition of penalty on the applicant for major or minor charge. A careful perusal of the enquiry proceedings also shows that the respondents have not brought the necessary witnesses during the course of enquiry to prove the charge which the applicant raised in his review petition dated

6.10.2008. The inordinate delay in concluding the disciplinary proceedings has also caused a great prejudice.

8. In view of the foregoing discussion, we are of the view that the penalty imposed on the applicant vide impugned order is in the nature of imposing multiple punishment, on the applicant which is violation of the principles of natural justice and against rules. While observing that there is definitely misconduct on the part of the applicant, we also observe that the respondents have acted irrationally and improperly while imposing the penalty which is not in accordance with rules. Accordingly we are of the firm opinion that the Impugned order under challenge in (i) No.P (A)87/2008/117, dated 18.12.2009, confirming the orders passed by the second respondent In No.M/CON/E/1219, dated 27.8.2008 are liable to be quashed and set aside In so far as the applicant is concerned and we do so. As the applicant had already undergone sufficient punishment all along these periods, we are not inclined to remit the matter back to the respondents.

9. In the result, the OA Is allowed and the impugned orders are quashed In so far as the Imposition of punishment against the applicant is concerned and direct the respondents to grant all consequential benefits."

9. Being aggrieved by the same, the present writ petition is filed by the petitioners, on the following grounds,

(a) The impugned order passed by the first respondent-Tribunal setting aside the punishment imposed on the delinquent in its entirety even without remitting back the matter for imposing a lesser or some other punishment is wrong, contrary to law and opposed to the facts of the case.

(b) The Tribunal has erred in setting aside the punishment in its entirety after holding that there is definitely misconduct on the part of the delinquent.

(c) The Tribunal ought to have sustained the penalty imposed the appellate authority once it came to the conclusion that the misconduct is proved.

(d) Once the Tribunal held that the misconduct is proved then the setting aside of punishment is not correct and the imposition of punishment is well within the domain of the disciplinary authority and as well as the appellate authority. Hence the order of the Tribunal setting aside the imposition of penalty is wrong.

(d) Findings of the Tribunal that the punishment imposed is in the nature of multiple punishment is wrong and unwarranted one.

(f) The 3rd petitioner, being the Disciplinary

authority, imposed the punishment of removal from service. The 2nd petitioner in appeal modified that punishment as Reversion of post (Reduction to a lower post). While the Disciplinary authority imposing the punishment of reduction to a lower post, Rule 6(vi) of the Railway Servants (Discipline and Appeal) Rules, 1968 empowers the disciplinary authority/punishment authority to issue further directions with regard to the restoration of grade or post or service and his seniority and pay on such restoration. Hence the modified punishment imposed by the 2nd petitioner while exercising his appellate powers is perfectly right and is in accordance with law.

(g) As per Rule 6(vi) of the Railway Servants (Discipline and Appeal) Rules, 1968, the disciplinary authority has powers to give further directions while imposing the punishment of reduction to a post and accordingly the disciplinary authority herein has given further directions only and it cannot be termed as imposing of multiple punishments.

(h) The Railway Board by its letter No.E[D&A]/R6/6-46, dated 30.07.1964 has elucidated the nature of penalties to be imposed under sub rule (vi) of Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. Hence it is clear that the Disciplinary authority while imposing the penalty, has to indicate whether the railway servant is eligible for repromotion on restoration or if he is reduced to the lower post, then he has to indicate the number of years for which he will not be drawing increments and also specify the seniority of the delinquent. Thus the punishment imposed on the second respondent, by the 2nd petitioner is punishment with further directions as per the rules and it is not a case of multiple punishment.

(i) The Tribunal misconstrued the further directions given by the Appellate Authority regarding the conditions of restoration to the grade or post or service from which the delinquent was reduced and his seniority and pay on such restoration to that grade, post or service as multiple punishments. (J) The Tribunal that punishment imposed is in the nature of multiple punishments and it is in violation of natural justice and against rules is unjustifiable and it is a perverse finding.

(k) The Tribunal has totally failed to consider the relevant provision of law with regard to the imposition of punishment.

(l) There is no violation of natural justice at any point of time during the entire enquiry proceedings. When there is no violation of principles of natural justice in the enquiry proceedings, the concept of natural justice in imposing the punishment alone is strange to service

law jurisprudence.

(m) The misconduct by the second respondent is clearly proved in the departmental enquiry by both oral and documentary evidences and the misconduct is serious in nature. The delinquent has misbehaved with the Vigilance officer during vigilance check with motive to destroy the evidence documents which will be cited against him in the enquiry proceedings and such a misconduct is danger to the administration of system and hence the punishment of reversion of post is correctly awarded by the second petitioner appellate authority after considering the fairly clean service record of the second respondent. The delay in completing the enquiry is not relating to the charges or the proceedings. Further the delay is sufficiently explained by the Department that the second respondent delinquent himself caused the delay and further the simultaneous proceedings before the Criminal Court in CC.No.506 of 2009 also caused delay. While so without considering or reversing the said findings, the Tribunal erred in saying that the department has not examined the witness to prove the charges and there is delay in completing the enquiry and thus it caused prejudice to the delinquent.

(n) The Tribunal even without suggesting a minimum punishment, aside the punishment in its entirety and thus, the Tribunal has exceeded its jurisdiction and it assumed unfettered powers which is against the established principles of service law and various judgments of the Supreme Court and our High Court."

10. The 2nd respondent has filed a detailed counter affidavit to the writ petition, stating that a charge memo was issued to him, by the Divisional Electrical Engineer, Southern Railway, Madras Division, vide proceedings, dated 05.11.1998. Two charges were framed against him and he submitted his explanations, denying the above said charges. However the explanations given by him, were not accepted and an enquiry officer was appointed to conduct an enquiry for the above said charges. After an inordinate delay of more than 9 years and without examining the persons whose names were found place in the charge memo, the Enquiry Officer submitted his report on 27.11.2007, holding that the charges framed against him are proved. The copy of the said Enquiry Report was furnished to him, vide letter dated 25.01.2008. He submitted his additional explanations to the Enquiry Officer's Report on 15.02.2008. However, the Senior Divisional Electrical Engineer, Southern Railway, Madras Division, without considering the valid points raised by him, passed an Order, dated 30.6.2008, imposing punishment of removal from service. Against the said order of removal for service, he preferred an appeal to the Additional Railway Manager-II, Southern Railway, Madras Division, NGO Annexe Building, Park Town, Chennai-600003 on 04.07.2008. Vide order, dated 27.08.2008, the Additional Railway Manager-II,

Southern Railway, Madras Division, has modified the order passed by the Senior Divisional Electrical Engineer, Southern Railway, Madras Division dated 30.06.2008, as follows: -

"you are reverted to the post of AC Khalasi in scale Rs.2550-3200 on pay fixed at Rs.2550/- for a period of Six years which will affect the grant of future Increments & Seniority. On expiry of Penalty, you will not be restored back to Original and you will earn your Increment freshly in the grade of AC Khalas. Accordingly, you are reinstated to service and reverted as AC Khalsi Helper Gr-II for a period of 6 (Six) years with the effect of postponing future increments with effect from the date of joining to duty and your pay is fixed at Rs.2550/- in scale Rs.2550-3200. On restoration, you will be placed junior most to all the existing Khalsis in-date and those who have been appointed during the above period. The intervening period from 30-06-08 to the date of joining to duty on reinstatement is treated as DIES NON".

11. The second respondent has further submitted that aggrieved by the said order dated 27.08.2008, against imposition of punishment is concerned, he preferred revision petition to the Chief Electrical Service Engineer, Southern Railway, NGO Annexe Building, Park Town, Chennai-3, on 06.10.2008. Thereafter, on 13.10.2008, he submitted further representation in the form of additional revision petition to the first petitioner. Both the said review petitions were received by the first petitioner. However, no order has been passed on the said revision petitions. Therefore, he filed O.A.No.1056/2009, before the Central Administrative Tribunal, Chennai Benchm challenging the order dated 27.08.2008, insofar as the imposition of punishment against him, is concerned. On 04.11.2009, the said Tribunal disposed of the application, by issuing directions to the respondents therein, to consider and decide the revision petition, dated 06.10.2008 and pass a reasoned order, in accordance with law, within a period of one month from the date of receipt of a copy of the order. Thereafter, he made representation to the first petitioner herein on 27.11.2009, enclosing the copy of the order passed in O.A.No.1056/2009, dated 04.11.2009 and the copy of the Review Petition preferred by him, dated 06.10.2008, and requested him to comply with the order passed by the Tribunal. The said representation received, was also duly acknowledged. However, without reference to the order passed in O.A.No.1056/2009, dated 04.11.2009 and the Revision Petition, dated 06.10.2008, the first petitioner herein passed an order in No.P(A)87/2008/117, dated 18.12.2009, confirming the order, dated 27.08.2008. Against the said orders, he filed O.A.No.515/2010, before the Tribunal, which allowed the Original Application on 04.01.2013. The said order is challenged in this writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>

12. The 2nd respondent has further submitted that the

criminal case was taken up for trial by the Judicial Magistrate-III, Salem in C.C.No.506/1999. The Witnesses cited in the enquiry proceedings were examined in the said criminal case and the competent criminal court, after examination of the witnesses, came to a conclusion that the prosecution has not proved the guilt alleged against him, beyond any reasonable doubt and acquitted him on 09.09.2000 and no appeal was preferred against the said acquittal and it has become final. The said acquittal was also duly informed to the authorities. However, in his case, neither the enquiry officer, disciplinary authority, appellate authority nor the revisional authority considered the effect of his acquittal in the departmental proceedings. In fact there is no finding in the entire disciplinary proceedings initiated against him, with regard to his acquittal in the said criminal case. He was not acquitted not on some technical grounds. On the other hand, he was acquitted on the ground that the prosecution has miserably failed to establish the case. The criminal case and departmental proceedings against him, were based on the same set of facts and evidence. Judicial pronouncement was made after regular trial. The Hon'ble Apex Court held in various cases that it would be unjust and unfair to allow the contrary findings at the departmental proceedings to stand. When the judicial forum has given a finding that the charges against the petitioner have not been proved by the evidence of the witnesses and documents produced by the department the contrary finding given in the departmental proceedings based on the same set of evidence cannot be sustained in law and the impugned order based on the said findings cannot be sustained in law. The petitioners ought to have considered the said aspect before passing an order of punishment against him. However, it was not properly done by the petitioners herein. Therefore considering the said aspects the Tribunal rightly allowed the original application.

13. The 2nd respondent has further submitted that the charge memo was issued in the year 1998 and the criminal case filed against him, in respect of the same set of facts ended in acquittal in the year 2000. However the enquiry officer has submitted his report in the year 2007 i.e., after a period of more than 9 years from the date of issue of charge memo. Final order was passed only in the year 2008 after a period of ten years. There is an inordinate delay in completing the enquiry proceedings and no reasons whatsoever has been stated in the enquiry report for the said inordinate delay. The said inordinate delay in concluding the disciplinary proceeding has caused him, great prejudice and it was also pointed to the petitioners. However before passing the order of punishments against him, the petitioners herein have not at all discussed about this vital aspect and no valid reason whatsoever was given for the said inordinate delay. He was made to undergo the agony of protracted disciplinary proceedings for the past more than 10 years. No reason whatsoever has been assigned for the enormous

14. We have heard the learned counsel for the petitioners/Railways and the learned counsel for the 2nd

respondent/employee. We have also perused the materials on record, including the order of the Central Administrative Tribunal, which is under challenge in this writ petition.

15. The 2nd respondent, an employee under the petitioners, was proceeded with departmentally for the charge showing lack of integrity, devotion to duty and unbecoming of a Railway Servant in violation of provision of Rule 3.1 (I) (II) & (III) Railway (Conduct) Rules, 1966. In the enquiry, he was found guilty of the charges framed against him and imposed with the punishment of removal from service. However, on appeal, the punishment of removal from service was modified into one of reduction in rank for a period of six years. Not satisfied with the modification in punishment, the 2nd respondent preferred a Revision before the 1st petitioner/revisonal authority, who in turn, has confirmed the order of appellate authority. The above facts are not in dispute.

16. The 2nd respondent, not satisfied with the modified punishment i.e. reduction in rank for a period of six years, has challenged the order of the revisional authority, confirming the order of the appellate authority before the Central Administrative Tribunal, Madras Bench, Chennai, in O.A.No.515 of 2010, inter alia contending that there is a gross violation of principles of natural justice and also there is inordinate delay in finalising the disciplinary proceedings. It is the case of the 2nd respondent/employee that original documents relied on by the petitioners/Railways were not produced before the enquiry officer, but the enquiry officer, based on mere surmises, assumption and conjecture, found the 2nd respondent, guilty of the charges framed against him and therefore, the punishment imposed on him is liable to be set aside. It is his further case that there is a delay of about 10 years in finalising the disciplinary proceedings. According to him, though the charge memo was issued on 05.11.1998, enquiry was prolonged for a period of nine years and the punishment of removal was passed on 30.06.2008 and thus there is an inordinate delay which vitiates the entire proceedings initiated against him. He has also contended that for the same delinquency, a criminal case was instituted against him, which ultimately ended in acquittal on 09.09.200 and though this fact was brought to the authorities, it was not taken into account.

17. The petitioners/Railways have filed a detailed counter, denying the case of the 2nd respondent/employee. The Tribunal, after analysing the materials placed before it in detail, has allowed the Original Application filed by the 2nd respondent/employee and directed the petitioners/Railways to grant all consequential benefits. Aggrieved by the same, the Railways are before this Court with the present writ petition.

18. On the facts and events narrated above, we are of the view that the writ petition is liable to be dismissed on the sole ground of delay in finalising the disciplinary proceedings initiated against the 2nd respondent/employee.

The Tribunal is right in holding that the petitioners/railways had taken a longtime of 10 years to pass final order in the disciplinary proceedings and the same has caused prejudice in conducting a free and fair enquiry and the petitioners/railways have not given satisfactory reason for the enormous delay in concluding the disciplinary proceedings. Further, we are unable to accept the reason given by the petitioners/railways that the proceedings before the Judicial Magistrate in C.C.No.506 of 1999 was pending. It is pertinent to point out that criminal was initiated in the year 1999 and ended on 09.09.2000 itself, acquitting the 2nd respondent from the case. This fact had been brought to the notice of the petitioners/railways by the 2nd respondent/employee, immediately. Further, there is no bar in conducting simultaneous proceedings, both departmental and criminal proceedings. There is no record to show that the petitioners/railways have passed any order not to proceed further in the departmental proceedings till the disposal of the criminal case. Further, though the criminal case has ended in acquittal as early as in 2000 itself, even thereafter the petitioners/railways have taken nine more years in concluding the departmental proceedings.

19. The Hon'ble Supreme Court in a decision reported in (1998) 4 SCC 154 in the case of State of Andhra Pradesh v. N.Radhakrishnan, at Paragraph 19, held as follows:

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground that disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the

basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay cases prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

20. In the light of the above discussion and decision, we are not inclined to interfere with the well considered order of the Tribunal.

In the result, writ petition fails and accordingly, it is dismissed. The original order of removal from service is quashed. The petitioners are directed to implement the orders of the Central Administrative Tribunal, Madras, dated 04.01.2013, made in O.A.No.515 of 2010, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed.

//True Copy//

Sd/-
Assistant Registrar(CS)

Sub Assistant Registrar

To

The Registrar,
Central Administrative Tribunal,
Madras Bench (Chennai).

+1cc to Mr. P.Mohanraj, Advocate SR.No. 3834
+1cc to Mr.A.P.Srinivas, Advocate SR.No. 4226

Writ Petition No.23405 of 2016

A.SK(05/03/2019)