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

+ **W.P.(C) 3703/2015 and C.M. APPL. 6598/2015 (stay)**

UNION OF INDIA & ORS. Petitioners

Through: Mr. Malaya Kumar Chand, Senior
Panel Counsel.

versus

BIMAL BASUMATA Respondent

Through: Mr. A. K. Trivedi, with Mr. Naveen
Kumar, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **30.10.2019**

1. The Union of India has in this petition challenged an order dated 27th October, 2014 passed by the Central Administrative Tribunal ('CAT') allowing O.A. No. 3755/2013 filed by the Respondent. In the said O.A. the CAT has set aside the order of the Enquiry Officer ('EO') and the consequential order of the Disciplinary Authority ('DA'), whereby the Respondent was held guilty of the charge of accepting illegal gratification from two passengers while discharging his duties as a Deputy Chief Ticket Inspector on a train between Nagpur to Kazipet on 29th December, 2010 and punished with the penalty of reduction of pay from Rs.19450/- to Rs.18330/- in the same time scale till the date of retirement with cumulative effect.

2. In support of the above charge against the Respondent, the only witnesses who were examined belonged to the checking team from the Vigilance Department. The two passengers from whom the Respondent allegedly received the illegal gratification were not examined. There was also

admittedly a coach attendant, an employee of the Railways, who was neither examined nor was his statement recorded in the disciplinary proceedings.

3. The CAT in the impugned order accepted two of the grounds of challenge raised by the Respondent. The first was that the EO was from the Vigilance Department itself. The CAT relied on an order passed by it earlier in O.A.No. 1279/2012 (*V.C.Saxena v. Union of India*) and held that the enquiry stood vitiated on this score.

4. As far as the above ground is concerned, the Petitioner has filed an additional affidavit before this Court on 17th August, 2015 clarifying that in terms of a letter dated 21st July, 2015 issued by the General Manager of the Vigilance, an organization in each zonal railway has been established on the pattern of Central Vigilance Commission, having two separate Branches i.e. Investigation Organization and Enquiry Organization. It is stated that the vigilance organization is headed by a Senior Deputy General Manager (SDGM), who is also the ex-officio Chief Vigilance Officer of the zonal Railway. There is also a full fledged enquiry organization under the administrative control of the SDGM to deal with discipline and appeal inquiries arising out of vigilance cases. In other words, it is sought to be contended that the Vigilance Branch and the Disciplinary Branch are separate Branches. The statement now made is that 'appointment of the enquiry officer is done by the disciplinary authority and not by the Vigilance Branch'. It is further stated that the enquiry officer is not a member of the Vigilance Branch.

5. The above statement still does not categorically state whether the EO in the present case was from the Vigilance Branch or not. In this regard, it is pointed by the learned counsel for the Respondent, that in the counter affidavit filed before the CAT there was no categorical denial by the Petitioner that the EO in question was not from the Vigilance Branch. In the above additional affidavit as well, this Court does not find any categorical statement to this effect.

6. Consequently, this Court is unable to express any opinion on the contention now raised in the additional affidavit. It is, however, clarified that in a future case, where it is clearly shown that the EO functioned independently of the Vigilance Branch, the concerned forum before which the challenge is raised will examine the factual correctness of such averment and decide the issue uninfluenced by the opinion expressed by the CAT in the impugned order, which will not be treated as a precedent for that purpose.

7. On the second ground of challenge to the enquiry proceedings, in which the Respondent succeeded, the Court finds that indeed the Petitioner failed to produce the coach attendant, who was a Railway employee himself, and who could have given an independent version, notwithstanding the failure by the Petitioner to examine the two passengers. While the inability to produce the passengers in the enquiry was understandable, the failure to examine the coach attendant is not. It does appear to the Court that the enquiry did stand vitiated in the absence of any credible independent evidence other than that of Vigilance Officer associated with the raid.

8. Consequently, the Court is not inclined to interfere with the impugned order of the CAT.

9. Learned counsel for the Petitioner draws the attention of the Court to the leave granted by the CAT to the Petitioner to conduct a fresh enquiry. His only grievance is about the consequential orders passed by the CAT restoring the pay of the Respondent with all consequential benefits of arrears of difference of pay and pension

10. Once the enquiry proceedings were held to be bad in law, the consequential orders had to follow, viz., that of restoring the original pay of the Respondent with all consequential benefits. That order, therefore, does not call for any interference. As and when a fresh enquiry proceeding is held by Petitioner in accordance with law, subject to the outcome of such an enquiry, all consequences will logically follow.

11. The petition is accordingly dismissed with above observations. The pending application also stands disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 30, 2019

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