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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 9253 OF 2019**

Vijay Kumar Upadhyay

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

Dr. Pawan Pandey i/by Dr. Pawan K. Pandey Associates for petitioner.

Mr. A. A. Garge for respondents.

**CORAM: DIPANKAR DATTA, CJ. &  
MADHAV J. JAMDAR, J.**

**DATE : OCTOBER 12, 2022**

**ORAL JUDGMENT** (Per CHIEF JUSTICE):

**1.** The petitioner, aggrieved by dismissal of Original Application No. 465 of 2013 by an order dated 9<sup>th</sup> April, 2019 of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) has invoked our writ jurisdiction by presenting this writ petition dated 14<sup>th</sup> May, 2019.

**2.** At the relevant time, the petitioner was working as the Head Parcel Clerk at Lokmanya Tilak Terminus station (hereafter "LTT", for short). A major penalty charge-sheet dated 13<sup>th</sup> May, 2011 was issued containing three articles of charge. We consider it appropriate to reproduce below the three articles of charge together with the statement of

imputation of misconduct in respect of article of charge no.1. The same reads: -

**"ANNEXURE-I**

**STATEMENT OF ARTICLE OF CHARGES OF MISCONDUCT / MISBEHAVIOUR FRAMED AGAINST SHRI VIJAY KUMAR UPADYAY HPC LTT.**

That the said Shri V. K. Upadhyay HPS while on duty at LTT luggage office on 22.02.11 at about 13 hrs in 08 to 16 hrs shift duty at luggage counter committed misconduct in that:

**ARTICLE-I:**

He overcharged the decoy passenger by Rs.180/-.

**ARTICLE-II:**

With an intention to destroy evidence he passed the decoy money.

**ARTICLE-III:**

He was found involved in illegal earning in connivance with unauthorized parcel booking agent.

Thus by the above act of omission and commission jointly and individually the above named employee failed to maintain absolute integrity, devotion to duty and has acted in a manner unbecoming of a Railway servant and has thereby contravened the provision of para 3.1 (i), 3.1 (ii) & 3.1 (iii) of Railway Service Conduct Rule, 1966.

**ANNEXURE-II**

**STATEMENT OF IMPUTATION OF MISCONDUCT/ MISBEHAVIOUR IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI VIJAY KUMAR UPADHYAY HPC LTT**

**ARTICLE-I:**

As per source information that the luggage cum parcel clerks working at LTT station are habitual to over charge the passengers over and above the Railway dues while booking TV, scooter etc. a decoy check was planned at LTT luggage cum parcel booking office on 22.02.11.

For this purpose, the services of Shri Mukesh Kumar Pandey was utilized as decoy passenger. He was handed over an UTS journey ticket no. K 01777113 for two adults and one child ex LTT to DBG for journey on 22.02.11 alongwith marked GC notes of Rs.700/- for the purpose of booking a TV as luggage on owners charge ex TT to DBG. He was instructed to approach luggage cum parcel clerk and to request to book the TV and pay the amount as demanded by the clerk. He was also asked to accept the luggage ticket and balance amount if returned by the clerk.

Shri Santosh Kumar Singh utilized as independent witness. He was advised to accompany with Shri Mukesh Kumar Pandey and to listen and witness the transaction taking place between Decoy passenger and luggage clerk. They both were advised to intimate the matter after completion of transaction to the vigilance team who will be waiting near LTT station.

TCM-1 prepared at TNA station at 09.15 hrs. The TV was handed over to DP/IW at VVH station. Ticket no. K07604270/71 handed over to them for the journey ex.TNA to VVH.

As instructed in TCM-1, the DP approached the luggage clerk and asked to book the TV on owners charge. Initially the clerk stated them that TV will be booked in Brake van only. For this clerk demanded Rs.550/-. Then the clerk named Shri V. K. Upadhyay sked the whereabouts of Shri Mukesh Kumar Pandey and then book the TV vide luggage receipt no.B 263356 dated 22.02.11 on owners chare amounting to Rs.320/- on journey ticket no. K 01777113. As demanded the DP handed over marked GC notes of Rs.600/- (Rs.500 + Rs. 100) to the clerk. The clerk then returned Rs.100/- and accepted only Rs.500/- and handed over the luggage receipt alongwith the journey ticket. Thus Shri V. K. Upadhyay luggage clerk overcharged the DP by Rs.180/-. He had taken Rs.500/- as against Rs.320/-."

**3.** We have refrained from reproducing the statement of imputation of misconduct insofar as article of charge nos. II

and III because the same are, in fact, follow up of the particular incident that led to framing of article of charge no.1.

**4.** An inquiry followed into the charge-sheet after the petitioner had denied his involvement. An inquiry report was submitted by Mr. P. Y. Kadam, Chief Enquiry Inspector (HQ) dated 31<sup>st</sup> July, 2012 holding that all the three charges against the petitioner stood proved. Copy of the inquiry report was furnished to the petitioner seeking his response to the same. The petitioner by his representation dated 10<sup>th</sup> September, 2012 sought to point out alleged contradictions in the evidence of the prosecution witnesses as well as sought to point out why the report of the inquiry officer is vitiated. He claimed that the allegations levelled against him were vague, uncertain and unspecific and that there was no evidence on record to hold that the charges are proved. He, therefore, prayed that the disciplinary proceedings initiated against him be dropped.

**5.** The disciplinary authority, however, was not persuaded to accept the representation of the petitioner against the inquiry report and, accordingly, proceeded to pass an order of removal from service dated 10<sup>th</sup> October, 2012. The order, titled as 'Speaking Order', reads as follows: -

**"SPEAKING ORDER**

**No.BB.C.CON.48.2011.40**

**DT:10.10.12**

Sub: Major penalty charge memorandum of even no. dated 13.05.11 issued to Shri V. K. Upadhyay HPC LTT now HBC VDLR.

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I have carefully gone through the entire DAR case file together with all the relevant documents, report of the enquiry officer; CE's representation dated 10.09.12 and also heard CE patiently on 25.09.12.

All the three charges are interconnected. It is an established fact that CE had earlier booked the TV in Brake Van and cancelled it and then booked the same TV in owners charge. In the confrontation statement of CE recorded on the day of check, CE has admitted to the same. CE accepted Rs.500/- from the decoy passenger and issued a receipt for Rs.320/- and did not return the balance of Rs.180/-. It is emphatically confirmed by the independent witness and decoy passenger during the course of the enquiry that CE has overcharged them. The recovery of the pre recorded GC note of Rs.500/- inside CE's office underneath one handbag proves that transaction did take place. It is not possible for anyone to conceal anything in the office without the knowledge of the CE.

Shri Guddu Yadav, an unauthorized agent who was apprehended at the time of check admitted in his statement recorded at the time of check that CE had exchanged a GC note of Rs.500/- with him. Thus it is clearly evident that CE intentionally tried to destroy evidence.

The above observations are reasonable and sufficient to prove the charge leveled against CE. Hence, holding CE guilty of the charge, I decide to impose upon him the penalty of '**Removal from service with immediate effect**'."

(bold in original)

**6.** The order of removal from service, issued by the disciplinary authority, was carried by the petitioner in an appeal before the appellate authority by submitting an appeal dated 28<sup>th</sup> December, 2012. The appellate authority proceeded to pass the following order dated 13<sup>th</sup> February, 2013: -

"I have carefully gone through the DAR case file; the

relevant documents, decision of DA, CE's appeal dated 28.12.12 and also heard CE in person on 14.01.13.

I have fully analyzed the facts and circumstances of the case. The evidence on the record finds CE guilty of the charge leveled.

CE was not able to furnish any reasonable explanation against the charges in Article-I, II and III. It is pertinent to note that all the eventualities which have led to framing of the three charges occurred simultaneously and shows malafide intention.

I fully agree with the views of Disciplinary Authority.

The penalty imposed by Disciplinary Authority stands good."

**7.** The appellate order, including the order of removal from service, was the subject matter of challenge before the Tribunal.

**8.** We have read the order of the Tribunal. It appears that the Tribunal examined the evidence that was placed on record including the evidence led in the inquiry and held against the petitioner on each and every point that was argued before it. The Tribunal was ultimately of the view that the powers for exercise of judicial review are limited in the sense that the Tribunal cannot trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion, judicial review not being an appeal from a decision but a review in the manner in which the decision is made. Referring to the decision of the Supreme Court in **State of Tamil Nadu & Anr. vs. S. Subramaniam**, reported in 1996 STPL 1373 SC, the Tribunal was also of the view that its jurisdiction was limited to examine whether finding of guilt arrived at in the inquiry is based on any

evidence on record or whether it is a case of conclusions having been reached based on no evidence. It held that in the present case, the conclusions reached by the disciplinary authority and the appellate authority were based on the evidence on record and, therefore, the same did not warrant interference.

**9.** On behalf of the petitioner, Dr. Pandey, learned advocate, has raised the following points: -

- (a) The findings returned by the inquiry officer, since accepted by the disciplinary authority and affirmed by the appellate authority, are based on no evidence;
- (b) No presenting officer was appointed as a result whereof the inquiry officer acted as prosecutor and judge, which had the effect of vitiating the inquiry;
- (c) The inquiry officer was attached to the vigilance office of the respondents and, therefore, he ought not to have been appointed as the officer to conduct the inquiry; and
- (d) The Tribunal fell in error in not appreciating the points that had been raised on behalf of the petitioner in the proper perspective.

**10.** The first point that has been urged, which is the most important, requires to be dealt with looking at the evidence recorded by the inquiry officer. The petitioner's claim is that the finding of article of charge no.1 being proved is based on no evidence. Although, it is not the function of the

judicial review Court to reappraise or reanalyze the evidence that has been led in course of an inquiry of the present nature, it becomes necessary for the Court to look into the evidence if a contention is raised that the findings are based on no evidence. With that in mind, we had the occasion to look into the depositions of the trap witnesses, viz. Prosecution Witnesses 1 and 2.

**11.** We consider it proper to quote below the evidence of PW 1, the decoy passenger (Mukesh Kumar Pandey), in course of his examination-in-chief and cross-examination. Question No.2 put to PW 1 by the inquiry officer and the answer of PW 1, read as follows: -

"Q.2. Do you confirm that during this check you 22.02.11 you have acted as Decoy Passenger, if so please state details of the case you know about?

Ans. On 22.02.11 at about 7.45 hours Shri Jain SSE (P.Way) Neral instructed me and my colleague Shri Santosh Kumar Singh, Gangman to go to Thane and meet Shri Saxena, CVI(T) to assist in the vigilance check. On arrival at Thane, I along with Shri Santosh Kumar Singh, gangman met to Shri Saxena. Shri Saxena handed over me Rs.700/- and asked both of us to go at Parcel office LTT and book the TV from LTT to Darbanga. Then we both came to LTT station, at around 10.00 hours. First of all one of the RPF handed over me old TV at Vidyvihar station, then we came to LTT by Road. We both went to Parcel Office LTT for booking of said TV. On duty HPC told me to book the TV in B/van. After request to CE, demanded Rs.550/- for which I had handed over Rs.700/- on which, CE returned me Rs.200/- out of 700/-. CE handed over me **Receipt of Rs.320/-**. Thus CE overcharged **Rs.180/-** for the said booking of TV.

Immediately on getting receipt I approached Vigilance team and handed over Rs.200/- along with receipt of Rs.320/- to Shri Saxena. Vigilance team then approached in the CE's office and inquire about the case to CE and then after prepared all other documents on which I have signed. This much I have to state in this case."

(bold in original)

In course of cross-examination, the relevant question put by the petitioner and the answer thereto by the PW 1 are set out below: -

"Q.17 What is the procedure of parcel booking at LTT of TV which you have adopted?

Ans. I along with Shri Santosh Kumar approached CE for booking of TV from LTT to Darbhanga. At first (sic, first) time when we approached (sic, approached) CE he told us that TV should book in the brake van. Then (sic, then) I requested CE that I have to take my TV along with me then after he convinced with my request and told me that Rs.550/- will be charged. I handed over him Rs.700/- and CE returned me Rs. 200/-. Also CE handed over me Receipt of Rs.320/-. Out of Rs.500/-."

It is, thus, clear that not to speak of any contradiction, PW 1 stood by what he deposed in examination-in-chief.

**12.** Insofar as PW 2 (Santosh Kumar Singh), who was the other departmental trap witness, is concerned, the question put to him by the inquiry officer and the answer thereto by him read as follows: -

"Q.2 Do you confirm that during this check you 22.02.11 you have acted as Independent Witness, if so please state details of the case you know about?

Ans. On 22.02.2011 at about 07.45 hours Shri Jain

SSE (P.Way) Neral instructed me and my colleague Shri Mukesh Kumar Pande, Gangman to go to Thane and meet Shri Saxena, CVI(T) to assist in the vigilance check. On arrival at Thane, I, along with Shri Mukesh Kumar Pande, gangman met to Shri Saxena. Shri Saxena handed over me Rs.700/- to Shri Pande, and asked both of us to go at Parcel office LTT and book the TV from LTT to Darbanga. Then we both came to LTT station, at around 10.00 hours. First of all one of the RPF handed over us old TV at Vidyavihar station, then we came to LTT by Road. We both went to Parcel Office LTT for booking of said TV. On duty HPC told Shri Pande to book the TV in B/van. After request to CE, demanded Rs.550/- as booking charge. Shri Pande has given Rs.500/-. CE handed over e **Receipt of Rs.320/-**. Thus CE overcharged **Rs.180/-** for the said booking of TV. Shri Pande then mobile to Shri Saxena who were standing nearby station premises I did not seen them. She Pande had then handed over the receipt to vigilance team at remaining at Parcel premises. Vigilance team then entered in the Parcel office LTT to inquiry about the matter at that time we were just outside the parcel office. Then after vigilance team called both of us for statement inside the parcel office. Then after we have given our statement to the vigilance teand (sic, team), those documents which have been prepared by the vigilance team I have signed thereon. This much I have to state."

(bold in original)

Significantly, we do not find any question of relevance having been put to PW 2 by the petitioner to demolish the assertion made by him in answer to Question No.2 of the inquiry officer.

**13.** The testimony of PW 1 and PW 2, which stood unshaken after cross-examination, was sufficient to return a

finding that article of charge no.1 against the petitioner stood proved.

**14.** We have, however, found from the representation of the petitioner against the inquiry report that the petitioner has joined issue by submitting that while the charge-sheet refers to Rs.600/- having been tendered upon a demand allegedly being made by the petitioner, PW 1 referred to tender of Rs.700/-, which is a contradiction in terms. It could be true that there is some discrepancy with regard to the quantum of money demanded by the petitioner and paid by PW 1. However, such a discrepancy is minor and does not have the effect of vitiating the ultimate finding. There is no evidence to demolish the evidence of PW 1 that he had tendered Rs.500/- but in lieu thereof had been issued a receipt for Rs.320/-, meaning thereby that Rs.180/- was unauthorizedly retained by the petitioner. This version of PW 1 is corroborated by PW 2. No material has been brought forth by the petitioner in course of his cross-examination which would enable us to render a finding that the witnesses were inimical to the petitioner and, therefore, had deposed falsely. We, therefore, see no merit in the first contention of Dr. Pandey.

**15.** Insofar as the second contention that the inquiry officer acted as a prosecutor and a judge is concerned, the same is equally without any merit. An inquiry officer is one who conducts an inquiry into the charges with a view to ascertain whether, based on the evidence led in the inquiry, the same can be held to be established/proved. Since an inquiry officer is a person discharging quasi-judicial

functions, he ought to perform his functions fairly and reasonably. We have noticed from the proceedings of inquiry, which are placed on record, that the inquiry officer put three questions each to PW 1 and PW 2, viz. (i) whether they know of they being cited as prosecution witnesses and whether they confirm their signatures on certain exhibits, (ii) what they know about the case; and (iii) whether they have anything further to say. This being the nature of questions put to PW 1 and PW 2 by the inquiry officer and no leading questions having been asked by him, it is difficult to accept the contention that the inquiry officer acted in a dual capacity as a prosecutor and a judge. Even otherwise, we do not see any reason to uphold the contention in the absence of any demonstrable prejudice having been suffered by the petitioner or injustice caused to him. The contention, thus, stands overruled.

**16.** The third contention of Dr. Pandey that the inquiry officer was attached to the vigilance office of the respondents and, therefore, he ought not to have been appointed to conduct the inquiry, has been considered in the light of the decisions cited by him, viz. **Union of India & Ors. vs. Prakash Kumar Tandon**, reported in (2009) 2 SCC 541 and **Moni Shankar vs. Union of India & Anr.**, reported in (2008) 3 SCC 484.

**17. Prakash Kumar Tandon** (supra) does not go thus far to lay down the law that there is an absolute bar in appointing someone from the vigilance department to conduct an inquiry. We have referred to above how an inquiry officer should conduct the proceedings to ascertain

the truth. It is in the facts and circumstances of the case before it that the Court held that any officer from the vigilance department ought not to have been appointed, with a view to be fair to the delinquent officer. It has not been shown by Dr. Pandey that the inquiry officer did not conduct the proceedings fairly or reasonably or that he has taken into consideration any irrelevant fact or refused to consider relevant facts or proceeded on the basis of surmises and conjectures.

**18.** In the present case, we find from the covering letter dated 10<sup>th</sup> May, 2011 (page 278 of the writ petition) that the General Manager's Office (VB), CST, Mumbai had forwarded a draft major penalty charge-sheet for being issued to the petitioner. In such covering letter, it was observed that if the disciplinary authority concludes on receipt of the defence statement that an inquiry is warranted, he could appoint an officer of his choice. However, it should be ensured that the inquiry officer being appointed by him for conduct of the inquiry is of sound integrity and possesses adequate knowledge of rules and procedures in regard to conduct thereof. The disciplinary authority was also given the liberty to appoint anyone of the two officers suggested by the General Manager. It is indeed true that one of such officers was elected by the disciplinary authority to be the inquiry officer; however, as observed above, there is no material on record that the inquiry officer proceeded to conduct the inquiry in a biased manner against the petitioner or that, by reason of the manner of conducting the inquiry, the petitioner was at all prejudiced.

**19.** In such view of the matter, the decision in **Prakash Kumar Tandon** (supra) does not come to the rescue of the petitioner.

**20.** The decision in **Moni Shankar** (supra) also has no applicability on facts and in the circumstances. This decision was cited by Dr. Pandey for the proposition that while laying a trap which ultimately resulted in the petitioner being proceeded against, provisions of paragraphs 704 and 705 of the Railway Vigilance Manual have not been complied with. The Court in **Moni Shankar** (supra) referred to its earlier decision in **Chief Commercial Manager, South Central Railway vs. G. Ratnam**, reported in (2007) 8 SCC 212, and accepted the position that executive orders laying down procedure and guidelines to be followed by the inquiry officers who are entrusted with the task of investigation of trap cases and departmental trap cases against railway officials do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued. However, in paragraph 16 of the decision it was emphasized that if there be total violation of the guidelines, the same may be considered together with other factors for the purpose of arriving at a conclusion as to whether the department has been able to prove the charges against the delinquent official.

**21.** The Tribunal has examined the aspect of alleged violation of paragraphs 704 and 705 of the Vigilance Manual. Based on the findings recorded in paragraphs 7 and 8 of the order, the Tribunal held that the provisions of the

Manual had not been violated. One of the points raised on behalf of the petitioner that the witnesses of the trap case should have been gazetted officers was negated by the Tribunal by referring to paragraph 704 of the Vigilance Manual, which itself permitted non-gazetted officers to be trap witnesses. That apart, the Tribunal was of the view that paragraph 705 seeks to contemplate an ideal situation where the culprit is to be caught red-handed immediately after the bribe money has changed hands so that he may not get rid of it. The requirement to follow the Vigilance Manual entirely could be insisted upon in a criminal trial where the standard proof is different from the standard of proof that is applicable in disciplinary proceedings. However, since this is a case where the petitioner has been proceeded against departmentally, the Vigilance Manual was not required to be followed strictly on pain of invalidation. The evidence of the prosecution witnesses 1 and 2 noted above unmistakably points towards retention of Rs.180/- by the petitioner and such version of the said witnesses have been found by us to be creditworthy; therefore, even though the petitioner could not be caught red-handed, the direct evidence of PW 1 and PW 2 together with other circumstantial evidence renders it difficult for us to arrive at a finding that since paragraph 705 of the Vigilance Manual has not been followed strictly, that by itself is a ground to exonerate the petitioner.

**22.** Finally, coming to the last contention raised by the petitioner that the Tribunal fell in error in not appreciating the points that had been raised on behalf of the petitioner in

the proper perspective, we have bestowed due consideration to the facts and circumstances on record. Whatever point had been raised before the Tribunal is found to have been duly considered. We had called upon Dr. Pandey to show from the writ petition any pleading that any point raised on behalf of the petitioner had not been dealt; however, no such instance was brought to our notice. The particular contention seems to have been raised in desperation and, thus, does not merit consideration.

**23.** We have not discussed the evidence led in respect of article of charge nos.2 and 3 since article of charge no.1 is so grave in itself that proof thereof is sufficient to record an order of removal from service. When a public servant is entrusted to handle the finances of the State, he acts as a trustee. If the trust reposed in such public servant is betrayed by him, not only does it amount to a misconduct but the betrayal of trust could, in certain cases, give rise to a lack of confidence of the public employer in such servant. There has to be zero tolerance insofar as financial irregularities committed by a public servant are concerned and we do not see reason to interdict such order merely because the amount retained by the petitioner was meagre.

**24.** Before parting, we need to refer to two important features. We have reproduced infra the orders of the disciplinary authority and the appellate authority verbatim only for the purpose of highlighting that the petitioner could have attacked such orders on valid grounds but did not. First, the disciplinary authority had taken into consideration the "confrontation statement" of the petitioner while

arriving at a finding that he ought to be removed from service, although the same was not part of the records of the inquiry. This was indeed in breach of principles of natural justice. Unfortunately for the petitioner, that the disciplinary authority erred in considering a document which was not even part of the records of the inquiry was not urged in the appeal that the petitioner had preferred against the order of removal. Such point has also not been urged in the original application or this writ petition. However, not having taken such point, we are loath to come to the assistance of the petitioner. The other apparent infirmity that we have noticed is from the appellate order. The same clearly suffers from the vice of lack of reasons. The petitioner could well have relied on the decision of the Supreme Court in **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney & Ors.**, reported in (2009) 4 SCC 240, where the Court emphasized the need for writing a reasoned appellate order showing application of mind. The appellate order by which the petitioner's appeal was rejected is couched in such language that the same could be cut, copied and pasted for dismissing any other appeal arising out of an order of penalty of removal passed on proof of three charges, with a change in the date of the appeal petition. Despite such position in law, the petitioner did not question the appellate order in the original application on the ground of the same being an unreasoned order evidencing non-application of mind.

**25.** Except for these two infirmities, which have remained unchallenged, we have not found any other infirmity in the disciplinary proceedings for which the petitioner could be entitled to an order for setting aside the order of removal as well as the appellate order.

**26.** For the reasons aforesaid, we find no reason to interfere. The order of the Tribunal is upheld and the writ petition is dismissed.

**27.** There shall be no order as to costs.

PRAVIN  
DASHARATH  
PANDIT

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**(MADHAV J. JAMDAR, J.)**

**(CHIEF JUSTICE)**