



2026:DHC:4485-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 231/2019****ANIL KUMAR (DECEASED) THROUGH****L.R. SMT. RAJNI CHAKRAVATI**

.....Petitioner

Through: **Mr. S.P. Sethi, Adv.**

versus

UNION OF INDIA & ORS

.....Respondents

Through: **Mr. Bhagvan Swarup Shukla,**
CGSC with Mr. Mukesh Kr. Pandey, Mr.
Dashmesh Tripathi and Mr. Praveen Gupta,
Advs.**CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT (ORAL)**

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15.05.2026**OM PRAKASH SHUKLA, J.**

1. The present writ petition assails the impugned order dated 10.08.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi¹ in Original Application² No. 2311/2012, whereby the Tribunal dismissed the O.A preferred by the petitioner's husband, late Shri Anil Kumar³.

2. That the deceased had been appointed in Group 'D' post against Sports Quota in the Railways on 25.01.1990 and had been posted in the

¹ "CAT" / "Tribunal" hereinafter

² "O.A" hereinafter

³ "the deceased/ petitioner's husband" hereinafter



2026:DHC:4485-DB



Parcel Office, New Delhi Railway Station. The appointing authority had been the Divisional Railway Manager.

3. Subsequently, the deceased was promoted to the post of Booking Clerk through departmental process. During his duty, while working as Booking Clerk at Shahdara Railway Station, the deceased was subjected to a vigilance check conducted by the Railway Vigilance Team on 29.10.2003.

4. During the said vigilance check, it was found that the deceased allegedly demanded Rs. 58/- in excess of fare for issuing two tickets to the decoy passengers. In pursuance of which, excess government cash of Rs.160/- was allegedly also found.

5. Accordingly, the deceased was transferred from Delhi division to Murdabad division due to the above incident, a penalty chargesheet dated 20.07.2004 was also issued to deceased. The same read as-

“ Shri Anil Kumar, CC/DSA while posted in Booking Office/ Delhi Shahadara and manning Counter No.04 as such on 29.10.2003 was detected to have committed serious irregularities in as much as that:-

i) He demanded and accepted Rs.58/- over and above the due fare on two IInd M/E tickets for Raxaul from the decoy passenger in a Departmental Test Check.

ii) He produced Rs.160/- excess in his Govt. cash with an inconvincing reasons.”

By the above act of omission and commission Shri Anil Kumar, CC/N.Rly., Delhi Shahadara failed to maintain absolute integrity, exhibited lack of devotion to duty, acted in a manner unbecoming of a Railway Servant and thereby contravened the provision of Rule No.-3.1 (i), (ii) & (iii) of Railway Service Conduct Rules, - 1966.

Sd/-

*Divl. Traffic Manager
N.Rly., New Delhi*

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Page 2 of 16



2026:DHC:4485-DB



6. The charges were denied by the deceased and as a result disciplinary proceedings were conducted and an Inquiry Officer⁴ from the Vigilance Department was appointed to conduct the departmental inquiry.

7. During the inquiry proceedings, five prosecution witness had been examined including two Vigilance Inspectors, two RPF constables and one Booking Clerk from Shahdara. After the conclusion of the inquiry, the I.O submitted his inquiry report dated 29.10.2007 holding the charges against the deceased to be proved.

8. That pursuant to the inquiry report, the Disciplinary Authority *vide* order dated 14.01.2008 had imposed the penalty of reduction to the lowest grade/Class IV post carrying pay scale of Rs.2550-3200 for a period of twelve years, with restoration thereafter to the higher-grade carrying scale of Rs.3200-4900 along with postponement of future increments.

9. Being aggrieved by the aforesaid punishment order, the deceased preferred an appeal dated 20.02.2008 before the competent authority

10. That *vide* order dated 17.09.2008, the competent authority rejected the appeal of the petitioner and had enhanced the punishment from reduction in rank to removal from service.

Signature Not Verified⁴ "I.O" hereinafter

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Signing Date: 19.05.2026
19:01:39

Page 3 of 16



2026:DHC:4485-DB



11. Being aggrieved by the order of removal from service passed by the Appellate Authority, the petitioner approached the learned Tribunal challenging the disciplinary proceedings and the appellate order, *inter alia*, on the grounds that the punishment had been enhanced without issuance of a show cause notice under Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968⁵, and that the authority passing the order of removal from service was not competent to do so.

12. During the pendency of the O.A., petitioner had expired on 09.09.2016 and thereafter the present petitioner, being his widow and legal representative, was substituted on record before the learned Tribunal.

13. *Vide* impugned order dated 10.08.2018, the learned CAT dismissed O.A. No. 2311/2012 on the grounds that it is for the Disciplinary Authority to consider what would be nature of punishment to be imposed on a government servant based upon the misconduct proved against him and in the absence of any procedural illegality and irregularity in the conduct of DE there is no ground to interfere with the order of appellate authority.

14. That being aggrieved by the impugned order dated 10.08.2018, the present writ petition had been preferred.

15. Mr. S.P. Sethi, appearing on behalf of the petitioner submits that the vigilance check conducted against the deceased had not been carried



2026:DHC:4485-DB



out in compliance with Para 705 of the Railway Vigilance Manual, which required the presence of two independent gazetted officers as witnesses during the vigilance trap proceedings.

16. It is further been contended that instead of independent witnesses, two constables and one Vigilance Inspector belonging to the R.P.F. Department had participated in the vigilance check, thereby raising apprehensions regarding fairness and impartiality in the conduct of the proceedings. Reliance is placed upon the judgment of the Supreme Court in *Moni Shankar v. Union of India & Ors*⁶, wherein the importance of adherence to the prescribed vigilance procedure had been emphasized.

17. It is further submitted that Paras 708 and 710 of the Indian Railways Commercial Manual specifically govern cases relating to shortage or excess Government cash and require such excess or shortage to be duly accounted for in the Daily Trains Cash Book. It is submitted that excess cash is required to be deposited with Government cash and, therefore, mere recovery of excess cash from the Booking Clerk cannot by itself constitute proof of malpractice or misconduct.

18. Further under Rule 710, excess cash represents an amount erroneously collected from travelling passengers and cannot be utilised to cover deficiencies of any previous shift or train. On the basis of the aforesaid provisions, the petitioners contend that the alleged excess amount of Rs.160/- found in the Government cash of the deceased could



2026:DHC:4485-DB



not, by itself, be treated as proof of malpractice or misconduct.

19. It is also contended that the vigilance trap conducted against the deceased was not in accordance with the provisions contained in the Indian Railway Vigilance Manual. Reliance is placed upon Rule 704(v)(a), which provides that while laying a trap, two or more independent witnesses must hear the conversation so as to establish that money was passed as illegal gratification. It is further submitted that Rule 704(vii) requires that responsible and impartial persons should witness the transaction and overhear the conversation between the suspect public servant and the decoy passenger.

20. Further, the learned Counsel contends that the testimony of the prosecution witnesses themselves revealed material inconsistencies in the respondents' case. Shri Satyaveer Singh, examined as PW-1, allegedly stated in cross-examination that he was not aware of the actual fare of the tickets and had not heard any passenger complaining that the deceased had charged excess amount. He also stated that he had been called to the booking office after approximately 20-25 minutes of commencement of the raid and that the vigilance inspectors were not in a position to hear the conversation between the decoy passenger and the Charged Officer.

21. It is also contended that PW-2, during cross-examination, stated that the decoy passenger paid whatever fare was demanded but did not ask for the balance amount from the deceased. It is further submitted that PW-3 Shri Ashok Kumar, another Booking Clerk on duty at the adjoining counter, stated that he heard that someone had left balance



2026:DHC:4485-DB



money on the counter and had thereafter left the place. It is also contended that he stated the Government cash was already with the vigilance officials when he was called into the booking office and that he signed certain documents prepared by the vigilance team.

22. As regards to PW-4, it is submitted that the decoy check had been conducted on the basis of source information, which according to the petitioner contradicted the stand of the vigilance team that the action had been initiated pursuant to complaints received from passengers.

23. Further as to PW-5 Shri A.S. Pandey, Vigilance Inspector, it is submitted that during cross-examination it was admitted by him that he could not hear the conversation between the Charged Officer and the decoy passenger. He also allegedly admitted that the Chief Booking Supervisor and Station Superintendent had not been approached during the trap proceedings. It is further pointed out that although reference had been made to one Shri Guddu Jaiswal allegedly complaining of excess charging, the said person was neither confronted with the Charged Officer nor cited as a witness during the inquiry proceedings.

24. Learned Counsel further contends that the punishment order is non-speaking in nature inasmuch as it merely reproduces the charges and rejects the defence without discussing the defence raised or the basis on which the same is rejected.

25. Learned Counsel further submits that the learned Counsel appearing for respondents before the Tribunal on 18.01.2018 had also submitted that no notice was served upon the deceased before



2026:DHC:4485-DB



enhancement of penalty Rule 22 of the Railway Servants (Discipline & Appeal) Rules.

26. It is also submitted that the issue regarding enhancement of punishment by an authority lower than the appointing authority stands covered by the judgment dated 22.04.2013 passed by this Court in *Union of India & Ors. v. Jagdish Prasad*⁷.

27. *Per Contra* Mr. Bhagvan Swarup Shukla, learned CGSC appearing on behalf of the respondents submits that there existed sufficient material on record to establish that the deceased had demanded and accepted Rs.430/- from the decoy passenger against the due fare of Rs.372/-.

28. According to the respondents, the version put forth by the deceased regarding acceptance of Rs.430/- from the decoy passenger substantiated the allegation relating to demand and acceptance of excess fare.

29. It is further submitted that the vigilance check had been conducted on the basis of source information alleging that the booking staff at Shahdara Railway Station had been indulging in malpractice of overcharging passengers. In order to verify the veracity of the source information, a departmental test check had been conducted in the booking office at Shahdara Railway Station. During the said check, the deceased had allegedly demanded and accepted Rs.58/- over and above



2026:DHC:4485-DB



the due fare on second class mail/express tickets for Raxaul from the decoy passenger.

30. It is submitted that the decoy money amounting to Rs.430/- had been recovered from the government cash of the deceased and that the numbers of the government currency notes recovered during the vigilance check tallied with the numbers mentioned in the test check memorandum. It is further submitted that the deceased had also signed the recovery memo in token of its correctness.

31. It is submitted that the Supreme Court, in *State of U.P. v. Nand Kishore Shukla & Anr.*⁸ has held that the Court, while exercising judicial review, does not act as an appellate authority to reconsider the quantum of punishment imposed by the Disciplinary Authority.

32. Lastly, it is submitted that in the absence of any procedural illegality or irregularity in the conduct of the departmental enquiry, no ground for interference with the order passed by the Appellate Authority is made out in the present case.

33. This Court has heard learned counsel appearing for the parties and has perused the material placed on record.

34. The principal issues arising for consideration in the present writ petition are (i) whether the Appellate Authority could have enhanced the punishment from reduction in rank to removal from service without



2026:DHC:4485-DB



issuance of a show cause notice under Rule 22 of the Railway Servants (Discipline & Appeal) Rules (ii) whether the authority passing the order of removal from service was competent to do so and (iii) whether the findings recorded in the disciplinary proceedings suffered from procedural irregularity warranting interference.

35. On the second issue, the petitioner contends that when the vigilance trap was conducted by vigilance officials, appointment of an Inquiry Officer from the same department gave rise to a reasonable apprehension regarding fairness and impartiality in the enquiry proceedings.

36. In this regard, we deem it relevant to refer to the decision in *Prakash Kumar Tandon (supra)* where in it was held that a disciplinary proceeding must be fairly conducted and that an enquiry officer being a quasi-judicial authority, is required to perform his functions fairly and reasonably, which is also a requirement of the principles of natural justice. It was further observed that if the proceedings are not conducted fairly, an inference can be drawn that prejudice has been caused to the delinquent employee.

37. Thus, there is no doubt that the inquiry officer ought to have been an impartial and fair person.

38. With regards to issue (iii), the petitioner challenged the disciplinary order dated 14.01.2008 on the ground that the same is non-speaking in nature.



39. According to us, a perusal of the order shows that while the charges are reproduced, there is little discussion regarding the defence raised by deceased or the basis upon which such defence came to be rejected.

40. It is well settled that even in departmental proceedings, the disciplinary authority is required to record reasons which reflect due application of mind to the defence and material placed on record. Recording of reasons is an important safeguard against arbitrariness.

41. In *Moni Shankar(supra)*, the Supreme Court emphasized the importance of adherence to the safeguards contained in Railway Vigilance Manual during departmental trap proceedings. The Court observed that although the Vigilance Manual may contain executive instructions, total violation of the prescribed safeguards, particularly non-association of independent witnesses and failure to ensure fairness in trap proceedings, could be taken into consideration while examining whether the charges against the delinquent employee stood properly proved. The Court further reiterated that departmental proceedings, being quasi-judicial in nature, must satisfy the requirements of fairness and principles of natural justice.

42. However, the most significant issue arising in the present case relates to enhancement of punishment by the Appellate Authority. It is not disputed that the deceased had preferred a statutory appeal against the punishment imposed by the Disciplinary Authority. Instead of affirming, modifying or setting aside the punishment, the Appellate Authority enhanced the punishment from reduction in rank to removal



from service *vide* order dated 17.09.2008.

43. The petitioner has specifically contended that before enhancing the punishment, no show cause notice or opportunity of hearing was granted to petitioner's husband as required under Rule 22 of the Railway Servants (Discipline & Appeal) Rules.

44. A perusal of Rule 22 of the Railway Servants (Discipline & Appeal) Rules is reproduced herewith for ready reference:

22. Consideration of appeal –

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstance of the case;

Provided that:-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held



in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit;

(iv) subject to the provisions of Rule 14, the appellate authority shall-

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

45. A perusal of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, makes it abundantly clear that before an Appellate Authority enhances the punishment imposed upon a delinquent employee, the employee must be afforded a reasonable opportunity of making a representation against the proposed enhanced penalty. Rule 22(2)(v) specifically mandates that no order imposing an enhanced penalty shall be passed unless the appellant has been given a reasonable



opportunity of representation in accordance with the provisions of Rule 11. The requirement of notice and opportunity under Rule 22 is therefore mandatory in nature and forms an integral part of the principles of natural justice.

46. Once it stands admitted that no notice was issued before enhancement of punishment, the appellate order dated 17.09.2008 becomes procedurally unsustainable. Enhancement of punishment from reduction in rank to removal from service without affording an opportunity of hearing strikes at the very root of fairness in disciplinary proceedings.

47. In *Oriental Bank of Commerce v R.K.Uppal*⁹, the Court observed that where the Appellate Authority proposes to enhance the punishment, notice must be issued to the delinquent employee and an opportunity of hearing must be granted before passing such order. The said principle squarely applies to the facts of the present case, particularly when the punishment imposed upon the petitioner's husband was enhanced from reduction in rank to removal from service without issuance of any notice under Rule 22 of the Railway Servants Rules.

48. The petitioner has further questioned the competency of the authority passing the order of removal from service. The record shows that the deceased had originally been appointed by the Divisional Railway Manager, whereas the punishment of removal from service



came to be imposed by the Senior Divisional Commercial Manager.

49. In this regard, reliance has rightly been placed upon the judgment of this Court in *Jagdish Prasad (supra)*, wherein this Court, clarified that where the penalty order had not been passed by the competent authority, the same could not be sustained in law.

50. Although the scope of judicial review in departmental proceedings is limited, this Court can interfere where there is violation of statutory rules, principles of natural justice or procedural irregularity. In the present case, the challenge raised by the petitioner relates to the legality of the vigilance proceedings, fairness of the enquiry and enhancement of punishment without compliance of mandatory requirements under Rule 22 of the Railway Servants (Discipline & Appeal) Rules.

51. The learned Tribunal, while dismissing the O.A., failed to adequately consider the admitted non-compliance with Rule 22 and the procedural objections raised by the petitioner. The Tribunal also failed to properly examine the procedural objections raised regarding the vigilance trap proceedings and the enquiry process.

52. The requirement of fairness in departmental proceedings is not merely a procedural formality. It is a settled principle of law that justice should not only be done but should also be seen to be done. Therefore, where the vigilance trap itself is conducted without adherence to the prescribed safeguards and the inquiry is conducted by officers belonging to the same Vigilance Department, the apprehension



2026:DHC:4485-DB



regarding fairness and impartiality cannot be lightly brushed aside.

53. For the aforesaid reasons, we are of the opinion that the order dated 17.09.2008 of the Appellate Authority, which enhanced the penalty awarded to the petitioner without notice, cannot sustain.

54. Accordingly, the order is quashed and set aside. The order dated 14.01.2008 passed by the Disciplinary Authority would stand restored.

55. The impugned order passed by the learned Tribunal is modified to the aforesaid extent.

56. The writ petition is allowed in the aforesaid terms.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

MAY 15, 2026/ss