(2010) 10 MAD CK 0181

Madras High Court

Case No: Writ Petition No. 37607 of 2007

J. Jason Joseph		APPELLANT
	Vs	
The Union of India (UOI)		RESPONDENT

Date of Decision: Oct. 22, 2010

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11
- Railway Servants (Discipline and Appeal) Rules, 1968 - Rule 25
- Railways Act, 1989 - Section 25(1)

Hon'ble Judges: K.K. Sasidharan, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: L. Chandrakumar, for the Appellant; R. Thiagarajan for V.G. Suresh Kumar, for RR1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.K. Sasidharan, J.

INTRODUCTORY:

1. This case concerns the belated exercise of Revisional jurisdiction by the General Manager, Southern Railways at the instigation of the vigilance wing for the purpose of substituting the punishment of reduction in rank by removal from service, notwithstanding the fact that it was only at the instance of the Chief Vigilance Inspector, who was inimically disposed of against the petitioner, a trap was arranged, on the basis of which, the very disciplinary proceeding was initiated.

2. The petitioner challenges the order dated 30 May, 2007 in O.A. No. 559 of 2006 on the file of the Central Administrative Tribunal whereby and whereunder the original application challenging the punishment of removal from service was confirmed.

THE FACTS:

3. The petitioner was initially appointed as Ticket Collector in Indian Railways in the year 1979. Subsequently, he was promoted to the post of Senior Ticket Collector/Travelling Ticket Examiner and Travelling Ticket Inspector.

4. While the petitioner was working as Travelling Ticket Inspector, he was issued with a major penalty charge memo dated 19 February, 1997 by the Divisional Commercial Manager, Chennai for the alleged misconduct committed by him. In the said charge memo, it was stated that while working as Train Ticket Inspector in Train No. 6007 Mail, on 12 October, 1996, his records were checked by the vigilance wing and it was found that he collected substantial amount from passengers, who were travelling in First Class with Sleeper Class ticket without accounting for the conversion charges. Altogether there were seven charges. The petitioner submitted his detailed explanation denying the charges. The disciplinary authority opined that the explanation was not convincing and accordingly, inquiry officer was appointed to inquire into the charges. The inquiry officer conducted the inquiry and submitted his report, holding that the charges were proved. Based on the report of the inquiry officer, the Senior Divisional Commercial Manger of Southern Railways at Chennai imposed the penalty of removal from service as per proceedings dated 15 September, 1999.

5. The order of punishment was challenged by the petitioner before the Central Administrative Tribunal alleging violation of the principles of natural justice. The Central Administrative Tribunal as per order dated 18 September, 2001 set aside the penalty of removal from service and directed the railway administration to proceed with the inquiry from the stage of examination of witnesses.

6. Subsequently, another inquiry officer was appointed. The inquiry officer submitted his detailed report once again holding that the charges were proved. Accordingly, the Senior Divisional Commercial Manager passed an order of dismissal from railway service, as per proceedings dated 26 September, 2002.

7. The petitioner preferred a statutory appeal before the Additional Divisional Railway Manager. The appellate authority opined that, out of seven charges, charges 2, 3, 4 and 5 were not proved. The appeal was accordingly allowed by modifying the punishment. Instead of removal, the petitioner was placed in the lower post for a period of three years with recurring effect.

8. The order passed by the appellate authority on 20 February, 2003 was implemented by posting the petitioner as Senior Ticket Inspector at Gummidipoondi Railway Station. The petitioner joined the said station on 26 February, 2003.

9. Subsequently, the petitioner was transferred to Tiruchirappalli Division.

10. While the matters stood thus, the second respondent by invoking revisional jurisdiction issued a notice dated 4 March, 2004 calling upon the petitioner to show

cause as to why he should not be given the punishment of dismissal from railway service. The petitioner on receipt of the said communication submitted his detailed reply on 15 April, 2004.

11. The General Manger, Southern Railways as per his proceedings dated 8 September, 2005 set aside the order passed by the appellate authority and imposed the punishment of dismissal from railway service.

12. The order passed by the second respondent was challenged by the petitioner before the Railway Board. The appeal was rejected as per order dated 30 June, 2006. Feeling aggrieved, the petitioner filed original application before the Central Administrative Tribunal in O.A. No. 559 of 2006.

THE JUDGMENT OF THE TRIBUNAL:

13. The Central Administrative Tribunal was of the view that paragraph 705 of the Railway Vigilance Manual was more in the nature of administrative instructions and as it has no statutory force, any violation of the provisions of the manual would not give the delinquent officer, a right to challenge disciplinary proceedings. The Tribunal also found that there was no time limit for invoking the revisional jurisdiction by the General Manager and as such, there was no merit in the contention that the review was undertaken after a period of one year. In short, the Tribunal opined that the petitioner was given full opportunity to present his case before the inquiry officer and the revisional authority was having sufficient materials to arrive at the conclusion that the punishment awarded by the appellate authority was not proportionate to the charges levelled against the petitioner. Accordingly, the original application was dismissed as per order dated 30 May, 2007. It is the said order which is challenged in this writ petition.

14. Since the respondents have filed a reply statement in O.A. No. 559 of 2006, they have not filed a separate counter affidavit in the present writ petition.

SUBMISSIONS:

15. The learned Counsel for the petitioner would contend thus:

(a) The very trap arranged by the vigilance was in violation of paragraph 705 of the Railways Vigilance Manual. As per the said provision, the Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses. In the case on hand, it was a pre-planned trap and as such, there was sufficient time for the vigilance team to take the assistance of gazetted officers from Railways to act as independent witnesses. Failure on the part of the vigilance to take such independent witnesses have to be taken serious note of in this matter, in view of the factual background, inasmuch as the Chief Vigilance Inspector was inimically disposed of against the petitioner, on account of an earlier incident. Therefore, the very trap was a stage managed one with the sole purpose to oust the petitioner from railway service.

(b) The appellate authority while modifying the punishment indicated reasons for its interference in the matter. However, in the revisional notice issued by the General Manager, no reasons were indicated as to why the punishment imposed by the appellate authority was not sufficient in the facts and circumstances of the case.

(c) The petitioner was re-instated into service, consequent to the order passed by the appellate authority. It was long after that the second respondent has initiated the revisional proceedings. The revision was highly belated and as such, the very initiation of proceedings caused substantial prejudice to the petitioner.

(d) The inquiry officer committed serious irregularities in the matter of conduct of inquiry. The previous statement of witnesses were marked without examining those witnesses. Those statements were taken as primary evidence to arrive at a finding of guilt against the petitioner.

(e) The coat alleged to have been thrown away by the petitioner and recovered by the vigilance official was not produced before the inquiry officer.

16. The learned Senior Counsel for the Southern Railways would contend thus:

(a) The petitioner was involved in a trap case and the very trap was on the basis of the reasonable information received by the vigilance wing. Proceedings were initiated on the basis of the report submitted by the vigilance and as such, the petitioner was not justified in contending that there were no materials before the inquiry officer.

(b) Paragraphs 704 and 705 of the Railway Vigilance Manual were in the nature of administrative instructions. It has no statutory force. Therefore non-complaince of those provisions would not result in nullifying the trap organized by the vigilance.

(c) The General Manager in his capacity as revisional authority initiated revisional proceedings after one year and fourteen days and given the nature of misconduct, the said period was not unreasonable.

DISCUSSION:

17. The basic material for initiating departmental proceedings against the petitioner was the report submitted by the vigilance wing after conducting the trap in train No. 6007 Mail on 12 October, 1996.

18. Before considering the validity of the departmental trap organized by the vigilance wing, the basic facts relating to the strained relationship between the petitioner and the Chief Vigilance Inspector, Southern Railways requires consideration.

19. The petitioner was cited as a witness in a complaint relating to a co-employee by name Tmt. Chitra Ramanathan. The Chief Vigilance Inspector Thiru Ravikumar appears to have shown undue interest in the said matter and called upon the

petitioner to abstain from tendering evidence. The said advise was not taken seriously by the petitioner and he appeared before the authorities and tendered his evidence, which ultimately resulted in the dismissal of the said officer.

20. While the petitioner was on duty on 8 October, 1996 in 2640 Express from Bangalore to Madras, he was assaulted by the Chief Vigilance Inspector. The incident was witnessed by Thiru V. Gopinath, an officer of Indian Overseas Bank at Madras. The petitioner preferred a complaint against Thiru Ravikumar, Chief Vigilance Inspector on 9 October, 2010. The said complaint reads thus:

Respected sir,

Sub:- Previous enmity against me by Sri. Ravikumar CVI/MAS/S. Rly.

Ref:- His open challenge with me when I was working in 2640 Express dated 8.10.1996

When I was working in 2540 Express on 8.10.1996 from Bangalore to Madras, I met Sri. Ravikumar CVI/Mas in the pantry car near the manager''s cabin. He called me and challenged me openly that he would not leave me unless I am sent out of Railways by his frequent checks.

He also said that I escaped during the last vigilance check and next time he would come with full team from which I could not escape and he would some how fix me.

I fear that as a Chief Vigilance Inspector in Railways Sri. Ravikumar may cause danger to my job. He also informed my batch J. Kannan about this and J. Kannan in turn revealed to me in presence of V. Leelarama T.T.I/BG I/Mas and I was advised to report this matter to your goodself for necessary action. I am prepared to face any enquiry in this regard.

I was the main witness in the vigilance case Tmt. Chitra Ramanathan (Ex. Personal Inspector, Madras Division). So I was forced by Sri. Ravikumar CVI/MAS to withdraw the complaint on several occasions, since the lady is known to him for which I was not prepared. This was the main reason for our previous enmity and he is trying to teach me a lesson by somehow fixing me during his vigilance checks.

This is for your kind information and necessary action.

Thanking you,

Yours faithfully,
sd/ J. Jason Joseph

21. The complaint was forwarded by the Chief Travelling Ticket Training Inspector on 9 October, 2006. A copy of the complaint is available in the file produced by the Standing Counsel for the Railways.

22. Thiru V. Gopinath, an employee of the Indian Overseas Bank was examined as a witness in respect of the complaint preferred by the petitioner against Thiru Ravikumar. The statement of the said witness is also available in the file. The complaint preferred by the petitioner against the Chief Vigilance Inspector was on 9 October, 1996. On 12 October, 1996 Thiru Ravikumar, Chief Vigilance Inspector convened a meeting of the vigilance officials in the air conditioned dormitory at Madras station. In the said meeting a decision was taken to conduct a check in Train No. 6007 Mail on 12 October, 1996 after ascertaining the roster of the petitioner. Thiru Mohammed Rafeeq, Vigilance Watcher, who was attached to the vigilance wing of the Southern Railways at Madras was nominated to act as a passenger for the purpose of check. The said witness was given a sleeper class wait list ticket, and a sum of Rs. 400/- besides his dinner. The witness was asked to approach the petitioner to accommodate him in the First Class compartment with Sleeper Class wait list ticket. He was further instructed to pay the amount as demanded and to insist for a receipt, if he was accommodated in first class. The witness was given specific instruction to inform the vigilance team at Jolarpet junction, if the petitioner had collected money but failed to issue the receipt. There were five other vigilance officials including Thiru Ravikumar, Chief Vigilance Inspector.

23. The vigilance team was not accompanied by gazetted officers from Railways to act as independent witnesses as provided under Paragraph 705 of the Railways Vigilance Manual. When the train reached Jolarpet junction at 1.35 a.m. on 13 October, 1996 on platform No. 1, Thiru Mohammed Rafeeq, trap witness peeped through the window of F2 coach and informed the vigilance officials that the petitioner collected a sum of Rs. 400/- but he did not issue receipt. Immediately the vigilance team entered F2 coach and found the petitioner in the toilet. On seeing the vigilance team, the petitioner went inside the toilet and attempted to lock the toilet door. The said attempt was prevented by Thiru G. Ravikumar and another vigilance official. In the said process, the petitioner threw his coat containing the material documents outside the door. The vigilance team found two persons sleeping near the toilet of F2 coach. On enquiry, they told the vigilance officials that the petitioner did not collect any money from them or issued any receipt. The vigilance team further found that six adults and two children were travelling in the cabin F2 as against the capacity of four members. On inquiry, those passengers stated that a sum of Rs. 1,300/- was paid towards excess charges, but no receipt was issued by the petitioner. Similar inquiries were made with witness Mohammed Rafeeq and other passengers and the vigilance team obtained their statement implicating the petitioner.

24. Thiru M. Murugan, Vigilance Inspector recovered the coat from the track with the assistance of Railway Protection Force Constables. The said witness prepared the inventory and a statement was also recorded. The vigilance wing was of the view that the action of the petitioner in not issuing tickets to the passengers resulted in loss of revenue to the railways to the tune of Rs. 1,779/-. Accordingly, a report was

submitted to the railway administration. This made the railways to initiate departmental proceedings against the petitioner.

25. The charge sheet contains as many as seven charges and it reads thus:

1. Shri. J. Jason Joseph, TTI/S/BG.I/MAS did not extend his co-operation to the Vigilance Inspectors in their legitimate duties. He refused to produce rough journal books, cash value books, charts, personal cash and Railway cash, when asked for.

2. He had demanded and collected Rs. 400/- from one passenger by name Shri. Mohammed Rafeeq in between MAS and AJJ as against the actual difference in fare of Rs. 279/- but did not issue the receipt therefore till the time of check at JTJ.

3. He has collected Rs. 1200/- from Shri Shakir Hussain towards conversion charges from Sleeper Class to First Class for four adults and two children but did not issue the receipt therefore till the time of check at JTJ.

4. He has collected Rs. 300/- along with the reservation slip from a passenger holding ticket No. 01288015 travelling in F1 coach through Coach Attendant, Shri Ramaiah at AJJ but did not issue receipt till the time of check at JTJ.

5. He did not make entry in the chart about the allotment of berths to Shri Mohammed Rafeeq, Shri. Shakir Hussain and family and the passenger holding ticket Nos. 78715276/01288015 till the time of check at JTJ.

6. Besides his non-co-operation and refusal to produce documents, he attempted to do away with the documentary evidence in support of the charges listed above 2 to 5 by throwing his coat along with the case, EFT book and the charts of F1 and F2 coaches.

7. He has allowed two passengers holding Sleeper Class W/L ticket No. 83859556 to travel from AJJ in the corridor of F2 coach without realizing the difference in fare till the time of check at JTJ

26. The petitioner in his reply to the charge memo denied the charges specifically. He also alleged mala fides, as according to him he was beaten by Thiru Ravikumar and other officers of the vigilance department and there was no act of misconduct on his part as alleged by the vigilance. The Divisional Commercial Manager, being the disciplinary authority appointed an inquiry officer. The inquiry was ultimately conducted by Thiru G. Dhanasekaran and he submitted his inquiry report on 13 June, 2002 reporting that all the charges were proved except the demand portion in charge No. 2.

27. The disciplinary authority accepted the inquiry report. Accordingly, the petitioner was removed from service.

28. The order passed by the disciplinary authority was challenged in appeal before the Additional Divisional Railway Manager. The appellate authority was of the view

that there were no acceptable materials to prove charges 2, 3, 4 and 5 and therefore, the quantum of punishment must be restricted to charges 1, 6, and 7 only. Accordingly, he set aside the punishment of removal from service and imposed the punishment of reduction in rank for a period of three years.

29. The Railway Administration accepted the order passed by the appellate authority on 20 February, 2003. Accordingly, the petitioner was re-instated into service on 26 February, 2003.

30. The file produced by the Railway Administration does not contain any material even to suggest remotely that there was an attempt made by the railway officials at any point of time either to review the punishment or to exercise the revisional jurisdiction. This material fact assumes importance in a case like this on account of the peculiar background facts.

31. Before dealing with the issue as to whether the General Manager exercised the revisional jurisdiction independently or at the instance of the Chief Vigilance Inspector, it is necessary to consider the charges framed against the petitioner and the findings recorded by the inquiry officer.

32. Charge No. 2 realting to payment of Rs. 400/-, was disbelieved by the inquiry officer. So Charge No. 2 was only partly proved. Charges 3, 4, 5 and 7 pertains to collection of money from passengers and failure to issue receipts. Except witness Mohammed Rafeeq, who was nominated as a passenger for the purpose of check, none of the other passengers were examined. The alleged statement given by those passengers were marked through other official witnesses. No attempt was taken to examine those independent witnesses.

33. It is true that in cases relating to non issue of tickets, non examination of independent witnesses alone would not vitiate the inquiry. However, in a case like this, wherein the very bonafides in conducting the trap was disputed and in the face of the materials available on record regarding the strained relationship between the Chief Vigilance Inspector and the petitioner, such non examination of independent witnesses assumes significance. The presenting officer has given a very strange explanation that the present address of those passengers were not given correctly and as such, they were not in a position to summon the independent witnesses. Similarly, the main witness Thiru Murugan, Vigilance Inspector was also not examined. The said witness was a railway employee. There would be no difficulty for Railways to secure his presence. With respect to the said witness also, a noval defence was taken that he was transferred to another office. However, on the basis of the records, the appellate authority in his note sent to the vigilance department observed that no attempt was taken by the authorities to ensure the presence of either the independent witnesses or Thiru Murugan, so as to prove the allegations levelled against the petitioner in an acceptable manner. The fact that passengers from whom the petitioner has collected money were not examined, the statement of

the material witness, the Vigilance Inspector, who recovered the coat and recorded the mahazar was not examined coupled with the fact that the coat which was stated to have been thrown out by the petitioner was found missing, etc., gives a clear indication that all were not well. Therefore, there were no sufficient materials to arrive at the conclusion that all the seven charges were proved. These aspects were considered by the appellate authority and it was only in such circumstances the appellate authority modified the punishment, as according to him, the punishment of dismissal from service, was shockingly disproportionate to the proved charges.

34. The file produced by the Railways contains materials to suggest that the proposal for suo motu review of the punishment imposed by the appellate authority was initiated by the vigilance wing and the subsequent initiation of revisonal proceedings by the General Manager was also at their instance.

35. The Chief Vigilance Inspector as per his proceedings dated 19 June, 2003 called upon the Additional Divisional Railway Manager/Appellate Authority to process the case for suo motu review. The said communication reads thus:

DRM/CON/MAS Dated:19.6.2003

Sub: Vigilance case against Shri J. Jason Joseph TTI/MAS.

Ref: Your letter No. M/CON/C/1177 dated 24.4.2003

Shri J. Jason Joseph, TTI/MAS has been reinstated into service and awarded with a penalty of reduction from the rank of TTI in time scale of pay of Rs. 5000-8000 to the rank of Sr. TC in time scale of pay of Rs. 4000-6000 for a period of 3 years (Recurring) as per the appellate authority''s orders.

The penalty of dismissal from service imposed by the disciplinary authoirty has been reduced by the appellate authority based on the following points.

(i) There was (alleged) enmity between the CO and Sri. Ravikumar, then CVI/T.

(ii) The charges 2 to 5 which have been proved in the inquiry and accepted by the disciplinary authority have been held not proved by the appellate authority on the plea that the author of the RUD did not attend the enquiry and hence no credence can be given.

The Vigilance has the following remarks to offer with regard to the above orders of the appellate authority.

In DAR proceedings, the authorities who deal the cases should not consider any extraneous factors and the decision of penalty are to be confirmed within the evidences placed in enquiry.

Moreover the issue of enimity between the Vigilance Inspector Sri G. Ravikumar and the CO is under trial before the Court of Law, disputed by Sri. G. Ravikumar.

As regards the point number two it is not always necessary that the author of a statement has to confirm it at the enquiry but anyone in whose presence the statement has been recorded can adduce and confirm the content and the charged official was given an opportunity to cross examine the witness. Moreover the charged official had not disputed these evidences.

In view of the above and the fact that the reduced penalty does not commensurate with the gravity of offence committed by the employee the case may be processed for suo-motto review by the competent authority under advise to this office.

Sd/-
For Chief Vigilance Officer

36. The communication dated 19 June, 2003 was in the nature of a direction issued to the appellate authority to review the punishment by initiating suo motu review proceedings.

37. The appellate authority was not inclined to exercise the suo motu power of review. According to the appellate authority, serious prejudice was cased to the delinquent, on account of marking the statement of witnesses, without examining them. The appellate authority was of the further view that non-examination of Murugan, Vigilance Inspector on the ground that he was not available for examination and failure on the part of the department to produce the coat before the enquiry officer raises a serious doubt about the veracity of the case projected by the vigilance. The appellate authority in his remarks observed that Thiru Murugan, Ex-Vigilance Inspector was a serving railway employee and as such, there was no difficulty for the Railways to produce the said witness. The appellate authority on the basis of the materials available observed that the presenting officer, without making any attempt to get the presence of Murugan, simply came forward with a request to dispense with the evidence of Thiru Murugan and this really prejudiced the defence of the charged official. The appellate authority in his detailed note submitted to the vigilance indicated the lapses in the inquiry and concluded thus:

Conclusion:

9.0) In view of the foregoing remarks, it is clear that the Appellate Authority has not been influenced by any extraneous consideration while modifying the penalty in favour of Shri Jason Joseph. Further, I am not inclined to accept the view that a document can be proved through the mouth of another person without the production of its author. The Appellate Authority had imposed on Sri. Jason Joseph a penalty which was commensurate with the gravity of the charges held as proved.

9.1) From the above remarks, it is evident that the case on hand does not warrant suo-motto revision at the hands of the Revising Authority.

38. The proceedings dated 25 June, 2003 clearly gives an indication that the Additional Divisional Manager/appellate authority was not in favour of the unwarranted interference by the vigilance wing in the departmental proceedings.

39. The vigilance department was determined to review the punishment given by the appellate authority and to restore the original punishment. They have acted with determination that the petitioner should be ousted from railways at any cost.

40. When the vigilance found that the appellate authority was neither amenable nor agreeable for their decision to initiate suo motu review and to enhance the punishment to one of dismissal from service, they approached the Divisional Railway Manager as per communication dated 31 July, 2003. The said letter reads thus:

DRM/CON/MASDated: 31.7.2003

Sub: Vigilance case against Shri J. Jason Joseph TTI/MAS.

Ref: Your letter No. M/Con/C/1177 dated 25.6.2003.

The views of ADRM/I/MAS communicated vide letter cited above have been considered.

Necessary further action may immediately be taken to process the case for suo motto revision by the competent authority under advise to this office.

Sd/
(N. Sreekumar)
Dy. Chief Vigilance Officer/T
for Chief Vigilance Officer

41. The communication dated 31 July, 2003 was also in the nature of a direction calling upon the Divisional Railway Manager to process the case for suo motu revision by the competent authority and to report compliance.

42. The office of the Divisional Railway Manager processed the communication dated 31 July, 2003 of the vigilance and as per proceedings dated 10 September, 2003 forwarded the papers to the General Manager.

43. The materials available in the file would indicate that the office of the Divisional Railway Manager was of the opinion that the limitation for initiating suo motu review by the Divisional Manager has expired. They were also of the opinion that in case, action has to be taken belatedly, it could be done only by an officer in the rank of General Manager and above. Therefore the file was sent to the General Manager with a note to invoke revisional jurisdiction.

44. The vigilance wing succeeded in their attempt to reopen the proceedings. The General Manager issued notice to the petitioner calling upon him to show cause as to why the punishment should not be enhanced.

45. We have perused the inquiry report as well as the material documents relied on by the inquiry officer, to verify as to whether the appellate authority was justified in arriving at the conclusion that charges 2, 3, 4 and 5 were not proved. The inquiry officer appears to have placed heavy reliance on the statements of witnesses, who were not examined before him. Even the Vigilance Inspector was not examined in the inquiry proceedings. Therefore, the petitioner was not having the benefit of cross examining the witnesses. The statements recorded behind his back were relied on for the purpose of arriving at the conclusion against him. A cumulative reading of the materials would show that the appellate authority was duly justified in its conclusion regarding charges 2, 3, 4 and 5. The appellate authority was of the view that the other three proved charges does not warrant the extreme punishment of removal from service. We are of the view that in the peculiar facts and circumstances of the case, the decision taken by the appellate authority was perfectly correct and there was no scope for exercising the suo motu powers of review or revision. In fact, before exercising the revisional jurisdiction, the General Manager has not even considered the views expressed by the appellate authority in its note submitted to the vigilance wing, in reply to their demand to exercise suo motu power of review. Therefore, the revisional authority was not justified in interfering with the punishment imposed by the appellate authority.

46. It is true that there is no period of limitation for superior officers like General Manager to exercise the power of revision. While considering the question as to whether the revisional jurisdiction was exercised within a reasonable period, the provisions regarding limitation for suo motu review/revision with respect to other officers, assumes significance. As per second proviso to Section 25(1)(v)(i) of the Railways Act, limitation for enhancing the punishment was only six months and in case of reduction in the matter of punishment, it was one year. The revisional power in this case was exercised after a period of one year and fourteen days.

47. The order passed by the appellate authority modifying the punishment to one of reduction in rank was accepted by the railways. Accordingly, the petitioner was re-instated into service. It was long thereafter, the revisional authority and that too, at the instance of the vigilance, resorted to the revisional action by issuing notice. Therefore, it is evident that there was no independent decision taken by the General Manager to re-open the proceedings by exercising the revisional jurisdiction. The General Manager was merely acceding to the request made by the vigilance.

48. It is true that the proceedings for revision could be taken up by the appropriate railway authority either on his or its own motion or otherwise by way of calling for the records of the enquiry proceedings.

49. In the case on hand, the revisional authority has not taken suo motu action independently and within a reasonable period to review the order passed by the appellate authority. Not even a scrap of paper was found in the file, to suggest that a decision was taken by the General Manager suo motu to initiate revisional proceedings against the petitioner. The significant part played by the vigilance is writ large. The delay in initiating the revisional proceedings coupled with the fact that it was initiated more than one year after re-instating the petitioner into service and that too, at the instance of the vigilance, clearly gives an indication that it was not a bona fide action. The vigilance has shown undue interest in the matter for reasons best known to them.

50. The complaint preferred by the petitioner against Thiru Ravikumar, Chief Vigilance Inspector appears to be the genesis for the trap and initiation of disciplinary action against the petitioner. The Railway was correct in their stand that it was not always necessary to take the assistance of independent witnesses during the time of conducting surprise check. The core issue in this case is as to whether the departmental trap conducted by the vigilance on 12 October, 1996 was a bona fide one. While considering an issue like this and more particularly, the bona fides and genuineness of the alleged trap, absence of independent Gazetted officers, assumes importance. Even according to the vigilance, the meeting was on 12 October, 1996 at 15.50 hours and it was only in the said meeting a decision was taken to conduct the trap on that evening.

51. The inspection was at about 1.35 hours on 13 October, 1996. Therefore, there was sufficient time to take the assistance of two gazetted officers as per paragraph 705 of the Railways Vigilance Manual. Failure on the part of the vigilance to take the assistance of Gazetted officers in spite of sufficient time, causes serious doubt on the version given by them in respect of the departmental trap. It was not the case of the vigilance that independent witnesses were not available. The Railway Vigilance Manual provides that in the usual case, nominated passenger should be an independent witness. However, in the case on hand, the vigilance watcher, who was working under the Chief Vigilance Inspector was nominated as a passenger for the purpose of check. The officer, who prepared the Mahazar statement and instrumental in recovering the coat, was not examined. Similarly, independent witnesses, who were travelling in the train were also not examined.

52. All the charges relates to the incident at 1.45 a.m. on 13 October, 2010. Therefore, the very departmental trap appears to be a make-belief affair to collect materials against the petitioner for the purpose of initiating disciplinary proceedings.

53. The appellate authority found that there were no legal evidence to sustain charges 2, 3, 4 and 5 and was of the opinion that the punishment of dismissal was not proportionate to the other proved charges, namely, 1, 6 and 7. The General Manager, by way of a brief order resolved to initiate revisional proceedings against

the petitioner. There was noting contained in the order passed by the revisional authority on 20 February, 2003 indicating as to why he was not in favour of the modified punishment imposed on the petitioner by the appellate authority.

54. The General Manager in his proceedings dated 4 March, 2004 indicated the following reasons for initiating the revisional proceedings.

In terms of Rule 25 of the Railway Servants (Discipline and Appeal) Rules 1968, I have reviewed the case and find that the reasons stated by the Appellate Authority in arriving at the reduction is not valid as the evidence adduced in disciplinary proceedings is different from that in criminal cases. Preponderance of probabilities suffices in a disciplinary case, especially when the irregularities committed by the charged official is affecting the interest of travelling public and the image of the railway administration. Accordingly, I find that the penalty awarded by the Appellate Authority is very less and is not commensurate with the quantum of offence. I, therefore, propose to enhance the penalty to that of dismissal from service.

55. Except stating that the conclusion arrived at by the appellate authority was not valid as the evidence adduced in departmental proceeding is different from the criminal proceedings, nothing was said as to why the revisional authority was in disagreement with the views expressed by the appellate authority. The General Manager was exercising the revisional jurisdiction. It was a statutory revision invoking Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968. Notice issued by the revisional authority should contain materials which actually weighed with the said authority to invoke the revisional jurisdiction, as otherwise, the delinquent would not be in a position to submit his explanation in a proper and effective manner.

56. The General Manager was not in the picture at all till the vigilance called upon him to exercise his revisional power. In case, the General Manager was of the view that the punishment awarded by the appellate authority was nothing but simple punishment and it did not commensurate with the misconduct in question, he should have exercised the revisional power within a reasonable time and atleast before giving posting to the petitioner. Therefore, it is evident that the Railway administration has no grievance against the reduction in punishment, but for the pressure exerted by the vigilance they would not have initiated the revisional proceedings. The materials found in the file clearly indicates that it was the concerted action of the vigilance which actually culminated in exercising the revisional jurisdiction by the General Manager. Therefore, we are of the considered opinion that initiation of revisional proceeding was not a bona fide exercise of power.

57. The learned Senior Counsel for the Railways placed reliance on the decision of the Supreme Court in The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others, in support of his contention

that Paragraph 705 of the Railways Vigilance Manual was only in the nature of an instruction and as such, non-compliance of the same does not vitiate the departmental check or the consequential disciplinary proceedings.

58. The decision of the Supreme Court in G. Ratnam''s case was considered and explained by the Supreme Court in the subsequent decision in Moni Shankar Vs. Union of India (UOI) and Another, . In Moni Shankar case the primary issue before the Supreme Court was with regard to the non-compliance of paragraphs 704 and 705 of the Vigilance Manual and the manner in which the purported trap was laid. In the said case, the trap was laid by the members of the Railway Protection force. It was a pre-arranged trap. The decoy passenger was a member of the Railway Protection Force. A constable from the Railway Protection Force witnessed the operation. The Supreme Court observed that being a pre-arranged trap it was not a case which can be said to be an exceptional one where two Gazetted Officers as independent witnesses were not available. The Supreme Court further observed that since it was a pre-planned trap, independent witnesses could also have been made available. The Supreme Court after considering paragraph 17 of the judgment in G. Ratnam''s case observed thus:

16. ...we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the Department has been able to prove the charges against the delinquent official.

59. The Supreme Court in Moni Shankar''s case cited supra observed that Courts exercising the power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer, relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. The relevant paragraph reads thus:

17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.

60. The Supreme Court in Moni Shankar''s case ultimately held that the cumulative effect of the illegalities/irregularities was required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not.

61. The facts of the present case are quite similar to the facts in Moni Shankar''s case.

62. In the subject case also the decision to arrange the trap was a pre-arranged one. Therefore, it cannot be said that it was an exceptional case where two gazetted officers to act as independent witnesses were not available. The vigilance was having more than twelve hours at their command and they could have arranged gazetted officers to witness the trap. The decoy passenger was also a sub-staff of the vigilance department. The officer against whom complaint was preferred by the petitioner was the leader of the vigilance team. The other officers were all subordinates of the Chief Vigilance Inspector. Therefore, the fact that two gazetted officers were not taken coupled with the fact that the decoy passenger was also a subordinate of the vigilance inspector would clearly show that the departmental trap as well as the initiation of disciplinary proceedings were not bonafide exercise of power and it was actuated by malice.

63. In K.I. Shephard and Others Vs. Union of India (UOI) and Others, the Supreme Court observed that it is a common experience that once a decision has been taken there is a tendency to uphold it and a representation may not really yield any fruitful purpose. The subject case is a similar one inasmuch as the vigilance was trying their level best to uphold the decision of the disciplinary authority taken on the basis of the materials provided by them by way of conducting departmental trap.

64. The vigilance wing in the subject case initially acted as the prosecutor and ultimately as the judge also. The decision taken by the General Manager to initiate revisional proceedings was on the basis of the direction given by the vigilance and in fact the General Manager has not considered the issue independently. The string of communications addressed by the Vigilance to the Additional Railway Manager and to the Divisional Railway Manager gives a clear idea that the vigilance was chasing the petitioner and ultimately, they succeeded in their attempt to terminate the petitioner from Railway service.

65. The Central Administrative Tribunal very mechanically answered the issues by observing that inquiry was conducted in a fair manner and as such no interference was necessary in the order passed by the authorities.

66. The factual matrix referred to above shows that the appellate authority was perfectly justified in reducing the punishment. The initiation of action by the General Manager without any supporting material and at the instance of the vigilance was an unwarranted action.

67. The vigilance department appears to have a hidden agenda to punish the petitioner at any cost. The vigilance has no business to interfere in departmental proceedings. The authorities should be given free hand in the matter of disciplinary proceedings against their employees. The vigilance wing, took up the matter with the disciplinary authority, appellate authority, review authority as well as the revisional authority, with a view to award capital punishment to the petitioner. In fact, the petitioner, at the earliest point of time objected to the conduct of inquiry by an official of the vigilance wing. The said objection was over ruled and the inquiry was conducted by Thiru G. Dhanasekaran.

68. In Hardwari Lal Vs. State of U.P. and Others, , the allegation against the delinquent, who was a constable in the police department, was that being under the influence of liquor he hurled abuses at another constable and accordingly, a departmental enquiry was initiated against him. The issue before the Supreme Court was as to whether the inquiry officer was justified in giving a report about the misconduct without examining the material witnesses. In the said factual context, the Supreme Court observed thus:

3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

69. In Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, , the Supreme Court indicated that the purpose of rules of natural justice is to safeguard the position of the person against whom, an inquiry is being conducted, so that he is able to meet the charge laid against him properly. The observation reads thus:

It may be accepted that rules of natural justice do not change from tribunal to tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer it may be

possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient: (see New Parkash Transport Co. v. New Suwarna Transport Co. 4; but where in a domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic inquires in industrial matters; the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the inquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and 1 brings home the evidence more clearly to the person against whom the inquiry is being held Generally speaking therefore we should expect a domestic inquiry by the management to be of this kind. Even so, we recognise the force of the argument on behalf of the appellant that the main principles of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic enquiry (though we again repeat that this should not be the rule but the exception) and that is in the manner laid down in Shivabasappa Case3. The minimum that we shall expect where witnesses are not examined from the very beginning at the inquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given atleast two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter.

70. The Supreme Court in Kuldeep Singh Vs. The Commissioner of Police and Others, by following the earlier judgment in Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, observed that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross examination by the delinquent.

71. The Supreme Court in Mathura Prasad Vs. Union of India (UOI) and Others, , indicated that where on the result of the inquiry, an employee''s is likely to be deprived of his livelihood, the prescribed procedure must be strictly followed.

19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

72. In Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, , the Supreme Court held that though Evidence Act is not applicable to the industrial tribunals, that does not mean that where issues are seriously contested and have been established and proved, the requirements relating to proof can be dispensed with. The relevant observation reads thus:

14. ...But the application of principal of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order 19 of the CPC and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except insofar as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection insofar as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt.

73. In our considered opinion, the exercise of revisional jurisdiction must be a bonafide exercise of power by the statutory authority and it should not be at the instance of the prosecuting agency. When the revisional authority initiates action on

the basis of the direction given by the investigating agency, though couched in the form of a request and decides the matter in such background, there appears to be a real risk of bias.

CONCLUSION:

74. For the reasons set out above, we are of the view that the revisional authority was wrong in setting aside the order passed by the Appellate Authority and the Central Administrative Tribunal was equally wrong in dismissing the original application filed by the petitioner. Therefore, we are constrained to set aside the order passed by the General Manager, Southern Railway as confirmed by the Railway Board and to restore the punishment imposed on the petitioner by the appellate authority. The petitioner is entitled to all consequential benefits including continuity of service and seniority. It was not the case of the Railways that the petitioner was gainfully employed subsequent to his dismissal. Since we are convinced that the petitioner was subjected to humiliation and the revisional proceedings were initiated only at the instance of the vigilance and there was nothing to show that there was an independent consideration by the revisional authority to revise the punishment coupled with the fact of his non-employment, we direct the respondent to pay 25% of the backwages to the petitioner.

75. The respondents are directed to pay the back-wages and re-instate the petitioner into service within four weeks from the date of receipt of a copy of this order.

76. The writ petition is allowed as indicated above. No costs.