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

Writ Petition No. 37607 of 2007

Court: Madras High Court

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 Manager 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 Manager, 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-compliance 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./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 relating 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 pertain 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 revisional 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 authority 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 enmity 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

caused 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/MAS Dated: 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//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 inquiries 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 it 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.