

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No.13000 OF 2018

Between:

Union of India, rep. by General Manager, S.C Railway and
others

.....Petitioners.

AND

B.S. Purushotham

.....Respondent

DATE OF JUDGMENT PRONOUNCED: 19.12.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

B.V.L.N. CHAKRAVARTHI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ WRIT PETITION No.13000 OF 2018

% 19.12.2023

Between:

Union of India, rep. by General Manager, S.C Railway and
others
.....Petitioners.

And

\$ B.S. PurushothamRespondent

! Counsel for the Petitioners: Sri. Venna Hemanth Kumar,
Central Government Counsel

^ Counsel for the respondent: Sri K.R.K.V. Prasad.

< Gist :

> Head Note:

? Cases Referred:

¹ 2007(8) SCC 212

² (2008) 3 SCC 484

³ (2009) 2 SCC541

⁴(2007) 1 SCC 437

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE B V L N CHAKRAVARTHI
WRIT PETITION No.13000 OF 2018

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri Venna Hemanth Kumar, learned Central Government Counsel for the petitioners and Sri K.R.K.V.Prasad, learned counsel for the respondent.

2. This Writ petition under Article 226 of the Constitution of India has been filed by the Union of India and its Authorities challenging the Judgment and Order dated 01.12.2017 passed in O. A. No.1439 of 2012 by the Central Administrative Tribunal (in short "The Tribunal"), Hyderabad with the prayer to quash the same.

3. The prayer in the Writ Petition reads as under:

"...to issue a Writ of Certiorari or any other appropriate Writ or Order or Direction in the nature of the Writ under Article 226 of the Constitution of India calling for the records relating to and connected with the order dated 01.12.2017 rendered in O.A.No.1439 of 2012 on the file of the Hon'ble Central Administrative Tribunal Hyderabad Bench Hyderabad quash and set aside the same as it is contrary to law and pass....."

4. The respondent, Sri B.S.Purushotham, while working as Ticket Examiner in Guntakal Division was issued the Charge Memorandum dated 16/23.03.1998 by the 6th Petitioner/Assistant Commercial Manager, South Central

Railway, Guntakal Division, Guntakal, under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The Charges related to the alleged misconduct of the respondent, during a decoy check by the Vigilance team of Railways in Train No.248 Passenger from Madanapalle to Tirupati on 27.04.1997 wherein the respondent was working as Travelling Ticket Collector in that train in the Checking Squad. The respondent allowed a decoy passenger to travel from Kalikiri Station to Tirupati without ticket by collecting Rs.30/- for which no railway receipt was issued and thereby he violated the provisions of Indian Railway Commercial Manual and Railway Service Conduct Rules.

5. The Articles I and II of the Charges read as under:

“Statement of Articles of Charges framed against Sri

B.S. Purushotham TC/Spl Squad/RU:

Article-I:

That the said Sri B.S. Purushotham TC/SS/RU while working as squad by Tr.No.248 passenger on 27.04.1997 in between Kalikiri and Tirupathi has failed to maintain devotion to duty and also acted in a manner unbecoming of a Railway Servant and committed the following serious irregularity in that -

He has collected Rs.30/- unauthorized charges from Sri Kadam Gopal and permitted to travel to Tirupathi without ticket as detailed in the statement of imputations and thus liable vide para 2430 (R) of IRCM Vol. II.

Thus Sri B.S. Purushotham TC/SS/RU has violated rule No.3(i)(ii) and (iii) of Railway Service (conduct) rules 1966.

Article – II:

That the said Sri B.S. Purushotham TC/SS/RU while working as squad by Train No.248 passenger on 27.04.1997 in between Kalikiri and Tirupathi has failed to maintain absolute integrity devotion to duty and also unbecoming of Railway Servant committed the following serious irregularity in that -

He has collected Rs.30/- from Sri Kadam Gopal at Piler and has not issued receipt upto Pullercherla and thus violated the instructions contained in para 2427 (b) of IRCM Vol II.

Thus Sri B.S. Purushotham TC/SS/RU has violated rule No. 3(i) (ii) and (iii) of Rly. Services conduct rules, 1966.”

6. The respondent denied the Charges. The Disciplinary Authority appointed an Enquiry Officer and the Enquiry Officer after conducting the enquiry submitted his report recording the findings that, both the Articles of Charge were proved. A copy of

the Enquiry Officer's report was served to the respondent for submitting the Representation against the findings of the Enquiry Officer. After considering, the representation and the Enquiry Officer's report, the Disciplinary Authority/Assistant Commercial Manager (ACM) *vide* Proceedings dated 30.09.1999 imposed the penalty of 'withholding of his Annual Increments for a period of 40 months (NR)'. The respondent filed departmental appeal dated 13.11.1999. However, during pendency of the appeal, the Senior Divisional Commercial Manager, Guntakal, the 4th Petitioner herein, issued a Show Cause Notice (Memorandum) dated 15.03.2000, proposing to enhance the penalty to that of "Compulsory Retirement". The respondent challenged the Show Cause Notice, in O.A.No.515 of 2000 which was dismissed by the Tribunal *vide* Order dated 15.06.2001, against which the respondent filed Writ Petition No.22420 of 2001 which was disposed of, *vide* Judgment dated 30.08.2010, with a direction to the 4th petitioner herein, to withdraw the Show Cause Notice, but making it clear that such withdrawal would be without prejudice to take further action after disposal of the respondent's pending appeal dated 13.11.1999. Thereafter, the Appellate Authority/Divisional Commercial Manager (DCM) *vide* its Order dated 07.06.2011

dismissed the appeal and confirmed the order of penalty as imposed by the Disciplinary Authority.

7. The 4th Petitioner, the Senior Divisional Commercial Manager (Senior DCM), again issued a Show Cause Notice dated 14.10.2011 proposing to impose the penalty of Compulsory Retirement on the respondent observing that the penalty as imposed by the Disciplinary Authority and confirmed by the Appellate Authority was inadequate. The respondent submitted detailed reply dated 05.11.2011 requesting to drop the proposal of enhancement of penalty. The 4th Petitioner *vide* its Order dated 05.12.2012 enhanced the punishment to Compulsory Retirement from service, from the date of receipt of copy of the Order.

8. Challenging the aforesaid Orders dated 30.09.1999, 07.06.2011 and 05.12.2012, the respondent filed O.A. No.1439 of 2012 which has been allowed by the Tribunal on 01.12.2017 against which the present Writ Petition has been filed.

9. The Central Administrative Tribunal had allowed the O.A.No.1439 of 2012 quashing the impugned Orders and consequentially providing that the applicant therein, the present respondent shall be entitled to consequential benefits such as pay fixation and promotion on notional basis on par with his juniors in accordance with Rules.

10. The Tribunal allowed the O.A., holding that the trap was conducted in violation of Paras 704 and 705 of the Railway Vigilance Manual. The trap was a pre-arranged trap. The authorities had not ensured the presence of gazette officers as independent witnesses. The Tribunal further held that the alleged recorded admission of the delinquent employee in the trap alone could not be taken as sufficient proof of misconduct, and unless the statement of the Charged employee, during Vigilance Check was corroborated by an independent witness the same could not be relied upon and particularly when the vigilance check was not even conducted as per the Paras 704 and 705 of the Vigilance Manual.

11. The Tribunal further held that the Order of the Revising Authority, of enhancement of the penalty was without Jurisdiction. The said Order dated 05.12.2012 was passed by the Senior Divisional Commercial Manager. The Tribunal considering Rule 25(1)(4) of the Railway Servants (Discipline & Appeal) Rules, 1968 (in short “the Rules”) and placing reliance in **Union of India, Rep by the Additional Divisional Railway Manager South Central Railway Vijayawada and another vs. S. Rama Rao in (W.P.No.11851 of 2001 dated 01.03.2011)** held that the Revising Authority in the case of the present respondent would be the Divisional Railway Manager and the

Suo Moto action for enhancement of the penalty could not be taken by an Authority below the rank of Divisional Railway Manager, in the Division.

12. Challenging the Order of the Tribunal, learned Central Government Counsel submitted that even if, there was violation of the provisions in Paras 704 and 705 of the Vigilance Manual, that violation would not ipso facto vitiate the Departmental Proceedings and on such ground the Order of punishment could not be set aside. He submitted, placing reliance in the case of the *Chief Commercial Manager v. G. Rathnam* (Civil Appeal No.5033 of 2003) decided on 22.08.2007 of the Hon'ble Apex Court, that the instructions contained in Paras 704 and 705 of the Vigilance Manual are procedural which have been issued for the information and the guidance of the Investigation Officers and do not confer any right on the delinquent employee.

13. The learned Central Government Counsel further submitted that the Departmental appeal was preferred by the respondent before the Divisional Commercial Manager (DCM) and therefore the Revisional Authority is the Senior Divisional Commercial Manager (Dy. Head of the Department), in view of Rule 25(1)(b) of the Rules, 1968. The Tribunal therefore legally erred in setting aside the revisional order on the ground of want of jurisdiction.

14. Learned counsel for the respondent submitted that the Vigilance Officer conducted the decoy check in violation of the instructions contained in Paras 704 and 705 of the Vigilance Manual. The Departmental Proceedings based on such Vigilance Enquiry also stand vitiated. There was no independent witness. The employer did not appoint any Presenting Officer. The Enquiry Officer himself acted as the presenting officer which vitiated the enquiry. The mandatory provision of rule 9(21) of the Rules were not followed. The respondent was not questioned on the circumstances appearing against him in the evidence resulting in violation of the principles of the natural justice. The Tribunal did not commit any illegality in allowing the O.A.

15. Learned counsel for the respondent further submitted that the revisional order was without jurisdiction as Senior Divisional Commercial Manager is not the competent authority under Rule 25 of the Rules to act as revisional authority.

16. Learned counsel for the respondent placed reliance in the following cases in support of his submission:

- i) Order of the Hon'ble High Court of Andhra Pradesh dated 01.03.2011 in W.P.No.11851 of 2001.
- ii) Order of the Hon'ble High Court of Andhra Pradesh dated 22.01.2014 in W.P.No.1490 of 2002.
- iii) Order of the Hon'ble High Court of Andhra Pradesh dated 06.04.2022 in W.P.No.18766 of 2011.
- iv) (2008) 3 SCC 484 Moni Shankar Vs. Union of India

Refusal to assist or witness a trap without a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand. A memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the Investigating Officer/Inspector. Another memo, for returning the G.D. notes to the decoy will be prepared for making over the G.C. notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witnesses will take up position at such a place where from they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe — a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the Investigating Officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, Railway and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.

(c) XXX

(d) XXX

(e) XXX"

20. As per para 704 of Vigilance Manual, when laying a trap, two or more independent witnesses are required, who must hear the conversation which should establish that the money was being passed as illegal gratification. The transaction should be within the sight and hearing of two independent witnesses. The witnesses should be responsible witnesses who should not

have appeared as witnesses in earlier cases of the department. It is safer to take witnesses who are Government employees and other departments. Para 705 of the Vigilance Manual also contains the instructions in addition to those in para 704. It also emphasis for two Gazetted Officers of Railway to act as independent witnesses.

21. In **Chief Commercial Manager vs. G. Ratnam and others**¹, upon which the learned counsel for the petitioner placed reliance, the Hon'ble Apex Court held that the instructions contained in Paragraphs 704 and 705 of the Vigilance Manual, 1996 are procedural in character and not of a substantive nature. The violation thereof, if any, by the investigating officer in conducting departmental trap cases would not ipso facto vitiate the departmental proceedings initiated against the respondents on the basis of the complaints submitted by the investigating officers to the railway authorities. It was also observed that the instructions under paras 704 and 705 of the Manual were issued not for the information of the accused in the criminal proceedings or delinquent in the departmental proceedings, but for the information and guidance of the investigating officers.

¹ 2007(8) SCC 212

22. In **Chief Commercial Manager** (supra), the Hon'ble Apex Court declined to agree that the non-adherence of the mandatory instructions and guidelines contained in paragraphs 704 and 705 of the Manual vitiated the departmental proceedings against the railway authorities.

23. Paras 19 and 24 of the **Chief Commercial Manager** (supra) are reproduced as under:

“19. We are not inclined to agree that the non-adherence of the mandatory Instructions and Guidelines contained in paragraphs 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained.

24. On consideration of the foregoing facts and in the teeth of the legal aspect of the matter, we are of the view that the instructions contained in paragraphs 704 and 705 of the Vigilance Manual, 1996 are procedural in character and not of a substantive nature. The violation thereof, if any, by the investigating officer in conducting departmental trap cases would not ipso facto vitiate the departmental proceedings initiated against the respondents on the basis of the complaints submitted by the investigating officers to the railway authorities. The instructions as contemplated under paragraphs 704 and 705 of the Manual have been issued not for the information of the accused in the criminal proceedings or the delinquent in the

departmental proceedings, but for the information and guidance of the investigating officers.”

24. The **Chief Commercial Manager** (supra) was considered in **Moni Shankar vs. Union of India and another**².

25. In **Moni Shankar** (supra), the departmental proceedings were initiated based on a decoy check. One of the points was whether non-adherence of the instructions as laid down in paragraphs 704 and 705 of the Manual would invalidate the departmental proceedings. The Hon’ble Apex Court held that with a view to protect the innocent employees from traps, appropriate safeguards were provided in the Railway Manual in paras 704 and 705. The Hon’ble Apex Court observed that the case of **Chief Commercial Manager** (supra) proceeded on the premise that the executive orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued. The Apex Court emphasized in **Moni Shankar** (supra) that the 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. In

² (2008) 3 SCC 484

Moni Shankar (supra), the Apex Court held that Para 705 of the Manual was also very relevant. If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go by.

26. It is apt to reproduce Paras 15 to 17 and 26 to 30 of **Moni Shankar** (supra) as under:

“15. It has been noticed in that judgments that Paras 704 and 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. This Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

16. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but 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.

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 Court 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. (See - [State of U.P. v. Sheo Shanker Lal Srivastava](#) : (2006)) 3 SCC 276 and [Coimbatore District Central Cooperative Bank vs. Coimbatore Distarict Central Cooperative Bank Employees Association and another](#) : (2007) 4 SCC 669 2007.

26. The High Court has only noticed paragraph 704 of the Manual and not the paragraph 705 thereof. Paragraph 705 was very relevant and in any event both the provisions were required to be read together. The High Court, thus, committed a serious error in not taking into consideration paragraph 705 of the Manual. The approach of the High Court, in our opinion, was not entirely correct. **If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go bye.**

27. It is the High Court who posed unto itself a wrong question. The onus was not upon the appellant to prove any bias against the RPF, but it was for the department to establish that the charges levelled against the appellant.

28. The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. **The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied from the said opportunity.**

29. The cumulative effect of the illegalities/irregularities were required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not.

30. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual ; the Enquiry Officer acted as a Prosecutor and not as an independent quasi judicial authority ; he did not comply with Rule 9(21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.”

27. Thus, it is well settled in law that the safeguards provided to a railway employee under Paras 704 and 705 of the Railway Vigilance Manual, 1996, cannot be given a complete go-bye and in order to judge whether the departmental proceedings stood vitiated or not the cumulative effect of illegalities/irregularities is required to be taken into consideration.

28. In the present case, the Presenting Officer was not appointed and the appointed Enquiry Officer was working under the Senior Deputy General Manager (Vigilance)

29. In **Union of India, rep. by the General Manager, S.C. Railway, Secunderabad and others vs. A.R. Rakesh and another** (W.P.No.26790 of 2015 decided on 14.09.2015), it was observed that the principle to which the concept of appointing a

Presenting Officer owes its existence is that the Inquiry Officer so appointed, no doubt, by the very same disciplinary authority belongs to the same department/unit, but is required to maintain adequate distance from both sides. He is required to hold the scales even. He must necessarily demonstrate that he is fairly objective and impartial in his approach and mind. It was observed that justice must not only be done, but it must appear to have been so done. The Enquiry Officer should not act or conduct as prosecutor.

30. Para 7 of **A.R. Rakesh** (supra) reads as under:

“7. We are conscious that some times for sheer want of adequate man-power, it may not be always possible for an Inquiry Officer to be assisted by a Presenting Officer, but at the same time, the principle to which the concept of appointing a Presenting Officer owes its existence is that the Inquiry Officer so appointed, no doubt, by the very same disciplinary authority belongs to the same department/unit, but is required to maintain adequate distance from both sides. He is required to hold the scales even. He must necessarily demonstrate that he is fairly objective and impartial in his approach and mind. Before a witness is introduced for examination or before a witness examined on behalf of the employee is cross-examined, a certain amount of briefing is required. Certain information may have to be secured from various other sources independently. Imagine the situation where the Inquiry Officer doing the above acts behind the back of the employee and thereafter the impression he gains beforehand about men and matters

brought before him in the inquiry undertaken by him. Therefore, it is always set out by the Constitutional Courts that justice must not only be done, but it must appear to have been so done. What would a Bungalow Peon expect from an Inquiry Officer, who is also acting on behalf of the very same disciplinary authority who is conducting the prosecution as well? Would it be fair to expect that the man, who is facing the charge, will still have the same fair and fearless attitude that the Inquiry Officer is an impartial individual and that he is objective in his mind? That is why, we feel, that the concept that 'no man should be a judge in his own cause' has been developed to the extent it has been done by the Indian Courts. Looked at it from any perspective, we cannot approve the conduct of either the Inquiry Officer or the Railways in litigating in the manner in which they have done."

31. In **Union of India and others vs. Shri K. Srinivasa Rao** (W.P.No.18766 of 2011 decided on 06.04.2022), a Coordinate Bench of this Court held that as it was not in dispute that one of the officers of the Vigilance Wing of the Railways was appointed as Enquiry Officer, the order of punishment was rightly set aside by the Tribunal. The Coordinate Bench placed reliance in the Hon'ble Apex Court judgment in **Union of India and others vs. Prakash Kumar Tandon**³, in which **it was held as under in para 12:-**

"12. The disciplinary proceedings were initiated only after a raid was conducted by the Vigilance Department. The enquiry officer was the Chief of the Vigilance Department. He

³ (2009) 2 SCC541

evidently being from the Vigilance Department, with a view to be fair to the delinquent officer, should not have been appointed as an enquiry officer at all”.

32. In **Mathura Prasad vs. Union of India and others**⁴, the Hon’ble Apex Court held that 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 Rules are required to be strictly followed.

33. It is apt to refer Paras 19 and 20 of **Mathura Prasad** (supra) as under:

“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 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.

20. In **Shri S.N. Chandra Shekhar & Anr. v. State of Karnataka & Ors.** 2006 (3) SCC 208 wherein this Court held:-

"34. The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not

⁴ (2007) 1 SCC 437

been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regards the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.

35. In [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai](#) ((2005) 7 SCC 627), this Court referring to [Cholan Roadways Ltd. v. G. Thirugnanasambandam](#) (2005) 3 SCC 241) held: (SCC p. 637, para 14)

14. Even a judicial review on facts in certain situations may be available. In [Cholan Roadways Ltd. v. G. Thirugnanasambandam](#), this Court observed: (SCC 253, paras 34-35) '34□It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See [E. v. Secy. of State](#) for the Home Deptt). Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled "Judicial Review, Appeal and Factual Error" published in 2004 Public Law, p.788."

36. The order passed by the statutory authority, it is trite, must be judged on the basis of the contents thereof and not as explained in affidavit. The said dicta shall apply to the facts of the present appeal also.”

34. The Tribunal has clearly recorded that the witnesses in the present case are R.P.F Constables who admittedly had participated in a similar traps earlier also. Although the trap was a pre arranged trap, the authorities had not ensured the presence of Gazetted Officers to act as independent witnesses. The Tribunal recorded that there was violation of paras 704 and 705 of Manual and the disciplinary proceedings based on the trap were vitiated. The recorded admission of the delinquent employee in Vigilance check alone could not be taken as sufficient proof of misconduct as well as the facts constituting the misconduct, in the absence of any corroboration. The Tribunal observed that the penalty order and the enhancement of penalty order placing reliance on the statements recorded during the vigilance check without any corroborative evidence could not be sustained. The acceptance at the time of vigilance check of the charge cannot be adequate ground for enhancement of penalty. The Tribunal has further recorded that when the recorded C.C. notes were never recovered from the respondent herein, the finding that the charges were proved

was perverse. Nothing could be argued contrary to the aforesaid, by the learned Central Government Counsel.

35. In view of the findings recorded that the trap was not conducted as per Paras 704 and 705 of the Vigilance Manual; there was no independent witness, the alleged statement of the delinquent during vigilance check could not be relied against him without any corroboration and the C.C notes were not recovered from the delinquent, coupled with the fact that the enquiry officer acted as a presenting officer and no presenting officer was appointed; we hold in point No.1 that the disciplinary proceedings and the penalty orders are vitiated. The finding of the Tribunal on this aspect does not call for any interference.

POINT No.2:

36. Rule 25 of the Rules, 1968 reads as under:

“25. **Revision** –

- (1) Notwithstanding anything contained in these rules –
 - (i) the President, or
 - (ii) the Railway Board, or

- (iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or
- (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or
- (v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control - 23 may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary, and may –
 - (a) confirm, modify or set aside the order; or
 - (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
 - (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
 - (d) pass such orders as it may deem fit:

Provided that –

- (a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;
- (b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after

consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after - (i) the expiry of the period of limitation for appeal; or (ii) the disposal of the appeal where any such appeal has been preferred: Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this rule -

(i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and 24

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired:

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by - (a) an appellate authority other than the President; or (b) the revising authorities mentioned in item (v) of sub-rule (1) - after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant: Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.
Explanation: For the purposes of this sub-rule the time limits for

revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.”

37. From Rule 25(4)(ii) of the Rules, 1968, it is clear that the revisional authority shall be higher than the appellate authority.

38. As per the memo filed by the respondent dated 24.07.2023 to which there is no objection raised, the hierarchy in Guntkal Division of South Central Railway is as follows:

“(a) The Division is headed by Divisional Railway Manager (DRM) followed by Additional Divisional Railway Manager (ADRM). The Branch Officer for the Commercial Department under the control of the DRM is Senior Divisional Commercial Manager (Junior Administrative Grade) under whom the Divisional Commercial Manager (Senior Scale) and Assistant Commercial Manager (Junior Scale) function. As per the arrangement in the Division, the Senior Scale Officer i.e., DCM is not holding independent charge as he was reporting to a Junior Administrative Grade Officer viz., Sr. DCM.

(b) As per the Schedule-II appended to rule 4 and sub-rule(2) of rule 7 of the Railway Servants (Discipline & Appeal) rules, 1968, in respect of the penalty imposed on the respondent rule 6(iv), the Appellate Authority shall be Junior Administrative Grade Officer i.e Sr. DCM in the instant case. Whereas, the DCM (Senior Scale Officer) acted as appellate Authority who is not competent. Once Sr. DCM is the Appellate Authority, he cannot be the

Revising Authority, whereas in the instant case Sr. DCM acted as Revising Authority and issued the order of enhancing the punishment after about 18 months.”

39. Schedule-II to the Rules, 1968 is as under:

Sl.No	Authority empowered to place a Railway servant under suspension or to impose penalties	Class of Railway Servants over whom disciplinary powers can be exercised	Nature of penalties mentioned in rule 6 which the authority in column 2 is empowered to impose on Railway Servants mentioned in corresponding entries in column 3 and powers of that authority to place them under suspension	Appellate Authority
1	2	3	4	5
	Senior Supervisors incharge with Grade Pay of Rs.4300/- and above. (Described as Supervisors Incharge by the Railway Administration for this purpose)	All staff who are three grades (Grade Pay) below and lower than the Disciplinary Authority.	Penalties specified in clauses (i) to (iv) (no such power can be exercised where inquiry under sub-rule(2) of rule 11 is required) suspension subject to report to Divisional Officer or Assistant Officer Incharge within twenty four hours in the case of Group 'C' staff	Assistant Officers (Junior Scale and Group 'B') (Gazetted)
2	Assistant Officers (Junior Scale and Group 'B') (Gazetted)	All staff with Grade pay of up to and including Rs.2400/-	Penalties specified in clauses (i) to (v) and suspension. Also penalty specified in clause (vi) on staff with Grade Pay of up to and including Rs.1650/- only.	Senior scale officers and Assistant Officers (Junior Scale and Group 'B' (Gazetted) holding independent charge)
3.	Senior Scale Officers and Assistant Officers (Junior Scale and Group 'B' (Gazetted) holding independent charge)	All staff with Grade pay of upto and including Rs.2,800/-	Penalties specified in clauses (i) to (vi) and suspension.	Junior Administrative Grade Officers and Senior Scale Officers holding independent charge or incharge of a Department in the Division.
.....	-----	-----

Note:

- (1) An Appointing authority or an authority of equivalent rank or any higher authority shall be competent to impose penalties specified in clauses (vii), (viii) and (ix) of rule 6.
- (2) Where the post of appellate authority as shown in column 5 is vacant, then, in that case, the next higher authority shown in the row just below that authority shall be the appellate authority.
- (3) The appointing authority or an authority of equivalent rank or any higher authority who is competent to impose the penalty of dismissal or removal or compulsory retirement from service, may also impose any lower penalty.”

40. In view of the rule position, we are of the view that even if the appellate order was passed by the Divisional Commercial Manager (Senior Scale Officer) who functions under the Senior Divisional Commercial Manager, the Senior Divisional Commercial Manager cannot act as revisional authority. The appellate authority under the rules being Junior Administrative Grade Officer, i.e Senior Divisional Commercial Manager, the same authority cannot be the revisional authority as well. The Revisional Authority has to be higher than the appellate authority as per the Rules.

41. In **Union of India, Rep by the Additional Divisional Railway Manager South Central Railway Vijayawada and**

another vs. S. Rama Rao in (W.P.No.11851 of 2001 decided on 01.03.2011), a Co-ordinate Bench of the High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh held that the Revising Authority in respect of a Travelling Ticket Examiner is only the Divisional Railway Manager and not even the Additional Divisional Railway Manager who is below the rank of the Divisional Railway Manager.

42. In **Union of India Rep by the Additional Divisional Railway Manager South Central Railway Hyderabad Division Secunderabad vs. S. Harikrishna** (W.P.No.1490 of 2002 decided on 22.01.2014), a Coordinate Bench of the High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh, held that from rule 25(4)(ii) of the Rules, the revisional power is conferred on the Higher Authority i.e higher than the appellate authority. It is apt to refer paras 5 and 6 of the judgment as under:

5. In this case, it is not in dispute that against the orders of the disciplinary authority i.e. Divisional Commercial Officer, appeal lies to Additional Divisional Railway Manager as per Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968. Part VI of the Railway Servants (Discipline & Appeal) Rules, 1968 deals with the provisions relating to revision and review. In this case, it is

also not in dispute that the punishment of reduction in pay was enhanced to a penalty of removal from service by order, dated 25/28.2.2000 passed by the revisional authority in exercise of power under Rule 25 of the Rules. Rule 25 (4) of the Rules read as under:

“(4) No power of revision shall be exercised under this Rule-

- (i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and
- (ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired.”

6. From a perusal of the provisions under Rule 25 (4) (ii) of the Rules, it is clear that revisional power is conferred only on the higher authority i.e. higher than the appellate authority, where an appeal has been preferred or where no appeal has been preferred. Inasmuch as the Additional Divisional Railway Manager is an appellate authority only, not being an authority higher than the appellate authority, he cannot exercise the power of revision. The same aspect has been considered by Division Bench of this Court in W.P.No.11851 of 2001 in its order, dated 01.03.2011. From a perusal of the said order, we are also in agreement with the view taken by the Division Bench in the said order.”

43. On point No.2, in view of the above consideration we hold that the revisional order passed by the Senior Divisional

Commercial Manager, enhancing the penalty to compulsory retirement has been highly held to be without jurisdiction.

44. We do not find force in the submission of the learned Central Government Counsel that if the revisional order was not passed by the competent authority, the Tribunal should have maintained the order of penalty as passed by the Disciplinary Authority, for the obvious reason, that on the findings recorded by the Tribunal and considered in Point No.1 (supra) even the penalty order of the disciplinary authority cannot be sustained. Once the original order of penalty is unsustainable its enhancement by the authority revising it for higher punishment also cannot stand, irrespective of the point of jurisdiction.

POINT No.3:-

45. In view of our consideration on Point Nos.1 and 2, we hold on point No.3 that the impugned order of the Tribunal does not call for any interference in the exercise of our writ jurisdiction.

46. The writ petition lacks merits and is dismissed. No order as to costs.

As a sequel, Miscellaneous Applications, if any, pending shall stand closed.

RAVI NATH TILHARI, J

B.V.L.N. CHAKRAVARTHI, J

Date:19.12.2023

Note:

L.R copy to be marked.

B/o.

MSI/Gk.

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE B V L N CHAKRAVARTHI**

WRIT PETITION No.13000 OF 2018
(per Hon'ble Sri Justice Ravi Nath Tilhari)

Date:19.12.2023

MSI/Gk