

Reserved On : 04/05/2026

Pronounced On : 17/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16392 of 2013

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DINESHKUMAR JETHALAL PARMAR

Versus

UNION OF INDIA THROUGH SECRETARY & ORS.

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Appearance:

MR MIREN PRIYADARSHI(11023) for the Petitioner(s) No. 1

MS RATNA VORA(2251) for the Petitioner(s) No. 1

MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1,2

MR KM PARIKH(575) for the Respondent(s) No. 2

RULE NOT RECD BACK for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**

and

HONOURABLE MR.JUSTICE J. L. ODEDRA

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. This petition is presented by Mr. D. J. Parmar, who had joined the railways in the year 1972, was promoted in 1981 as Welfare Inspector and thereafter as Assistant Personnel Officer in 1995.

2. In the year 1999, a charge-sheet was laid against him and an enquiry was conducted in which it was found that the charges had been established and the

Disciplinary Authority proceeded to accept the enquiry report and impose a penalty of removal from service.

3. An appeal preferred by him before the Appellate Authority was also dismissed. He thereafter approached the Central Administrative Tribunal (for short “CAT”) challenging the penalty imposed on him but even the CAT dismissed the application and consequently he has filed the present petition.

4. The necessary facts for deciding this writ petition as could be ascertained from the original records produced by the Railways as per the orders of this Court and the pleadings are as follows:

5. On 12.02.1999 a charge-sheet was laid against Parmar in which the following two charges were made.

“Shri DJ Parmar, APO(IR)-CCG/while working as APO(C)-CCG during the month of June, 1996 committed gross misconduct in as much as that:

1. He concealed the fact regarding his daughter’s candidature in the examination for NTPC conduct

by RRB/Mumbai held on 12.6.1996 in Centre No. 22, New English High School, MG Marg, Vasai from the administration and got himself nominated as centre in charge therein.

2. He extended undue favour to his daughter in the written examination by misusing his official position with the assistance of his subordinate staff.

By his above acts Shri DJ Parmar has displayed lack of integrity and acted in a manner which is unbecoming of a Railway Servant Infringing Rules-3.1(i) & (iii) of Railway Services (Conduct) Rules, 1996.”

6. As could be seen from the above, the charge-sheet that had been laid in 1999 was regarding an allegation that he had abused his official position to help his daughter, who had taken up an examination conducted by the Railway Recruitment Board in the year 1996.

7. On 24.02.1999, i.e., about three weeks after charge-sheet had been laid against Mr. D. J. Parmar, a charge-sheet was also laid against one Mr. S. A. Gajre.

8. The charge-sheet that has been laid against Gajre is not available in the records. It is however admitted by the Railways that the charge leveled against S. A. Gajre was that he had intentionally given a misleading statement to the Chief Vigilance Inspector on 19.08.1998 to the effect that D. J. Parmar was not available in the school's office at New India English School, Vasai on 23.08.1996 between 10:00 hours to 12:30 hours and he had stated that D. J. Parmar had fallen sick and hence had left the school.

9. On 28.06.2000, S. A. Gajre passed away and as a consequence on 02.08.2000 the disciplinary proceedings against him were closed in view of his demise.

10. It may be pertinent to state here that the basic charge against D. J. Parmar, as could be seen from the charge extracted above, was that he had got himself nominated at the New English High School, Vasai, by suppressing the fact that his daughter was taking this

examination, and had shown undue favor to his daughter in the written examination, by misusing his official position.

11. However, strangely, at about the same time, an inquiry was conducted against S. A. Gajre, who was posted at the same school in connection with the RRB exam, to the effect that he had connived with D. J. Parmar, and in order to help him, had given a misleading statement that Parmar was not available in the school between 10:00 hours to 12:30 hours i.e., during the time his daughter took up the examination.

12. Though the charge, both against Gajre and Parmar related to the same incident which was alleged to have occurred on 23.08.1996 whereby D. J. Parmar was alleged to have helped his daughter in the examination which she took up, the railways, for reasons best known to them, did not conduct a joint inquiry.

13. It may also be pertinent to state here that the railways did not inform D. J. Parmar or the inquiry officer of the fact that there was a statement made by S. A. Gajre to the effect that D. J. Parmar was not available in the New India English School on 23.08.1996 from 10:00 to 12:30 hours.

14. It is obvious that this charge, made by the railways against S. A. Gajre, would basically mean that there was a statement that Parmar was not available in the school when the examination of his daughter had taken place, and this would in turn, render the charge laid against him nugatory.

15. An inquiry was conducted on the basis of the charge that had been laid against Parmar.

16. The railways sought to make out a case against Parmar to the effect that in the Railway Recruitment Board examination, which was scheduled to be held on 23.06.1996, his daughter was allotted New English

School, Vasai as her center to take up the examination, and though he was aware that his daughter was allotted the center, he had made a request to be appointed as center-in-charge at the very same school by requesting one Mr. P. K. Goel and he was nominated as the center-in-charge for the said school.

17. The Railways sought to contend that he had deliberately hidden the fact that his daughter was taking up the exam at that center and he also did not deliberately sign in the declaration regarding the close relatives appearing at the center.

18. It was sought to be alleged that he had asked his subordinate Shri Worlikar to solve the question paper and write the answers on a sheet of papers and he had asked him to accompany him to room No. 22 where his daughter was seated and he took out the answer-cum-question paper from Shri Baria who was the invigilator of the said room and had asked Worlikar to solve the questions relating to his daughter. It was alleged that

Parmar had subsequently told him that the answer book belonged to his daughter.

19. In short, the allegation against D. J. Parmar was that he had manipulated his nomination as an officer-in-charge and using this official position, he had called upon his subordinate to solve the question papers and thereafter had approached the invigilator and had taken out the answer book of his daughter and got them corrected by Worlikar with an intention to unduly favor his daughter.

20. Interestingly, even though there was clear allegations of misconduct against Mr. Gajre, the invigilator Baria and Raju Worlikar, who was alleged to have corrected the answers, the Railways chose to proceed only against Mr. D. J. Parmar, the present petitioner, Mr. S. A. Gajre, Officer-in-charge of Center (against whom the inquiry was closed on account of his death) and Mr. Baria, the invigilator.

21. Though there was a clear allegation that it was Raju Worlikar, who corrected the answer at the behest of the petitioner Mr. D. J. Parmar, no charge was laid against him nor was any inquiry held against him. An inquiry was conducted on this charge and five witnesses namely, P.K. Goel (with whom the petitioner Mr. Parmar was supposedly made a request for being nominated to the school), Raju Worlikar, (the Clerk who had corrected the answers of Parmar's daughter), Mr. P. Kulkarni, Head Clerk, and Shri Bankar, were examined as witnesses.

22. During the course of the inquiry, Mr. P. K. Goel deposed that the petitioner had requested him to nominate him at New English School and Raju Worlikar also deposed that he had been requested by Parmar to correct his daughter's answer papers. On the basis of this evidence, the Inquiry Officer came to the conclusion that the charges had been established, and the Disciplinary Authority accepted this inquiry report and

proceeded to impose the punishment of removal from service on 08.04.2005. An appeal filed by the petitioner Parmar to the President was also rejected on 08.09.2006.

23. The petitioner approached the Central Administrative Tribunal which has dismissed the application filed by the petitioner Mr. D. J. Parmar on the ground that a fair procedure was followed by the Railways in conducting the inquiry and the Tribunal could not enter into the adequacy of the evidence or reliability of the evidence.

24. The Tribunal held that its interference in such matters was limited. It also recorded a finding that the examination of Raju Worlikar as a tactical collaborator did result in his evidence being viewed cautiously. The totality of the circumstances, even though the answer sheet of the petitioner Parmar's daughter had not been sent for any expert, did not provide for any mitigating circumstances in favor of the petitioner Parmar.

25. The Tribunal also held that the success or failure of the petitioner Parmar's daughter in the conducted examination was not germane, and it proceeded to dismiss the application.

26. Though in matters relating to a department enquiry, the scope of interference is limited, it is well-established law that when there is complete perversity on the part of the employer in laying the charge against an employee, and when there is absolutely no evidence to establish the charge, Courts of Law are duly bound to intervene to avoid a travesty of justice. In our view, this is one such case where we are forced to intervene in the orders passed by the Disciplinary Authority as well as by the CAT, given the facts which have unraveled during the course of hearing this matter.

27. During the course of the hearing, Parmar, who appeared in person, highlighted three major factors. Firstly, Gajre who was the officer-in-charge had clearly stated that he was not available in the school between

10:30 and 12:30 hours, for which he had in fact been charged with having made a misleading statement. He submitted that if the Railways were unable to establish this fact, even if it was because of the death of Gajre, the fact remained that the officer in charge of the school had made a categorical statement that the petitioner was not in the school when his daughter took up the examination. He submitted that this key fact about the officer-in-charge having made a statement that he was not in the school at the time when his daughter took up the examination had been deliberately suppressed by the Railways during the course of the entire enquiry held against him. He submitted that if this statement of Gajre had been placed on record, that by itself would completely demolish the charge that had been laid against him that he was in the school when his daughter took up the exam and had proceeded to help her in the said examination.

28. Secondly, he submitted that the fact that the

Railways did not conduct a joint enquiry in respect of all the people including Gajre, who was alleged to have committed a misconduct, by itself proves that there was a witch hunt in progress.

29. Thirdly, he submitted that the fact that a charge sheet was filed three years after the incident also establishes that the entire enquiry initiated was a *mala fide* exercise.

30. On the merits of the charge, Parmar contended that apart from the Gajre's statement, the evidence of Raju Worlikar was itself so contradictory that the inquiry officer have could never come to the conclusion that the charge of tempering with his daughter's answer paper had been established.

31. He highlighted the fact that Worlikar clearly admitted during the course of his cross-examination that he had been asked to distribute the question paper to the respective rooms wherever it was found that there

was a shortfall and that he also did some other miscellaneous work like distributing pins, collecting attendance sheets etc. and after completion of this work he was sitting with the Petitioner Parmar and in between, as and when required, he was attend the work given to him.

32. He pointed out the Worlikar had stated that in the last half an hour of the examination, Parmar had given him one set of question-cum-answer papers and asked him to solve it, which he did on a rough paper and had thereafter given it to Parmar. He had also stated that Parmar had taken the blank answer-cum-question paper and kept it in a bundle of unused question papers and after the written test was over, he had asked him to accompany him and took him to room No. 22 in which Dheeraj Baria and D. D. Parmar were already there and he then asked Baria to give him the answer papers and Baria handed over the answer paper to him and Parmar sat down with Raju Worlikar and

asked him to tick mark in the answer sheet and Baria took out the answer sheet and gave it to D. J. Parmar.

33. He also submitted that D.J. Parmar and D. D. Parmar sat down with him (Raju Worlikar) and told him to tick mark in the answer sheets while he was reading answer from the rough paper in which he had written the answers earlier and after ticking the answers he had given the answer sheet to Baria who was in-charge of the room.

34. He submitted that in the light of this evidence it was clear that according to Raju Worlikar he had solved the question paper and had thereafter accompanied the Petitioner Mr. D. J. Parmar and had requested the Invigilator Baria to hand over the answer sheet to him and he had then asked him to tick mark in the answer sheet.

35. It was therefore contended that according to the Railways, Raju Worlikar had tick marked in the answer

sheet, but the alleged tampered answer sheet produced of his daughter clearly indicated that there was not a single tick mark in the answer sheet and the answer sheets only contained numbers. He, therefore, contended that when there was absolutely no tick mark, as stated by Raju Worlikar who had allegedly tampered with the answer sheets, the entire charge against him would miserably fail.

36. He also highlighted the fact that since the Railways alleged that he had taken Raju Worlikar to the room and had called upon the Invigilator therein i.e., Mr. Baria to hand over the answer papers for making the corrections to the answer sheets of his daughter, and when such an important witness like the said Invigilator Baria who was instructed to hand over the answer was not even examined, the charge of tampering with the answer sheet which was admittedly in the custody of Baria could never have been held to have been established. He also submitted that the fact that

the other witness to this misconduct, i.e., Mr. Parmar, was also not examined to establish this case also indicated that the charge had not at all been proved.

37. He sought to contend that given the nature of charges alleged against him, Mr. Gajre, Mr. Baria and Mr. D. D. Parmar, it was necessary that a joint inquiry be conducted and each charge, which were interconnected, had to be established. However, since a separate inquiry was conducted and there was no evidence adduced to establish that he had committed a misconduct in connivance with the others, the entire inquiry report would be illegal. He submitted that the charge did not contain any allegation of his connivance with or seeking help of the invigilator was made, and hence the entire proceedings were vitiated.

38. Lastly, he contended that since there was no charge or inquiry initiated against Raju Worlikar, against whom the primary charge of tampering with the answer sheets were conducted with the Railways, the

entire charge against him would have to necessarily fail.

39. He pointed out that in service matters, the question of treating an employee, against whom a specific act of wrongdoing has been alleged, to be a witness against other employee is wholly impermissible. He submitted that if the allegation of the Railways were indeed true, then all the employees involved ought to have been charged, and if one employee is absolved of any wrongdoing and is treated as an approver in order to secure a finding of guilt against the other employees, the entire proceedings would stand vitiated.

40. The petitioner Parmar also submitted that as a matter of fact his daughter had not even passed the examination, and therefore the question of him helping his daughter was absurd. He submitted that had he really helped his daughter through the services of Worlikar, the question of his daughter failing would never arise, and this one fact was by itself sufficient to discard the charges leveled against him.

41. Learned counsel appearing for the Railways on the other hand sought to basically contend that the interference in departmental proceedings, either by the CAT or by this Court, would be extremely limited. He submitted that since there was clear evidence adduced regarding the misconduct of the petitioner and since Raju Worlikar's evidence clearly established Parma's wrongdoing, the Disciplinary Authority had no other option but to record a finding of guilt.

42. He submitted that a finding of guilt recorded by the Inquiry Officer on positive evidence adduced by the Railways was, by itself, sufficient to impose the extreme punishment of removal. He submitted that the extreme punishment of removal was warranted since the petitioner had got himself nominated as the officer in charge in a school where his daughter was taking the exam, and had abused his position to help his daughter.

43. Mr. Shukla also sought to argue that this Court

ought not to examine the merits of the allegation against the petitioner. He highlighted that this Court should not make an attempt to ascertain the guilt of the petitioner since that had already been established by the Inquiry Officer. In short, he submitted that this Court ought not to consider the case put forth by Parmar on merits.

44. In the light of the above, the main question that arises for consideration in this petition is:

I) Whether a finding of guilt could have been recorded against the petitioner on the basis of the evidence adduced against him?

II) Whether the charge against the petitioner could be even maintained in the light of the statement of Mr. S.A. Gajre that he was not in the school between 10:00 and 12:30 hours when his daughter took up the examination?

III) Whether the Railways could have proceeded only against the petitioner, Mr. Gajre, and Mr. Baria and not take any steps against Raju Worlikar who was the person who was accused of tampering with the answer sheets?

45. At the outset, it is true that in matters arising out of departmental proceedings, the interference of the Courts would be limited. However, it is also settled law that when there is a case in which there is patent perversity and there is absolutely no evidence to support a charge, the Courts are bound to intervene. In a case where there is evidence that an employee is being targeted, the Court is even more duty bound to intervene.

46. In our view, the proceedings initiated against the petitioner is a clear case of *mala fide* exercise of power. We say so because we have examined the entire original record relating to the petitioner and also to the other employees which are found in the original record and

which came to light only because the petitioner stated that the enquiry against the other employees came to be known to him after the succeeded in getting some of records under the RTI Act.

47. In fact, when the petitioner placed on record a copy of the charge sheet that had been laid against Parmar, we were constrained to call upon the Railways to inform us whether there was indeed an enquiry against Parmar and only then were we informed that there had been an initiation of proceedings against SA Gajre. The Railways, thereafter, on our direction filed an affidavit admitting the above fact and at our further direction placed on record the entire file, which unravelled all the facts.

48. As narrated above, the gist of the charge was that the petitioner Parmar had manipulated the situation to ensure that he was nominated as the officer-in-charge and this was because he wanted to help his daughter who was taking up the examination at that very center.

The basic charge was that he used this position and called upon his subordinate head clerk Raju Worlikar to solve the question paper and thereafter approached the invigilator, secured the answer paper of his daughter and thereafter asked Raju Worlikar to make a tick mark in the answer sheets.

49. In other words, Raju Worlikar is supposed to have made tick marks in the answer sheet of the petitioner Parmar's daughter's answer sheet and had thereby ensured that she had answered all the questions correctly and this had enabled his daughter to secure an undue advantage in the examination.

50. Firstly, in a case in which charges are leveled against a group of employees of collectively acting together to help one of the employee's daughter, the Railways were required to hold an enquiry against all the employees who were guilty of this wrongdoing. The moment the enquiry was split and was sought to be conducted independently of each other, that by itself,

established that the Railways were trying to target the employees selectively.

51. We are constrained to say so because there was a clear statement of S.A. Gajre, the officer-in-charge, that the petitioner Parmar was not in the school between 10:00 to 12:30 hours i.e., when his daughter took up the examination. If this statement was true, then, the entire charge that the petitioner Parmar was in the school and had used his authority to help his daughter would simply fall to the ground.

52. It is admitted that the charge against Gajre was that he had made a misleading statement that Parmar was not in the school. However, this charge was not established inasmuch as the enquiry against him was closed because he passed away. In law, if a charge that an employee had made a misleading statement has not been established, the inference is that the statement that he made was, indeed, correct. However, here the enquiry ended prematurely, as the delinquent- Gajre,

passed away unexpectedly. Thus, the statement that Gajre had made, namely that the petitioner Parmar was not in the school, may have to be accepted.

53. The original record which was placed before us on our direction contains a preliminary report in which Gajre's statement dated 11.08.1996 is produced. The question No. 10 to 17 put to S.A. Gajre and his reply are as follows:

Q.10 From what time to what time Shri D.J. Parmar, APO(C) was available at New English School (Vasai)(W) on 23.6.96?

Ans. He was not available with in office from 10 Hrs. to 12.30 Hrs. and available from 12.30 Hrs in office. upto 21.30 Hrs. He arrived at New English school, Vasai at 10.00 Hrs.

Q.11 Who was actual officer-in-charge nominated by RRB for conducting the written test on 23.6.96 at New English School, Vasai Ref.(W)

Ans. As per RRB's orders Shri D.J. Parmar, APO(C) was nominated officer-in-charge.

Q.12. If Shri D.J. Parmar, APO(C)CCG was the nominated officer of the New English school, Vasai(W) for conducting written test on 23.6.96, then why did you work as officer-in-charge in the morning session.

Ans. As per APO(C)'s orders I managed the work in the morning session.

Q.13. What do you mean by manage the work in the morning session.

Ans. I managed the work with the help of Shri Kulkarni, Raju K. Worlikar, Kadu, charge etc.

Q. 14 When did Shri D.J. Parmar, APO(C) was officer-in-charge nominated by RRB, to work as such on 23.6.96 then why did he not work as such in the morning session, i.e. why he asked to work.

Anr. Shri Parmar, APO(C) at last moment at 10.00 Hrs. had ordered me to work in his absence as he was not feeling well and not in a position to manage the work in morning session.

Q.15. As stated by you in your answer to question no.10 that Shri Parmar was not with you from 10 to 12.30 Hrs. and in answer to question no.14 that you stated that at 10. Hrs. 23.6.96 he told you that to work in his place as he was not feeling well in this connection please state how do you remember the exact time and also state what happen to him that he was not feeling well (what sickness) etc.

Ans. He has not explained about his sickness at last moment i.e. at that time when he had asked to work. Time explained by me may be slightly changed.

Q.16. Who worked as officer-in-charge in the afternoon session on 23.6.96 at New English school, Vasai (W) during the written test held there.

Ans. Mr. D.J. Parmar, APO(C) had worked as officer-in-charge in the afternoon session during written test held there.

Q.17. Do you mean to say that he was well in the afternoon session to work as officer-in-charge on 23.6.96.

Ans. At about 12.30 Hrs. Mr. Parmar, APO(C) came and stated that I will manage the work of afternoon session.

54. This statement of Shri Gajre would clearly indicate that he had positively stated that the petitioner Parmar was not available at the New English School, Vasai on 23.06.1996 between 10:00 hrs to 12:30 hrs. If the Officer-in-Charge had made a categorical statement to this effect, obviously the charge that the petitioner Parmar was in the school and had proceeded to help his daughter would fall to the ground.

55. The fact that the Railways were of the view that this statement of Gajre was misleading and incorrect, and this required an inquiry to be conducted against him, would indicate that it is a case that the Railways

are of the clear view that he was also involved with the petitioner-Parmar and was thereby a party to the misconduct. If that was the resultant view of the Railways, it is beyond anyone's comprehension as to why separate inquiries were conducted against the petitioner Parmar and Gajre.

56. Similarly, the further allegation was that Parmar had taken Raju Worlikar to the room in which his daughter had taken up the examination and had called upon the Invigilator to provide his daughter's answer sheet, whereupon he had called upon Raju Worlikar to tick the answer marks in that answer sheet. This would also indicate that the Invigilator, Mr. Baria, was also involved and, more importantly, Raju Worlikar was the person who had tampered with the answer sheets.

57. If the allegation was that there was such a coordinated event amongst three officials for tampering of the marks of the petitioner's daughter, the fact that the Railways did not conduct a joint enquiry and, most

importantly, did not choose to hold Raju Worlikar, who tampered with the answer books, accountable for his wrongdoing is rather strange and perplexing.

58. This approach of the Railways in letting Raju Worlikar off the hook was obviously only to ensure that his evidence is utilized to secure a finding of guilt against the petitioner, Mr. Gajre, and Mr. Baria, the Invigilator of that room.

59. In departmental proceedings, though the principle of preponderance of probabilities is applied to record a finding of guilt against a delinquent employee, the departmental proceedings will not enable an Employer to selectively choose the employees against whom it will proceed, more so when the misconduct alleged is a coordinated attempt of several employees to achieve a common purpose. The Employer, while conducting the disciplinary proceedings, is required to enquire into the misconduct of his employees and he cannot decide on selectively proceeding against only a

few of the employees and letting go of the remaining, even though it was their admitted case that they were an active party to the misconduct. If this is the legal position, the act of the Railways in letting go of Raju Worlikar off the hook vitiates the entire enquiry that has been initiated against the other employees including the petitioner Mr. Parmar.

60. In our view, what is really shocking is that the Railways did not even inform the petitioner that parallel inquiries were being conducted in respect of the very same incident making different sets of allegations against the other employees. As indicated above, the charge that was laid against Gajre would basically exonerate the petitioner herein because according to Gajre's statement, the petitioner was not even present in the school at the time his daughter took up the examination.

61. The Railways, by proceeding only against the petitioner, Gajre, and Baria, have basically exonerated

Worlikar of all wrongdoing, though, even according to the case of the Railways, it was Worlikar who had tampered with the answer sheets. If Worlikar was the person who had acceded to the request of the petitioner and tampered with the answer sheet, letting him off the hook and proceeding only against the petitioner and three others would be absolutely impermissible.

62. It is to be stated here that Gajre had categorically stated that the petitioner was not available in the school. The original record does not contain the entire records but it does contain record which indicates that the other persons, i.e., Baria and Parmar, who are also alleged to have been involved in this incident, were proceeded against and penalties of reduction by one stage for a period of two months and reduction of initial grade respectively, have been imposed on them. However, whether these punishments have been challenged by them or not, is not forthcoming from the records.

63. It is seen from the original records, that Baria was charged with abetting the petitioner in committing an unethical act by way of giving out/taking out answer sheets of the petitioner's daughter to the petitioner and also that he had given a false and misleading statement to the Chief Vigilance Inspector. The exact reasoning for concluding the guilt of Baria reads as under:

“No where the charge is pressed or discussed with regard to help or abetment in any other form by the C.O. in fact it is others who have been charged for attempting/writing answer for the candidates who was the daughter of the APO Shri D. J. Parmar, Shri Baria's abetment is that he gave/handed over the answer book to the centre in charge. In fact even if Shri Baria, Junior Clerk, would not have been difficult for them to take out the answer sheet of the girl in question. The point is not whether Shri Baria gave the “whole bunch” to the exam centre in charge or a “single copy but what was the role of Shri Baria and what would have been chain of events if he was not there and the gravity of act of omission or commission on his part. Thus, when exam centre in charge demands a copy or the whole bunch a junior clerk has no choice but to hand over the same to him because in any case centre incharge is the one supposed to be the custodian of all the answer sheets and it is his responsibility to safely deposit the same to its destined place.”

64. As could be seen from the above, it is not

recorded that Baria was asked to give only the answer sheet of the petitioner's daughter or whether the whole bunch of answer sheets was handed over to the petitioner. But, in the statement of imputations against the petitioner it is stated as follows:

“Shri D. J. Parmar, APO took out an answer-cum-question paper from the bunch of answer books collected at the end of the examination by Shri Baria who was the invigilator of the room and asked Shri Worlimar to solve the remaining questions duly ticking the right answers.”

65. As could be seen from the above, the statement is to the effect that the petitioner took out the answer sheets from the bunch of answer sheets collected by Baria. This indicates that the petitioner took the paper books whereas the finding as extracted above was that Baria either handed over a single answer book or the entire bunch of answer books.

66. Unless Baria had made a statement that he was asked to hand over the answer sheets by the petitioner and the petitioner was allowed to challenge this

statement by way of cross examination, the charge against the petitioner would become doubtful.

67. The fact that Baria was alleged to have given an false and misleading answer to the CVI also indicates that he did not support the case of the Railways that the petitioner was involved in the incident of tampering with the answer sheets. This makes the charge even more doubtful.

68. In so far as DD Parmar (also known as DD Bankar) as per the original records, it appears that he was also charged with abetting the petitioner for committing an unethical act and he had also given a false and misleading statement to cover up the act the unethical act to the CVI.

69. In the original record, the reasoning for order against DD Parmar @ DD Bankar reads as follows:

“During the course of enquiry as clear from answer to q. no. 8 that charged official knew sh. D J Parmar as both hailed from same place even before the

examination was being conducted. In addition to it, in answer to q. no. 17(PD-6) the C.O. has confirmed that he knew that sh. D J Parmar's daughter was appearing in the NTPC written test on 23/6/96 in morning session in the same school, i.e., New English School, which he has certified in his answer to next question No. 18 wherein he has confirmed that sh. D J Parmar introduced him to his daughter. Further he has also confirmed he knew that sh. D J Parmar's daughter was appearing in room no. 22 for the written test. Further, during the enquiry, the C.O. (charged Official) has confirmed in his answer to Q. No. 20 that he went to room no. 22 along with sh. D J Parmar, the then APO/COG and other were present, after examination was over. At that time the answer sheet of one of the candidates, later identified as daughter of sh. D J Parmar was being corrected as accepted by the employee during his investigation in answer to q. no. 21(PD-6). As sh. D D Banker was present in the room when this unethical action was being done, as a railway servant, it was his duty to report this matter immediately to the concerned officials, he has failed to do so and hence is a party to the unethical act of sh. D J Parmar and hence the charge levelled against him are found to be correct as also pointed out by EO in his findings."

70. As could be seen from the above, it is found that DD Bankar accompanied the petitioner to Room No 22 and at that time one answer sheet (later identified as the one belonging to the petitioner's daughter) was being corrected. This finding would contradict the allegation that had been made against the petitioner

that he had collected or demanded the answer sheets of his daughter and had asked Raju Worlikar to correct them.

71. Unless there was a clear statement from DD Bankar that the petitioner had demanded and collected the answer sheet of his daughter from Baria and had asked Worlikar to correct them and this statement was confronted and allowed to be challenged by way of cross examination, the charge against the petitioner would become weak. The further fact that Bankar was alleged to have made a false and misleading statement to the CVI to cover up the act of the petitioner would make the charge against the petitioner even more weak.

72. It appears that the Railways embarked upon this misadventure of holding different inquiries against the aforementioned four employees only because the charges alleged against them and their statements would contradict the entire manner in which the incident was alleged to have been staged. It would also

appear that the Railways were only interested in targeting the petitioner as his daughter was alleged to be the beneficiary of the wrongdoing, though, it has also come on records that his daughter had actually failed in the examination and she gained no benefit from this alleged malpractice.

73. In our view, when the allegation was that the invigilator had handed the answer sheets to the petitioner and he had got Worlikar to correct them is let off with a minor penalty, the manner in which Railways have proceeded in the entire matter, is to be deprecated. The fact that the Railways had decided not to conduct a joint enquiry against all the persons involved in the same incident, smacks of arbitrariness. A feeble argument was sought to be advanced that disciplinary authorities in respect of Gajre were different and against the petitioner was different, and therefore separate inquiries were conducted. This argument is completely unacceptable.

74. The highest Disciplinary Authority would obviously be the authority to proceed against employees who are involved in one incident. It must not be lost sight of that the ultimate aim of any Employer is to weed out the employees who are indulged in malpractice, and it should not be the intention of the Employer to shield one set of employees while proceeding against the other. It should not also be the intention of the Employer that proceedings are initiated independent of each other against employees in respect of a single incident. This would lead to severe prejudice being caused to all the employees and would also prevent the employer to get to the truth of the matter.

75. Rule 13 of The Railway Servant (Discipline and Appeal) Rules, 1968 reads as under:

13. Common proceedings -

(1) Where two or more Railway servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Railway servants, may make an order directing that disciplinary action against all of them may be taken in a common proceedings.

Note:- If the authorities competent to impose the penalty of dismissal on such Railway servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of

such authorities with the consent of the others.

(2) Any such order shall specify -

(i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;

(ii) the penalties specified in Rule 6 which such disciplinary authority shall be competent to impose; provided that such authority shall not impose the penalties specified in clauses (vii) to (ix) of that rule if that authority is subordinate to the Appointing Authority; and

(iii) whether the procedure laid down in Rule 9 and Rule 10 or Rule 11 shall be followed in the proceedings.

76. As could be seen from the above, the Rules specifically empower the Railways to conduct common proceedings when two or more Railways servants are concerned in any case, and this is obviously because the Rule makers were acutely aware that there would be cases where more than one railway servant would jointly be involved in committing a misconduct and this would therefore required that a common enquiry should

be conducted as a matter of rule.

77. The fact that the procedure to conduct such an enquiry has been clearly spelt out also leads to an inference that once a misconduct is in relation to one incident and this involves more than one Railways servant, a common enquiry is the norm. If a common enquiry for one incident is not conducted, there would be severe prejudice to the employees, and it would also be difficult to the Railways to identify the actual persons involved in the misconduct. The present case is a clear example as to why a common enquiry ought to have been conducted.

78. We are constrained to make these observations in a matter arising out of departmental proceedings because of the manner in which the entire proceedings have been conducted. Though the normal rule is of limited interference in departmental proceedings, in a case such as this, where arbitrariness is self-evident and has severely prejudiced the petitioner, we are

constrained to intervene in the matter.

79. Consequently, the writ petition is allowed and the impugned orders passed by the Disciplinary Authority imposing the punishment of removal from service against the petitioner and its affirmation by the Appellate Authority and the CAT are quashed.

80. The petitioner shall be entitled to all consequential benefits, which shall be computed and made over to the petitioner within a period of eight weeks from today.

(N.S.SANJAY GOWDA,J)

(J. L. ODEDRA, J)

Mehul Desai