No. 2008/V-1/Decoy Check/1/1

Dated: 29.7.2008

The SDGMs, All Zonal Railways & CORE

The CVOs, All PUs, PSUs, Metro and RDSO

Sub: Court case as a consequence of Vigilance decoy check:
Supreme Court judgement in Civil Appeal 5033 of 2003

Recently, Supreme Court has delivered a judgement on 22.8.07 in a case of Vigilance decoy check involving 3 TTEs. Two of them were removed from service while the third one was compulsorily retired after following the procedure laid down in the D&AR Rules, 1968.

Hon'ble CAT set aside the punishment holding that the trap laid by Vigilance squad had not been in accordance with the procedure laid down in Paras 704 and 705 of the Vigilance Manual (1968). An appeal of the Railways against the order of CAT was also dismissed by the Hon'ble High Court of Andhra Pradesh.

Railway went in for appeal against the dismissal orders of the Andhra Pradesh High Court in the Hon'ble Supreme Court. The Supreme Court observed that administrative rules, regulations and instructions which have no statutory force, do not give any legal right in favour of the aggrieved party and cannot be enforced in a Court of Law against the Administration. Administrative instructions are given to Government servants as to how to act in certain circumstances but that will not make such instructions statutory rules which are justiciable in certain circumstances. Even, if there has been breach of such executive instructions, it does not confer any right on any member of the public to ask for a Writ against the Government by petition under Article 226 of the Constitution of India. The breach of administrative instructions may expose subordinate authorities to disciplinary or other appropriate action but these instructions cannot be said to be in the nature of statutory rules having the force of law. Hon'ble Supreme Court upheld the appeal of the Railways and set aside the High Court orders. The gist of the judgement delivered by the Hon'ble Supreme Court in Case No. Appeal (Civil) 5033 of 2003 (in 1 page) is also enclosed. This is for information and guidance. Full text of judgement is available on website and may also be referred, wherever required.

This issues with the approval of Adviser (Vigilance).

Encl: As above

(Sanjay Goel)
Director Vigilance(Mech.)
Railway Board
Gist of judgement of Supreme Court in CASE NO.: Appeal (civil) 5033 of 2003

PETITIONER:
The Chief Commercial Manager, South Central Railway, Secunderabad & Ors

RESPONDENT:
G. Ratnam & Ors

DATE OF JUDGMENT: 22/08/2007

"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".

In this case, Disciplinary Authority awarded the punishment for the proved guilt, based on the DAR Inquiry. The appeal and review petition of CO were considered and rejected upholding the punishment. Hence it was opined by the apex court that violation of procedure, if any, in the traps as per vigilance Manual, cannot justify the acquittal of COs.