

Central Administrative Tribunal, Principal Bench

Original Application No.10 of 1996

New Delhi, this the 8th day of October, 1999

Hon'ble Mr.R.K.Ahooja, Member (Admnv)
Hon'ble Mr.Rafiq Uddin, Member (Judl)

Shri Rachhpal Singh
S/o Shri Munsha Singh
Permanent Way Inspector (Const.)
Northern Railway
Panipat
working under Dy.Chief
Engineer (Construction), Shivaji Bridge,
New DelhiApplicant

(By Advocate - Shri B.S.Mainee)

Versus

Union of India: Through

- 1.The General Manager,
Northern Railway, Baroda House,
New Delhi
- 2.The Chief Administrative Officer (Const.)
Northern Railway, Kashmeri Gate,
Delhi
- 3.The Dy.Chief Engineer (Construction)
Northern Railway, Shivaji Bridge,
New DelhiRespondents

(By Advocate - Shri B.S.Jain)

O R D E R

By Hon'ble Mr.Rafiq Uddin, Member (Judl)

In this O.A., the applicant has sought quashing of order dated 6.8.93 issued by the Deputy Chief Engineer/Const/GC, Northern Railway, Hisar. By the said order, recovery of Rs.7,34,634/- being the cost of material which was found short, is being effected from the applicant.

2. The applicant at the relevant time was posted as P.W.I. (Construction) at Ropar. He took over charge of his post in the month of March, 1990. The stock verification was conducted by the Stock Verifier

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in the month of October, 1990 who found 650 M of rail surplus and took the said stock as to be stock in the registers. According to the applicant, the said stock verification was not correctly done and there was no rail surplus in the stock and consequently he had also requested for fresh stock verification. The applicant has also claimed that when he took charge in the month of March, 1990 at Ropar, it was taken without physically checking the stores as his predecessor was going to retire on 31.3.90 and the stocks under PWI(Const.), Ropar were lying at various places within the terrorist affected areas of Punjab. The applicant has also stated various grounds to justify his stand that the stock verification was not correctly done but we do not find it necessary to narrate all the grounds taken by the applicant. It is suffice to mention that after his transfer from Ropar the Deputy Chief Engineer(Const.), Chandigarh, under the orders of Chief Administrative Officer(Const.), respondent no.2, issued the impugned order. The relevant portion of that order reads as under:

"It has been intimated by Dy.C/O/Chandigarh vide his above cited letter that while handing over the charge to PWI/C/Ambala Cantt some P.Way material was found short as per list attached.

The cost of shortage has been worked out to Rs.7,34,634/- and advised to this office to effect recovery from you".

3. On receipt of the aforesaid letter, the applicant made a representation on 20.8.93. The Deputy Chief Engineer(Const), however, did not consider the same and issued the impugned letter.

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4. The case of the applicant is that the impugned order is arbitrary because no show-cause notice has been given to the applicant and no opportunity has been provided of hearing. It is also claimed by the applicant that he is not at all responsible for the shortage which had taken place as a result of terrorism in the State of Punjab and it is because of the failure on the part of Chowkidar to perform his duty and also because of the wrong verification done by the Stock Verifier. It is also stated that in the meantime, the respondents have served a chargesheet on the applicant for major penalty on 15.2.94 in which the allegation of short quantity of railway material has been made. A copy of the aforesaid chargesheet has been annexed as Annexure A-5. In pursuance of the impugned order, the respondents have started recovering Rs.1,000/- per month from the salary of the applicant.

5. The respondents have raised two preliminary objections against the present OA. Firstly that this Tribunal has no territorial jurisdiction because the impugned orders have been passed by the Deputy Chief Engineer(Construction), Northern Railway, Hisar and Deputy Chief Engineer (Construction), Chandigarh who have not been impleaded in this OA and secondly because the claim is time barred. Besides, it has also been denied that the applicant was not provided opportunity before passing the impugned order as the applicant filed representation against the show-cause notice. Hence the impugned order cannot be said to

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have been issued without following the principles of natural justice. The O.A. has also been contested on merits in which it has been stated that the applicant is wholly responsible for the loss of material in question. It is however admitted that the applicant has been issued charge memo dated 15.2.94 (Annexure A "5") for major penalty and he will have full opportunity to prove his innocence.

6. We have heard both the learned counsel.

7. As regards jurisdiction of this Tribunal, it is worth mentioning that vide order dated 6.6.97, this Tribunal has held that the objection of the respondents regarding jurisdiction of this Tribunal is not well founded and the same was rejected. The OA was admitted subject to the question of limitation.

8. As regards the question of limitation, an application under Section 5 of the Limitations Act has been filed by the applicant for condoning the delay on the ground that on receipt of the impugned order, a civil suit was filed before the civil court at Hisar which was dismissed on 4.9.95. The information regarding dismissal of the suit was received by the applicant on 22.11.95 and thereafter he collected the papers from his counsel, who prepared the OA and filed the same before the Tribunal on 22.12.95.

9. This application for condonation of delay has been opposed by the respondents on the ground that the applicant has wrongly stated that any civil suit

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was filed before the civil court at Hisar. Besides, ignorance of law is no excuse and the fact that all the cases relating to service matters of the Central Govt. employees are filed before the Tribunal, is well-known. Hence there was no justification on the part of the applicant to move the civil court for redressal of his grievances. Besides it has also been pointed out by the learned counsel for the respondents that the applicant has also wrongly stated that the suit was dismissed as withdrawn because as per his own rejoinder affidavit, the same was dismissed for default. Hence there is no justification to condone the delay in this matter.

10. It is no doubt correct that the civil court has no jurisdiction in the matter. There was no justification to file a civil suit in that court. However the case of the applicant is that he was so advised by his counsel at Hisar and he acted accordingly. It is urged that the applicant cannot be punished for the fault of his counsel who had given a wrong advice to him. It is clear from the rejoinder filed by the applicant that a civil suit bearing no.1033/93 was duly filed before the civil court at Hisar in which an injunction was sought restraining the respondents from effecting forcible recovery of the amount in question. It is also clear that the said civil suit was dismissed under order 9 rule 8 of CPC as none appeared on behalf of the applicant/plaintiff.

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11. We are of the opinion that such civil suit cannot be filed by the applicant at his own will unless he is advised by an Advocate or Counsel. Under such circumstances, the applicant cannot be blamed for moving a wrong court and consequently he should not suffer for the delay in filing the present OA on account of pendency of aforesaid civil suit.

12. The apex court has held time and again that it is not the period which is material for the satisfaction of the court to find sufficient reason for condoning the delay. It is only to be seen that the delay was not deliberate. In the present case, we do not find that the applicant acted deliberately in moving the civil court at Hisar. Accordingly we find sufficient cause to condone the delay in filing the present OA. Accordingly the delay is condoned.

13. Learned counsel for the respondents has pointed out that recovery of the disputed amount is being made under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. He has also admitted that the recovery of the amount in question amounts to minor penalty as described in the aforesaid rule 6. It is however an admitted position in the present case that the chargesheet has been served on the applicant in respect of the alleged negligence of the applicant in causing the shortage of the material for imposing major penalty on him. A copy of the chargesheet (Annexure A-5) clearly indicates that the applicant has been charged for handing-over short quantities of railway material resulting in to a net

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loss of Rs.7,34,634/- to the railways. In other words, the charges are also in respect of the same transaction in respect of which the recovery in question is being effected by the respondents. The respondents are conducting a full-fledged departmental inquiry. It is a fact finding inquiry in which the negligence and liability of the applicant in respect of the alleged loss of railway material is to be determined by the Enquiry Officer.

14. Under such facts and circumstances, we do not find it desirable that the respondents should start recovering the disputed amount from the applicant without awaiting the result of the full-fledged departmental inquiry. Learned counsel for the respondents has not been able to point out specific provision and departmental rules under which such recovery is being made. It is no doubt correct that before issuing the impugned order, a notice was served on the applicant and a reply was also submitted by him denying his liability but the fact remains that a departmental inquiry is being held against the applicant in respect of the same allegation. Therefore we find it reasonable and appropriate that no recovery should be made from the applicant till the final disposal of the departmental inquiry and consequently the impugned order deserves to be quashed.

15. In the result, the impugned order dated 6.8.93 is quashed. It would however be open to the respondents to take action against the applicant

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including the recovery of the amount in question only after completion of and on the basis of findings of the departmental inquiry. The O.A. is disposed of accordingly. No order as to costs.

Rafiq Uddin
(Rafiq Uddin)
Member(Judl)

R.K. Ahooja
(R.K. Ahooja)
Member (Adminv)

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