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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2088/1994

New Delhi, this ~~The Third~~ day of November, 1995

Hon'ble Shri B.K. Singh, Member(A)

Shri Ganpat Singh
s/o Shri Chet Ram
Work Study Inspector
Northern Railway, Baroda House, New Delhi. Applicant

By Shri B.S.Maine, Advocate

versus

Union of India, through

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Dvl. Railway Manager
Northern Railway
Jodhpur
3. Senior Dvnl. Accounts Officer
Northern Railway
Jodhpur

.. Respondents

By Shri H.K. Gangwani, Advocate

ORDER

This OA No.2088/94 has been filed against the order No.396-E-5/AM Pt-I/97/92-EIII/21 dated 17.3.94.

2. The admitted facts are these. The applicant was working as Rest Giyer Assistant Station Master (RGASM) with hqrs. at Pipar Road station (PRS) and on Sunday and Monday he was working at PPR. He had been providing rest at Kheri Salwa station (KSS) on Tuesday and Wednesday as per roster. PRS is situated at centre point and KSS comes before PRS while going from Jodhpur station which is in west direction. On Thursday and Friday he was providing rest at Sathin Road station (SRS) which is situated 16.35 kms away from Kss in west direction and one will to have touch the PRS wehich is 6.35 kms away

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from KSS. The applicant had been providing rest on two stations from his hqrs. station which are in opposite direction of PRS. KSS is 6.35 kms away from PRS in west direction and SRS is 10 kms away from PRS while providing the rest from KSS to SRS while he was providing the rest at KSS he was working within 6.35 kms radius of his hqrs. i.e. PRS and when he had been moving from KSS to SRS, he was going towards his hqrs.

3. It seems some irregular payment of daily allowance had been made to the applicant as detected during the audit of the Divisional Audit party and it was proposed to recover that amount from the applicant. Aggrieved by the impugned order (Annexure A/1), this OA was filed and interim order was passed on the very first day of hearing on 20.10.94. That interim order has continued since then. The relief prayed for in this OS is to quash and set aside the impugned order dated 17.3.94 and to direct the respondents to refund the amount, which has already been recovered from his pay.

4. On notice, the respondents filed their reply contesting the applicant and grant of relief prayed for. Heard the learned counsel for the parties and perused the record of the case.

5. The learned counsel for the applicant vehemently argued that the TA bill was in order and that if it was not in order, the applicant should have been served a show cause notice to effect the recovery from him. But this has not been done and on this ground alone, the order of recovery is liable to be set aside. In this regard he cited some reference to show



that where a vested right is being curtailed, principles of natural justice demand that show cause be served on the employee before such a recovery is made.

6. The learned counsel for the respondents categorically stated that the Railway Board's instructions are clear and unambiguous. Circular No.F(E)/170/Ai/28/1 dated 28.7.70 was quoted by him which lays down that "when railway servant halts on a tour at a place within 8 kms of his hqrs. and proceedings further from there on duty beyond 8 kms daily allowance will be admissible to him even if he goes to his residence without return to his hqrs." He vehemently argued that the stations where he was providing rest are in opposite direction of east and west and he had no option but to touch his hqrs. before going to the said station where he was expected to provide rest. He had charged TA on the basis of wrong interpretation of the rules and the same was detected during the course of audit and in order to meet the audit objection, the authorities applied their mind to the whole issue and found that he had been wrongly allowed the DA. He argued that an employee providing rest at two stations from his hqrs. station which are in opposite directions of PRS. KSS is 6.35 kms away from PRS in west direction and SRS is 10 kms away from PRS while providing the rest from KSS to SRS while he was providing the rest at KSS he was working within 6.35 kms radius of his hqrs. i.e. PRS and when he had been moving from KSS to SRS, he was going towards his hqrs. By the impugned order what is sought to be achieved is nothing but implementation of the railway board's circular and recovery of wrong payment made to the applicant.

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7. It was admitted by both the parties that though a clarification was sought about this circular from GM(P) but when clarification was not received from him, the matter was discussed in light of relevant rules in a tripartite meeting held amongst DAUO/JU, DAO/JU and DPO/JU and it was decided to effect recovery of Rs.4270 as irregular payment of DA from the applicant in 10 equal instalments of Rs.427 p.m. and confirmation was also sought from GM(P) regarding the action taken by the office of DRM. GM(P) vide his letter dated 27.5.94 directed APO/Bills to effect the recovery and this interpretation of the rules as laid down in the Manual was accepted by the GM(P).

8. Shri Mainee argued that since no reply was received, this can not be treated as a reply in respect of the reference made. This interpretation of the ld. counsel is untenable. when a particular letter alongwith number is quoted in the counter reply, there is a presumption under section 114(E) of the Indian Evidence Act, 1872 and the presumption is in favour of the order of an official unless contrary is proved. Official acts are presumed to be legally performed and where jurisdiction of an official is not questioned in the court, it is to be presumed that he acted within his jurisdiction. Presumption about the authenticity of the letter and the communication of GM(P) in the absence of a strong rebuttal by concrete pleadings on record can not be accepted in the instant case. The rebuttal has been extremely weak. In the rejoinder affidavit the genuineness of the letter has not been questioned and there is no MA for calling for the file

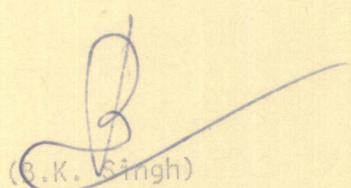
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containing official communication and therefore this has to be accepted as a genuine one and it will be treated as confirmation of the interpretation given by the subordinate offices and has an evidentiary value which can not be questioned. This puts a seal to the reference made in this connection.

9. Principles of natural justice envisage that an employee is to be given a chance to present his case and he should be heard before an order is passed. The OA itself shows that the applicant had received show cause notice issued by the DAO and he also submitted his representation on 13.6.90(annexure A/3) protesting against the decision of recovery. He also sent another representation(annexure A-4) to the GM(P). However, in the counter reply it has been submitted that the employee submitted his application protesting against audit objection and this is dated 15.8.90 and not 13.6.90 and in the said representation he did not mention the amount. It was further pointed out by the learned counsel for the respondents that the applicant was given full opportunity of hearing when objection was raised by the DAUD/JU in June 90. Not only the applicant expressed his views in writing but he met DPO/JU and DAUD/JU several times and they were not satisfied with the interpretation given by the applicant to the railway board circular. Thus principles of natural justice have been fully complied with in the sense that the employee filed his representation which was considered and also he was given opportunity to be heard and the matter was also discussed in

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the tripartite meeting. What more opportunity can be given to a person in order to observe principles of natural justice. The point raised by Shri Mainee has been met with greater force by the respondents' counsel and interpretation of the rules has been confirmed and therefore reference regarding the interpretation of rule will stand disposed of in pursuance of the letter of the GM(P). Thus the interpretation of the rule as given by the respondents will be treated as final and correct and the objection raised in regard to the claim of DA, to which the applicant shall not be entitled, is correct and valid. The applicant is not entitled to the excess payment made to him and as such the recovery is in order. The application fails and the OA is dismissed but without any order as to costs. Interim order passed by this Tribunal on 20.10.94 stands vacated.



(B.K. Singh)
Member (A)

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