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Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 1204/90

New Delhi, this the 10th Day of May, 1995

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

HON'BLE SHRI K. MUTHUKUTAR, MEMBER (A)

Chaturvedi Sharma
s/o Shri Karan Singh,
Station Master,
Northern Railway Station,
Pilkhani Distt. Saharanpur.

Applicant

(By Shri G.D. Bhandari, Advocate)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

Respondents

(By Shri Shyam Moorjani & Sh. H.K. Gangwani,
for Respondents No. 1 & 2 and 3 respectively)

JUDGEMENT (ORAL)

Hon'ble Sh. J.P. Sharma, M(J)

The applicant applied for 15 days leave and he was sanctioned the same with effect from 23rd December, 1984 and remained out of the station from Thanā Bhawan Railway Station on Shahdara-Sharanpur Section and joined his duties on 8.1.1985. During his absence, the charge was handed over by the applicant to Sh. Inderjeet

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LR/ASM who was deputed to work vice the applicant, during the said period. The Inspector of Traffic Accounts(TIA) inspected the station on 29th Dec., 1984. When the applicant resumed the duty on 8.1.1985, the applicant was informed by T.I.A. that a bundle of 50 Blank QSTs was missing. The applicant made enquiries from Shri Inderjit besides making search for these tickets but in vain. The applicant had also certain suspicion regarding the involvement of one Shri Vinod Kumar Ex. Shunting Porter, regarding the missing tickets. The applicant also reported the matter to the Divisional Commercial Superintendent on 8.2.1985 besides lodging a report with the Railway Police and Railway Protection Force authority. The grievance of the applicant is that the Senior Divisional Commercial Superintendent levelled a recovery of Rs. 11,000/- the maximum cost of 50 QSTs by the letter dated 24.3.1986. The applicant submitted a representation against this recovery by the order dated 24.3.1986 stating that the recovery has been ordered in violation of para 227 (b) and para 229 of the Commercial Manual Volume-I. In the meanwhile, a recovery of Rs. 300/- per month was directed to be made from the salary of the applicant. However, by the order dated 20th August, 1986, the instalment of recovery was reduced to

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Rs. 200/- per month instead of Rs. 300/- per month. The applicant again submitted an appeal on 13th October, 1986. By the letter dated 20th October, 1986, a confronted enquiry was also directed to be held. The Senior D.C.S. vide his letter dated 12th June, 1987 ordered the stoppage of the recovery from the salary of the applicant till the finalisation of the confronted enquiry. The applicant also prayed by representation that the amount already recovered to the tune of Rs. 4200/- be re-imbursed to the applicant subject to the result of the enquiry. However, the applicant not was/conveyed any result of the said enquiry and the enquiry was abruptly closed. A letter was received by the applicant on 14.4.1990 regarding the rejection of the appeal. The applicant, therefore, filed this application on 5th June, 1990 and prayed for the grant of reliefs that the impugned order dated 14.4.1990 rejecting the appeal as also the order dated 24.3.1986 whereby the debit of Rs. 11,000/- has been arbitrarily and illegally ordered to be recovered from the pay of the applicant be quashed. He further prayed that the amount of Rs. 4200/- already recovered from the salary of the applicant be directed to be re-imbursed to the applicant with market rate of interest.

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The respondents contested this application by filing a reply in which it is stated that the applicant was never sanctioned the leave. It is further stated that the applicant never handed over the charge to Sh. Inderjit, the reliever, and at least he did not make over charge of QSTs. The Inspector of Traffic Accounts inspected the record, stock on 9.1.1995 and found 50 blank QST tickets missing for which no action had been taken by the applicant while he resumed the duty on 8.1.1985 and rather he reported the matter to GRP only on 13.2.1985 after the passage of a long period. The recovery from the salary of the applicant and its stoppage till the finalisation of the enquiry proceedings, has not been denied. The conduct of the confronted enquiry is also not denied but the applicant did not participate in the proceedings of the enquiry and that is why the statements were recorded in his absence. The Enquiry Officer has rightly held the applicant responsible for the loss of 50 Blank QST tickets. In view of this, it is stated that the applicant has no case.

The applicant has also filed the rejoinder highlighting the facts already stated in the original application. Further emphasis has been placed on para 227 and 229 of the Commercial Manual Vol. I and an extract of which has also been filed as

annexure to the original application (Annexure AXI). For the sake of ready reference in the later part of the judgement, an extract of Annexure A-XI is quoted below:-

COMMERCIAL INLAND VOLUME I OF 1971

Para 225:- Deficiency or loss of tickets.

If subsequent to the acknowledgment to the correct receipt of the supply of tickets, any deficiency or loss of ticket is noticed, the Station Master should take action according to the instructions contained in para 227(b). An enquiry will be made to determine the cause of loss and in case it is established that the ticket in question was actually sold and the money lost to the Railways, the amount of loss will be recovered from the Railway servants held responsible, in addition to any other disciplinary action as may be considered necessary according to merits of each case. If however the result of the enquiry shows that the ticket was not actually sold and the value thereof was not actually lost, such disciplinary action as may be considered necessary according to merits of each case will be taken against the staff responsible.

On receipt of intimation regarding loss of tickets, the Traffic Accounts office will raise the debit for the value of such tickets. The debits however will be withdrawn if the enquiries made by the Traffic (Commercial) department reveals that the tickets in question were actually not sold.

Para 227(b):- When any tickets are missing, their closing and commencing numbers must be recorded on both copies of the supply advice and also immediately reported by wire to the supplying officer, Station Master of the destination mentioned in the ticket, the Traffic accounts office and the Divl. Comml. Supdt. On receipt of this wire the Divl. office should arrange for notifying the loss through Railway Gazette warning the staff to guard against the fraudulent use of missing tickets. The destination station master should be on the look out for the tickets in his daily collections and procure the address of any person who may be found in possession of one or more tickets. Such persons should be questioned and asked to state how they came in possession of the tickets.

Should the supplying officer found that a mistake has been made in his office, when despatching the tickets, he should advise the issuing station master who in turn will advise all concerned, to whom he communicated the loss so that look out for the tickets may be discontinued & notification in the Rly. Gazette may be cancelled or withdrawn.

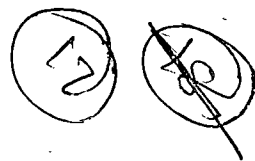
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We heard the learned counsel Shri G.D. Bhandari
counsel for the applicant. We got the departmental^{enquiry}/file
summoned from the respondents and the same has been placed
before the Bench today. We also heard Shri Shyam Moorjani,
counsel for the respondents No. 1 & 2 and Shri H.K. Gnagwani
also appears for respondent no. 3.

It is surprising and shocking to see that the
departmental file IC/22/IR/CJ/85 and IC/25/M/CG/85 does not
contain any order of the disciplinary authority on the procee-
dings of the enquiry and the Enquiry Officer's report dated
30.11.1989. We have also passed on the enquiry file to
the counsel for the respondents as well as to the Departmental
representative Shri R.L. Shukla, Law Assistant, but no help
could be received from them in tracing out the order of the
disciplinary authority in the department file. We have also
gone through the file but we do not find any other order
nor it is averred in the reply filed by the respondents No.

1 & 2. Regarding the order of the appeal, there is no
mention of any order of punishment imposed against the
applicant in the enquiry. It is further surprising to note
that the recovery was ordered by the Senior D.G. S., Delhi

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by the order dated 24/3/1986 as already observed as follows:-

A sum of Rs. 11,000/- has been debited against

Shri Chaturvedi, SM Partapur.

Please recover the same and confirm

recovery."

The above letter has been addressed to A.P.O./Bills. The basis of this order also remains untraceable in the departmental file. When there is no order of imposing of punishment, we fail to understand how the recovery can be effected when the applicant has claimed the confronted enquiry under rule 9 of the D & AR Rule, 1968. It is further suspicious to note that after this order of 24.3.1986, a memo detailing the chargesheet was issued to the applicant on 1.4.1986. After this memo only there is some correspondence with the applicant but it appears that if the applicant does not appear to cooperate in the enquiry proceedings, the proceedings can be drawn by the Enquiry Officer in an exParte manner. Actually the proceedings of the enquiry have also gone exparte. The state^{ment}/of Inderjit has also been recorded in the absence of the applicant and the applicant has also been examined by the Enquiry Officer and thorough questions have been put to him in his examination. The Enquiry Officer in the

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report dated 30th November, 1989 has taken pains to give an elaborate report and submitted the same to the disciplinary authority, thereafter the enquiry/case ended in a blind result and no order was passed or if the orders were passed, they are neither available on the file nor conveyed to the applicant. The state-of-affairs prevailing can be assessed by the department itself and if need be the departmental enquiry file be perused by them while complying with the direction to be issued in this judgement.

Normally, in a case where the final orders have not been passed, departmentally by the disciplinary authority a direction can be issued to conclude the departmental disciplinary enquiry as the enquiry remains pending till the final order is passed by the disciplinary authority on the report of the Enquiry Officer. However, another incidence has happened that the applicant on super-annuation has already retired on 31.12.1994. Till his retirement, he has not been conveyed any result of the enquiry nor served with a copy of the enquiry officer's report which is a mandatory. In such circumstances, the proceedings of disciplinary enquiry appears to have been dropped by the respondents or by the authority concerned looking to the affairs of the enquiry against the applicant. When this has been dropped, an

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enquiry cannot be re-opened after the retirement of the applicant from service. By/certain lapses, deliberate or accidental, the loss of 50 blank QTS tickets cannot be ascertained and the respondents cannot fix the responsibility on the applicant about any loss, actual or potential, caused to the Indian Railways. cannot be ascertained.

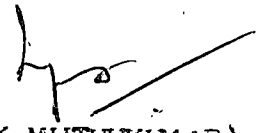
We have also perused the para 227 and 229 of the Commercial Manual Volume-I, there is a clear breach of those provisions in issuing the order dated 24.3.1986, that order, therefore, cannot be sustained. Regarding the communication to the applicant of the dismissal of his appeal of 19/4/1990, we do not find any order of the appellate authority in the departmental file and the ^{which} order is available in the file is ~~of~~ dated 23.3.1990 issued by the Sr. D.O.S. and that does not refer to any order of the Disciplinary authority and only mentions that the deduction already ordered to be made from the salary of the applicant cannot be stopped. Thus, it is not evident whether appellate authority has applied its mind at all to any un-written, unseen and unknown order of the disciplinary authority.

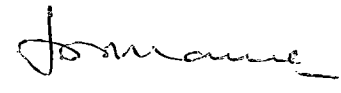
In the conspectus of the facts and circumstances, we allow the present application and hold that the order of

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recovery of Rs. 11,000/- from the salary of the applicant is totally unjustified, illegal, arbitrary and cannot be sustained and therefore, is quashed. As a consequence, the recovery already debited from the pay of the applicant to the tune of Rs. 4200/- is directed to be re-imbursed to the applicant. However, with regard to the interest, we do not pass an order as the departmental file, as said above, speaks itself. The respondents are directed to comply with the order within three months period from the date of receipt of this order. Departmental file has been returned to the respondents in the same conditions in which it was received. Cost on Parties.


(K. MUTHUKUMAR)
MEMBER (A)


(J. P. SHARMA)
MEMBER (J)

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