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Central Administrative Tribunal

Principal Bench: New Delhi

OA No.2505/92

New Delhi this the 8th Day of July, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Shrimati Lakshmi Swaminathan, Member (J)

D.R. Gupta,
R/o 88/B,
Shastri Park near Old Yamuna Bridge,
Delhi-110053.

...Applicant

(By Advocates Sh. O.P. Khokha and Sh. S.C. Luthra)

Versus

1. Union of India through
Secretary, Railway Board,
Baroda House, New Delhi.

2. The General Manager,
Central Railway,
V.T. Bombay.

3. The Divisional Railway Manager (Commercial)
Jhansi Division,
Jhansi.

...Respondents

(By Advocate Sh. H.K. Gangwani, though none appeared)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan:-

The applicant, a Deputy Station Superintendent under the third respondent, has filed this application challenging the Annexure A-1 order dated 15.5.92 of the third respondent, the D.R.M., Jhansi Division, Jhansi which reads as under:-

"Sub:- Admitted debit against Shri D.R. Gupta at the end of July, 1992.

.....

As per records Rs.39,846 is shown admitted debit against Shri D.R. Gupta O/S at Sholaka.

If you will not clear the above amount of admitted debit in lump sum within a period of 15 days from the date of receipt of this letter severe action will be taken against you."

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2. The brief facts of the case leading to the issue of the Annexure A-1 order are as follows.

2.1 The applicant was working as a Station Master at Sholaka on the Delhi-Palwal sector. On 30.9.90, when the Booking Clerk was on weekly rest and as no relief had been provided, the applicant, who was on duty, had also performed the duties of the Booking Clerk.

2.2 At about 7.05 a.m., the Gatekeeper came to the station and informed the applicant that a riotous mob was fast approaching the station shouting anti reservation slogans protesting the Mandal Commission's report and its implementation by the Government. At that time, the applicant was counting cash in order to seal the same in the cash bag for remittance by train No.362 Up at 9.30 a.m.

2.3 The applicant contacted the Controller at Agra. However, before any assistance could be provided to him, it is stated as follows in the O.A.:-

"4.6 That before the Applicant could put the cash in the Cash Bag, the riotous mob attacked the Railway Station with the result that he could not put the cash in the Bag and that the cash, cash bag, remittance papers and cash safe keys which were all lying on the Table.

4.7 That the mob immediately went on a rampage and started breaking telephone wires, ticket tube and almorahs where tickets were kept. Some of them were also having kerosene oil with them and after sprinkling the same on ticket tube and almirah and other record, set fire to them."

There was a danger to his life, but, somehow he was spared.

2.4 He then went inside the office with Pointsman Sh. Amar Singh. He tried to extinguish the fire with the help of the fire extinguisher. He could contact to the Controller at Agra and requested him to arrange for a Fire Brigade to avoid any further destruction.

2.5 The Government Railway Police also arrived and they made investigation on the spot. The applicant also filed an F.I.R. in the Government Railway Police (Annexure A-2) and recorded ^{the} incident in the daily diary (Annexure A-3). A newsitem about this incident appeared in the Hindi daily newspaper 'Navbharat Times' (Delhi, 1.10.1990), a copy of which is annexed at Annexure A-7. It carries the headline "Immolation attempt foiled - Sholka Station burnt", as translated.

2.6 The Area Officer, Faridabad arrived at ^{arrived} 9.15 a.m. and shortly thereafter a Fire Brigade and it took about half an hour to extinguish the fire.

2.7 Subsequently, on 4.10.90 the records were checked by the Senior Commercial Officer, Palwal, Senior Traffic Inspector (Accounts), Faridabad and G.C. in the applicant's presence and found some shortages. An inventory had been taken on 30.9.90. These details are given in Annexures 4, 5 and 6.

2.8 Admittedly, on the basis of the inventory thus prepared, it was found that there was a shortage of tickets amounting to Rs.31,176, a loss of cash of Rs.659 and a loss of Excess Fare Receipt Book valued at Rs.6,000/-. Thus, a total loss of Rs.37,835/- was found.

2.9 It is stated that the Police filed their final report on 9.5.91 and they could not trace the culprits.
2.9(a) It is thereafter alleged in the O.A. as follows:-

"4.20 That on the same day i.e. 4-10-1990, the Senior Traffic Inspector (Accounts) persuaded the Applicant to write the admission of loss and assured him that no action will be taken against him. The applicant in pursuance of the said assurance wrote that he admits the loss of tickets etc (due to act

of riotous mob) although this admission was to be qualified in the manner indicated above in bracket () yet the applicant came to know that the Respondents are using this admission against the applicant and are planning to pin the responsibility on the applicant, although he had no control over the situation which occurred on 30-9-90 as explained above."

2.10 It is on the basis of this alleged admission that the third respondent has issued the Annexure-(I) order for the recovery of Rs.39,846/-, which, admittedly, includes Rs.2,011/- which does not pertain to this incident, and, therefore, the amount sought to be recovered in connection with the loss due to this alleged incident is Rs.37,835/-.

2.11 In the circumstances, the applicant has prayed that the Annexure A-1 memo be quashed in respect of the alleged loss incurred on 30.9.90 and to direct the respondents not to recover this alleged loss from him.

3. The respondents have filed a reply denying these claims. It is their contention that the entire incident, as reported by the applicant, is suspicious in nature and that, as a matter of fact, he is trying to cover up his dishonesty by foisting its^{results} on this incident. The important averments made by the respondents are as follows:-

"4.7 That the contents of para 4.7 of the OA are not admitted, as worded. It is submitted that on receipt of information regarding Anti-Rasservation Mob, agitating at the station, Senior Area Officer alongwith SCI-Faridabad visited Sholaka Station on 30.9.90 at 9-50 Hrs. and found that Almirahs having ticket stock and other records were in-tact and had no signs of any smoke. The ticket tube was also sound."

“4.14 That the contents of para 4.14 of the OA are not admitted, as worded. It is submitted that on 30.9.90 Sr. Area Officer Faridabad visited Sholaka immediataly on receipt of the message about anti-reservation agitation at the station. During his visit, he found two almirahs in the room adjacent to Station Masters office. One of the almirahs containing ticket stock was found intact, undisturbed and locked. Second almirah containing other records was found open and record kept therein was burnt. However, there were no sign of fire on the body of almirah. This created (sic) suspicious/about malafide intention of the applicant, the then Station Master, Area Officer instructed Shri N.C. Saxena SCI to seal the almirah containing ticket stocks and ordered for joint verification of stock by Senior Comml. Inspector and Sr. TTA. Joint verification of ticket stock was done by= Mr. N.C. Saxena SCI Faridabad and Mr. G.P. Ashok Sr. TTA BVH, in presence of Station Superintendent Sholaka, the applicant, and G.C., Mt. B.N. Qurashi on 4 and 5.10.90. It was found that one thousand six hundred seventy seven tickets worth Rs. 31,176/- were found missing/short in the sound almirah. Details of these tickets are given in statement, which is annexed & Marked as Annexure R-3. Apart from the loss of above tickets one EFR Book No.78401 to 78450 worth Rs. 6000/- was also found missing besides the shortage of Cash at the tune of Rs. 659/-. The allegations are wrong & denied.”

“4.17 That the contents of para 4.17 of the OA are not admitted, since the amount mentioned therein was not looted by anti-reservation Mob, as the

almirah containing tickets stock was sound, locked and having no signs of smoke etc. The allegations are wrong and denied.)

4.20 That the contents of para 4.20 of the OA are not admitted, as worded. It is submitted that there was no pursuasion on the part of Sr. TTA for admission of the loss of ticket worth Rs.31,176/-. Contrary to it, Station Master Sholaka had at his own admitted his guilt for the shortage of said tickets in the column "Explanation of the Station Master" of TTA's inspection report, which is annexed & marked as Annexure R-4."

4. The applicant has filed a rejoinder in which the allegations made against him have been denied. He contends that if the respondents had entertained any doubt about his integrity and about his version of the incident they could have very well filed a counter complaint against him in the police station, which could then have been investigated. It is further pointed out that there was a large amount of Rs.4,850/-, being the unpaid bonus amount, which was left intact, which he could very well have got away with, if he had been dishonest. It is further pointed out that, only 4 days before the incident, the Accounts staff had done the normal checking of the station on 25/26.9.90 and every thing was found in order and no shortage of money or tickets was reported. He further submits that he has an unblemished record of 30 years' of service and was shortly to retire and, therefore, one cannot think of his acting in such a manner jeopardising his whole career. The applicant also states as follows in his rejoinder:-

"The mob arrived at the Shalka Railway Station when the applicant was handling cash. The mob had destroyed/damaged the almirah where records were kept. Since the other almirah was open they ransacked

it and put some of the contents including tickets etc. in Fire set by the miscreants. After the mob left, the applicant had locked the almirah and kept the remaining tickets and cash etc. in it as a measure of precaution since he was the only person present at the station to man it as the booking clerk and other staff were on leave."

5. He also denies having admitted that he was responsible for the loss.

6. This matter was heard on an earlier occasion on 28.2.94 when the following directions were given to the respondents:-

"The 1d. counsel for the respondents is directed to file typed copies of the illegible documents which have been filed in this case. He is also directed to produce copies of the F.I.R. stated to have been filed by the applicant and the final report reported to have been filed by the Investigating Officer before the Magistrate, along-with English translations of these documents.

The 1d. counsel is also directed to clarify as to whether the authorities who investigated the incident examined the Station Supdt. in regard to this incident, as also the manner in which the applicant got possession of the key of almirah from which the tickets are found to have been lost. The respondents are also directed to file any other investigation report made in this case which may have relevance."

7. Though the respondents were given a sufficiently long time to comply with these ^{directions} 1 this was not done and on 18.4.94 time was given till today to Sh. H.K. Gangwani, learned counsel for the respondents.

8. This case is listed at serial No.3 in today's list under 'Regular Matters' but none is present for the respondents, though the case has been called twice. Sh. S.C. Luthra with Sh. O.P. Khokha, counsel for the applicant are present. They are, therefore, heard and after perusal of record this order is being passed.

9. The learned counsel for the applicant traversed through the pleadings in the case and submitted that there were no grounds to impugn the applicant's honesty or integrity in the matter. That there was an incident of this nature cannot be denied. The newspaper report at Annexure-7 could certainly not have been engineered by the applicant. That newsitem states that the mob had attacked the Railway station and burnt it.

10. Considerable stress was laid by the learned counsel for the applicant on the following points

- i) If the applicant was dishonest and he was fabricating the case to cover his misdeeds in the past, resulting in a loss of Rs.37,835/-, which, according to the respondents, he has misappropriated, nothing prevented him from taking away the ready cash of Rs.4,815/- which is the unpaid bonus amount and attribute this loss ^{also} thereafter, to the riotous mob violence.
- ii) He has an unblemished record of 30 years' of service and it cannot be reasonably expected of such an official to put his record in jeopardy by resorting to criminal misconduct.
- iii) None of the missing tickets ^{has} been recovered from any of the destinations. Therefore, they cannot be treated as used tickets and, hence, value cannot be equal to the price indicated on those tickets but could only be the ^{material} value of printed tickets, if at all.

iv) Lastly, he contends that no such admission has been made by the applicant. He only admitted the loss of the tickets, which is a fact, but he never admitted that he was responsible for the loss. The recovery could not have been made without instituting a proper disciplinary proceeding.

11. In the absence of the learned counsel for the respondents we have perused the records.

12. The conduct of the respondents and the acts of omission and commission are surprising in many ways. The enclosures to the reply are illegible and clean typed copies have not been provided, despite our directions on 28.2.94. We have, therefore, tried to read them to the extent possible.

13. Annexure R-2 is a letter dated 18.8.92, addressed to the second respondent by the F.A. & C.A.O. enclosing a true copy of the report dated 6.10.90 of G.P. Ashok, Senior TTA. In this report it is alleged as follows:-

"It is a clear case of fraud, embezzlement and permanent misappropriation of the Govt. money."

It is surprising that the D.R.M. (C) did not have before him this report dated 6.10.90 as soon as it was prepared and that it ~~had~~ ^{was} to be sent ~~as~~ ^{late} ~~book~~ as on 18.8.92. It is surprising that the Area Officer and other senior officials who came to the spot for investigation on the date of the incident, did not have instructions that all reports of investigations should be sent to the Divisional Headquarters Jhansi immediately by the concerned authority, to consider the next course of action. That apart, if an official on the commercial side had reported that this was a clear case of misappropriation by the applicant, the report should have been taken seriously as it alleges commission of a serious crime. The respondents would normally have been expected

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to conduct a more thorough probe and investigation into the matter. For one thing, they could have looked into the inspection report of this station to see whether every thing was found in order earlier or, whether, there had been any matter raising any suspicion. This is relevant because, as will be stated shortly, the applicant contends that the station was checked only 4 days earlier and every thing was found in order. In any case, if they had serious apprehensions, they could as well have lodged a FIR in the police station in regard to their apprehension about the commission of an offence by the applicant. No such action was taken, as can be seen from the reply. One would also have expected the respondents to have placed the applicant under suspension, pending departmental enquiry/criminal prosecution. This conduct is perplexing.

14. Para 4.14 of the reply, extracted above, shows that the grounds for suspecting the applicant's integrity and his malafide intention are that the almirah containing ticket stock was "found intact, undisturbed and locked. However, there were no sign of fire on the body of the almirah."

15. It is, however, not denied that certain things had been set on fire in the station and that the fire brigade was also called. This is admitted in the Annexure R-1 report dated 8.10.90 of the Area Officer to the Senior D.C.S., Jhansi. The statement of the fire brigade as to what things were found to be on fire by them and which fires were extinguished by them was not taken.

16. It is equally surprising that the statement of the applicant was not recorded about the doubts the ^{he had} authorities, at the time of spot inspection on 30.9.90. It would have been most natural to have pointed out to him that the almirah containing tickets was found in-tact and unburnt and recorded his expla-

most nation. Indeed, the 1 elementary duty was to record the statements of the eye witnesses to the incident. It would appear that, besides the applicant, Gateman Kishan Chand and Pointsman Amar Singh were present at the time of the incident, as seen from the averments made in the O.A. The respondents do not state who were the officials found on the scene when the Area Officer and others visited the scene on 30.9.90. They do not appear to have recorded the statement of any of these persons. At any rate, the reply to the OA does not say anything in this regard and the statements, if recorded, have not been produced.

17. On 28.2.94 we had directed the respondents to produce copies of the F.I.R and the final report stated to have been filed by the Investigating Officer before the Magistrate. This has not been done.

18. In the circumstances, the apprehension of the respondents that the applicant himself has dishonestly disposed of the lost tickets etc. for his gain are only surmises, not based on any enquiry or evidence.

19. The crucial question is whether the applicant has admitted his responsibility for the loss. In this regard, para 4.20 of the respondents' reply extracted in para 3 above alleges that the applicant had admitted his guilt in the column "Explanation of the Station Master" of TIA's inspection report annexed at Annexure R-4. No such Annexure is available with the counter. Indeed, the index to the counter shows the filing of only three Annexures R-1, R-2 and R-3.

20. Photo copies of 3 pages of register have, no doubt, been filed as part of Annexure R-3, which have a column "Explanation of the Station Master". The explanations are illegible. In any case, we are unable to make out any admission by the applicant in this column, as to

his responsibility for the loss.

21. However, in the report of the Area Officer dated 8.10.90 (Annexure R-1) we are able to discern the following:-

"The TIA has raised debit for Rs.31,176 and passed remarks on TAGF as under. 'I have thoroughly checked ticket stock with the help of SCI of your station found 1329 ticket short and 344 MSP QST MUST from tube as well as from stock, the value of tickets missing arrived at Rs.31,176 which is debited to your station." In "Explanation of S.M." column of the above form S.M. has explained:

"Admitted and statement of missing ticket received. Debit shall be accounted for in the month of Oct.90"

The report then states as follows:-

"Thus the SM SHLKH admitted debit of Rs.31,176 raised by TIA. It indicates that the tickets have been sold out of turn from the stock." (emphasis given).

22. The original record containing this admission of the applicant has not been produced. We are unable to conclude that this is an admission of the applicant of his guilt. He has certainly admitted the extent of loss, as arrived after a detailed inventory was taken. That by itself will not amount to admitting any guilt on his part when, all along, his contention has been that a riotous mob has attacked the station and which caused damage to the property, including cash and tickets. That apart, the debit raised is against the station and not against him personally. If he had been informed by the TIA that the debit was being raised against him personally and he had accepted this debit, it could have been contended that, at any rate, the applicant had accepted personal responsibility for the loss, whatever be the manner in which the loss had occurred and that, therefore, the recovery was justified. We are unable to accept the

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contention of the Area Officer that this admission indicates that the tickets have been sold out of turn as alleged in the above extract. No such allegation should have been made without a more thorough enquiry.

23. In the circumstances, the respondents could not have come to the conclusion that the applicant was liable to refund this amount without instituting a departmental proceeding to hold him responsible, ^{or even} for the loss simpliciter, if not on a charge of misappropriation.

24. What is more surprising is that the accounts were checked only four days earlier, as mentioned in the rejoinder and everything is stated to be found in order.

Tickets are the most valuable stock held in a railway station - One would presume that stocks of tickets held ^{to see if they are} would be checked in such a checking, and found in order. The respondents have not denied this averment. If that be so, the alleged loss could have taken place only after such checking. The respondents have failed to show how, within the next four days, the applicant had access to the almirah containing the tickets from which it is alleged that he ^{has} sold, out of turn, tickets of the value of Rs.31,176/-.

It is worthy of note that in the report of the SCI dated 6.10.90 (Annexure R-2), there is a statement that the ^{are} average earnings of this station ~~is~~ Rs.1,000/- per day.

It is highly probable that, after the account was checked on 26.9.93, tickets amounting to Rs.31,176/- could have been sold, out of turn, by the applicant before 30.9.90. The applicant has stated in the rejoinder that the almirah containing the stock was open at the time of the mob attack and it was he who locked it after the mob left. This is not denied. Destruction of the tickets by ^{the mob} was not improbable.

25. In our view, there are some circumstances which appear to show that the applicant's version has a ring of

truth in it. Firstly, that the incident of a mob attack on the station took place is not fiction. Secondly, the mob set fire to certain articles in the station. This could as well include tickets taken from the almirah, which the applicant states in his rejoinder was kept open at the relevant time. Thirdly, if the applicant was indeed dishonest, nothing prevented him from going whole hog in this behalf and take away the sum of Rs.4,850/-, being the unpaid bonus and attribute this loss also to the damage caused by the riotous mob. In our view, ready cash of this value could not have been left behind when it is alleged, by implication that, he made away with Rs.669/-. That ready cash is also to be preferred to unsold tickets, which can be converted into cash only after clandestine sales involving risk. Fourthly, though the respondents have the list of 1677 missing tickets and the 50 blank Excess Fare receipts, they have not been able to recover these tickets/receipts from any station.

Lastly, the applicant states that he has an unblemished record of 30 years of service, which is not denied. He was due to retire on 31.12.93. We are of the view, that he would not have gambled away his retirement benefits and risked dismissal and prosecution, with this record. At any rate, ~~not~~ just for the amount involved, which is relatively small, as it is stated that it has been adjusted from the gratuity.

26. In the circumstances, we hold that there was no ground for holding the applicant responsible for the amount of Rs.37,835/-, the value of the tickets and Excess Fare Receipts found missing after the incident. Therefore, there was no justification for issuing the order of recovery as at Annexure A-1, in so far as it includes the amount of Rs.37,835/-.

27. In these circumstances, this O.A. is disposed of with the following orders and directions:

(i) The Annexure A-1 order dated 15.9.92, directing the applicant to clear the admitted debit of Rs.39,846/- is quashed to the extent of Rs.37,835/-, meaning thereby that the recovery under Annexure A-1 should be restricted to the sum of Rs.2,111/-.

(ii) In case the amount of Rs.37,835/- has been recovered by short payment of the gratuity payable to the applicant on his retirement, the respondents are now directed to refund the same to the applicant within two months from the date of receipt of this order, along with interest @12% from the date of such recovery till the amount is actually paid.

(iii) This order will not, however, stand in the way of the respondents from taking any further proceedings, in accordance with law, against the applicant, if so advised.

28. There will be no order as to costs.

Lakshmi Srinivasan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

N.V. Krishnan
8.7.94
(N.V. KRISHNAN)
VICE-CHAIRMAN(A)

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