

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 01st day of May, 2002.

Original Application No. 315 of 2001.

Q U O R U M :- Hon'ble Mr. C.S. Chadha, Member- A.  
Hon'ble Mr. A.K. Bhatnagar, Member- J.

Udit Narayan Shukla (T. No. 668070)  
S/o Late R.P. Shukla , working as T.T.E under  
the Station Superintendent, Central Railway, Jhansi.  
R/o 110-B, Deen Dayal Nagar, Nandan Pura,  
Distt. Jhansi.

.....Applicant

Counsel for the applicant :- Sri S.K. Mishra

V E R S U S

1. The Union of India through the General Manager,  
Central Railway, Mumbai.
2. The Additional Divisional Railway Manager (second),  
Central Railway, Jhansi, U.P.
3. The Senior Divisional Commercial Manager,  
Central Railway, Jhansi, U.P.
4. The Chief Tikkit Inspector (D),  
Central Railway, Jhansi, U.P.

.....Respondents

Counsel for the respondents :- Sri Prashant Mathur

O R D E R (Oral)

(By Hon'ble Mr. C.S. Chadha, Member- A.)

The case of the applicant is that he was held  
guilty for not taking proper action on the loss of E.F.T

*Chadha*



Books as required under the instructions contained in the Gazette of Central Railway No. 3 dt. 01.03.1993, item No. 49, page 31 to 34, Sl. No. 1 to 11. By the above mentioned instructions, certain actions were supposed to be taken and it is alleged that the applicant did not comply with these requirements. Therefore, vide impugned order dated 13.09.2002 (annexure A- 1), an amount of Rs. 29,555/- was directed to be recovered from his pay.

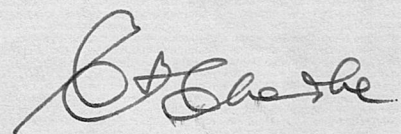
2. The main question to be decided in this matter is whether the applicant has complied substantially with the requirements of the above mentioned instruction/rule. It transpires that soon after the alleged theft of E.F.T Books from his house which he discovered when he went on leave, he filed a report with the police station, Sipri, Jhansi on 01.09.1996 (annexure A- 3) with the copies to the Superintendent of Railway Police and C.P.O, Central Railway, Jhansi. He further filed another report of the incident on 02.09.1996 which has been shown to have been received by the Chief Ticket Inspector (D), Division Jhansi, Central Railway (annexure A- 4). Both these documents have not been rebutted in their counter affidavit by the respondents. It is true that after these two actions by the applicant, he filed a 'formal' F.I.R with the Police Station, Sipri, Jhansi on 10.9.1996. The respondents' main objection is that he filed this F.I.R after 10 days of the said incident and, therefore, he cannot get benefit of the fact that he has taken proper action. The learned counsel for the respondents has repeated time and again that the document of 10.09.1996 is the only F.I.R as required under law and that this delay has been admitted by the applicant. However, we feel that annexure A- 3 which is a report not only to the ~~Police~~ Police Station but also a copy of

*[Handwritten signature]*



which has been endorsed to the Superintendent of Railway Police, should also be construed to be an F.I.R. The learned counsel for the respondents also states that in para 11 of the CA, they denied the contents of para 4.7 of the O.A. We have gone through the concerned para 11 of the CA. We cannot agree that this is a specific rebuttal of annexure A- 3 and A- 4. The respondents have simply said in para 11 of the CA that the contents of para 4.7 of the O.A are vague and mis-concieved and denied. We cannot consider this as a specific denial of annexure A- 3 and A- 4. When there is a specific allegation that annexure A- 4 was received by the Chief Ticket Inspector on 02.09.1996, there should have been a clear rebuttal by the C.T.I that he did not receive the annexure A- 4 on 02.09,1996. There is no such averment. However, it is most important that the action against the applicant has been taken without giving him an opportunity to be heard. The learned counsel for the respondents has stated that under the existing rules, no such show cause notice needs to be given. We are afraid that statutory rules cannot go against the Constitution of India. No action can be taken without giving an opportunity to be heard.

3. In view of the above, we feel that firstly, the applicant took substantial action in reporting the said theft of E.F.T Books by informing the Police Station as well as the superior railway authority, immediately after knowing about the theft. Secondly, he has been penalised without giving him any show cause notice. We do not intend to let the applicant go scot free and, therefore, it will be open to the railway authorities to initiate any fresh action that they deem fit in accordance with law.



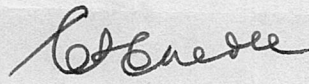


We also observe here that before giving a show cause notice, the respondents must bear in their mind that intention of rule quoted above should be seen in toto and not in part.

4. In view of the above discussion, the impugned order dated 13.09.2000 (annexure A- 1) and the appellate order dated 02/03.01.2001 are quashed with the above direction. The O.A is disposed of accordingly.

5. There shall be no order as to costs.

  
Member- J.

  
Member- A.

/Anand/