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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 28th day of August 2007

Original Application No. 1518 of 2005

Hon'ble Mr. P.K. Chatterji, Member (A)

S.M.H. Abdi, S/o Sri Indad Hasan Abdi, working as Booking Clerk, North Central Railway, Allahabad.

... Applicant

By Adv: Sri A.K. Srivastava and Sri M.K. Srivastava

V E R S U S

1. Union of India through Chief Commercial Manager (Refund), Baroda House, New Delhi.
2. Chief Traffic Manager, Northern Railway, Kanpur, UP.
3. Chief Booking Supervisor (Accounts) (C.N.B.) Kanpur, Kanpur (UP).
4. Senior Traffic Inspector Accounts, Kanpur Central Kanpur.
5. Senior Chief Commercial Manager, North Central Railway, Allahabad.

... Respondents

By Adv: Sri Anil Kumar

O R D E R

This OA has been filed against the order of recovery of refund against the tickets of passengers from the salary of the applicant without giving him opportunity of hearing before the deduction inspite of the order of the Tribunal dated 23.0.2001 passed in OA No. 53 of 2001 in respect of the applicant. The facts of the case are that while working as Booking Clerk at Kanpur Railway Station on

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09.10.1997 he had refunded some amount of partially used ticket to the passengers of Train No. 4518 dn and 3008 dn. These trains were running late due to fault in the track and were terminated at the station. As booking clerk he refunded fare to the passengers for partially used tickets as per rule 213 (14) of part I Vol. I of Cochin Traffic No. 25 of Indian Railways Conference Association. These rules apply in case of discontinuation of journey due to disturbances in train services.

2. Respondent No. 2 referred the matter on 17.11.1997 to the Chief Commercial Manager on the question of applicability of above rules in this case. After examining the matter the CCM came to the conclusion that the refund was valid and order dated 13.04.1998 was issued by respondent No. 1 i.e. CCM to respondent No. 2 stating that the refund was made correctly as per the above rules. A photocopy of order dated 13.04.1998 is annexed as annexure A-2. But inspite of the specific order of CCM dated 30.04.1998 respondent No. 4 prepared a debit list on 28.06.2000 directing that the amount refunded should be recovered from the pay of the officials. Several names were there in the list and the applicants of this OA filed OA No. 53/01 which was decided by the Tribunal directing that respondent No. 7 should consider and decide the representations of the applicants after giving opportunity of hearing to



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the applicant by a reasoned order within a period of two months from the date of filing a copy of this order or the date of representation which ever is earlier. It was also directed that till then the amount should not be deducted from the salary of the applicants. Photocopy of this order is enclosed to this OA as annexure A-4.

3. The applicant further stated that he had filed a copy of the order of the Tribunal dated 23.01.2001 alongwith an application before the concerned authority, but it has still not been decided. The applicant has further stated that some other persons who were adversely affected by the order of recovery filed OA 390/04 which was decided on 23.12.2004. In the same order the Tribunal directed the respondents to decide representation pending before them and pass fresh order in accordance with law. Thus in more than one OA the officials who were a victim of the alleged wrong decision to recover the refunded value of ticket got favourable direction from the Tribunal. Therefore, the applicant is of the view that his case should also be similarly disposed of by the respondents. His application to the concerned authority not to recover the refunded value of the fare has still not been decided by the respondents. By submitting the above facts the applicant has prayed for a direction of this Tribunal upon the respondent No. 3, 4 and 5 not to

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make recovery from the salary of the applicant without giving him any opportunity of hearing in compliance with the above-mentioned orders of the Tribunal.

4. The respondents have refuted the allegations. It has been stated by them that the decision of the Tribunal dated 23.01.2001 was not served in the office of the answering respondents. It is further stated by them that the order dated 23.12.2004 was an ex parte order passed in the absence of the respondents.

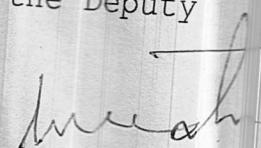
5. The respondents have also denied that the applicant submitted an application alongwith a copy of the order of this Tribunal dated 23.01.2001. Therefore, this OA is barred by time. The learned counsel for the applicant however has stated categorically referring to the OA that the applicant's application alongwith the copy of the order was given to the respondents. Not only that he made several representations thereafter, but to no effect. The matter therefore, remains disputed whether the applicant made an application after the Tribunal's order dated 23.01.2001. However, it appears more reasonable to believe that he filed an application. It is improbable that a person who thinks he has become a victim of a wrong order will not make a representation taking advantage of a

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favourable order of the Tribunal. For these reason and also taking into account the fact that all pleadings have already been exchange in this case it is too late in the day to dismiss the case as time barred.

6. The learned counsel for the respondents has drawn my attention to para 10 of the reply in which it is stated that partial refund of fare is admissible only when the Railway failed to make alternative arrangements for further journey in case the train is terminated en route. In this case the applicant himself has admitted in para 4.1 of the OA that an alternative arrangement was made by the Railways. Therefore, such refund was not justified and the earlier order was not consistent with the rules. For that reason the matter was discussed with the Chief Commercial Manager and after the discussion the order dated 25.02.2000 was issued. In reply to this the learned counsel for the applicant drew my attention to the letter dated 30.04.1998 of the CCM (Annexure A-2) in which it was clearly written that no alternative arrangement could be made. Hence, refund was justified.

7. It is also clarified by the respondents in their reply (paras 13 & 14) that after the Tribunal decided OA 390/04 and 409/04 by directing the Deputy



Chief Traffic Manager, NC, Railway, Kanpur to pass a fresh order in accordance with the law and in the light of the judgment. There was no post of Chief Traffic Manager, at Kanpur and therefore, the Deputy Chief Traffic Manager was the competent authority to decide such case. The reply further clarified that another similar OA 996/04 was decided on 09.11.2004 directing that opportunity of personal hearing be given to the applicants by Deputy Chief Traffic Manager, Kanpur before deciding the case. In compliance with the order opportunity was given on 30.11.2004 for personal hearing of the applicants and an order was issued on 13.12.2004 justifying the recovery. The respondents go on to clarify further that the present applicant Sri S.M.H. Abdi the booking clerk never preferred any representation before the Deputy Chief Traffic Manager against the debit bill.

8. On hearing the case on 13.07.2007 the Tribunal passed the following order:

"Relying on letter dated 30.4.1998 of Chief Commercial Manager/Refunds (Annexure-2), this Tribunal quashed the order of recovery vide order dated 9.3.2006 in O.A. No. 997/05 in so far as Shivaji Mishra, Nafis Ahmad, Anil Kumar and R.K. Srivastava were concerned. Sri A.K. Srivastava says that the writ petition filed against the order dated 9.3.2006 has also been dismissed by the Hon'ble High Court.

The case of the applicant is identical to case of Shivaji Mishra and three others but relying on letter dated 25.2.2000 written by Chief Traffic Manager after consulting with Chief Commercial Manager, the Respondents have tried to defend the recovery saying that earlier order dated 30.4.1998 were modified by the Chief Traffic

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Manager. The copy of this letter dated 25.2.2000 is, however, not on record.

It would be better if the respondents place it on record so that the matter is properly and effectively heard and disposed of. What will be the effect of decisions in other O.A., will be considered at the time of arguments and decision. Sri Anil Kumar will place on record the said order dated 25.2.2000 of the referred to in para 10 of the reply on the next date."

9. In reply the learned counsel for the respondents has filed a supplementary written counter reply on 23.08.2007 as follows:

"That it is further humbly submitted, that vide order dated 25.2.2000, Chief Traffic Manager Northern Rly., has passed the following order, "It is learnt that full refund is being given in case of 4518 down Unchahar Express is terminated at Kanpur on account of late running. The matter has been discussed with Chief Commercial Manager, and it has been decided that such refund should be stopped henceforth and normal rules should be followed", in view of the above order dated 25.2.2000 as mentioned above, it is very clear that the objection raised by Sr. T.I.A. was correct hence debit list was prepared for the recovery against 18 staff including petitioner and accordingly recovery was made vide order dated 15.3.2004 of Deputy Chief Traffic Manager, detail of the same has been already mentioned in para 11 onwards on the written counter reply....."

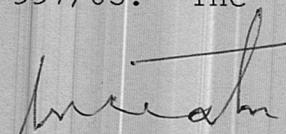
10. During arguments of the case today the learned counsel for the applicant was of the view that the first order upholding the decision of refunding partial fare dated 30.04.1998 was issued by the Chief Commercial Manager. It is seen that the subsequent order dated 25.02.2000 is issued by the Deputy Chief Traffic Manager who is much lower in rank compared to CCM. Therefore, the order of the Deputy Chief Traffic Manager cannot supersede the order of CCM. The learned counsel for the applicant has also drawn my attention to the order of the Tribunal dated 09.03.2006 in OA 997/05. The Tribunal directed in that OA that the respondents

*Shri J. M. Jha*

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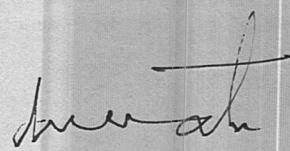
would act upon the order dated 30.04.1998 of the CCM and if by so acting upon the said order the applicant is entitled to any refund the same should be made to him within a period of three months from the date of communication of this order. The learned counsel for the applicant has further stated that this order of the Tribunal in OA 997/05 was challenged by Writ Petition before Hon'ble Allahabad High Court by the respondents. However, the Hon'ble High Court has upheld the decision of the Tribunal. As no further petition has been made against the decision of the Hon'ble High Court the matter has attained finality. The cases therefore, has to be disposed of finally in terms of the judgment in OA 997/05. The learned counsel for the applicant has further stated that in the debit list his name figured alongwith the four applicants of the OA 997/05 at Sl. No. 8, 4, 1 and 13 respectively. The name of the applicant figures at Sl. No. 7 of the same debit list. This, therefore, should not leave any doubt that the applicant is similarly circumstanced as the applicants of OA 997/05. Therefore, his representation should be decided in terms of the same order.

11. Having gone through the pleadings and on hearing the arguments of the learned counsel I am of the view that the applicant deserves to be treated in terms of the Tribunal's order in OA 997/05. The



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respondents should deal with his grievance in the same way and so I direct the respondents to act upon the order dated 30.04.1998 in respect of the applicant. If by acting upon the said order the applicant is entitled to any refund the same may be made to him within a period of three months from the date of communication of this order. With this direction the OA is disposed of. No cost.



Member (A)

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