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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 361 OF 2005

ALLAHABAD THIS THE 5th DAY OF August, 2005
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Jitendra Kumar Singh,
s/o Shri Satya Narain Singh,
Village-Mahedua, Post Office-Darghut Kandhai,
District- Pratapgarh.

..... Applicant

(By Advocate: Sri K. M. Singh)

1. Union of India through General Manager North Central Railway Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Divisional Commercial Manager, North Central Railway, Allahabad.
4. Assistant Commercial Manager, North Central Railway Allahabad.
5. Chief Inspector Tickets North Central Railway, Kanpur.

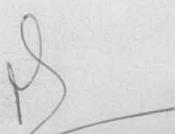
..... Respondents

(By Advocate: Shri Gautam Chaudhary)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this Original Application applicant has challenged the order dated 25.08.2004 whereby his appeal was rejected against the recovery letter dated 08.06.2004 whereby the order has been passed to recover an amount of Rs.6050/- against the applicant for loss of EFT Book while on duty. Even though no loss has been caused to the Railway.





2. It is submitted by the applicant that on 21.12.2003 applicant was on duty on Train No.2367-UP from Mughalsarai to Kanpur when somebody snatched his hand bag at Mughalsarai which contained a completely blank EFT Book and duty order pass and checking authority of the applicant. Immediately reaching Kanpur Central Station he lodged FIR at GRP Kanpur and submitted report of the incident to the Chief Inspector Tickets Line on 23.12.2003. He also gave application to the Senior Divisional Commercial Manager on 01.01.2004 requesting for publication of this stolen EFT Book as per rules but without making any enquiry and giving any opportunity to the applicant, respondent No.4 has issued recovery of Rs.6050/- against the applicant. On the basis of which a letter dated 23.06.2004 was issued by the Senior Divisional Commercial Manager for deduction the amount from his salary. He thus, have no other option but to file the present original application.

3. Respondents have opposed this O.A. They have submitted that applicant has not given a correct story, his letter dated 01.01.2004 has not been received in the office of Senior Divisional Commercial Manager. The law is well settled that in case loss of any EFT Book by the TTE the fair should be calculated on the basis of second class ticket for excess fair for which class cannot be ascertained from any other connected record, which is evident from para No.2152, Moreover, Railway Board has also issued commercial circular No.54/2000 para-6 clause 'D' therein clearly states that in case of loss the deduction of amount will be recovered by the salary of the employee for which Divisional Commercial Manager has to pass the order (Annexure CA-2 and 3).

4. They have further explained that full opportunity was given to the applicant but it was found that applicant gave false evidence in the FIR as he stated EFT No. 987451 to 300 while EFT Book contains 50 foils and in case started number is 987451 then enclosing number would be 500 which says applicant gave incorrect evidence to mislead the authorities. Applicant gave wrong EFT Book No. deliberately because of which publication of Gazette was delayed. Therefore, he is fully responsible and recovery has rightly been ordered against him. They have thus, prayed that the O.A. may be dismissed.

5. I have heard both the counsel and perused the pleadings.

6. Perusal of the para 2152 of Indian Railway Accounts Code para-2 explains as follows:

"In examining the Excess Fare Returns, the opening numbers of Excess Fare Tickets should be checked with the closing numbers of the checked Return for the previous month and it should be seen that the tickets issued in the month are accounted for individually in consecutive order, and there is no break in the continuity of machine numbers. If a Local Excess Fare ticket is not accounted for in the Excess Fare Return, the debit should be raised against the Station Traveling Ticket Examiner as if the ticket had been issued to the farthest station to which it could be made available in Local Booking. In the case of Through traffic, the debit should be raised as if the ticket had been issued to the farthest junction with another railway. The fares should be calculated on the basis of second class fare or excess Fare Tickets for which the class cannot be ascertained from any other connected records".

Similarly para-6 of Clasue 'C' and 'D' Commercial Circular No.54/2000 reads as under:

"(C): Proper action will be taken against defaulting staff who fail to deposit the return in time or delay in submitting the used EFT books. A Headquarter wise list of outstanding list of

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defaulting staff will be prepared for the information of Senior Officers.

(D): It will initiate DAR/recovery proceedings on receipt of CTI's report on the loss of any EFT Book by a TTE and arrange to publish the same in the Gazette. Such recoveries be completed in shortest possible time."

7. Perusal of the above shows that it is the duty of the staff to deposit the returns in time about the used EFT Books and in case of default DAR/recovery proceedings are required to be taken on receipt of CIT's report of loss of any EFT Book by a TTE and arrange to publish the same in the Gazette. However, from the rules as mentioned above it is not clear as to what action is required to be taken in a case where EFT Books gets loss due to some accident fire or snatching of the EFT Book. Even though there is some force in the contention raised by the counsel for the respondents that if such cases are not dealt with strictly, TTEs were start misusing the EFTs and then in order to take advantage would simply lodged an FIR showing it to have been lost or having been snatched away.

8. Respondents have explained in their counter affidavit that EFT Book is a Money Book and unless it is accounted for properly it can be misused. They have also explained how applicant deliberately gave wrong numbers of the EFT Book showing it to be from 987451 to 300 as a result of which correct Gazette could not be issued in time which defeat the whole purpose of issuing the Gazette because the EFTs can be checked on the same day only if they were only misused and defeat the very purpose. Gazette is issued after number of days. I quite see a point at which respondents counsel is driving at but even if I agree with

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the respondents counsel on these points I am faced with the difficulty because counsel for the applicant has relied on a judgment given by Division Bench on 18.03.2002 in O.A. No.506/1995 wherein it is held as under:

"We find from Rule-6 of the Railway Service Disciplinary Rules 1968 that recovery is one of the minor penalties and can be effected for any pecuniary cause lost by a Railway Servant to the Govt. or Railway administration by negligence or breach of orders. Thus, any recovery has to be for the whole or part of a pecuniary loss. In the case before us, no loss has been established against the applicant. The order has been passed only on account of apprehension of such loss on account of the loss of EFT Book. Counsel for the applicant has placed before us the order of a Division Bench of this Tribunal in O.A. No.158/1988 dated 25.05.1999 in which in a similar case, the orders of the respondents have set aside.

We find justification in the O.A. which is allowed setting aside the memo dated 30.11.1994 and the order of the disciplinary authority dated 07.03.1995 and appellate authority dated 16.05.1995. The amount which may have already been recovered from the applicant shall be refunded to him within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs".

9. Meaning thereby that the Division Bench has treated the recovery on account of loss of EFT Book as one of the minor penalties but since no loss has been established on account of loss of EFT Book. Therefore, the charge memo, the order of recovery as well as appellate authority have been quashed and sent aside. Since I am sitting in Single Bench I can neither ignore the judgment given by Division Bench nor over ruled the same nor referred it to the large bench. A single bench is bound by the judgment given by the Division Bench, therefore, as per the judicial discipline in view of the judgment as referred to above, the impugned orders are quashed and set aside. The O.A. is partly

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allowed. However, liberty is given to the respondents to take action against the applicant under the discipline and appeal rules for being misrepresenting the facts and causing loss if any.

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Member (J)

Shukla/-