RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 716 of 1986

Shankhdher Dwibedi .... Applicant.

Versus

DRM, NE Rly., Lucknow & another .... Respondents.

Connected with

Registration (O.A.) No. 67 of 1987

Ashwani Kumar .... Applicant.

Versus

DRM, NE Rly, Lucknow & others .... Respondents.

Connected with

Registration (O.A.) No. 68 of 1987.

Sita Ram Gupta .... Applicant.

Versus

DRM, NE Rly, Lucknow & another .... Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

These applications have been received under Section 19 of the Administrative Tribunals Act XIII of 1985. In Registration (O.A.) No. 716 of 1986 the applicant, Shankhdher Dwibedi, was working as a Booking Clerk in the Booking Office at Nautanawa, Gorakhpur on the N.E. Railway. By orders dated 7.11.1985 followed by another order dated 27.10.1986 a debit of foreign PCT during 1.7.1981 to 7.5.1982 was raised against him. He had sold the tickets when he was on duty during this period. The recovery involved is a sum of Rs.5,308.55 P. The applicant's case is that he was never informed about the increase in the fares and, therefore, he denied any liability against short recovery of passenger fare. According to him, the

Assistant Station Master (ASM) or the Senior Booking Clerk (Sr.BC) never informed him of the increase in the fares and the findings of the Audit party about short recovery of fare is based on presumption that all persons had travelled by 2 Dn. Mail, while as a matter of fact certain other trains were also available. He has said that on 17.9.1986 the Commercial Inspector (CI) conducted an enquiry into the matter and though there was a specific denial of the charges during the enquiry the Enquiry Officer concluded that the applicant was liable to pay the short recoveries made in the passenger fare. According to the applicant, originally alternative route was allowed by the administration but this was revoked on 1.9.1984. He has, therefore, challenged the order issued by the Divisional Railway Manager (DRM) on 7.11.1985 and the findings of the Enquiry Officer and prayed for a direction to be issued to the respondents not to recover the amounts shown against his name as per Annexure 'C' to the application, i.e. a total of Rs.5,308.55 P. at a monthly rate of Rs.300/- The grounds on which he has prayed for setting aside the enquiry findings are that the order making the recoveries is not a speaking order and the findings of the Enquiry Officer were not supplied by the Railway Administration, thus he was deprived of proper defence.

2. In the other two applications, i.e. Registration (O.A.) No. 67 of 1987, Ashwani Kumar v. DRM, NE Rly, Lucknow & others, and Registration (O.A.) No. 68 of 1987, Sita Ram Gupta v. DRM, NE Rly, Lucknow & another, the applicants are similarly placed, i.e. they are also working as Booking Clerks in the N.E. Railway and they have also challenged the same orders dated 7.11.1985 and 27.10.1986. In Application No.67 of 1987 the applicant was also posted at Nautanawa station. A debit of Rs.3,840/- has been ordered to be recovered from him in monthly instalments of Rs.200/-. Similarly in Application No. 68 of 1987 the applicant was also posted at Nautanawa station and he has also challenged the same orders. The recovery in his case is of Rs.6,980/- in instalments of Rs.400/- per

month. The pleas put forward by the applicants in these two applications are also the same. They have also sought protection under Sections 7(2) and 10 of the Payment of Wages Act. Since all the three applications are challenging the same orders and are on similar matters and involved the same questions of law, they are being dealt with together. The decision in Registration (O.A.) No.716 of 1986 will be applicable to the other two applications as well.

3. The case of the respondents is that the recovery of the amount has arisen due to non-implementation of the instructions issued under Circular No.6 of 1981 which laid down that all M.G. traffic from stations in the East of Chhapra Jn. to stations in the West of Gorakhpur and Gonda Jn. and vice-versa for M.G. destinations on Gorakhpur-Gonda loop, Anand Nagar-Nautanwa and Gainsari Jarwa branches, the chargable distance would be worked out by adding in the N.E. Railway's current local distance table 66 Kilometers plus the distance from Gorakhpur to the destination on the above loop and branches by consulting Annexures B-1, B-2, B-3, B-4, B-5 and B-6 and in case of destinations West of Gonda, the distance for charge would be worked out by adding in the N.E. Railway's current local distance table 133 Kms. This circular, according to the respondents, was received at Nautanwa station on 14.6.1981 and was kept in the circular file by the Head Booking Clerk (HBC) with his endorsement "all staff to please note and sign". The respondents have denied that the findings of the Audit party are based on any presumption. According to them, an enquiry was conducted and during the enquiry and cross examination of the applicant including other staff the applicant and 7 other Booking Clerks were held responsible for under charges. According to them, after the conversion of M.G. to B.G. over trunk routes a few pairs of passenger trains had their routes changed by the Railway administration. Consequently, 1 Up and 2 Dn Express Trains were diverted through the loop line on a 66 Kms. longer route. By notification issued in 1981 the staff

were advised that the passengers travelling from Gorakhpur to station East thereof and vice-versa will continue to be charged by the main line distance instead of carried route during the entire period till B.G. became operative. This concession was withdrawn by a telegram issued on 10.7.1981. Consequently the passengers travelling by 1 Up and 2 Dn were chargable through actual carried route with effect from 14.7.1981. Similarly to and from the West of Barauni Jn. by all B.G. route via Muzaffarpur-Hajipur an extra distance of 66 Kms. was to be charged. According to them the enquiry officer after conducting the enquiry and recording the statements concluded that the Booking Clerks of Nautanwa station never bothered about those circulars. It was their duty to be conversant with the revised charges and during the course of enquiry the applicant had in reply to a question whether reading of circulars as and when received at the station and signing in token of having read them over was being done or not replied that they had never read circulars during their 8 years' stay and never signed them. So they were careless and negligent resulting in financial loss to the railways. The respondents have said that the enquiry was conducted strictly according to the rules and the competent authority accepted the enquiry findings and ordered the recovery. The applicant was given reasonable opportunity to defend his case. The relevant rule for making such recoveries had been followed and such recoveries do not come within the ambit of D&A Rules. The deduction for the loss of money on account of the negligence are being made under clause M of Section 7(2) of the Payment of Wages Act and in accordance with the procedure laid down under Section 10 and Rule 14 of the same Act. The applicant has not submitted any representation against the orders dated 27.10.86 to the appellate authority. Therefore, even on this ground the application is liable to be rejected. According to the respondents, it was obligatory for the applicant to charge correct fare from the passenger and he was legally bound to know the latest rates. A plea that he

did not know the proper rates only smacks of negligence and derelict-ion of his duty.

4. In his rejoinder affidavit the applicant has said that the circular was not kept by HBC on 14.6.1981 because in the demands of tickets made by him after 14.6.1981 he had made the demand according to old rates. Therefore, HBC also did not have knowledge about the increased rates. The endorsements made on the circular by HBC have evidently been made after 14.6.1981. The signatures of the Booking Clerks were also not obtained by him after receipt of the circular and perhaps the endorsement was made during the course of enquiry. They have produced the Indent Registers for this period. The applicant has again denied that copy of the enquiry report has not been supplied to him till to-day. The enquiry was conducted in an arbitrary manner and, therefore, the order for deduction cannot sustain in the eyes of law. The enquiry was not conducted in accordance with Rule 12 of the Railway Servants (Discipline & Appeal) Rules,1968 and thus the applicant was deprived from putting forward his proper defence. According to him, the Railway authorities can only deduct from the salary by powers conferred under Rule 6(3) of the Railway Servants (D&A) Rules,1968 and, therefore, any recovery under the Railway Board's letter dated 23.5.1975 is ultravires and unconstitutional. The applicant has further said that he has already represented the matter to F.A. & C.A.O., Gorakhpur on 22.11.1985 and further representation is not necessary. He has relied on a pronouncement of the Principal Bench of this Tribunal in the case of R.P. Suri v. Union of India (1986 (2) ATR 323) and the case of Charan Singh v. Union of India (1986 (2) ATR 643) wherein it was held that the principle of alternative remedy did not apply when an order is passed by an authority void of jurisdic-tion and where natural justice has not been complied with. He has further said that the reply filed by the respondents has been verified by the learned counsel for the respondents, Sri G.P. Agarwal and is, therefore, illegal. He has no power to argue the case as an agent

can only present an application but he cannot argue the case before the Tribunal. Since he has worked as an Agent he is stopped from arguing the case. It is also professional misconduct becuse Rules 13 and 18 of the Bar Counsel of India Rules is violated.

5. We have heard the learned counsel for the applicant and Sri G.P. Agarwal. As far as the contention raised by Sri G.P. Agarwal are concerned we have relied on the reply filed by him on behalf of the respondents and we overruled the objection that the reply also cannot be considered as these are mere technicalities and do not stand in the way of meeting out proper justice on the basis of the facts of the case.

6. It is not under dispute that some under charges were made by the applicant on account of ignorance of the instructions issued by the respondents. However, it is also not under dispute that these instructions were not noted by the applicants for one reason or the other. The applicants' case is that HBC never got these instructions displayed or noted by them and any endorsement that has been done by him is only after he realised that an enquiry has started. Therefore, the applicant cannot be squarely held responsible for the under charges. It is also not disputed by the respondents that the indents which were placed by HBC for obtaining tickets even afater the receipt of the circular were based on the old affairs. At Annexure 'A' to the application is a notice for recovery of the debits issued on 7.11.1985. On the receipt of this notice the applicant had submitted his explaination on 22.11.1985 and finally a recovery order was issued on 27.10.1986 on behalf of DRM. The applicant has raised a number of issues which need to be examined by the appellate authority but there is no indication in the order of recovery as to whom he is supposed to put in his appeal against the order for recovery. The applicant has said that he has not been given the copy of the enquiry report and none has been filed by the respondents along with their reply. The notice of recovery issued

on 7.11.1985 is also not under the D&A Rules. For commercial debits perhaps searate instructions exist, but it is necessary that the employee is allowed proper opportunity to appeal against the final order passed for making the recoveries. We find that this has not been done and thus the order dated 27.10.1986 suffers on account of these lacuna. We, therefore, order that a proper enquiry should be conducted by the respondents under Rule 6(iii) of the Railway Servants (D&A) Rules,1968 for recovery from the pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders and only after arriving at a proper conclusion after giving adequate opportunity according to rules to the applicant the final order may be passed. We, therefore, quash the order dated 27.10.1986 and remit the case back to the respondents for conducting enquiry according to rules.

7. The application is allowed in the above terms, but in the circumstances of the case we make no order as to costs.

MEMBER (A). VICE-CHAIRMAN.

Dated: May 31st, 1988.

PG.