

12
1

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1198 of 1986

Tirath Prasad Plaintiff

Versus

Union of India through G.M.
N.E. Railway Gorakhpur. Defendant

Hon.Ajay Johri, A.M.
Hon.G.S.Sharma, J.M.

(By Hon.Ajay Johri, A.M.)

3

Suit No. 277 of 1985 Tirath Prasad Versus Union of India has been received on transfer from the Court of Munsif Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff's case is that while working as a clerk a memorandum dated 25.8.81 was served on him on 8.12.1981 ~~and~~ with the statement of imputations that during stock verification 2198.35 Ltrs Oil Super Heater and 1270-49 Ltrs Kerosene Oil were found short for which he was answerable. The plaintiff demanded documents to enable him to submit his defence to the memorandum of charges but the same were not supplied to him inspite of that he submitted his reply on 13.3.1983 denying the charges. Without further considering his case an order dated 21.7.84 was issued imposing punishment for the recovery of Rs. 15,094-22 from the salary of the plaintiff

12/2

- 2 -

and the recovery was started at the rate of Rs.147-10 in December, 1984 and from January, 1985 it was increased to Rs. 200/- per month. The plaintiff submitted an appeal to the Senior Divisional Mechanical Engineer on 12.9.1984 and the recovery was reduced to 50% of the amount vide order communicated to him on 5.12.1984. He submitted a revision petition to the Divisional Railway Manager, N.E. Railway Lucknow on 4.1.1985 but the same has not been replied. The plaintiff goes on to say that the Asstt. Mechanical Engineer who issued him the chargesheet had actually held him responsible for the shortage of 518.35 Ltrs Super Heater Oil and 542.5 Ltrs K.Oil in a report submitted by him on 27.10.1984^{8/} but he was illegally held responsible for the shortage quoted earlier. He challenged both the order of punishment and the order of the appellate authority on the ground that he was not responsible for the shortage because he was not the custodian of the material but he was only a Ledger Poster clerk and because this was the case of common proceedings but no common proceedings were initiated, thus the Railway Discipline and Appeal rules were violated. According to the plaintiff the custodian of the materials is the Loco Foreman who is assisted by the Head clerk/stores, Sr. Clerk/Stores and Store Issuer and these persons should have been responsible. The plaintiff was working only as a Ledger Poster and had no concern with the physical possession of the

3

12/3

- 3 -

materials. He has further challenged the orders on the plea that the Assistant Mechanical Engineer was not the competent authority to impose the punishment and he was not given reasonable opportunities to defend his case. No enquiry was conducted and thus he was not given an opportunity to disprove the charges and even in terms of Railway Board's instructions, when a recovery exceeds Rs.150/-, an enquiry should have been conducted before effecting the recovery. He has therefore prayed for relief that by a decree of declaration in his favour the impugned order passed by the Asstt. Mechanical Engineer on 21.7.84 and the order passed by the Senior Divisional Mechanical Engineer on 5.12.84 be declared illegal and not binding upon the plaintiff and that the ^{or plaintiff} ~~plaintiff~~ is entitled to ^{or to} refund ^{of} all the amount which has been illegally recovered from his wages. ^{or He has further prayed that} The defendant be restrained from making further recoveries. The cost of the suit and any other relief which may be considered due may also be awarded to him.

2. In their written statement the defendant has said that the plaintiff was posted as a Stores Clerk in the Loco Shed, Gorakhpur and was responsible for the transactions of Stores entrusted to him. He was also responsible for maintaining the ledger. When stock verification was done shortages of Oil Super Heater and K'Oil were found. On account of

12/4

- 4 -

these shortages a chargesheet dated 25.2.81 was issued by the Asstt. Mechanical Engineer for submission of his explanation. The plaintiff instead of submitting his explanation demanded copies of certain documents. According to the rules their being no provision for supplying the copies of the documents, in cases of minor penalty, he was given opportunity to see the relevant documents and to take extracts. This fact has been admitted by the plaintiff in his appeal dated 12.9.1984. On the explanation submitted by the plaintiff he was found responsible for shortages and he was imposed a minor penalty by an order dated 21.7.84 for recovery of Rs. 15,094-22 towards the cost of material from short. There was nothing illegal or wrong in this order. The defendant has further said that on ^{the plaintiff's} appeal against this order the Senior Divisional Mechanical Engineer rejected his appeal but taking a lenient view ^{he} reduced the amount ^{of} recovery from him. ^{According to defendant} there was no question of common proceedings, ^{the} the plaintiff was given all possible opportunities and the Asstt. Mechanical Engineer was competent to impose the penalty for the loss caused to the Railway Administration. For a minor penalty holding of an enquiry is not obligatory. According to the defendant no principles of natural justice have been violated and the punishment has been imposed for sufficient cause and consideration was given to the representations and the appeal and that a revision application is pending with the

82/5

Divisional Railway Manager and therefore the suit was premature and is liable to be dismissed.

3. We have heard the learned counsel for both parties. Shri A.S. Lal, the learned counsel for the plaintiff contended that documents were not made available to the plaintiff and a punishment was imposed without holding any enquiry. The plaintiff was only a Ledger Poster. Issue of the stores was done by somebody else and therefore more than one person being involved ^{by} in common proceedings should have been processed and the Asstt. Mechanical Engineer was not competent to impose the punishment. These contentions were repelled by the learned counsel for the defendant on the ground that this was only minor penalty and the merits of the case cannot be appraised by this Tribunal. The plaintiff was given all reasonable opportunities. He had perused the records. His appeal had been considered and the Railway Board's circular, relied upon by the defendant, of an enquiry in cases of recoveries of more than Rs.150/-, was not applicable to the case of the plaintiff. ^{& his letter} It was in connection with claims from the public against loss of consignments. We have also perused the case file.

4. In his rejoinder the plaintiff has reiterated that he was only discharging the functions of a Ledger Poster and that the Stores clerks are usually in grade Rs. 330 - 560 and since he was a junior clerk

A2/
6

- 6 -

he was never posted as a Stores clerk, and that the actual shortages that has been shown is only of 518.35 Ltrs of Super Heater Oil and 543.5³Ltrs. of K'oil but the recovery has been ordered against a much larger quantity. Thus the charges are totally incorrect and he reiterated that he was not given reasonable opportunity and since his revision petition has not yet been decided the act of the defendant to start recovery from him was premature. A copy of the Railway Board's letter dated 23.5.75 in connection with the procedure to be followed when deductions are made from a Railway employee, on account of public claim for payment of compensation, exceeding Rs.150/- for value of goods not delivered, has been placed at Annexure-'A' of the rejoinder submitted by the plaintiff. This letter is with reference to making recoveries from railway servants of the pecuniary loss caused to the railway administration in a claim for the loss of booked consignment and says that the departmental enquiry on the lines of Sub: rules 3 to 19 of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 should be held before passing an order to make such recovery. This was done with a view to afford reasonable facilities to the railway servant concerned to defend his case before enforcing the recovery from him without attracting the Discipline and Appeal Rules. This letter also in para 2 says that in the case of employees who are governed by the Payment of Wages Act any deductions that are made from the wages for damage or loss sustained by the railways on account of ³² ~~his~~ negligence

12/5

- 7 -

should be done only after following the procedure laid down in Section 10 and 10(1)(a) and Rule 14 of the Payment of Wages Act.

5. The Payment of Wages Act applies to persons employed in any (factory) to persons^{or} employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration (and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of Section 2). The existing wage limit for the applicability of the Payment of Wages has been raised now to Rs. 1600/- per month. Under Section 10 of this Act a deduction under Clause (c) or clause (o) of Sub Section (2) of Section 7 shall ^{or exceed the} not ~~exist~~ amount of damage or loss caused to the employer by the neglect or default of the employed person and deduction shall not be made until the employed person has been given an opportunity of showing cause against the deduction or otherwise. Rule 14 of the Payment of Wages Act lays down the procedure ^{or for} ~~in~~ imposing fines and deductions. This rule says that no fine shall be imposed or no deduction for damage or loss shall be made from a person employed by a railway administration except in accordance with the procedure laid down

33

in the rule in force on the railway and until the employed person has been given an opportunity of showing cause against such imposition or deduction. According to the Payment of Wages Act claims arising out of deduction from wages or delay in payment of wages are to be presented to the authority which the State Government by notification appoints to hear and decide for any specified area all such claims including all matters incidental to such claims. The Payment of Wages Authority sees to the implementation of the Payment of Wages Act. The rights and obligations under the Payment of Wages Act are not enforceable by this Tribunal. They can only be enforced through the machinery provided under the Payment of Wages Act and are not common law rights. The Statutory remedies under the Payment of Wages Act therefore cannot be agitated in this Tribunal. The plaintiff's plea that the Railway Board's order over him even under the Payment of Wages Act in respect of deduction and therefore deductions should not have been made without hearing him cannot therefore be entertained under the proviso of the said Act and is liable to be rejected. As far as the Railway Board's letter in respect of recovery of more than Rs. 150/- is concerned the stress in the Board's letter is that a proper enquiry should be conducted and the delinquent may be given an opportunity to be heard in the course of the enquiry. It does not make the recovery lie in the

12/9

- 9 -

ambit of the Discipline and Appeal Rules. The order in question therefore has been issued to avoid cases where recoveries were being imposed by the administration without conducting a proper enquiry or giving opportunity to the person to defend his case before the recovery was enforced. Thus this letter will, in normal circumstances, not apply to the case of the plaintiff. At the same time it would be violative of the rights of the individual if a recovery of such a huge amount is made from his salary without giving him an opportunity to be heard. Therefore keeping in view the safeguards that have been provided by the Railway Board's letter of 23.5.75 in another context which is not applicable to the plaintiff, we feel that even in cases like that of the plaintiff's any recovery that is being made from a person for the loss of material under his charge should be preceded by similar action. We therefore do not agree with the contention of the defendant that it was not necessary to give an opportunity to the plaintiff to defend his case before enforcing the recovery for the loss of the material under his charge. A proper enquiry should have been made before the recovery was ordered.

6. Rule 6 of the Railways Discipline and

A2/10

- 10 -

Appeal Rules, 1968 lays down the penalties which can be imposed on a railway servant and Rule 6(iii) covers the recoveries from pay of the whole or part of any pecuniary loss caused by a railway servant to the Govt. or railway administration by negligence or breach of orders. There is no doubt that the charge against the plaintiff was only a charge for minor penalty and for imposition of minor penalty holding of an enquiry in the manner laid down in Sub Rule (6) to (25) of Rule 9 is only necessary where the disciplinary authority is of opinion that such an enquiry is necessary after taking the representation into consideration except in certain proviso which are covered in Rule 11(ii) which do not apply to this case of the plaintiff. Keeping in view the fact that the amount which is being recovered is not a small amount and also keeping in view that in the case of the Commercial Department Railway Board had felt it necessary to issue instructions in 1975 under their letter No.E(DA)RG6-18 dated 23.5.75 that if a recovery is to be made of more than Rs.150/- as a whole or part of the pecuniary loss caused by a railway servant to the administration, a departmental enquiry on the lines of Sub Rule (3) to (19) of Rule 9 of the Discipline and Appeal Rules, 1968 should be held before passing any order to make such recovery, we find no reason why the same safeguards should not be provided by introduction of suitable clause under

Rule 11 of the Indian Railway (Discipline and Appeal) Rules, 1968 which lays down the procedure for imposing minor penalties.

7. The plaintiff has further contended that the shortage which has been actually certified by the Asstt. Mechanical Engineer in his report on Stock sheet No. 15 of 26.7.77, on 22.10.1980 holds the plaintiff responsible for shortage of much lesser amount than what has been given in the memorandum of charges issued to him and on which basis the recovery was started by the defendant. This would go to clearly establish the necessity of holding a proper enquiry before recoveries could be made as there is a likelihood of excessive and wrong recoveries being made in case of shortages and losses, the facts of which can come to light only if a proper enquiry is held. Even on the basis of observations made by the Asstt. Mechanical Engineer in his own report of 22.10.1980 the charges that have been levied on the plaintiff do not sustain and are liable to be set aside.

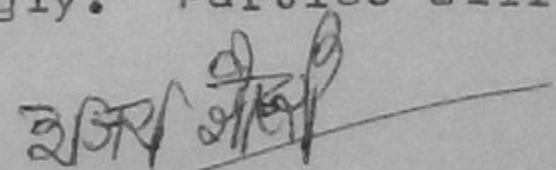
8. As far as the competency of the Asstt. Mechanical Engineer to issue a chargesheet is concerned ⁱⁿ Schedule II of the powers on disciplinary matters, Assistant Officers are competent to give a punishment involving recoveries from pay on account of losses caused to the Govt. by negligence on group 'C' and 'D' staff in the scale of pay

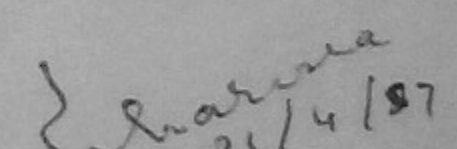
A2
12

- 12 -

rising upto Rs.455/-. The plaintiff was only a clerk in the grade Rs. 260 - 400. Therefore his contention that the Asstt. Mechanical Engineer was not competent to issue the chargesheet, is not supported by the facts and is rejected.

9. On the above considerations we find that the memorandum of charges issued to the plaintiff was not based on correct facts and therefore is liable to be quashed. The memorandum of charges is not based on facts it would be incorrect to punish the plaintiff on the basis of those charges. The punishment order and the appellate order become non est in view of the fact that the chargesheet has been incorrectly issued to the plaintiff. The recoveries made from the plaintiff on the basis of the punishment order dated 21.7.84 are also quashed. The money should be refunded to him alongwith interest at the rate of 5% from the date of recovery to the date of refund. The defendant will be at liberty to issue a fresh chargesheet and to arrive at a conclusion after following due process of imposition of minor penalty on recovery in terms of our observations made in paras supra. The petition(Suit No. 277 of 1985) is disposed of accordingly. Parties will bear their own costs.


A.M.


J.M. 21/4/87

Dated the 2/4 April, 1987

RKM