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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Registration O.A. No. 158 of 1988

H.S. Srivastava Applicant.

Versus.

Divisional Commercial
Superintendent & others Respondents.

Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. K.J. Raman, A.M.

This application under section 19 of the
Administrative Tribunals Act 1985, is for issue of orders
to quash the orders dated 29.1. '87 (erroneously mentioned as
9.1. '87), Annexure-4, 24.9. '87 Annexure-6 and 17.12. '87
Annexure-8.

2. The facts of the case are not in dispute. The applicant
H.S. Srivastava, Train Ticket Examiner at Kanpur ~~and~~ was to
proceed on duty from Kanpur by 163 UP Sangam Express on
1.11.1984 upto Meerut. He carried certain blank paper ticket
books called excess fare ticket books which are used for
issuing tickets, on payment, to passenger travelling without
tickets. The applicant failed to account for those ticket books.
He reported to the S.O. of G.R.P., Meerut City on 2.11.1984,
that is, the date on which the train arrived at Meerut, that
while he was on way on his cycle from his residence to Railway
Station, Kanpur on 1.11. '84, riotous mob, in consequence of
assassination of the late Mrs. Indira Gandhi, were in the
route. It was said that he was carrying a bag on the luggage
carrier of his cycle which bag contained the excess fare ticket
books. Some members of the riotous mob removed the bag from
the cycle carrier, but despite search by the applicant it
could not be found.

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3. The applicant having failed to account for the tickets, the Railway Department served him with a charge sheet dated 23.12.'86 Annexure-2 calling upon him to show cause for causing loss to the Railway administration amounting to Rs.15,498/- for failure to account for the ticket books. The applicant filed a reply dated 8.1.'87 Annexure-3, in which he repeated the story of the snatching away of the bag by the mob and said that the circumstances were unforeseen and uncontrollable and the loss was not caused by his carelessness. He further said that the figures of Rs.15,498/- was arbitrary.

4. Opposite Party No. 1 on a consideration of the representation found it to be unsatisfactory and passed an order Annexure-4 holding the applicant liable for the loss and directing the recovery of Rs.15,498/- from him in monthly instalments of Rs.200/- each.

5. The applicant filed a departmental appeal which appears to have been dismissed. He preferred a revision which also was dismissed by order dated 24.9.'87 Annexure-6. He appears to have made further representation which was held to be not maintainable by order dated 17.12.'87.

6. The case of the applicant is that there is no proof that any loss, much less to the tune of Rs.15,498/- was caused to the Railway Administration and, therefore, the penalty is arbitrary and illegal.

7. Shri. K.N. Kumar, Advocate appearing on behalf of the Opposite parties has emphasised that the burden of proving loss was upon the applicant and that the stand taken by the applicant on facts was unnatural. He says that the version in the first information Report made to the S.O. of G.R.P. also in his

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representation Annexure-3 and the memo of appeal that he made search for the bag which had been snatched away by the members of mob does not appeal to reason. We do not think that there is any palpable unreasonableness in that conduct.

8. The learned counsel says that the applicant ^{never} ~~lodged~~ the first information Report at Kanpur and that the lodging thereof at Meerut itself is delayed. The applicant was on his way to join his duty on running train. It is not clear from the material on the record that he was in a position immediately to report to G.R.P., Kanpur. There is no delay in making the report at Meerut where train itself must have reached on 2.11. '84.

9. We wanted to know, from the learned counsel for the Opposite Parties, the basis on which the loss of Rs.15,498/- to the Railway Administration was assessed. The learned counsel says that it is the maximum amount of fare which the applicant could have collected, if he had sold the tickets between Kanpur and Meerut on the excess fare ticket books, the full details thereof being set out in Annexure-2 to the Counter Affidavit. The rule of penalty requires proof of negligence on the part of the employee, the causing of loss on account of that negligence and the quantum of loss. Assuming that the applicant was negligent as held in the impugned penalty order dated 29.1. '87 Annexure-4, it has still to be proved that the Railway Administration did suffer a loss, and the loss was to the tune of Rs.15,498/-.

The minimum that could have been done by the department was to ascertain from the Ticket Collector at Meerut railway station who might have attended at the arrival of 163 UP Sangam Express, or from the Ticket Collector's office at that station, whether any ticket of the excess fare ticket books had been collected or

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received at Meerut railway station. There is no such material on the record. The learned counsel for the parties also admitted that no evidence was taken by the department in the course of enquiry proceeding. In this situation, it is clear that there is no material to show that tickets from any of the books in question had been issued by the applicant or that the applicant had received any money therefor. The applicant's contention therefore that there is no proof whatsoever of loss to the Railway Administration on account of the failure of the applicant to account for the excess fare ticket books, is correct. The result is that the order of penalty is without material.

It may be mentioned that the Opposite Party's learned counsel admitted that no security was taken from the applicant for holding the excess fare ticket books, nor there is any provision that in the event of un-accounted loss there would be a presumption of liability to a certain amount. The facts, then have to be proved by evidence.

10. Learned counsel for the Opposite parties submitted that the case may be remanded to the authorities for holding an enquiry afresh. We do not think it necessary to do so, The matter is four & half years old, and if evidence could not be gathered then, it would be futile to expect any evidence now. We do not consider it fair or just to re-open the enquiry regarding loss.

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11. In view of what we have said above, the application is allowed and the penalty order dated 29.1.87 contained

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in Annexure-4 as well as its recovery order dated 24.9.87 contained in Annexure-6 are quashed. The proceeding of recovery, if any, of the sum of Rs.15,498/- from the applicant are also quashed. In case any amount has already been recovered from him, it shall be refunded to him within three months from today. The application is disposed of accordingly. Parties shall bear their own costs.

(M. A. M. A.)

Administrative Member

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Vice Chairman.

May, 25th, 1989.

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