

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 18th day of March 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. A.K. BHATNAGAR, J.M.

O. A. No. 506 of 1995.

Ashok Kumar Shukla s/o Sri Ram Murat Shukla r/o 1/269,
Gopi Puram, Shukla Ganj, Unnao, working as Travelling Ticket
Examiner (TTE) in N.R., Allahabad Division, Allahabad at
Kanpur Headquarters.....
..... Applicant.

Counsel for applicant : Sri V.C. Dixit.

Versus

1. Union of India, Ministry of Railway, New Delhi.
2. Senior Divisional Commercial Manager, N.R., Allahabad.
3. Divisional Commercial Manager, N.R., Allahabad Division,
Allahabad.
4. Chief Inspector Tickets, N.R., Kanpur, Allahabad Division
Allahabad.
5. Accounts Office, N.R., Kishanganj, Delhi through its
General Manager.
6. Divisional Railway Manager, N.R. Allahabad.

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..... Respondents.

Counsel for respondents : Sri G.P. Agarwal.

O R D E R (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application has been filed for setting aside
order dated 7.3.95 passed by the Divisional Commercial
Manager, Northern Railway, Allahabad and order dated 16.5.95
passed by the Senior Divisional Commercial Manager, Northern
Railway, Allahabad. A prayer has also been made for
cancellation of charge memo issued on 30.11.94 and not to
recover any amount in pursuance of the impugned order as
return the
well as/recovered amount.

2. The case of the applicant is that the applicant

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was working as T.T.E. The applicant lost an E.F.T. book containing unused leafs from 610719 to 610750 on 17.8.93 while he was going to Shuklaganj from his residence. It is claimed that there was a Mela and there was a crowd through which he had to pass and the unused leafs in the book got stolen on that day. A complaint was made to the Police Station on the same day and the applicant sent a telegram to his senior officers. The applicant also lodged a FIR in GRP, Kanpur on 18.8.93 and published the news item in Aaj daily on 20.8.93. He was, however, issued a memorandum of charge sheet dated 30.11.94. The applicant gave a detailed reply giving all facts as stated above. The respondents ignoring the facts, given by the applicant in his reply, imposed upon him the punishment of recovery of Rs.9034/- to be made in monthly instalment of Rs.300/=. The appeal filed by the applicant was rejected. The present application has been filed to set aside the disciplinary and appellate authorities orders.

3. We have heard Sri V.C. Dixit for applicant and Sri G.P. Agarwal for respondents and considered the pleadings on record.

4. We find from the memorandum of charges served on applicant in standard Form No.11 for minor punishment that the applicant was served with a charge of loss of E.F.T. However, Annexure A-7 does not contain the imputation of misconduct said to be annexed to the memorandum. The applicant has furnished a reply in which he has recounted leading the events to loss of E.F.T. on 17.8.93 and the action taken by him thereafter for preventing any loss to the railways. He has also stated that since no loss were caused to the railways, the proposed recovery should not be inflicted upon him. The disciplinary authority, however, did not accept the explanation given by the applicant. The reasons given by the disciplinary authority are cryptic. They run as follows

"Your defence reply is not acceptable. You are responsible in this case."

5. Penalty of recovery from the pay of the applicant of the whole of pecuniary loss of Rs.9034/= was ordered in monthly instalment of Rs.300/= each with immediate effect. The applicant filed an appeal in which besides recounting which the facts/have already mentioned in his reply to the memo dated 30.11.94. He pointed out that it was not established that any ticket was made from the E.F.T. or that any person travelled on such tickets. It was also stated that no detailed investigations have been made to find out whether any loss actually occurred. The appellate authority merely commented that E.F.T. book was a money valued book and it was the responsibility of the applicant which he failed to ensure. He mentioned the possibility of misuse of loss to revenue to the railways and stated that a token amount was being recovered from him while actual loss could be more.

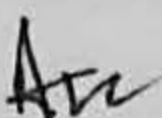
6. We find from Rule 6 of the Railway Service Disciplinary Rules 1968 that recovery is one of the minor penalties and can be effected for any pecuniary cause lost by a railway servant to the Govt. or railway administration by negligence or breach of orders. Thus, any recovery has to be for the whole 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. 158/88 dated 25.5.99 in which in a similar case, the orders of the respondents have set aside.

7. We find justification in the O.A. which is allowed setting aside the memo dated 30.11.94 and the order of the disciplinary authority dated 7.3.95 and appellate authority

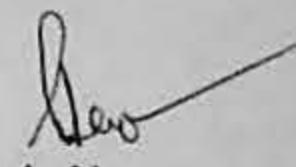
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dated 16.5.95. The amount which may have already been recovered from the applicant shall be refunded to him within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.



J.M.



A.M.

Asthana/
19.3.02