

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1424 of 1999

Thursday, this the **28th** day of **August** 2008

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mr. K.S. Menon, Member (A)

Heera Lal Agrawal S/o Sri Ram Nath Agrawal, Head Booking Clerk
Railway Station Banda, r/o Q. No. R.B. II-40 C Railway Colloney
BANDA.

Applicant

By Advocate: Sri A.K. Dave

Vs.

1. Union of India through D.R.M. Central Railway Jhansi.
2. Senior Divisional Commercial Manager, Central Railway, Jhansi.
3. General Manager, Central Railway Bombay.
4. C.C.I. (C/R) Jhansi/Inquiry Officer.

Respondents

By Advocate: Sri J.P. Tripathi

ORDER

Delivered by Justice A.K. Yog, Member (J)

By means of this O.A., applicant has claimed following relief/s: -

- (i) *issue a writ or direction or order in the nature of mandamus directing the respondents to pay the amount of Rs.15109.74 as over time duty payment in the department due from 28.11.1993 to 21.1.1995 with interest.*
- (ii) *issue a writ or direction or order in the nature of mandamus directing the respondents to refund Rs.6958/- deducted from the salary of the petitioner in the year 1998 in defferent months.*
- (iii) *issue a writ or direction or order in the nature mandamus commanding the respondents for quashing the order dated 24.2.99 and the entire enquiry proceeding initiated against the petitioner by the respondents in pursuance to order dated 24.2.99 under rule 9 and 10 of the Railway servants (discipline and Appeal) Amendment Rule 1969.*



(iv) *issue a writ or direction or order in the like nature which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case.*

(v) *Award the costs."*

2. The applicant claimed above quoted relief(s) on the pleadings, inter alia amongst other, that he had done over time and in lieu of it he paid Rs.15109.74. The applicant is permanent employee. He was posted as Booking Clerk. Aforesaid amount, which relates to the year 1993 to 1995, was not paid to him on one pretext or the other though he was entitled for the same. The applicant claims to have filed representation before respondent No. 2/Senior Divisional Commercial Manager Central Railway, Jhansi on 09.02.1999, giving details. According to applicant, without disclosing reasons or opportunity to defend, the respondents deducted Rs.6950/- from salary of the applicant in the month of June, July and August 1998. According to applicant, he was not served with show cause notice. It is submitted by applicant that he raised his grievance before higher authority (respondent No. 1 and 2) demanding copy of order, if any, on the basis of which deductions in question, were made. The grievance of applicant is that instead of considering his request in the light of relevant rules, the respondents took ^{on to an} ~~resort~~ of victimization by initiating departmental proceedings. Inquiry Officer is said to have been appointed. After holding the inquiry, certain punishment was awarded to ^{93/16} applicant.

3. Sri A.K. Dave, Advocate, learned counsel for the applicant has placed photocopy of certified copy of Order dated 01.09.2004 passed in O.A. No. 747 of 2002 Heera Lal Agrawal vs. Union of India and others. Photocopy of the Order shows that punishment awarded to that of reduction to lower grade from Rs.5000-8000/- to Rs.4000-6000/- for a period of two years without future effect. Relevant para-7 and 8 of Order of the Tribunal reads: -

"7. Coming to the merits of the case. The only charge leveled against the applicant was that he had claimed OTA of Rs.15110/- instead of Rs.1930.32/- illegally and wrongly. As far as this charge is concerned, Enquiry Officer had given a clear finding that the applicant was not found guilty for claiming OTA of Rs.15110/- instead of Rs.1930.32/- in irregular,

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unjustified and illegal manner, that should have been end of the enquiry report because the Enquiry Officer cannot travel beyond the charge levelled against the delinquent officer. Once he had recorded that the charge as framed against him, was not proved, other findings recorded by the Enquiry Officer is of no consequence in law. Interestingly, the disciplinary authority has stated that he accept the findings of the Enquiry Officer, meaning thereby that the delinquent was exonerated of the charge levelled against him. Therefore, once the charge which was levelled against the applicant was not found proved and the same was accepted by the disciplinary authority, there was absolutely no justification to impose the punishment upon the applicant. Therefore, the order passed by the disciplinary authority is held to be bad in law. The same is accordingly quashed and set aside. As far as the appellate order is concerned, he has observed that the applicant has wrongly claimed OTA for the extended period of time, nor he had taken any written order from the superior authority. This observation is contrary to the findings given by the Enquiry Officer on the charge leveled against the applicant, therefore, this order is also bad in law. The same is accordingly quashed and set aside. Since the revision petition was filed in July, 2001 and the same has not been decided by the authorities concerned till date. I do not think any purpose would be served by remitting back the matter to the revisionary authority at this stage after over three years. Therefore, in view of the above discussions, the O.A. is allowed. The respondents are directed to place the applicant at his proper grade and shall draw the arrears of salary by giving the details to the applicant within a period of three months from the date of receipt of copy of this order and also make the payment to the applicant.

8. *In view of the above directions, the O.A. stands allowed with no order as to costs."*

4. The respondents filed counter affidavit alongwith M.A. No. 3676 of 2000 with the prayer to condone delay in filing Written Statement. M.A. is allowed. Written Statement is taken on record. However, another M.A. No. 3677 of 2000 for rejecting interim relief has become redundant and irrelevant at this stage, hence rejected. We find no substantial contest with respect to the facts stated in the O.A.

5. The applicant has filed Rejoinder along with M.A. No. No. 4479 of 2003-with the prayer to condone delay in filing said Rejoinder. M.A. is allowed. Rejoinder is taken on record. In para-7 of the Rejoinder, it is reiterated that the applicant was not given any opportunity to present his defend himself

6. Learned counsel for the respondents then filed another M.A. No. to accept the Supplementary Written Statement on record. M.A. is allowed. In the Supplementary Written Statement, the respondents have reiterated their stand of false claim being made by the applicant.

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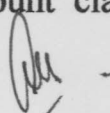
The respondents then again filed Civil Misc. Application No. Nil of 2007 along with prayer to permit the filing of Supplementary Written Statement. Said Misc. Application is allowed. Supplementary Written Statement is also taken on record. In Supplementary Written Statement contention of applicant has been denied. Para-4 and 5 of Supplementary Written Statement, referred to above, reads: -

"4. That it is pertinent to mention here that applicant was found guilty in the enquiry of D & AR proceeding and the applicant was punished by the Disciplinary Authority vide letter dated 18.9.2000 and imposed penalty of reduction to a lower grade from the Grade 5000-8000 (RSRP) in the scale of Rs.4000-6000 (RSRP) for the period of two years (non cumulated) and his pay was fixed Rs.5000/- in Grade Rs.4000-6000 (RSRP). The true typed copy of the punishment order dated 18.9.2000 alongwith speaking order are enclosed herewith as Supplementary Counter Reply Annexure-1 to this reply.

5. That the applicant was preferred an appeal dated 28.11.2000 against the order of the Disciplinary Authority to the Appellate Authority the same appeal of the applicant has been considered by the appellate authority and reduced the punishment imposed by the Disciplinary Authority to reduction to lower grade fixing pay of Rs.5000/- for a period of one year (N.C.). A true typed copy of the order dated 10.06.2001 is being enclosed herewith and marked as Annexure SCR-2 to this reply.

7. Learned counsel for the applicant refers to annexure RA-1, filed alongwith Rejoinder (in reply to Written Statement of the respondents attached with M.A. No. 4479 of 2003). Perusal of said annexure RA-1 shows that Heera Lal Agrawal has ^{as} ~~not~~ been found ^{not as} guilty for claiming OTA of Rs.15110/- instead of Rs.1930.32 except that he failed to take prior permission from any competent/higher authority.

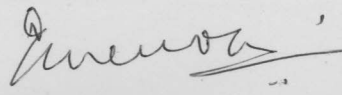
8. In view of the above, there remains no doubt that claim of the applicant for OTA is justified in law. It also transpires that recovery for a sum of Rs.6958/- was unjustified. In the result, we direct the respondents to pay aforesaid amount of Rs.6958/-, recovered/deducted from the applicant, and a sum of Rs.15110/- alongwith simple interest @ 9% per annum from the date amount became due/payable to the applicant till the date of actual payment. The applicant is directed to file certified copy of this order alongwith his account statement indicating all the amounts separately-principal amount alongwith interest payable with total amount claim under our order within 6



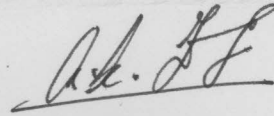
weeks from today before respondent No. 2/Senior Divisional Commercial Manager, Central Railway, Jhansi. If certified copy of this order is filed, as contemplated above, within the time stipulated above, the said authority shall ensure compliance of the Order by A/c Payee draft within three months from the date of receipt of certified copy of this order.

9. The O.A. stands allowed subject to above observation.

10. There shall be no order as to costs.



Member (A)



Member (J)

/M.M/