

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1432 of 1999

Allahabad this the 17th day of September, 2004

Hon'ble Mr. Justice S.R. Singh, V.C.
Hon'ble Mrs. Roli Srivastava, A.M.

Amar Pal, A/a 43 years, Son of Sri Roop Chand, Resident of Quarter No.299 A, New Model Railway Colony, Izatnagar, N.E. Railway, Bareilly. Presently posted as Depot Store Keeper Grade III, In the Office of Distt. Controller of Store, NE Railway, Izatnagar, Bareilly.

Applicant

By Advocates Shri Sudhir Agarwal,
Shri S.K. Mishra

Versus

1. Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, N.E. Railway, Gorakhpur.
3. The Senior Divisional Accounts Officer, Izatnagar, N.E. Railway, Bareilly.
4. The District Controller of Stores, N.E. Railway, Izatnagar, Bareilly.
5. The Workshop Accounts Officer, N.E. Railway, Izatnagar, Bareilly.

Respondents

By Advocate Shri Km. Sadhna Srivastava

O R D E R (Oral)

Hon'ble Mr. Justice S.R. Singh, V.C.

The facts giving rise to this O.A., stated briefly, are that while the applicant was working as Store Keeper Grade III during 1993-95, he was placed

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under suspension vide order dated 06.04.1995. Subsequently by order dated 04.10.1995 suspension was revoked and the applicant stood reinstated. By the order impugned herein, a sum of Rs.3,66,193-62 is sought to be recovered from the applicant in instalments at the rate of Rs.1000/- per month from his salary towards the alleged loss suffered by the railway administration due to non verification of Stock Sheet No.4388 dated 28.02.1997 in respect of 61.35 M.T. of scrap. The case of the applicant is that Stock Sheet was duly verified on 13.06.1998, as would be evident from the letter dated 24.06.1998 of District Controller of Stores, Izzatnagar, copy of which has been annexed as annexure-6 to the O.A., whereby Senior Divisional Accounts Officer, N.E. Railway, Izzat Nagar was requested to consider over the matter in the light of verification before making recovery from the applicant towards the alleged loss suffered by the railway administration.

2. The submission made by the learned counsel appearing for the applicant is that recovery is one of minor penalties stipulated in Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968, in short Rules, for imposition of which procedure is prescribed under Rule 11 of the Rules, which procedure, it is submitted by the learned counsel, was not at all followed and without issuing a specific order fixing the liability of the applicant, respondents have straight away started making recovery from the salary of the applicant, pursuant to the order impugned herein. Learned counsel for the respondents on the other hand submitted that the inquiry in the instant case was not required to be made in view of the instruction dated 29/30-01-1997 issued by 2nd respondent as well as paras no.1108 to 1110 of the Indian Railway Establishment Code.

3. With a view to appreciate the submissions made across the bar, it would be apt and proper to refer to the related statutory provisions and also the instructions relied on by the respondents. Rule 6 of the Rules enumerates various minor and major penalties that may be imposed on a railway servant. Recovery from the pay of the whole or part of any pecuniary loss caused by a railway servant to the Government or the railway administration by negligence or breach of order, is one of the minor penalties referred to in clause (iii) of Rule 6 of the Rules. It is evident from clause (iii) of Rule 6 of the Rules that it is not every pecuniary loss that is recoverable from a railway servant, in whole or in part but a pecuniary loss caused by the railway servant to the Government or Railway Administration due to "negligence or breach of orders". It is, therefore, necessary that a finding must be recorded, as a condition precedent to recovery, that the Government or Railway Administration have suffered pecuniary loss due to negligence of the railway servant or due to breach of any order by him and for that purpose an enquiry has necessarily to be made in the manner prescribed. Procedure for imposition of minor penalty is laid down in Rule 11 of the Rules, which provides that subject to the provisions of sub clause (iv) of Clause (a) of sub rule (9) of Rule (9) and of sub rule (4) of Rule 10, no order imposing on a Railway Servant any of the penalties specified in Clauses (i) to (iv) of Rule 6, shall be made except after :-

(a) informing the railway servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving

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him a reasonable opportunity of making such representation as he may wish to make against the proposal;

- (b) holding an inquiry in the manner laid down in sub rules (6) to (25) of Rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Railway Servant under clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;
- (d) recording a finding on each imputations of misconduct or misbehaviour ; and
- (e) consulting the Commission where such consultation is necessary."

4. It would be evident from the aforeextracted provisions that before directing recovery of any pecuniary loss suffered to Railway Administration due to negligence or breach of orders by the railway employee, employee must be informed in writing of the proposal of the action to be taken against him and of the imputations of the misbehaviour and misconduct on which the action is proposed, and given reasonable opportunity of making such representation as he may wish to make against such proposal. Misbehaviour and misconduct in the context of the penalty specified in clause (iii) of Rule 6, would mean misbehaviour/ misconduct of negligence or breach of order which caused the pecuniary loss. Clause (b) of sub rule (1) of Rule 11 of the Rules provides for an inquiry in the manner laid down in sub rules [6] to [25] of Rule 9 " in every case in which the disciplinary authority is of the opinion that such inquiry is necessary." True, power under

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Clause (b) of sub rule (1) is discretionary, but unfettered discretion and arbitrary powers are what the Courts refused to countenance being incompatible with the rule of law. In a system based on rule of law, unfettered governmental discretion is a contradiction in terms.

5. It is implicit in clause (b) of sub rule (1) of Rule 11 that the disciplinary authority must address itself to the representation, if any, that may be filed by the railway servant on receipt of the notice proposing action against him under Clause (a) of sub rule (1) and then form the requisite opinion as to whether or not holding of an inquiry in the manner laid down in sub rules (6) to (25) of Rule 9, is necessary. Clauses (a) and (b) of sub rule (1) of Rule 11 if read together, would make it obligatory on the part of the concerned authority to first inform the railway servant in writing of the proposal to take action against him and of the imputations of misconduct and misbehaviour i.e. negligence or breach of orders, on which the action is proposed and after giving him reasonable opportunity to make such representation as he may wish to make against the proposal, take appropriate decision as to whether inquiry in the manner laid down in sub rules (6) to (25) of Rule 9 is necessary or not. The procedure so laid down has concededly not been followed by the respondents. This, in our opinion, is a gross procedural impropriety vitiating the recovery order.

6. Counsel for the respondents further submits that on 28.02.98/03.03.98, a letter was issued to the applicant by the fourth respondent but the applicant failed to explain and satisfy the inquiring authority about the..pg.6

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shortage of store and, therefore, in view of sub rule (1) of Rule 11, the inquiry was not considered necessary in as much as the procedure laid down in clause (a) to (c) of sub rule (1) of Rule 11 is subject to the provisions of Sub Clause(iv) of Clause (a) of sub rule (9) of Rule 9 of the Rules and of sub rule (4) of Rule 10. A perusal of the letter relied on by the counsel for the respondents, copy of which has been annexed as annexure-13 in the O.A., would indicate that by means of the said letter, the applicant was required to take action for disposal of stock sheet, failing which action would be taken against him. This letter, in our opinion, is not tantamount to proposal within the meaning of clause (a) of sub rule (1) of Rule 11 of the Rules, so as to attract the provisions of sub clause (iv) of Clause (a) of sub rule (9) of Rule 9 and of sub rule (4) of Rule 10. As such, the exclusionary clause of sub rule (1) of Rule 11 is not attracted.

7. Counsel for the respondents then placed reliance on paragraph nos. 1108 to 1110 of the Indian Railway Financial Code, which are quoted herein below:-

"1108 हानि की वसुलियाँ:- आर्थिक दायित्व लागू करने के प्रश्न पर और अनशासनिक कार्यवाई के अन्य तरीकों के सम्बन्ध में सदैव विचार किया जाना चाहिए। रेल कर्मचारी के आर्थिक दायित्व की मात्रा को निश्चित करते समय केवल भाष्य के परिस्थितियों को ही देखना आवश्यक नहीं होगा बल्कि रेल कर्मचारी की वित्तीय परिस्थितियों को भी देखना आवश्यक होगा। इस बात को ही मानना चाहिए कि दण्ड ऐसा न हो जिससे भविष्य में रेल कर्मचारी की कार्यकुशलता ही नष्ट हो जाय।

1109 हानि यदिविशेषरूप से धोखेबाजी के कारण हुई हो तो दोषी व्यक्तियों से हानि की पूर्ति पूरी रकम वसूल करने

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के लिए हर संभव प्रयत्न किया जाना चाहिए और यदि पर्यवेक्षण में विधिलता के कारण धौखेबाजी संभव हुई हो तो दोषी पर्यवेक्षण अधिकारी को सम्बित दण्ड दिया जाना चाहिए । यह दण्ड उसे प्रैयत्न रूप से हानि के पर्याप्त अनपात को धन से परा करने के लिए बाध्य करके अर्थात् उसी वेतन बढ़ियों को कम या बन्द करके अप्रत्यक्ष रूप से दिया जाए सकता है ।

1110 इस बात पर हमें विचार किया जाना चाहिए कि जिन व्यक्तियों को सरकारी सम्पत्ति या उपस्कर भी देखरेख सैंपी कई थी यदि उनकी लापरवाही से सरकारी सम्पत्ति या उपस्कर गव, क्षतिग्रस्त या नष्ट हो जाते हैं तो क्या उनका मर्लै रेल कम्बियारी की भगतान क्षमता की सीमा तक पूरी वसूल नहीं किया जाना चाहिए ।

8. The Financial Code referred to above, in our opinion are meant for the guidance of the railway employee as well as the railway administration in the matter of stock verification. These provisions do not and cannot in any way over ride the statutory provision contained in Rule 11 of the Rules. Rather these are supplementary rules regulating exercise of power in regard to fixation of responsibilities of employees in disciplinary proceedings for recovery of loss to government. The Hon'ble Supreme Court in 'O.K. Bhardwaj Vs. Union of India and Others 2002 S.C.C (L & S) 188', has held that in enquiry is necessary even/the case of minor penalty. In a similar case, the Ernakulam Bench of the Central Administrative Tribunal has held that shortage in stores must be referable to 'negligence' on the part of the railway employee. As observed above, the respondents have nowhere recorded the finding that there have been shortage in the stock due to negligence on the part of the applicant or due to breach of any orders by him.

Financial Code referred to by the counsel for the

Financial Code relied on by the counsel for the respondents is, therefore, of no avail.

9. So far as the instructions contained in D.O. letter no. SA/V/Genl. Review/9 to 28 dated 28.02.85, a copy of which has been annexed as annexure C.R.-2, suffice it to say that it contains the decision of the General Manager to the effect that whosoever fails to reply the stock sheets within 3 months, recoveries will be effected from the custodian of the stock who had signed the stock sheets. The instructions contained in the above noted letter may be attracted only if it is established that the applicant has failed to reply the stock sheets within a period of 3 months. There is no such material on the record on the basis of which it could be said that the applicant failed to reply the stock sheet within a period of 3 months. On the contrary Shri Rajesh Kumar Verma, Assistant Store Controller, Izzat Nagar in his letter no. 1240/24.06.1998 addressed to Shri V. Kumar, Senior Divisional Accounts Officer, N.E. Railway, Izzatnagar had requested that decision regarding deduction from the salary of the applicant should be taken after considering the reply of the applicant, which he had submitted in respect of stock verification. The reply was sent by the applicant on 23.06.1998 in respect of stock sheet verification. In the circumstances, therefore, we are of the considered view that respondents have started recovery from the applicant without following the prescribed procedure laid down by law.

10. Accordingly, the O.A. succeeds and is allowed. The order dated 22.06.1998 is quashed. The competent

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authority shall pass a fresh order after ascertaining whether there has been a loss in the stock of railways scrap and if so, whether the loss occurred due to negligence on the part of the applicant or breach of any order by him, and if so, to what extent he is liable. The refund of amount already deducted from the salary of the applicant would depend upon the decision that may be taken by the department. No cost.

Roni
(Mrs. Roli Srivastava)
MEMBER 'A'

PS
(Justice S.R. Singh)
VICE CHAIRMAN

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