

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No, 1332 of 2003.

Wednesday, this the 27th day of October, 2004.

Hon'ble Mrs. Meera Chhibber, J.M.

Hon'ble Mrs. Roli Srivastava, A.M.

Mahesh Chand Sehgal
Son of Shri M.L. Sehgal
resident of Sadar Bazar, Jhansi.Applicant.

(By Advocate : Shri R.K. Nigam)

Versus

1. Union of India through General Manager,
North Central Railway, Allahabad.
2. Divisional Railway Manager,
North Central Railway, Jhansi.Respondents.

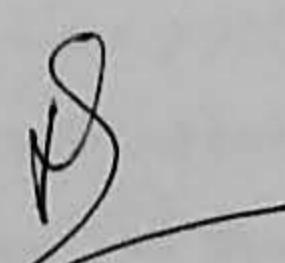
(By Advocate : Shri K.P. Singh)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M. :

At this OA, applicant has sought the following relief(s):-

- i) to issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 10.10.1962 (Annexure A-I)
- ii) to issue another writ, order or direction in the nature of MANDAMUS thereby commanding the Respondents to refund the entire amount of Rs.16342/- with interest within a time bound period;
- iii) to issue any other suitable order in favour of the humble petitioner as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case;
- iv) to award cost of the petition in favour of the humble petitioner."



2. It is submitted by applicant that in the night of 15/16 May, 2002, applicant had lost his Attache which contained EFT Books as well. Accordingly, he had lodged FIR with GRP on 16.5.2002 itself (page 14) and had given intimation to all superior officers and other authorities as well, which is shown ^{on} page 16 to the O.A. Thereafter, vide order dated 24.6.2002 applicant was issued warning by the DRM by making it clear that in future ^{if B} such recurrence ^{will be} would take place, disciplinary action ^{be} initiated against him (page 17).

3. It is submitted by applicant that once warning issued by the DRM, respondents could not have issued any further orders against the applicant, yet vide order dated 10.10.02 Chief Ticket Inspector, Central Railway, Jhansi issued an order for recovery of Rs.16342/- for loss of EFT books and amount was to be recovered from his salary (page 11). Being aggrieved, applicant gave a detailed representation to the DRM (Commercial), Central Railway, Jhansi on 11.12.2002 (page 20), but since no reply was given to him, he had no other option but to file the present O.A.

4. It is submitted by applicant that he could not have been given penalty of recovery that too without any charge-sheet or any show-cause notice, therefore, the impugned order is bad in law and is liable to be quashed.

5. O.A. is opposed by the respondents who have submitted that Fare Receipt Book (in short EFR Book), ~~which~~ are money value book of Railway and loss of these EFR books ^{cause B} direct pecuniary loss to Railway revenue. The staff is expected ^{same} that they be kept in very safe custody so that they ^{cannot} be misused. Safe custody of these EFR Books lies with the custodian of these books i.e. applicant, in the instant case. Due to negligence and carelessness of the applicant's ^{was lost, B} working, ~~loss~~ the money value EFR books, therefore,



recovery order has rightly been passed against him. Applicant was supposed to keep the EFR books in safe custody with him till the train had arrived at Jhansi ~~and~~^{as} his duty was upto Jhansi, whereas perusal of FIR itself shows that applicant had kept EFR books alongwith other stationery items in his Attache, therefore, it is clear that he was careless in keeping EFR books in safe custody.

6. They have further submitted that an enquiry was conducted against applicant, wherein it was found that applicant had worked on 16.5.2002 in a negligent manner, therefore, he was warned and recovery of Rs.16342/- was imposed on him, which is in accordance with the instructions contained in the Railway Board's circular dated 13.4.2000. They have, thus, submitted that O.A. may be dismissed.

7. We have heard both the counsel and perused the pleadings on record.

8. Counsel for applicant has relied on the decision dated 19.3.2002 passed in O.A. No. 1198 of 2000 wherein in the similar circumstance, the Court was pleased to set-aside the order of recovery (page 18).

9. Perusal of Rule 6(3) of Railway Servants (Discipline & Appeal) Rules, 1968 shows that recovery from ~~and~~ pay ~~for~~ either whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders is one of the minor penalties. It goes without saying that even in minor penalties, respondents are expected to issue a chargesheet or atleast to give a show-cause notice. In the instant case, admittedly, neither applicant was issued any chargesheet, nor any show-cause notice was given to the applicant before ordering recovery against applicant. Therefore, this order suffers from illegality inasmuch as it is in violation of the principles of natural justice. More-over, we have asked counsel for respondents to explain

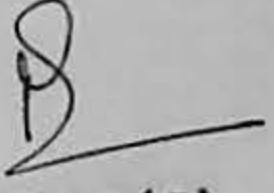
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as to how respondents have come to the conclusion that an amount of Rs.16342/- was to be recovered from applicant, but he has not been able to explain the same . After all, if any, recovery is to be made from the employee, the least that is expected from the respondents is to inform the person concerned how much loss was caused to the Govt. and on what basis the said figure has been arrived at, but no such effort was made by the respondents to explain these things either in the Counter or in the Court. The only stand taken by the respondents is that since applicant was careless, an enquiry was held, therefore, order was rightly passed against him. How was the enquiry conducted and what was the nature of the enquiry is also not explained. In normal course, when we say that enquiry was held, it would mean that person against whom enquiry was held, should have been given chance to defend himself. In the instant case, it is not the case of the respondents that any opportunity was given to the applicant. They have simply stated that enquiry was concluded. If an enquiry was held at the back of a person, it cannot be used against the said person. Therefore, the whole procedure which has been followed by the respondents is not in accordance with law. Respondents have not been able to show us any rule under which they could have made recovery against applicant without giving him notice/opportunity and without explaining as to how the amount of Rs.16342/- was arrived at. There is yet another aspect of the matter namely when for the loss of the EFR Book, applicant had already been warned by the DRM, whether it was still open to the authorities to recover the amount from the applicant. It is seen that applicant had already taken all these points in his representation given to the DRM, but the same was not even decided. In these circumstances, we are satisfied that the order dated 10.10.2002 cannot be sustained in law. Accordingly, respondents are directed to refund the amount recovered from applicant's salary within a period of one month from the date of receipt of copy of this order. It is, however, made clear

that since we are quashing the impugned order on technical ground, the respondents would have the liberty to take appropriate action against applicant in accordance with law and rules on the subject, if they so desire. Of-course in such an event, respondents shall deal with all the points referred to hereinabove.

10. The O.A. stands disposed off with no order as to costs.


MEMBER (A)


MEMBER (J)

GIRISH/-