

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 28th DAY OF Aug 2009)

PRESENT

HON'BLE MR. S. N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 1058 OF 2007
(U/S 19 of the Administrative Tribunals Act)

Smt. Usha Kiran Srivastava, W/o Late O.P. Srivastava, 53,
Parwati nagar Colony, Pandeypur, Varanasi
In her capacity as legal representative of Late O. P. Srivastava

...Applicant

By Advocate:- Shri Satish Madhyan

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Senior Divisional Commercial Manager, North Eastern Railway, Varanasi.
4. Divisional Railway Manager (Personnel), North Eastern Railway, Varanasi.

... Respondents

By Advocate:- Shri P. N. Rai

ORDER

DELIVERED BY HON'BLE MR. S. N. SHUKLA, MEMBER-A

This O.A. has been filed seeking following relief/s:-

That in view of the facts stated above, the Hon'ble Tribunal may graciously be pleased:-

(i). issue an order or direction in the nature of mandamus commanding the respondents to refund the entire amount deducted towards alleged error sheet, which has been illegally deducted from the retrial dues payable to the family of the deceased O.P. Srivastava;

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(ii). Issue an order or direction in the nature of mandamus commanding the respondents to refund the aforesaid amount alongwith interest at least at the rate of 24% for the mental agony that the applicant and her family has suffered at the hands of the railway administration;

(iii). Issue any and further order which this Hon'ble Court may deem fit in the circumstances of the case;

(iv). Award cost of the original application from the contesting respondents."

The facts of the case submitted on behalf of the applicant are as under.

1. The husband of the applicant was a regular employee of the Indian Railways and at the relevant point of time was working on the post of Chief Ticket Traveling Inspector, North Eastern Railway Varanasi. On 16.05.2003, the husband of the applicant was on duty of Chief Ticket Traveling Inspector in train No. 5219 started from Allahabad and the husband of the applicant (hereinafter referred to as husband) had the duty upto Varanasi and while coming out of the station towards Cycle Stand, the handbag being carried out by him containing the E.F.T. (Extra Fare Tickets) as well as some money was misplaced. In spite of frantic efforts, same could not be traced out as such immediately husband lodged on F.I.R. before the G.R.P. (Annexure-1).

2. The husband also informed the respondent No. 3 to get the same published in the monthly Gazette. The respondent No. 3 finally issued the Gazette in the month of July 2003 wherein the misplacement of aforesaid E.F.T. was notified (Annexure-2).

3. The department on being intimated inquired into the misuse of aforesaid E.F.T. from all the major stations of North Eastern Railway. None of the station has reported any misuse of E.F.T., therefore, for all practical purposes even according to Rules in this regard, no debit could be made out against the husband. Photocopy of the report submitted by the various Station Masters are enclosed herewith as (Annexure-3).

4. The department served a charge sheet on Form S.F.-11, which is for minor punishment on 28.05.2003 wherein, also there is no charge loss of money to the Railways. This charge sheet only imputes the charge of negligence. The husband gave a detailed reply to the said charge sheet within the period as allowed under the charge sheet. In reply, it was clearly explained the circumstances under which, the aforesaid E.F.T. was lost and the reason was fully justified and had called for no further investigation. (Annexure 4 & 5 respectively).

5. That since no inquiry in spite of the reply having been submitted, could be finalized by the Railway Administration hence only to give a fill up of those intervening period, the

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Railway Administration served another charge sheet on the husband on 28.03.2006 again with the allegation that the husband had showed dereliction of duty but there was again no imputation of loss of money to the Railways. The husband had duly forwarded a reply of the said charge sheet but here it would be pertinent to mention that the illegality is writ large on the face of the record as S.F.- 11 was already issued on 28.05.2003 and after 3 years another S.F.-11 was issued against the husband without any rhyme or reason dated 28.03.2006 (Annexure- 6 & 7 respectively).

6. Even without completing the inquiry, all of a sudden from the month of June 2006 the respondents started deduction of Rs. 4000/- per month from the salary of husband. This deduction was started without finalizing the enquiry and without fixing the amount to have been misappropriated due to loss of those E.F.T and misuse of the same.

7. The financial constrains were telling upon the health of the husband and in these stressful time, he dies due to cardiac attack in the train on 12.10.2006. Vide order dated 28.03.2006, the administrative themselves dropped the charge sheet dated 28.05.2003. When one charge sheet goes in respect of the same charge no other charge sheet could be issued hence the subsequent charge sheet dated 28.03.2006 was absolutely uncalled for and it was a ploy to some how or the other

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punished the husband without there being any fault on his part (annexure-8).

8. The respondent No. 4 had issued a show cause notice dated 24.02.2004 intimating that against the husband, there is an error sheet dated 21.07.2003 showing the debit of Rs. 1,19,330/- and required the husband to give reply to the same, and the reply was duly submitted by the husband on 16.03.2004. (Annexure-9 & 10 respectively).

9. That except for the above notice, there being no communication with regard to any amount due from the husband as neither any inquiry has been done nor any amount has been fixed to has been misappropriated due to loss of those E.F.T. and misuse of the same. When all the Railway stations under the N.E. Railway had given their report that there is no trace of any misuse of those lost E.F.T., then there is no question of recovering any amount which has never been quantified nor any basis of the same has been shown nor any intimation has been given to the husband that this amount is liable to be deducted from his salary. In pursuance of the E.F.T. the Police administration as well tried to trace out the E.F.T. alongwith other articles, reporting to be misplaced by the husband, which were all inside his hand bag, which was lost. The police have even submitted their final report dated 07.07.2006 (Annexure-11).

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10. There is no iota of evidence to relate any financial loss to the Railway administration due to loss of E.F.T., therefore, how the liability of Rs. 1,19,330/- could be fixed against the deceased husband. There is provision in the Indian Railway Commercial Manual to the effect that if there is no report from any station regarding any misappropriation of the said E.F.T., then no amount could be fixed against the employee. Further when the E.F.T. issue to the husband was local, which means that it can only be used for the stations within the N.E. Railway but after perusal of letter of the husband dated 02.04.2004 submitted to respondent No. 3, it is clear that the Railway administration is taking those E.F.T. even eligible for foreign tickets that means out side the zones of railway administration and as it from air they have calculated the amount of Rs. 1,36,048/- on the basis of 88 E.F.T. being used and the calculation has been made for the tickets from Varanasi to Kanyakumari in A.C.III, which comes to Rs. 1546/-per tickets (Annexure-12).

11. Synopsis of the applicant's case has also been filed on 07.08.2009. Where in a reference has been made in judgment rendered by this Tribunal in O.A. No. 979 of 2006 dated 30.03.2007 in similar and identical facts.

12. Heard the learned counsel for the parties and perused the pleading on record. Recapitulation of the contention of the rival

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is not necessary since the facts of the case are simple and clear.

This case would not have gone this distance at the respondents acted upon their own letter No. वा/409/विविध बकाया/06 which reads as under:-

“पूर्वोल्तर रेलवे
कार्यालय
मण्डल रेल प्रबंधक (वाणि.)
वाराणसी: दिनांक 11.01.08

पत्र संख्या वा/409/विविध बकाया/06

विल सलाहकार एवं मुख्य लेखाधिकारी
(यातायात/कोचिंग.), पूर्वोल्तर रेलवे
गोरखपुरः

विषय: ओम प्रकाश श्रीवास्तव भूतपूर्व मं. च. टि. नि. वाराणसी के विलद्व गायब ई एफ टी का मूल्य रु. 119330/ का अपलेखन के सम्बन्ध में।

सन्दर्भ: आको अ. सा. पत्रांक टीएस/सीजी/टीटीड़/1/5/3/ बीएसबी/537 दिनांक 3.07.03 ईएफटी 995443 से 995449 तक एवं 450350 से 450399 तक

विषयगत के सम्बन्ध में अवगत कराना है कि उक्त मृत कर्मचारी के विलद्व स्टेशन के कोचिंग बकाया सूची माह जनवरी 2004 में लेखा विभाग के हरर सीट टी एम/सीजी/टीटीड़/71/573/ बीएसबी/537 दिनांक 3.07.03 के द्वारा मूल्य रु. 119330/ का डेविट किया गया था जिसे वाराणसी स्टेशन द्वारा स्वीकृत मद में लिये जाने पर जिम्मेदार कर्मचारी के वेतन, बोनस एवं शेष राशि डीसीआजी से कटौती द्वारा स्टेशन बकाया का निस्तारण कर लिया गया। उक्त कर्मचारी द्वारा इएफटी गायब होने के सम्बन्ध में जी आर पी वाराणसी को लिखित रूप से सूचना दी गयी थी जिसके दुरुपयोग पर रोक थाम हेतु मासिक राजपत्र जुलाई 2003 में भी गजट हुआ था एवं वाराणसी मंडल, इज्जत

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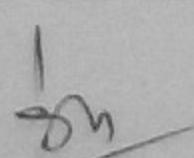
नगर मंडल, लखनऊ मंडल एवं मुख्यालय टिकट जांच अबुभाग द्वारा संदर्भित है एफ टी के दुरुपयोग का मामला प्रकाश में नहीं आने का प्रमाणपत्र जारी किया जा चुका है (छायाप्रति सुलभ संदर्भ हेतु संलग्न)। उक्त राशि के भुगतान हेतु मृत कर्मचारी की पत्नी द्वारा कैट इलाहाबाद में वाद संख्या 1058/2007 श्रीमती उषा किरन श्रीवास्तव बनाम भारत संघ कैट इलाहाबाद में दाखिल किया गया है। वाद का निस्तारण उक्त राशि का भुगतान करने पर ही होना है एवं कोर्ट के निर्णय के पूर्व भुगतान कर देने पर ब्याज से बचा जा सकता है।

अतः पैरा 229 के अनुसार उक्त राशि रु 119330/- के डेविट निस्तारित किया जाय जिससे कठौती की राशि को नियमानुसार रिफड़ किया जा सके।"

Sd/-
वरिष्ठ मण्डल वाणिज्य प्रबंधक
वराणसी"

13. Unfortunately effect to the communication dated 11.01.2008 has not been give at all the date of final hearing of this matter.

14. Some what similar and identical case was decided by this Tribunal vide order dated 30.03.2007 in O.A. No. 979 of 2006 in that case an amount of Rs. 1,90,330/- was recovered from the death-cum-retirement gratuity of the applicant who had lost excess fare ticket book. No financial loss to the Railway was reported, however, in a disciplinary proceeding initiated in this regard a simple warning was issued to him. The relevant part of the said judgment is reproduced below:-



"3. The respondents have contested the claim by filing written reply and by filing supplementary reply. According to them, the applicant was found responsible for loss of E.F.T. book, so the amount of Rs. 24050/- was rightly worked out @ Rs. 481.00 per folio (the fare from Gorakhpur to Kanyakumari) and was rightly treated to be dues. The reply in regard to the amount of Rs. 3081.00 is not clear except this that this amount was shown as dues, by Chal Lekha Nirikshak (Bakaya). It has been stated in para 5 of the original reply that no sale or misuse of E.F.T. came to light. In Supplementary reply, attempt has been made to say that in view of para-15 of Railway Services (Pension) Rules 1993 as well as in view of the para 2734 of Indian Railway Commercial Rules Vol. II, Railway dues can be recovered from the pensionary benefits of the retiring railway servant and so they are perfectly justified in recovering the said amount from the DCRG of the applicant.

4. The fact that the applicant lost E.F.T. Book, the fact that he was subjected to formal disciplinary proceedings in connection therewith and the fact that the said proceeding ended in "warning" have not been disputed by the respondent in their reply. In other words in departmental proceedings that were initiated against the applicant in the context of the missing of the said book, there were no orders for recovery of any amount on account loss of the book.

5. I have not been able to understand as to how the amount in question will fall within the definition of "Railway dues". This much is almost admitted that all the 50 leaves of that book were blank. In other words there is no allegation that the applicant had used any one of those 50 leaves of the book. There is further no misuse that of those leaves has not come to the notice of the respondents it was simple loss of a book, containing 50 leaves, which could have been used by applicant for charging fare or

extra fare, from passengers. There was no allegation or proof, that he issued those leaves, but with a view to misappropriate the amount showed it loss. Had it been so, the question would have been there whether the amount could have been treated dues without subjecting him to formal proceedings. It was not a case of loss of any money, entrusted to the applicant.

6. I am of the view that there was no justification with the respondents for deducting this amount, as dues from DCRG admissible to the applicant.

7. Simply because the respondents have shown this amount as dues in their paper, will not make it a "Dues" in the circumstances mentioned above.

8. As regards the deduction of Rs. 3081/- the position is not different to one stated, in respect of the amount of Rs. 24050/-.

9. I think the applicant is entitled to get back the amount in question together with interest @ 8% per annum.

10. So this O.A. is finally disposed of with a direction to respondents to pay an amount of Rs. 27,131/- (which they have deducted from the gratuity of the applicant) to the applicant within a period of two from the date of receipt of copy of this order (together with interest @ 8% per annum from the date the said amount was so deducted from his gratuity. No. Order as to cost.)

15. The case of the applicants, in the instance OA is on stronger footing for the reasons that:-

(i). Though a charge sheet has been issued nothing is brought on record to show that the applicant was finally held guilty of negligence and awarded any minor or major

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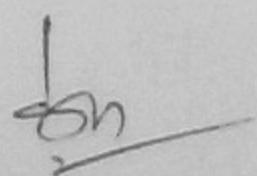
penalty through a order of the competent authority.

Whether any inquiry was at all completed? It seems that the recovery of amount in question was started only on the basis of an error sheet dated 21.07.2003. Showing a debit of Rs. 1,19,330/-. It may, however, be reiterated that no financial loss to the railways was reported.

(ii). In Annexure-4 to the Counter Affidavit a letter dated 11.01.2008 from Senior Divisional Commercial Manager to Financial Adviser and Chief Accounts Officer (Traffic and Coaching) Gorakhpur itself is an ample testimony to the facts the debit of Rs. 1,19,330/- to be squared up so that amount is already deducted may be refunded.

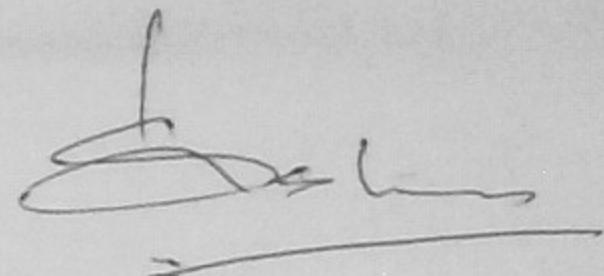
16. The applicant case is also squarely covered by decision in O.A. No. 979 of 2006 dated 30.03.2007 supra. The applicant has not only been put to hardship by deduction of the deceased employee's retirement dues at the time of distress and shock, family was also deprived of the opportunity cost on the amount deducted.

17. This O.A. is, therefore, finally disposed of with direction to the respondents to pay back all the amounts deducted from the salary and retirement dues of the applicant's late husband within two months from the date of receipt of copy of this order with simple interest @ Rs. 1% (one percent) per month from the



date each installments of said amounts were deducted from the salary/retirement benefits of the deceased employee till the date of actual payment. For this purpose, a part of a month consisting 15 days or more will be treated as one full month.

18. With the above direction O.A. is allowed. No order as to costs.



Member-A

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