

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 520 OF 1989.

~~TAX NOX~~

(S)

DATE OF DECISION 14-10-1993.

Shri N.S. Joshi, Petitioner

Mr. B.B. Gogia, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(6)

Shri N.S. Joshi
Railway Colony,
Block No. 96/D,
Dhrangadhra.

.... Applicant.

(Advocate: Mr. B.B.Gogia)

Versus.

1. Union of India,
Owning & Representing
Western Railway, through
General Manager,
Churchgate, Bombay.

2. Divisional Railway Manager
Western Railway,
Rajkot Division
Kothi Compound,
Rajkot.

.... Respondents.

(Advocate: Mr. B.R.Kyada)

J U D G M E N T

O.A.No. 520 OF 1989

Date: 14-10-1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. B.B.Gogia, learned advocate for the applicant and Mr. B.R.Kyada, learned advocate for the respondents.

2. This application under section 19 of the Administrative Tribunals Act, 1985, is filed by Guard 'C' working on Rajkot Division and posted to work at Kuda, Dhrangadhra, seeking the reliefs as under:

"8. Relief(s) sought.

A) It may be declared that recovery of debits/ dues to the tune of Rs.15,071/- as per Ann. A/1 as illegal, ineffective null and void.

Similarly the order at Annexure A/3 dated 20th June 1989 also may be declared as illegal ineffective and the respondents may please be

..... 3/-

restrained from recovering any dues from the applicant on account of the order at A/1 and A/3 or any other such orders.

B) Any other better relief/reliefs looking to the circumstances of the case may kindly be granted to the applicant.

C) The cost of the application may kindly awarded to the applicant."

This Tribunal had granted ad interim stay against the recovery.

3. The case of the applicant as pleaded in the application is that the respondents had passed an order for recovery of Rs. 15,071/- in November 1988 raised by the Accounts Department on the alleged ground that loaded wagons had come very late and the Guard had not given memo. The applicant has produced at Ann. A/1, the said order. It is alleged by the applicant that the said order has been passed without hearing the applicant. It appears that the applicant submitted an appeal on 1st May, 1989 when he was served with this order Ann. A/1. The applicant has produced the copy of that representation at Ann. A/2 which is dated 1st May, 1989 to which he received the reply Ann. A/3 dated 20th June, 1989 as under:

RE
"that representation submitted by you has been examined and found that there is no reason to review the same again and it is decided to recover the amount from you. This is for your information."

(S)

The applicant has alleged that even this order Ann. A/3 was passed without hearing him, without considering the grounds mentioned in his representation and the said order was passed without application of mind and is not a speaking order. The applicant has also produced one copy of letter dated 7th March, 1989, Annexure A/4 to show that the order should be in consonance with the principle of natural justice and no one can be condemned or held responsible for pecuniary losses if any, without hearing and proving the same etc.

4. The respondents have filed reply contending that the recovery of the salary of the applicant during July, August, September and December 1989 was made but thereafter the recovery was not made because of the interim stay given by this Tribunal. It is contended by the respondents that vide letter dated 24th February, 1989, the applicant was once again instructed to arrange payment of Rs. 15,071/- without any delay failing which recovery would start from his salary in terms of Payment of Wages Act. It is contended by the respondents that the recovery was made after full inquiry and it was the duty and obligation on the part of the applicant to see the interest of the Administration during his duty, but he has defaulted and neglected his duty due to which the Railway has suffered loss and there is no substance in the application and deserves to be dismissed.

new

5. The applicant has filed rejoinder, controverting the contentions taken by the respondents in the reply and it is contended that the respondents were bound to hold an enquiry under the Railway Servants (Discipline & Appeal) Rules, 1968 and they have not made any such enquiry nor the procedure laid down under that Rule followed by the respondents before taking the Recovery proceedings and the order for recovery amounts to penalty under the Rules and unless the procedure under the Rules was followed and the misconduct was established by the respondents, the order or recovery could not have been passed against the applicant and the whole action on the part of the respondents was illegal.

6. The applicant during the pendency of this application has filed an order dated 27th March, 1991 dated 27th March, 1991 at ~~An~~edure A/5 passed by ARM Ahmedabad which reads as under:

"In this case, total demurrage accrued is Rs. 15071/- out of which Rs. 4000/- has already been recovered from the salary bill of the concerned Guard as certified by you vide your letter quoted above.

The remaining amount of Rs. 11071/- is foregone in full.

You should therefore take credit for Rs. 11071/- (Rs. eleven thousand and seventy one only) on the authority of this letter."

The learned advocate for the applicant submitted that as the recovery was made in violation of the relevant rules under the Railway Servants (Discipline & Appeal) Rules, 1968, the impugned order was illegal and the respondents be directed to refund the amount recovered from the applicant. He also submitted that the applicant has during the pendency of the application retired from the service.

rule

7. The relevantrule under the Railway Servants (Discipline & Appeal) Rules, 1968 shown to us by the learned advocate for the applicant is Rule 6 'Penalties' - which reads as under:-

"The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely, "Minor Penalties".....

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders....."

Thereafter Rule 11 deals with the procedure for imposing minor penalties which is as under:-

"11. Procedure for imposing minor penalties--
(1) Subject to the provisions of sub-clause(iv) of clause (9) 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 sub rule (1) and clauses (i) and (ii) of sub rule (2), or 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 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 imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary."

Thus reading this Rule 11, it is clear that when the Railway servant is to be informed in writing the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken and it also provides for giving him a reasonable opportunity of making such representation as he may wish to make against the proposal and then an enquiry is to be held in the manner laid down in Sub-rule(6) to (25) of Rule 9 in which the disciplinary authority is of the opinion that such enquiry is necessary and then the representation and is to be taken into consideration / the finding is to be recorded etc. In the instant case, according to the learned advocate for the applicant, no enquiry was at all

held as per Rule 11 and no opportunity was given to him to make representation against the proposal to take action for recovery nor imputation of misconduct or misbehaviour were given to him, but straight way the order of recovery was passed, namely the impugned order Annexure A/1 which was illegal.

7. The learned advocate for the respondents submitted that the representation of the applicant was rejected and the order was passed on 24th February, 1989 which was served on applicant regarding recovery. The basic question is whether the Rule 11 of the Railway Servants Discipline & Appeal Rules, 1968 was followed before passing the order of recovery. Mr. Kyada, learned advocate for the respondents, at the time of hearing, submitted that the enquiry was held against the applicant. He submitted that in para 8 of the reply filed by the respondents also it is mentioned that the recovery order was made after full inquiry. We therefore, gave an opportunity to the learned advocate for the respondents to produce the inquiry papers before us to know what type of inquiry was held against the applicant, but no papers have been produced before us though opportunity was given. We therefore, presume that no inquiry was held against

the applicant as provided under the Railway Servants Discipline & Appeal Rules, 1968. If the respondents inquiry wherein possession of such papers of / held, it was the duty of the respondents to produce the same before us therefore but nothing was produced before us. We draw adverse inference against them that had they produced such same papers the /would have gone against them. It is quite possible also that they might not have held any inquiry under the relevant rules. We, therefore, come to the conclusion that no inquiry as provided under Rule 11 of the Railway Servants Discipline & Appeal Rules, 1968 was made before passing an order of recovery against the applicant and hence the said order was illegal and is liable to be quashed and hence we quash the impugned order Annexure A/1 as well as the order dated 24th February, 1989 produced by the respondents.

8. The applicant has already retired from service as submitted by the learned advocate for the applicant and not controverted by the learned advocate for the respondents. As the impugned order is held illegal has now retired, and as the applicant the recovery made by the respondents from the salary of the applicant in pursuance of this impugned order should be refunded to him. Hence we pass the following order :

ORDER

Application is allowed. The impugned order Annexure A/1 and the subsequent order dated 24th February 1989 passed by the respondents for recovery from the salary of the applicant are quashed and set aside. The respondents are directed to refund the amount of Rs. 4000/- recovered from the salary of the applicant as mentioned in the order Annexure A/5 dated 27th March, 1991, within three months from the receipt of our order. The application is disposed of. No order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

R.C.Bhatt

(R.C.Bhatt)
Member (J)

vtc.

STC^{no} 566/89
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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

ORIGINAL APPLICATION NO: 520 /89

Shri N.S.Joshi,
Dhrangadhra

:: Applicant

V/s

Union of India and 1 other

:: Respondents

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Rajkot/Ahmedabad

Date: 5/12/89

N.S.Joshi
(APPLICANT)

For use in Tribunals Office

Date of filing

or

Date of receipt of post

Registration No.

S signature
for Registrar.

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

ORIGINAL APPLICATION NO: 520 /89

2
Shri N. S. Joshi,
Railway Colony,
Block No. 96/D,
DHRANGADHRA

The applicant is enclosed as
Guard 'C' and headquartered at
Dhrangadhra - Rajkot Division

:: APPLICANT

Versus

1) Union of India,
Owning & Representing
Western Railway,
Through:
General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020

2) Divisional Railway Manager,
Western Railway,
Rajkot Division,
Kothi Compound,
RAJKOT

:: RESPONDENTS

DETAILS OF APPLICATION

1. Particulars of the order against which the application is made.

i) Order No.	:	1) EA No. TIA/KDR/G/DCM/11/22
	:	of Dt. Nil-November 1988
ii) Date	:	issued by TIA, Western
	:	Railway Morvi for recovering
iii) Passed by	:	Rs. 15,071 from Applicant
	:	
iv) Subject in brief	:	2) DCS Rajkot's No.C 500/2/162
	:	of 20th June 1989 rejecting
	:	to review the recovering the
	:	above amount, on being
	:	represented by the Applicant

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter
of the order against which he wants redressal is within
the jurisdiction of the Tribunal.

QZ

3. Limitation

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.

3.4. Facts of the case

The applicant begs to submit as under:

i) That the applicant is working as Guard 'C' on Rajkot Division and posted to work at Kuda-Dhrangadhra. He has about 3 years of service as Guard.

ii) That there has been an order for recovery of Rs.15,071/- from him raised by the Accounts Department for the alleged reasons that loaded wagons have come very late and the Guard had not given memo etc.etc.

Copy of the EA No.TIA/KDR/G/DCM/11/22 dt.Nil, November

A/1 1988 is annexed herewith as Annexure A/1. This order has been passed without hearing the applicant. Before passing this order of recovery and raising debit, no show cause notice was served upon the Applicant and no enquiry was also held and no opportunity was given to the applicant to defend against the recovery of debit.

iii) The applicant against the EA No.TIA/KDR/G/DCM/11/22 dated Nil, November 1988 submitted an appeal on 1.5.1989 when he was served with the said EA. In the said representation/appeal the Applicant inter-alia submitted various reasons and grounds urging that he was not responsible for for any such debit or recovery and that he was not to do any such duty or any such duty list was not supplied to him and if any such duty list exists which demands him to handle any commercial working he may be supplied a copy of such duty list

Q3

which was given to him showing the duties of the Comm. department to be done by him. The applicant further submits that he being an Operating Hand is not concerned or conversant with the Commercial Working and that and the said EA was returned back with the said application, since the Commercial Work was to be done by the Commercial Staff provided and trained for the purpose and that the recovery of debit if at all to be effected it has to be recovered from the merchants concerned whose wagons in question were involved. He submitted ~~xxxx~~ many other points in the said representation. Copy of a representation submitted by him is annexed here-

A/2 with as Annexure A/2 .

iv) The applicant received reply in terms of DCS Rajkot's letter No.C.500/2/162 dated 20th June 1989 informing the applicant in one line -

"that representation submitted by you has been examined and found there is no reason to review the same again and it is decided to recovery the amount from you."

Copy of the said letter dated 20th June 1989 is annexed

A/3 herewith as Annexure A/3.

v) The applicant submits that the reply dated 20th June 1989 at Annexure A/3 is also passed without any application of mind whatsoever and without considering any of the points and grounds advanced by the applicant in his representation. Any of the reasons/ grounds put forward by the applicant in his representation has not been given consideration as apparent from the reply at Annexure A/3. The reply is passed mechanically without application of mind. It is not a speaking order on the points/grounds advanced by the applicant.

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In this way the original recovery order, which is also passed without any hearing and show cause notice and without recording any reasons suffering from the vices of deafness and dumbness. The same is the position of Annexure A/3.

vi) The applicant draws the attention of the honourable Tribunal to one of the letter written by TI Surendranagar to DCS Rajkot in terms of his letter No. OM/DHG/3/1 dt.

7.3.1989, from various paragraphs it can be seen that the TI has also found that the debit raised by the Traffic Inspector (Accounts) Morvi are incorrect and that the procedure adopted therein is also faulty and that the Guard is not correctly ~~expected~~ accepted the debits.

According to the rules ~~unless~~ the debits are not accepted by the party, the same cannot be recovered, till such debits are proved to be due against the party. This is also in ~~xxxxxx~~ consonance of natural justice that no one can be condemned or held responsible for pecuniary losses if any, without hearing and proving the same.

Here in this case the Railways have become judge of their own cause and that too without affording proper opportunity to the applicant and without considering his grounds against the same. Copy of the letter as referred to (i.e., dt. 7.3.1989) is annexed herewith

A/4 as Annexure A/4.

vii) The applicant submits that the said recovery has not yet started from the salary of the applicant. This is likely to be started in instalments. Railways have not decided and informed the applicant as to how much amount has been decided to be recovery from his monthly salaries. The applicant is a low paid employee with advanced age and heavy responsibilities of his family.

If the recovery is ordered to be effected it is also going to affect the whole family budget and status and will cause untold hardship to him.

5. Grounds for relief with legal provisions

- 1) Violation of principles of natural justice in as much as without hearing the applicant and/or without holding any enquiry and/or without issuing any show cause notice the EA No.TIA/KDR/G/DCM/11/22 of Dt.Nov. 1988 has been issued raising a debit of Rs.15,071 against the applicant.
- 2) Similarly the reply at A/3 is also passed mechanically without considering the points raised by him.
- 3) That the recovery of alleged debits is arbitrary and whimsical and is hit by article 14 and 16 of the constitution of India

6. Details of the remedies exhausted

The applicant declares that he has no remedies available as per the statutory rules of the respondents.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

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8. Relief(s) sought

A) It may be declared that recovery of debits/dues to the tune of Rs.15,071/- as per Annexure A/1 as illegal, ineffective null and void. Similarly the order at Annexure A/3 dated 20th June 1989 also may be declared as illegal ineffective and the respondents may please be restrained from recovering any dues from the applicant on account of the orders at A/1 and A/3 or any other such orders.

B) Any other better relief/reliefs looking to the circumstances of the case may kindly be granted to the applicant.

C) The cost of the application may kindly awarded to the Applicant.

9. Interim reliefs sought

The respondents may please be restrained from giving effect/further effect to the recoveries from his salary towards the recovery of the debits as mentioned in A/1 and A/3 amounting to Rs.15,071/-

10. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed post card or inland letter, at which intimation regarding the date of hearing could be sent to him.

11. Particulars of the Bank Draft/Postal Order filed in respect of the application fee.

8
K

1. Number of Indian Postal Order(s) : DD 227516
 2. Name of the issuing Post Office : Rajkot
 3. Date of issue of Postal Order(s) : 4/12/89
 4. Post Office at which payable : Alibal

12. List of enclosures

1) Postal Order as per details in para 12
 2) Vakalatnama
 3) Copies of documents relied upon from Annexure A/1 to A/4

VERIFICATION

I, N. S. Joshi, son of Shri Shantilal Joshi,
 aged about 56 years working as Guard 'C' at
 Dhrangadhra under Rajkot Division of Western Railway
 resident of Dhrangadhra do hereby verify that the
 contents of paras 1 to 3 and 6 to 12 are true to my
 personal knowledge and paras 4 to 5 believed to be true
 on legal advice and that I have not suppressed any
 material fact.

Rajkot/Ahmedabad

Date: 5/12/89

N. S. Joshi
(APPLICANT)

Through:
 Shri B.B. Gogia,
 Advocate,
 RAJKOT

Filed by Mr.
 Learned Advocate for Petitioners
 with second set & copies
 copies copy served/not served to
 other side

Dt. 5/12/89 C. S. Rao 5/12
 Dy. Registrar C.A.T.(J)
 A'bad Bench

(Copy of EA)

Annex A-1

Ms. T. 2.1 K. 1 Gal Deut/1122 est Dr. Hoy - 1988

Ent - Kuda. Saff. Sisal up At Dhar. Chh. 3 rods

Amaret
Apples

Sp Kuda to est Saff. Nalke Shoree

Its placed for loading on 1/9/88 - 7 ac
and released on 1/12/88 in Kudia transfer
Rus. slot, where as loaded dangerous have
comes in different. I need very solit.

Guard: Kudia not given 'Almos, 7/85

Other, tasks were sent to Kuda have
also not shown any detector.

Rs. 150/-/-

True Copy

Bhawan

Advocate

6/1

Rs. 150/-/-

True Copy

Advocate

Accrued 11/18/88

Saff

Advocate

8

Copy (109)

Statement of Discharge

SNo.	WAGEN NO.	ICE	TIMING should be in WTR		Waggon Release		Wagon Loc. & A Time from which daily comes	Date
			Placed	Releasd	Date	Date		
1-	25661	18/3	4/9/88	5/9/88	4/9/88	1200	5/9/88	10-10
2-	58112	"						
3-	31000	"						
4-	20807	"						
5-	18262	"						
6-	57581	"						
7-	34395	"						
8-	211085	"						
9-	53080	"						
10-	15640	"						
11-	38307	35.6						
12-	35885	35.4						
13-	26223	35.4						
14-	44661	17.3						
15-	44234	"						
16-	44164	"						
17-	44055	"						
18-	2857	18/3						
19-	44199	"						
20-	14635	"						
21-	3257	"						
22-	16412	"						
23-	39229	"						
24-	14521	"						
25-	22780	"						
26-	51995	"						
27-	57431	"						
28-	44798	17.3						
29-	44638	"						
30-	28806	18/3						
31-	17526	35.4						
32-	61396	"						
33-	20307	18/3						
34-	55096	"						
35-	34572	17.3						
36-	27076	18/3						
37-	17190	"						
38-	25813	"						
39-	31988	"						
40-	28856	"						

40/285 M/9
W/988

(1) Placement & Released Tawish on
24/9/88 at 11°C Respi. cc WTR
The first weigous were under Date
when it's established from the
subsequent trips

(2) Discharge upto the time of

Mac. Sano TBA/KDR/2/Dec 11/22 of Nov. 1981

all regulars 4/9/83 at 7⁰2

6/7/66 15071

Anti-slavery has superseded the
order of loaded wagons by
protection of keels, tracks
- Ex. Kudz, etc.

~~SD~~
TJA (MWL)

Time after
B. V. am
Advocates

1000

1-5-88

(2)

From:- N.S.JOSHI
Kuda Guard 'C' DHQ, RJT, Division

To,
The CGSR DHQ,

Copy: SRDOS, DCSBRC, DRM, BRC, DOS, DCS, ADI, RJT, SS, DHQ.

Sub:- E.A.No. KDR|OW|B|STP|EA|88 of 22/12/88

R/SIR,

With reference to the above, I hereby return the copy of statement of E.A.No. TIA|KDR|G|Dec/11/22 of Nov, 1988 for No. 15071/- Not signed by any body as this E.A. does not return to the Mer I am supposed to deal with it to the detailed reasons are as under.

- 1- That I am not provided with such a duty list in which I am supposed or expected to handle any commercial working in case you claimed that this was a part of my duty list, furnish me a duty list which was handed over to me and duty acknowledged by me.
- 2- I being a purely an operating hand and I am not concerned with any commercial recovery, that so ever it may be not I am able understand the content of the statement of the E.A. which is returned herewith for your desling on the subject.
- 3- Recovery of freight charges, demurrage charges or any charges on commercial account is the duty and duty of the commercial staff, as per their duties entailed with the working of the commercial branch.
- 4- You have been provided with the staff keeping in view the workload offering at Kuda and if this is not so, kindly arrange to get me a certificate from you Sr.DCS that the workload offering Kuda has not been taken into consideration for providing commercial staff, at your as also the certificate should certain that the commercial working at Kuda was required to be done by Kuda Guard with the pre-assigned authority.
- 5- When staff for Kuda working has been provided to you can not shirk out of your responsibility of commercial working of had at Kuda.
- 6- The accounts of commercial had to be maintained by the commercial Dept .including any credit/dedkt etc and the operating staff has nothing to do with this.

- : : 2 : : -

12
(13)

7. You are also requested to send me a certified copy of the Commercial duties assigned to me officially where by I stand entitle for dual charges allowance at the prescribed rate of pay which I have never been paid so far while working at Kuda which aothmetically proves that dual working as not been assigned to me by any office or any officer.

8. You are hereby thereofre requested to acknowledge the receipt office letter sent to SS DHC, alongwith a statement of EA as maintained above and to deal with it further at your own level as deemed fit and required under rules futher to request you that you will not cause any futher botheration to me in this connection as Sr. DCS BRC even has not replied to my application dated 27/6/1988 in which I had Categorically requested him to fix up the responsibility of the commercial working as Kuda with thich staff concered and as such under the circumstances as requested above any I stand no where in this picture as any stage, and it will be your sole responsibility to arange the so of commercial working at Kuda hence you shall not get any information in regard to coonctial working either officially or anofficially hence forth which may please be noted.

If at all any Comm. working is required to be too keept after by me at kuda official Orders are required to be issued to me to hold the dual charge of duties with apecific instruction of payment of wages for holding dual charged percentage basis as per extant rules in force.

(R.S.JOSHI.)

Guard Kuda

True Copy

D. M. Joshi

Advocate

Annex A-3

13

14

(3)

Western Railway

No.C500/2/162

Divisional Office,
Rajkot. dt Qc /6/89.

To :

N S Joshi.
Guard. (Through: SG-DBG)

Sub: EA No.TIA/KDR/G/DCM/11/22 of
November '1988 for Rs.1507/-

**

Representation submitted by you has been
examined and found that there is no reason to
review the same again and it is decided to
recover the amount from you.

This is for your information.

23/6/89

✓ DCS/RJT.

Copy to: Sr.DCS-ERC SG-DBG for information please.

**

8/14/6*

True Copy

B. K. Sam

Advocate

Annex A-4

14
B
W

No. 867/DHG/3/1

Date : 7-3-89.

From : T1. SUNR.

To : DGM RJT.

Sub : Guard to perform commercial duty (additionally).

Ref : Your No.T.532/2 of 16.2.89.

R/Sir,

I had been at DFG in connection with the above subject and taken the statement of the Guard Shri N S Joshi HQ DHG alongwith the statement of CGRS DHG (Goods).

As per procedure the Guard working the train ex.DHG to Kuda Salt siding have to place the wagons at different places. He has also to take the wagon No. along with placement time. On the second trip he has to pick up the loaded wagons to DHG giving there No and released time to the CGRS DHG alongwith the wagons which are under 'B' in the Kuda siding.

There is no fundamental procedure and there is no check on the loading time as per rule in this siding for example wagon placed 40 in the siding on 7.3.89 crew and guard came back and there is no running of Goods train on 8.3.89 than how it can be determined that wagons are loaded within free time as there is no control of the railway for loading time in this siding.

On that particular date and wagons the Guard fails to give the loading completed time. The wagon were placed at 7.00 on 4.9.88 Total No. of Wagons were 40/45. As the Guard had not given the memo for completion of loading on 4.9, 5.9 and 6.9 then till date the Audit has raised the damage against him.

The debit raised by TIA MVI is also seems to be incorrect. He had taken the time of the completion of loading which is the actual departure of the load from Kuda siding to DFG. The timing of shunting etc. (vacuum) marshalling is not deducted from the Dpt. time.

On being asked from the S3 DHG he stated that the merchants are also not agreed to pay this damage charges by stating that they had completed the loading in the free time allowed.

In the inspection note of DOS ADI (Regular) on vide item No.9 para B + C + D shows that the Salt merchants had also requested him for the posting of one goods clerk and one market. The copy of the same is attached herewith.

The wagon transfer register has been taken by VI-BRC on 3-10-88 for the period 1.8.88 to 5.9.88. The copy of the acknowledgement is attached herewith.

The copy of the S/ment of Cd. Shri N S Joshi & CGRS DHG is also attached for your further necessary action in connection with the EA No. TIA/KDR/G/DM/11/22 of Nov.88 for Rs. 150/-

Sd/-

T1- SUNR.

- DA 1) Placement s/ment of Sept.88 Wgns. (40/45).
- 2) Statement of Cd. Shri N S Joshi 3 page.
- 3) Statement of CGRS 2 page.
- 4) Copy of VI receipt of Wgn. Trd. Register
- 5) Copy of DOS ADI inspection note.
- 6) copy of Diagram of Kuda Siding.

True Copy

D. N. Sunr

Advocate

No :C. 124/90

Western Railway

CCS/R/DIG.

A. S.
Area Manager's Office,
Ahmedabad 2.
Dt: 27/3/91

Sub: Admitted Debts Rs. 1107 1/2 Part of total
demurrage Rs. 1507 1/2 block rake, Rx.
KDR to SJP Inv. No. 164 to 203 RR No.
766889 to 939

Re: Your No CCS/KDN/AM/14/88/91 dt 07/3/91.

In this case, total demurrage ^{recoverd} incurred is Rs. 1507 1/2
bill of the concerned Guard as certified by you vde your letter

SUPDT's quoted above.

The remaining amount of Rs. 1107 1/2 is foregone in full.
You should therefore take credit for Rs. 1107 1/2 (Rs. eleven
thousand and seventy one only) on the authority of this letter.

AM/AM.

C/- DRW/C DRG for kind information please. This has reference to 21
No. C. 500/AM/DR-DIG.
C/- CCS(C)CCG for kind information please. This has reference to
file No. C. 500/1/2/64/89.

True Copy

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. No. 520 of 1989

N.S. Joshi Applicant.

Vs

Union of India & others Respondents.

REPLY BY THE RESPONDENTS.

1. At the outset the Respondents states and submits that the averments made in the application are not correct and is denied hereby. So far as the question of jurisdiction is concerned, this Hon'ble Tribunal has no jurisdiction. The present application is also time-barred and made without exhausting the alternative remedies available. And for these reasons this application deserves to be dismissed.

2. With reference to para 4(ii) of the said application the averments made therein are not correct and is denied hereby. It is true that the Inquiry was conducted by the Trafic Inspector at Surendranagar on 7-3-1989 but it is not correct to say that during the above inquiry the Applicant was not given reasonable opportunity to defend himself against the recovery of debit. On the contrary reasonable opportunity was given to the applicant and therefore the allegation is baseless and afterthought.

3. With reference to para 4(iii) the Respondents states that it is true that an appeal was filed on 1-5-1989 and the same was considered by the authority and it was replied vide letter dt. 20-6-1989. It was also disclosed from the evidence and records that

when question was posed to the Petitioner by the Inquiry Officer i.e. the Trafic Inspector, Surendranagar the Applicant has admitted question No. 4 and 5 and he has to place 'the wagons as per demand in Kuda Salt siding and remove the loaded wagons from the siding and show the wagons under 'B' position and it was his duty to serve memos to G SDHG but the same has not been done. A copy of the inquiry report is enclosed herewith for the perusal of the Hon'ble Tribunal so that it may not be complained later that no reasonable opportunity was given to the Petitioner.

4. At the outset the Respondents wants to state that so far as the jurisdiction of this Hon'ble Tribunal is concerned, the inquiry authority by the administration is purely an administrative action and so far as the findings are concerned, the same is also based on the domestic inquiry and this Hon'ble Tribunal has no jurisdiction to sit and decide the findings of facts. But it has jurisdiction to decide whether there is any error of law or not. So far as this case is concerned, no such allegation is made out and therefore on this account, the application of the Applicant deserves to be dismissed.

5. With reference to paras 4(iv) (v) and (vi), the averments made there in are not correct. It is further submitted that TI Surendranagar has also fixed the responsibility to the Guard working at DHG to Kuda Salt siding vide para 1 of letter dt. 7-3-1989. But, however, in the light of natural justice future recovery has been stopped.

6. With reference to para 4 (vii) , the averments made in the said para are not correct. So far as recovery is concerned, the same has been made during July, August, September and December 1989 and thereafter it was not recovered after the order of the Hon'ble Tribunal.

7. With reference to para 5(i) , the allegation is not correct. It is submitted that the Applicant has already been intimated regarding recovery vide letter dt. 24-2-1989 a copy of which is enclosed. Annexure- A-1

8. The Respondents further states that the recovery made so far is recoverable after full inquiry and therefore it was the duty and obligation on the part of the Applicant to see the interest of the administration during his duty. He was posted for a particular work and was paid for it. But he has defaulted and neglected his duty due to which the railway has suffered loss. And for this the department is bound to recover the amount fixed after the inquiry. When the Petitioner himself has admitted that it was his duty to place the wagons at 4 to 5 places , removal of the loaded wagons which were loaded at Kuda siding and he has further showed the wagons under BI, it was his duty to serve memo to G S DHG regarding loading and in B position of Kuda siding the same has not been done. Not only this, he has not seen any guidance or guidelines which was available in his files which were in his custody. And therefore, when the Petitioner himself has admitted his negligence in duty, the department is bound to recover the losses suffered due to the negligence of the petitioner and therefore the application of the applicant deserves to be dismissed.

9. For the above reasons and reasons that may be urged at the time of hearing this application, the application deserves to be dismissed awarding special cost in favour of the Respondent authority.

Ahmedabad.

Dt: 9-2-90

B. R. Kyada
(B.R. Kyada).
Advocate for
Respondents.

For and on behalf of the Union of India.

leetcen

Additional Divisional Railway Manager,
Western Railway, Rajkot.

VERIFICATION

I, C. K. Malvana,

Additional the Divisional Railway Manager, Western Railway,
Rajkot, do hereby solemnly affirm and state that what
is stated herein above is true to my knowledge, information
and belief and I believe the same to be true.

Ahmedabad.

Dt: 9-2-90

leetcen
Additional Divisional Railway Manager,
Western Railway, Rajkot.

Reply/Regoinder/written submission
filled by Mr. ... B. R. Kyada,
Learned advocate for petitioner/
Respondent with second copy
Copy served/not served either side

V.P. 9/4/90. Dy. Registrar C.A.
A. H. Patel

Ch. Secy of 2/50

WESTERN RAILWAY

No.C.500/2/162

Divisional Office,
Rajkot.Dt/ 24/2/89.

To:

Shree N S Joshi, Guard-DHG.
(Through SS-DHG).

Sub: EA No.TIA/KDR/G/Dem/4/22 for Rs.15071.00 O/s at DHG.
Ref: KDR/OW/BR/Stp/EA/88 of 29/2/89.

==

Your attention is invited to CGS DHG's letter No.KDR/OW/BP/SKP/EA/88 dtd.22/XII/88, 2/1/89, and 29/1/89 has requested you to arrange payment ~~at~~ Rs.15071.00 but you failed to remitt the same even though two months have been passed.

You are therefore once again instructed to arrange payment of Rs.15071.00 without any further delay and advise this office with full particulars of remittance failing which recovery will be started from your Salary in terms of payment of wagon wages act.

This may please be treated as notice to you for the recovery.

sd/-
DCS/RJT.

C/- SS-DHG For information & n/action.

He will please advise this office full history of case so as to enable this office to take further on the subject.

C/- Sr.DCS-BRC for information and necessary

==

परिचय देखे, राजकोह.

True copy
on D-2/2/89
1/2

(20)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD.

ORIGINAL APPLICATION NO.: 520/1989.

N.S. Joshi,
Block No.96/D,
Railway Colony,
DHRANGADHRA

APPLICANT.

Versus

1) Union of India,
Owning & Representing
Western Railway,
Through: General Manager,
Western Railway,
Churchgate,
BOMBAY -400 020.

2) Divisional Railway Manager,
Western Railway,
Rajkot Division,
Kothi Compound,
RAJKOT

RESPONDENTS.

REJOINDER - IN - AFFIDAVIT

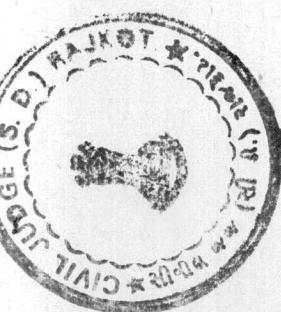
I, N.S. Joshi, applicant in this case do hereby file this Re-joinder and say on solemn ~~affirmation~~ affirmation to the reply filed by Respondents as under :

1) I have read the reply filed by the respondents and say that the statements made therein are not correct and are denied hereby except those which are specifically admitted by me.

2) In reply to para-1, it is not true that the application is time barred or it is made without exhausting the alternative remedies available.

3) In reply to para-2 of the reply, the statements made therein are not correct and not admitted to be true. The applicant denies to the enquiry having been conducted by Traffic Inspector at Surendranagar on 07-3-1989 as alleged therein. The

... (2) ...



1369
6/10

(2)

....(2)...

The applicant say that he has ~~been~~ never been given any reasonable opportunity to defend himself against the recovery of debit. It is not true that reasonable opportunity was given to the applicant in the matter of that the allegations is baseless and after-thought.

4) In reply to para-3, the statements made therein are not correct and not admitted to be true. It is not true that the appeal or representation was at all considered by the authority. It is not true that it is disclosed from the evidence and records about the question posed to the petitioner by the alleged Enquiry Officer or the applicant has admitted Question 4 & 5 and he has to place the wagons as per demand in Kuda Salt siding and remove the loaded wagons from the siding and show the wagons in 'B' position and it was his duty to serve memos to Goods Supdt./Dhrangadhra and that the same has not been done. All such allegations and averments are not correct and not admitted to be true or does not amount to admission. The applicant is not aware of any enquiry report as mentioned therein as it was not supplied to the applicant at any point of time.

5) In reply to para-4, the statements made therein are not correct and not admitted to be true. It is not true that the action of the enquiry authority is purely administrative action and as such the hon'ble Tribunal has no jurisdiction

....(3)....



22

... (3) ...

to set aside the findings of facts. The applicant deny of any enquiry having been made in the matter in accordance with law and rules.

6) In reply to para-5&6, the statement made therein are not correct and not admitted to be true. The applicant denies all the responsibility fixed on him by Traffic Inspector, Surendranagar, if any, since he has never been supplied with any such report of alleged enquiry.

7) In reply to para-7&8, the statements made therein are incorrect and not admitted to be true. It is not true that the recovery is made is after full enquiry. It is not true that it was the duty/obligation on the part of applicant. The applicant submits that the applicant has done his duty and obligation properly and in accordance with the procedure and the circumstances and rules. It is not true that the applicant has defaulted and neglected in his duty or that due to which the Railway suffered loss. It is not true that the department is bound to recover fixed after the enquiry. The applicant submits that he is not liable for the amount. It is not true that petitioner has admitted anything which amounts to admission of the guilt or negligency on his part. It is not true that it was his duty to serve memorandum to Goods Supdt./Dhrangadhra regarding loading and in 'B' position of Kuda siding, the same has not been done. It is not true that he has not seen any guidance or guidelines which was available in his file which were in his custody.

... (4) ...



(21)

... (4)

all these averments are incorrectly made.

Respondents are called upon to prove and produce any such alleged guidance or guidelines. It is not true that the petitioner has admitted his negligency in duty and the department is bound to recover the loss suffered due to the negligency on the petitioner.

✓ 8) The applicant draw the attention of the hon'ble Tribunal to Railway Servant (Discipline and Appeal) Rules of 1988 wherein penalties have been prescribed under Rule-6 of the Rules. The penalty No.5 is reproduced below :

"Recovery from pay of the whose or part of any pecuniary caused by him to Government or Railway administration by negligence or breach of orders."

This penalty is a minor penalty in the rules and the procedure for imposing such penalty as made in Rules is reproduced below :

*Rule 11
Part IV*
"(1) 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 clause(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 him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an enquiry 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;



... (5) ...

....(5)....

24

(d) recording a finding on each imputation of misconduct or misbehaviour; and

- (e) consulting the Commission where such consultation is necessary."

9) No such procedure has been followed by the respondents before taking present action which amounts to penalty under the rules. The applicant submits that unless the procedure as mentioned above in the rules is followed and unless it is proved that the loss of the money is directly attributed to negligency to the applicant or his default he can not be imposed with such penalty as done in the case by passing the simple order of recovery. The action of the Railway administration amounts to circumventing the rules provided for the purpose. No charge sheet has been framed or served upon the petitioner for the alleged cause.

10) The action of the respondents therefore is not only contrary to the principles of natural justice but also contrary to the statutory rules provided for the purpose in Disciplinary & Appeal Rules, and thus is without jurisdiction.

The applicant say the above facts on Oath.

Rajkot/Ahmedabad.

Dated: 26 -9-1991.

N. S. Joshi
(APPLICANT)

Identified by :

N. M. Pandya
Advocate, Rajkot.
A bad Bench



.....affirmed before me on
Shri..... N. S. Joshi
who is identified by Advocate
Shri..... N. M. Pandya, for
who is known to me
Rajkot Date:-
26-9-91

Clerk of the Court
Civil Judge Sr. D.
RAJKOT

(28)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. No. 520 of 1989.

Shri N.S. Joshi

.... Applicant.

Vrs.

Union of India

.... Respondents.

Reply by the Respondents on Merits

1. At the outset the Respondents states that the contentions raised by the Respondents in their reply are still true and the same is also to be treated as ~~untrue~~ part of the reply to the petition.
2. The Respondents states that the first question which is to be decided is whether this Hon'ble Tribunal has the jurisdiction under the Hon'ble Tribunal or not. This should be decided first.
3. The second legal question under the Central Administrative Tribunal Act is that without exhausting the alternative remedies available with the department, the Petitioner has no right to move this Hon'ble Tribunal. In the present case the Applicant has not exhausted the the alternative remedies . Whether the same point is still open ~~if~~ the Petitioner has ignored the said legal point and the Hon'ble Tribunal can decide the matter on merits.
4. That the findings by an Inquiry Officer is based on facts and evidence led during the Inquiry and he has the opportunity to judge the relevancy, the truthfullness and the conduct of the person who is witnessing before him. And therefore the same questions which are to be decided are based on subjective satisfaction after appreciating the Oral evidence and circumstances and in that findings if there is no error of law or jurisdiction, whether this Hon'ble Tribunal can sit as an appellate court.

and appreciate and reread the evidence under Art. 226 and 227 of the Constitution of India.

5. The next legal question would be that the remedies which were available to the Applicant has been completed by him and if there is no error of law whether this applicant is maintainable or tenable is also a question of law which is to be decided. It is further submitted that under the contract of service, it is the right of the employer to conduct inquiry against the employee and being an Administrative as well as quasi-judicial function, generally the Courts are restrained from interfering the the orders passed by the lower courts or authorities except in exceptional cases where there is an apparent error of law or gross violation of the Principles of Natural Justice.

6. The damage assessed is from the records and the same is that when the Petitioner was working he was in charge and he was under the obligation to serve the master with the best of his abilities and if there is any gross negligence in his duties, it is under service conditions to recover the losses suffered by the public Administration (Railways).

7. The above legal points and those which may be urged at the time of hearing of this application and the authorities which may be cited on the above points, your honour may be pleased to reject the claim of the Petitioner.

Ahmedabad.

Dt:

B.R. Kyada
(B.R. Kyada)
Advocate for the Respondents.

For and on behalf of the
Union of India.

b281 26/10/92
Additional Divisional Railway Manager,
Western Railway, Rajkot.

VERIFICATION

I, S.C. Agarwal Additional Divisional Railway Manager Western Railway, do hereby verify that the contents of this reply are true on legal advice and that I have not suppressed any material facts.

Ahmedabad.
Dt: 9/9/92

b281 26/10/92
Additional Divisional Railway Manager,
Western Railway, Rajkot.

1. 9/9/92 by Registrar C.A.T. (J)
A Bad Bench
Copy not served on other side
Respondent with second service
not served by Mr.
Respondent's advocate
Copy not served by Mr.
Dated 9/9/92

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD.

MISC. APPLICATION No: 91 /1992.

IN

ORIGINAL APPLICATION No: 520/1989.

Shri N.S.Joshi,
 New Scientificvadi Road,
 Near Jayantibhai's Motor
 Garage, Opp:Octroi Naka,
 Ravapar Road,
 MORBI: 363 641.

::APPLICANT

Versus

(1) Union of India,
 Owning & Representing
 Western Railway,
 Through: General Manager,
 Western Railway,
 Churchgate,
 BOMBAY: 400 020.

(2) Divisional Railway Manager,
 Western Railway,
 Kothi Compound,
 RAJKOT.

::RESPONDENTS.

APPLICATION FOR PRODUCTION OF DOCUMENTS

1) The applicant begs to submit that he is producing the letter No:C.124/90 dtd. 27.3.1991 issued by A.RM., Ahmedabad addressed to CGSR/Dhrangadhra in relation to subject matter of the present petition concerning the applicant by which the remaining amount of Rs.11071.00 is foregone in full.

2) The document is relevant and necessary for fair and final disposal of the suit, it may please be permitted to be produced.

Ahmedabad.
 Dated : 31-3-1992.

N.S.Joshi

(APPLICANT)

VERIFICATION

I, shri N.S.JoshiSon of Shantibhai Joshi, aged about 58 yrs., residing at Morbi, do hereby verify that contents of para 1&2 stated above is true to my personal knowledge and belief and that I have not suppressed any material fact.

Ahmedabad.
 Dated : 31-3-1992.
 Through:
(B.B.GOGIA)
 Advocate, Rajkot.

filed by Mr B.B.GOGIA N.S.Joshi
 Learned Advocate for Petitioners
 with second set & one spares
 copies copy served/not served to
 other side

31, 3 92 Malcolm
 Dy. Registrar C.A.T.(J)
 A'bad Bench

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD.

MISC. APPLICATION No: 915 /1992.

IN
ORIGINAL APPLICATION No: 383/1989.

Shri N.S. Joshi
of Morbi.

::APPLICANT

Versus

Union of India & one another.

::RESPONDENTS.

LIST OF DOCUMENTS

Sr.No.	Description	Date	Org./Zerox
1.	Copy of letter No:C.124/90 dtd.27.3.1991 issued by A.R.M. Ahmedabad regarding Admitted Debits Rs.11071/- part of total demurrage Rs.15071/- A/c block rake, Ex. KDR to SJP Inv.No.164 to 203 RR No.766889 to 939.	27.3.91	Zerox.

Rajkot/
Ahmedabad.
Dated : 31-3-1992.

Parvati
(B.B.GCJA)
Advocate for Applicant.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD. 30

M.A. No. 167 of 1993.

IN

O.A. No. 520 of 1989.

N.S. Joshi Applicant.

Vrs.

Union of India & ors. Respondents.

1. The Respondent state and submits that in the above O.A. the Hon'ble Tribunal has granted stay against the recovery of Rs. 15071/- by its Order dt. 12-12-1989. Thereafter, preliminary reply has been filed wherein the Respondents have taken the contention that they are entitled to recover the amount. But somehow or the other and specially for the want of time, the Court has not taken the matter on hand, and therefore, Misc. Application bearing No. 95 of 1992 was filed by the Respondents for early hearing of the matter for vacating the Stay Order granted in December 1989. The Railway being a Public administration, the Petitioner has no right to retain the above money which he has already used for his own purpose and therefore, after considering all the aspects to be the recovery ~~was~~ made from the Applicant, who after pocketing the money has approached the Hon'ble Tribunal and therefore, ultimately the money is lying with the Applicant, without any interest on it or use by the department. On the contrary, the Applicant by getting the Stay Order is utilising this money, and even if he keeps it in bank, he can get substantial amount of interest on it, and thus this is a fit case in which the Court should exercise

*Complaint
for recovery
of money*
dt 22/3/93

*2/10
B/10/93
dt 22/3/93*

*2/10
PM -
pw
22/3/93*

its powers and vacate the Stay Order granted in 1989.

2. The Respondent therefore prays that:

i) Your Honour be pleased to direct the department to place the matter on board for hearing on the Stay Order or for final hearing of the Original matter.

or

ii) Any other order for the ends of justice.

3. The Respondents states that verification is not required as no new facts have been stated in this application, but only request for vacating the Stay Order has been made or for final hearing in the Original matter. And this has been made in the instructions of the department and therefore the affidavit may be dispensed with.

Ahmedabad.

Dt: 28/3/93

B.R. Kyada
(B.R. Kyada)
Advocate of the Respondents.

Filed by Mr. B.R. Kyada
Learned Advocate for Petitioners
With second set & 701 copies
Copies copy sent to the other side

22/3/93 Dy. Registrar (A.I.)
A'bad Bench
Arrival

S. Chaitanya

The App. has been
scrutinized & found
in order, matter
placed before Hon'ble
of Bench. It is appealed
that the matter is already
brought on 11/1/93 for

K. C. Patel
145
15/3/93

D. V. Jayaram

28/3/93