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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO. 316 & 317 of 2006

Cuttack, this the ~~12th~~ day of August, 2008

V.S.Rao & Ors. Applicants

Versus

Union of India & Ors. Respondents

3. Whether it be referred to the reporters or not?
4. Whether it be circulated to all the Benches of the Tribunal?

(C.R.MOHAPATRA)
MEMBER (ADMN.)

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O.A.NO. 316 & 317 of 2006
Cuttack, this the 12th day of August, 2008

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

O.A. No. 316 of 2006:

Vadali Someswara Rao, aged about 58 years, S/o. Late V.Bangaram, working as Chief Divisional Transportation Inspector, East Coast Railway, Vizianagaram the then Station Superintendent at Jeypore.

..... Applicant

By legal practitioner: M/s.K.Patnaik,R.Samal, S.Patnaik, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, At/Po. Chandrasekahrpur, Orissa, Bhubaneswar.
2. Senior Divisional Commercial Manager, East Coast Railway, Waltair Division, Waltair, Andhra Pradesh.
3. Divisional Personnel Officer (Bill Section), East Coast Railway, Waltair Division, Waltair (SP).
4. Station Superintendent, Jeypore East Coast Railway, Jeypore (Orissa) Waltair Division, Dist. Koraput.

..... Respondents

By legal practitioner: Mr. R.C.Rath, Counsel.

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D.A.No. 317 of 2006

Basanta Kumar Mallick, aged about 40 years, S/o. Late Sadhu Charan Mallick, working as Chief Divisional Transportation Inspector, East Coast Railway, At/Po/Dist. Koraput.

..... Applicant

By legal practitioner: M/s.K.Patnaik, R.Samal, S.Patnaik, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, At/Po. Chandrasekharpur, Orissa, Bhubaneswar.
2. Senior Divisional Commercial Manager, East Coast Railway, Waltair Division, Waltair, Andhra Pradesh.
3. Divisional Personnel Officer (Bill Section), East Coast Railway, Waltair Division, Waltair (SP).
4. Station Superintendent, Jeypore East Coast Railway, Jeypore (Orissa) Waltair Division, Dist. Koraput.

..... Respondents

By legal practitioner: Mr. R.C.Rath, Counsel.

ORDER

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

Since common question of fact and law involved in these two Original Applications, though the matter was heard one after the other, this common order is passed which would govern both the cases.

D.A. No.316 of 2006.

2. In this Original Application the Applicants challenges the order under Annexure-1 dated 28.02.2006 directing recovery of an amount of

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Rs.5, 000/- per month from the salary of the Applicant to make good of the loss amounting to Rs.2, 10,420/- caused to the Department.

3. The reason of recovery of the amount, as described by the Respondents in their counter is that as per para 305 (6) (a) of IRCA Coaching Tariff No. 25 Part I, Volume I issued by the Central Government, Ministry of Railways and instructions of Chief Commercial Manager, South Eastern Railway Kolkata vide Circular No. RC/SPT/47/1856/1, dated 12.06.1996 (Annexure-R/1), the Applicant ought to have collected Rs.4, 62,036/- instead of Rs.2, 51,616/-. Hence, there was shortage of collection while issuing reserved special ticket for booking of a reserved carriage/coach of Rs.1, 01,160/- on ticket No.027117/24.09.1997 and Rs.1, 09,260/- on ticket No. 027118/02.09.1998. According to the Respondents, the irregularity was first detected by the Sectional Traffic Inspector of Accounts, Visakhapatnam in the year 1997 and mentioned in his inspection note dated 04.11.1997. As regards the allegation that at this distance place of time, the Respondents are estopped to raise such an application, it has been clarified by the Respondents that the time limit for raising debits ordinarily will be six months but in the special circumstances,

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the debit will be raised under the provision of para 2704 of IRCM Volume II and as such, there was no wrong in the impugned order under Annexure-1. It has further been stated that the Station Manager is himself in charge of the Jeypore Railway station and responsible for maintaining all Station records, returns, balance sheets, collection and remittance of cash etc. Therefore, the Applicant cannot plead innocence or absolve responsibility from the short collection of fare as he was the station Superintendent at that relevant point of time. In the light of the above, it has been stated by the Respondents that as the applicant acted contrary to rules, the Department sustained heavy loss and in order to make good the loss, order of recovery from the monthly salary of the Applicant was passed which needs no interference by this Tribunal and the OA is liable to be dismissed.

OA No. 317 of 2006.

4. In this Original Application, the Applicant challenges the order under Annexure-1 dated 28.02.2006 directing recovery of an amount of Rs.5, 000/- per month from the salary of the Applicant to make good of the loss amounting to Rs.1, 14,227/- caused to the Department.

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5. Similar is the stand of the Respondents in their counter filed in this case also. No rejoinder has been filed by the Respondents in both the above cases.

6. It has been submitted by Learned Counsel for the Applicant that the order of recovery is nothing but sheer case of colourable exercise of power as neither the applicant was noticed ever before, in compliance of principles of natural justice, nor it was pointed out by the Divisional Audit Officer, Kolkata during his inspection conducted prior to the detection of the alleged irregularity by the Traffic Inspector Account. By taking through the provisions of the Indian Railway Commercial Manual, Volume II, it has been contended by the Learned Counsel for the Applicant that even if there has been any irregularity in adherence to the Rules, recovery cannot be ordered at this distant point of time. Hence, he has argued that the order being against the *Audi alteram partem* besides being opposed to the Rules, the impugned order under Annexure-1 is liable to be quashed. On the other hand, Learned Counsel for the Respondents opposed the above contentions of the Learned Counsel for the Applicant by stating that non-adherence to the Rules is the reason of loss



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sustained by the Department. It is the contention of the Learned Counsel appearing for the Respondents that every officer/employee of the Department is required to take all possible steps to protect the interest of the institution and to discharge his duties with utmost sincerity, devotion and diligence and to do nothing which is against the Rules. Lack of non-observance of the Rules caused the loss of the Department and, therefore, it was rightly ordered for recovery of the amount from the Applicant.

7. After giving in-depth consideration to the arguments advanced by the Parties, perused the materials placed on record. Before expressing any opinion on the submissions advanced by the parties, it is worthwhile to extract the provisions of the Rules relied on by the parties and they are as under:

"INDIAN RAILWAY COMMERCIAL MANUAL - VOLUME II.

2703-Origin of Accounts office debits -Internal check in the Traffic Accounts Office of the various returns submitted by the stations and also the examination of accounts by the Inspector of Station. Accounts during his inspection at the station may sometimes reveal mistakes involving apparent financial loss to the railway revenues. In such cases the amount short accounted for, undercharged or unaccounted for will be debited in full to the station responsible by means of an error sheet.

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All error sheets issued by the traffic Accounts Office will be taken to debit in the station balance sheet of the month in hand, and if they remain unpaid or unadjusted at the close of the month, the debits will be shown as outstanding in the station balance sheet.

2704-Time limit for raising debits against stations- Except in special circumstances and in case of errors detected by the Inspectors of Station Accounts and the officials of the Audit Department, no debit will ordinarily be raised against stations more than six months after the month of account of transactions in station returns.

2710-If the **admitted debit** is against the persons working at the station, his name, father's name, designation, staff No. etc. should be noted on both the foils of the error sheet and his signature obtained thereon in token of his acceptance of the debit. The employee concerned should also give in writing whether he proposes to clear debit by cash payment or agrees to a deduction through his salary bill.

2712-If a debit is objected to, detailed reasons of the objection must be clearly stated quoting tariff authority in support thereof, on both the foils of the error sheet. If necessary copies of the supporting documents, if any, should be enclosed with that foil of the error sheet which will be returned to the Divisional Commercial Superintendent. The name of the staff responsible for the debit, his father's name, designation, staffs No., and the station at which working must also be shown on the error sheet. If the person concerned is still working at the station, his signature must also be obtained on the error sheet, in other cases, the name of the station at which he is working should be shown on the error sheet.

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2714-The time limit within which objections from the stations may be entertained in respect of the debits raised by the Traffic Accounts Office is 30 days from the date of receipt of the error sheet at the station.

2721-Recovery of admitted debits from pay bills- If the admitted debits including disallowances by cashier are not made good in cash by the staff concerned before the date of preparation of his salary bill, the Station master should prepare a statement of recoveries to be made from the staff on account of debits in Form Com./R.11 Rev. This will be prepared in quintuplicate showing the amount proposed to be recovered. All the five copies of the recovery statement should be sent by the Station Master to the bill preparing authority for submission to the Divisional Accounts Office along with the relevant pay bill.

2723-In case of heavy debits, the Divisional Commercial Superintendent may permit the recoveries fixing effected from the salary bills in installments. In such cases, credit in the balance sheet should be taken only for the amount actually recovered as intimated by the Divisional Accountants Office. A record of the total amount of debits due from the staff concerned and indicating the monthly progress of recovery should be kept in a 'recovery register' to be maintained at the station in Form Com./R-10 Rev.

2732-If the grounds of objection to the debit as furnished by the Station Master concerned are not found to be in order, the Traffic Accounts Office, Inspector of Station Accounts or the Outstanding Branch where one exists, will advise the Station Master of the reasons therefore and ask him to realize the debit. If necessary, the Divisional Office will be asked to initiate action in accordance with the procedure laid down in the Establishment Code for imposing a penalty of recovery from the pay of the staff concerned

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for the pecuniary loss caused to the administration by his negligence or breach of orders. The final orders imposing the penalty will be communicated to the staff concerned in writing and the amount due recovered from his salary.

2746-Expeditionis clearance of outstanding-The responsibility for initiating appropriate action in time for clearance of various kinds of freight, wharfage, demurrage and other miscellaneous outstanding evolves entirely on Commercial Department. Cash office disallowances and admitted debits are required to be made good at once by the staff concerned: hence the responsibility to which clearance in such cases also, is the exclusive concern of the Commercial Department by effecting recoveries through salary bills or writing off the outstanding amounts, if irrecoverable. Even in case of objected debits, necessary action towards clearance will be taken by the Commercial Department but the Traffic Accounts Office will offer necessary help in the matter and take action towards issuing credit advice, whenever necessary.

2747-To expedite clearance of old items of outstanding, the Traffic Accounts Office will prepare every half year, i.e. after the close of accounts for March and September each year, station-wise lists of all the outstanding items six months and over old, appearing in the books against each station. These lists will be prepared in chronological order separately for **admitted debits**, **disputed debits** and freight and other outstanding. A copy of these lists will be sent to the Divisional Railway Manage as also to the outstanding Branch at the headquarters of the railway for taking immediate steps for the review of each item and their early clearance and to advise the Traffic Accounts Office of the action taken in each case."

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8. Provisions quoted above clearly provide that only admitted debits are subject to recovery from the defaulting officer/official whereas in the present case the applicant seriously disputes the amount sought to be recovered from the pay of the applicant. He has nowhere admitted the shortfall. Besides the above, there has been no explanation by the Respondents as to the delay in detecting the alleged loss sustained by the Department and what are the special circumstances which necessitated recovery after the time limit fixed. Human memory is ephemeral and as such, recovery of the amount after eight years without giving any notice to the Applicants is a factor which tilts the balance of convenience in favour of the Applicant.

9. That apart, it is pointed out that recovery from salary of the loss is one of the punishments available in the D&A Rules of the Railways. This was also exactly provided in Rule 2732 quoted above which has admittedly not been followed in the present case. That apart, it is the specific case of

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the Applicant which has not been controverted by the Respondents in the counter or by filing any written note of submission that before ordering recovery from the salary of the Applicants, no opportunity was given to them to have their say in the matter. The Applicant in OA No. 317 of 2007 has specifically denied to have received any such letter as has been enclosed by the Respondents in the counter at Annexure -R/4. I may record that adherence to principles of natural justice is recognized by all civilized states and is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but

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essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that maybe adopted by a judicial, quasi judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice (Ref. **Canara Bank v V.K.Awasthy**-2005 SCC (L&S) 833).

10. From the above, it is manifest that issuance of impugned orders directing recovery of the alleged loss under Annexure-1 (in both the OAs) are not only contrary to Rules but also against the well settled principle of natural justice. Accordingly, the impugned orders under Annexure-1 in both the OAs stand quashed. However, quashing of the impugned orders shall not arrest the hands of the Respondents to take appropriate action, in accordance with Rules/Law.

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11. In the result, both the OAs stand allowed to the extent stated above. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)

KNM/PS.