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O.A. No.169 of 2008
Jabir Khan ... Applicant
Versus

UOI & Ors. ... Respondents

Order dated 17th February, 2010.

Applicant was initially appointed as Catering Supervisor, Gr.II (CS-II) on 25.10.1983 in S.E.Railway. Thereafter, he was transferred to Puri on 22.6.1984. He was promoted to the post of Pantry Car Manager in Neelachal Express in the scale of pay of Rs.425-600/- w.e.f. 05.03.1985. Again he was promoted to the post of Sr. CAIR in the scale of Rs.5500-9000/- (RSRP) w.e.f. 13.09.19978 and is at present working at Bhubaneswar under the control of IRCTC. He having been issued the order under Annexure-3 dated 16.10.2007 for recovery, has approached this Tribunal in the present Original Application to quash the said order. It is the stand of the Respondents that while the applicant was working as Catering Supervisor the applicant has dealt with public money and he has to give the account of expenditure and balance. Deficiency in transaction showing the balance/expenditure having been noticed the applicant has been asked to refund the outstanding against him. It was submitted by Learned Counsel for the Applicant that miscarriage of justice was caused to him in the decision making process of the matter of passing the order under Annexure-3 and similar matter has already been dealt with by this Tribunal in OA No. 168 of 2008 and OA No.170 of 2008 and this Tribunal in order dated 22nd October, 2009 having quashed the order, the present order under Annexure-3 needs to be quashed. After giving thoughtful consideration to various points raised by the parties, perused the materials placed on record vis-à-vis the order dated 22nd October, 2009 in OA Nos.168 and 170 of 2008. Relevant portion of the order passed in the aforesaid OAs is extracted herein below:

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4. After considering various contentions put forward by the parties with reference to the respective pleadings, perused the materials placed on record. It is not in dispute that recovery of any shortage amount is one of the punishments prescribed in the Railway Servants (Discipline and Appeal) Rules. What should be the procedure to be followed before imposing the punishments on a railway employee has also exhaustively been laid down in the said Rules. It is the basic and cardinal principle that before imposition any punishment or even passing any order adversely affecting the interest of an employee, minimum notice is required to be put to the employee so affected. In this connection I would like to recapitulate the observations of the Hon'ble Apex Court especially in regard to compliance of the natural justice in the following cases:

(i) **State of Maharashtra v Public Concern for Governance Trust** (2007) 3 SCC 587 -

"....In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play." (paragraph 39);

(ii) **S.L.Kapor v Jagmohan**, (1980) 4 SCC 379 -

"....The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced; (paragraph 24);

(iii) **Canara Bank and others v Debasis Das and others**, (2003) 4 SCC 557=2003(3) SLR 64 (SC)-

"The adherence to principles of natural justice as recognized by all civilized states 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 appraise 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 the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. Thus is one of the most important principles of natural justice" (paragraphs 13 at page 570)

(iv) **Canara Bank v V.K.Awasthy**- 2005 SCC (L&S) 833 -

"10. The adherence to principles of natural justice as recognized by all civilized states 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 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. It is after all an approved rule of fair play.

11. 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

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may be 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."

(v) **Col. J. N. Sinha v Union of India and others** – (1970) 2 SCC 458-

"The principal question is whether the impugned action is violative of Principles of natural justice. In *A.K. Kraipak v Union of India*, (1969) 2 SCC 262 a Constitution Bench of the Apex Court held that the distinction between quasi-judicial and administrative order has gradually become thin. Now it is totally eclipsed and obliterated. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded."

5. It is fundamental rule of law that no decision need be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In **Mohinder Singh Gill Chief Election Commissioner**, (1978) 1 SCC 405, the Constitution Bench held that "Civil consequences" covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In the instant cases no notice was put before coming to the conclusion of shortage or ordering recovery of the amount. It is noted at Annexure-4 to the OA that lapses of the nature for which the Applicants are being punished have to be dealt with under the Disciplinary and Appeal Rules. This has not been followed. Further law of the land is well settled that where a power is given to do certain thing in certain manner/way the thing must be done in that way/manner or not at all. Other methods of performance are necessarily forbidden. The procedure prescribed in the standing order clearly stipulates periodical review of the credit debit system of the amount placed for catering. Neither in the counter nor in the order impugned order it has been shown that such periodical check up/audit has been undertaken by the authorities entrusted to do the same. The order also sketchy and unspecific being silent on the specific year of shortage of the amount. What action has been taken against the erring official defaulting to make the periodical audit of the amount is not forthcoming from the records placed in these cases.

6. In view of what has been discussed above, I am constrained to hold that the entire gamut of exercise undertaken by the Respondents in reaching the shortage of amount thereby ordering recovery from the Applicant is faulty. Hence the same is held to be unjustified with direction to the Respondents to refund the amount if already recovered from the Applicants within a period of 30 days from the date of receipt of this order. However, it is made clear that the Respondents shall be at liberty to proceed in the matter, if so advised, in accordance with the relevant Rules and law.

7. In the result, both the OAs stand allowed to the extent indicated above. No costs."

2. I am satisfied that that the case dealt by the Tribunal is akin to the present case in hand and there has been injustice caused in the decision making process of the matter of passing the order under Annexure-3. Hence, the order under Annexure-A/3 is hereby quashed with direction to the Respondents to refund the amount if already recovered from the Applicant within a period of 30 days from the date of receipt of this order. However, liberty is given to the Respondents

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to proceed in the matter, if so advised, in accordance with the relevant Rules and law for making good of the alleged debit amount.

3. The OA stands allowed to the extent indicated above. No costs.


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

