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O.A. No.168 of 2008
Farahim Khan ... Applicant
Versus
UOI & Ors. ... Respondents
&

O.A. No.170 of 2008
D.Balmachari ... Applicant
Versus
UOI & Ors. ... Respondents

Order dated 22nd October, 2009.

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

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Though the above two matters were heard one after the other, the issues involved in these two cases being similar, this common order will govern both the cases.

Admittedly, Applicants in both the OAs were in the catering unit of the East Coast Railway. While the Applicant in OA No.168/2008 was working as Assistant Pantry Car Manager, Applicant in OA No. 170 of 2008 was working as Catering Supervisor of East Coast Railway. The letter under Annexure-A/3 dated 16.10.2007 is impugned in both the OAs. This is a letter written by Dy. FA & CAO (T), Traffic Accounts Office, Railvihar, Chandrasekharapur, Bhubaneswar to Sr.DCM/KUR and Sr.DPO/KUR. This deals the subject matter of 'outstanding Catering Debits to end of March '07. It provides as under:

"S.E.Railway has transferred the outstanding Catering debits to end of March '07 for an amount of Rs.1,29,18,719/- & 7,41,975/- to this Railway vide their T.C.No.SER/T.C/707 TC/SE.Rly/67 respectively. The detail list showing the name and Designation and the respective amount lying outstanding against respective employees (as

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obtained from S.E.Railway) pertaining to your Division was sent for verification vide this office letter under reference. Your office should have reconciled the same with that of "Staff debit register-Misc.Adv.CD" being maintained at your end as per the para 9 of JPO dtd.24.05.99 (copy enclosed). Since considerable amount lying outstanding against Railway employees, you are also requested to ensure early recovery by way of fixing suitable monthly installments and transferring the amount to liquidate the suspense head "Misc.Advance-CD". For employees who have already superannuated, the DCRG amount withheld are to be linked or amount is to be deducted from pensionary payment.

An early action is requested."

The prayer of the Applicants in both the OAs is as under:

- "(i)to quash the impugned order dated 16.10.2007 passed by the respondents;
- (ii)may further pleaded impugned order passed by the respondents is illegal and null and void;
- (iii) ...may further pleaded to debit amounts shown against the applicant is illegal and bad in law."

2. According to the Applicant without making proper verification in accordance with the procedure prevalent on the subject and without taking into consideration the expenditure incurred on various heads, unilateral decision was taken based on the letter referred to above for recovery of an amount of Rs.9, 48,336.00 from Shri Farhim Khan, Applicant in OA No. 168 of 2008 and Rs.92078/- from D.Balmachari, Applicant in OA No.170 of 2008. It is the specific case of the Applicants that the Respondents have not done the verification as per Joint Procedure order and reached the conclusion of shortage of the amount arbitrarily and at their sweet will for illustration it has been stated by the Applicants that the Respondents failed to take into account the staff commission in the catering work on

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the basis of the observation of the Accounts Section Officer that amount of commission paid to employees, Gas used for cook is non-sanctioned expenditure, though this observation is contrary to the relevant Rules/instruction. Such a conclusion was reached by the Respondents contrary to record as while calculating they have failed to look to the non-stock certificates of different food items procured on line for cook as also miscellaneous contingency items such as salt sachet, black paper sachet, paper napkin, plastic spoons paper plate etc. Further it has been alleged by the Applicants that the decision of shortage and recovery was taken by the Respondents behind their back without affording them any opportunity to have their say in the matter.

3. Respondents have filed their counter making efforts to justify their order showing the shortage of the amount, how the applicants are responsible for the shortage and the consequential action taken by them for making good the shortage amount. But nothing has been said in regard to putting notice to the applicants either while making the alleged enquiry or before the order for recovery of the amount was passed. Applicants in their counter besides reiterating some of the stand taken in their OA, have refuted the stand taken by the Respondents in their counter.

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

8 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

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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 are 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 say 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 he rights of the individual against the arbitrary procedure that 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-**

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"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

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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 is 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.

Sd/-
Member (A)