

8

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 267 OF 2009
Cuttack, this the 11th day of February, 2010


Jatish Chandra Das Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMIN. MEMBER

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 267 OF 2009
Cuttack, this the //th day of February, 2010

CORAM:

Hon'ble Shri C.R. Mohapatra, Member (A)

.....

Jatish Chandra Das, aged about 41 years, S/o. Late Laxmidhar Das, Vill-Kalipur, PO-Fulwar Kasaba, PS. Sadar, Via-Motiganj, Balasore, Presently working as Sr. Clerk under S.E.R (Works), Balasore, Railway Qr. No.E/78, Unit-B, Railway Colony, At/Po/Dist-Balasore.

..... Applicant

By the Advocate(s)

.....

Mr. Debasish Samal

Vs.

1. Union of India represented thorough the General Manager S.E. Railway, Garden Reach Calcutta-43, West Bengal.
2. Divisional Railway Manager, (Engineering), S.E.Railway, Khargapur, At/Po- Khargapur, West Bengal.
3. Sr. Divisional Personnel Officer, S.E.Railway (Engineering Bill), Khargapur, At/Po- Khargapur, West Bengal.
4. Asst. Divisional Engineer, S.E. Railway, Balasore, At/Po/Dist-Balasore.
5. Section Engineer (P.Way), S.E. Railway, At/Po/Dist-Balasore.

..... Respondents

By the Advocate(s).....Mr. S.K. Ojha

2

O R D E R

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

Applicant, a Sr. Clerk under South Eastern Railway (Works), Balasore has challenged the recovery of an amount of Rs.36,172/- vide order dated 08.04.09 (Annexure-1). The contention of the applicant is that he was the Establishment Clerk dealing with service matters in the Office of Section Engineer (P. Way), S.E. Railway, Balasore and was entrusted with additional charge of store duty of P. Way on 04.04.06. He took over the additional charge from one Sh. M.R. Sankhua and handed over the store charge to Sh. R.K. Dikshit Head Clerk on 18.10.06. According to him when he took over the charge from Sh. Sankhua, there was heavy shortage of materials and when he handed over the charge no shortage in stores whatsoever was reported/detected by Sh. Dikshit. The applicant was suddenly asked vide Annexure-1 for recovery of Rs.36,172 from his salary. This according to him was arbitrary and in as much as no notice was issued to him before the recovery of the amount which was decided behind his back. It amounted to imposition of minor penalty as per Rule-6 of the Railway

Servant (Discipline and Appeal) Rule, 1968. No inquiry or proceeding was drawn against him before recovery of the amount from salary. In view of the above he has sought the following relief:-

" i) The order of recovery/attachment from the salary of the applicant vide Annexure-1 be quashed and the Hon'ble Tribunal be pleased to declare that the applicant is deemed to be exonerated from any liabilities.

ii) That any other relief may pass by this Hon'ble Tribunal as deemed just and proper.

2. When the matter came up before this Tribunal it was ordered on 09.07.09 to keep the operation of Annexure-A/1 in abeyance for a period of one month and this interim order was allowed to continue from time to time. The Railways have filed their counter praying for dismissal of the O.A. The Respondents have pointed out that a stock verification on T.P. items was conducted on 17.10.06 for handing over charge to Sh. R.K. Dikshit. While conducting such stock verification shortage of T.P. items was detected by the Department and the applicant was found responsible being the custodian of such articles. In support of their contention they have filed various

2

documents like copy of handing over and taking over charge report dated 04.04.06, copy of stock verification report dated 17.10.06 and copy of handing over and taking over charge report dated 18.10.06 (Annexure-R/1, R/2 and R/3 respectively). They have further stated in the counter that the Sh. Sankhua has also been asked to pay Rs.73,583/- for some short items, and the applicant was not asked to pay for those items which were deficient while he took over the charge from Sh. Sankhua and the short items for which he has been found responsible were evaluated by the Committee in their verification report to be Rs.36,172/- Hence, this amount has to be recovered from the applicant. The Respondents further pointed out that the stock was verified in the presence of the applicant and he was witness to that deficiency. It is the contention of the Respondents that recovery against the shortage of materials does not amount to any penalty under Rule-6 of the Railway Servant (Discipline and Appeal) Rule, 1968. Hence, no proceeding is contemplated for such purpose.


3. The applicant has filed rejoinder more or less reiterating the facts and grounds already urged in the O.A.

4. Heard the Ld. Counsel for the parties and perused the records. In course of the hearing the Ld. Counsel for applicant emphasized that the verification Committee conducted the verification and submitted the report without his participation. In support of that he stated that the applicant has nowhere signed the documents to suggest that he has agreed with the deficiency conducted by the Committee. The Ld. Counsel for the applicant further emphasized that the amount which is to be recovered from salary is on account of the alleged loss to the Department and for recovery of such loss the provision of Rule-6 of the Railway Servant (Discipline and Appeal) Rule, 1968 will be attracted. It is not in dispute that the applicant was not given any show cause notice before the recovery action started. It is also not in dispute that the verification statement is not signed by the applicant. It is also a fact that the applicant was with the additional charge of the stores only for a period of six months. While it is true that the applicant cannot be absolved of his responsibility of looking after store/maintaining the store by way of appropriate accounting even if he was holding the charge as an additional charge in addition to his main duty, but at the same time, he has a right to be given an opportunity before any action for recovery from salary was contemplated. Even if, the recovery action was initiated not as a penalty but it has all the ramifications of a pecuniary loss caused by him to the Railways. In view of this, there can be no doubt that the principles of natural justice, before recovery of an amount of

L

Rs.36,172/- was to be resorted to, has been violated. In case, the Committee/ Department found the applicant to be responsible for the loss of Rs.36,172/-, the Department should have proceeded against him as per rules. In the aforesaid premises the Annexure-A/1 asking for recovery of Rs.36,172/- is hereby quashed in respect of Sh. J.C. Das, (applicant in the present O.A.). The Respondents are however, are at liberty to take appropriate action against the applicant as per Rule-6 of the Railway Servant (Discipline and Appeal) Rule, 1968.

5. With the above observation and direction this Original Application is disposed of. No costs.


(C. R. MOHAPATRA)
ADMIN. MEMBER