

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00182 of 2015

Date of Order : 23rd day of June, 2017

CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Bipin Bihari Pattnaik aged about 57 years S/o Late Shri Jadumani Pattnaik, presently working as Station Superintendent, Kaluparaghat Railway Station, District-Khurda.

...Applicant

By the Advocate-Mr.B.S.Tripathy-1

-V E R S U S-

- 1- Union of India represented through General Manager, East Coast Railways, Bhubaneswar, District Khurda.
- 2- Divisional Railway Manager, East Coast Railway, Khurda Road, Dist. Khurda.
- 3- Senior Divisional Commercial Manager, East Coast Railways, Khurda Road, District Khurda.

...Respondents

By the Advocate-Mr. M.B.K. Rao

ORDER

R.C.MISRA, MEMBER(A):

The applicant who is working as a Station Superintendent in Kaluparaghat Railway Station under the East Coast Railways has approached this Tribunal making the following prayer :

*"quash the impugned order dt. 23.03.2015 under Annexure-8 holding the same to be bad and illegal and confiscatory in nature.
Pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case."*

2. The facts of this O.A. briefly stated are that on the applicant's joining in Kaluparaghat Railway Station as Station Superintendent, he was handed over Obsolete Printed Card Tickets (for Short 'PCTs') on 18.1.2013 by his predecessor in that office. These tickets had been declared as obsolete since the year 2009 because of introduction of UTS system by which the computerized generated tickets were issued at the Railway ticket counters. These obsolete tickets were kept in the Stores of the Railway Station. These obsolete tickets were being disposed of by being burnt into ashes in phased manner in all the Railway Stations. The applicant was informed by the authorities that the destruction of the obsolete tickets shall be taken up on 20th, 22nd and 25th of August, 2014 in the presence of nominated officers. As per the given schedule, a total of 3,82,762 Obsolete Tickets were destroyed by being burnt into ashes. But, 37 Obsolete Tickets were found to be missing at the time of the destruction of the Obsolete Tickets. The value of the Obsolete Tickets which were not found was estimated be Rs. 10,005/- at present rate. The applicant had taken charge of these tickets from his predecessor. In July 2013 these stocks were also shifted from the old building to a new building and at that time, these tickets were scattered which might have resulted in some loss. The applicant was served with a hand written debit memo from Shri M.R.R. Dora, Sr. TIA, Berhampur on 27.8.2014 asking the applicant to clear this amount. The applicant being aggrieved, made a representation to the respondent No. 3, i.e. the Senior Divisional Commercial Manager, Khurda, praying that the deficiency in respect of the Obsolete Tickets may be condoned by the authorities. Subsequently, applicant could locate 19 Obsolete Tickets from a store room which he reported to the authorities. Thereafter on 26.12.2014 a fact finding joint inquiry was also conducted into the loss of these tickets by the authorities.

Thereafter on 6.2.2015 the applicant received a letter dated 2.2.2015 from respondent No. 3 in which it was indicated that the competent authority having found him responsible for the loss of these Obsolete Tickets has decided to recover an amount of Rs. 10,005/- from the salary of the applicant in two equal instalments. The applicant was aggrieved by this order dated 2.2.2015 and approached the Tribunal in OA No. 80/2015 challenging the same. The Tribunal after considering the matter passed order dated 26.2.2015 quashing the impugned order and directing the respondents to dispose of the applicant's representation dated 28.8.2014. Thereafter, on 26.3.2015, the applicant received a letter dated 23.3.2015 from respondent No. 3 communicating the order of the competent authority that his representation had no merit and thus his prayer was rejected. The order of rejection dated 23.3.2015 which has been placed at Annex.A/8 forms the subject matter of challenge in this O.A.

3. The respondents have filed a counter affidavit in which they have repeated the fact that the total cost of 37 Obsolete Tickets which had been lost as calculated by the officers present at the spot including the applicant came to Rs. 10005. It is submitted that the applicant being the Station Superintendent was the custodian of these Obsolete Tickets and was therefore clearly responsible for short fall. Therefore, the order dated 2.2.2015 was issued to recover the Obsolete Tickets of the value of Rs. 10,005 from the applicant for the loss of 37 Obsolete Tickets. When this order was challenged by the applicant in O.A. No. 80/2015, the Tribunal intervened in the matter and quashed the order on 2.2.2015 at the stage of admission and directed the respondents to dispose of the pending representation of the applicant. In deference to the order of the Tribunal, the authorities have passed the order of rejection dated 23.3.2015 after considering the representation. Further, it is submitted by the respondents that it was not necessary to conduct a full fledged departmental inquiry in such a matter where delinquent has admitted his negligence and the loss of Obsolete Tickets was strictly attributable to his negligence. Moreover, the applicant was a part of the process of destruction of Obsolete Tickets and he has duly acknowledged the cost of lost tickets as Rs. 10005. The discovery of some of these Obsolete Tickets at a later point of time cannot absolve the applicant of his primary responsibility in the matter. Another submission has been made to the effect that recovery from the pay of the delinquent Railway employee is one of the minor penalties prescribed under Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968. The said rule does not contemplate holding of a full-fledged departmental inquiry unlike in the procedure under Rule 9 prescribed for imposition of major penalties. The applicant has also not asked for a regular inquiry in the matter. Therefore, the respondents have submitted that the order of recovery of money from the applicant is based on material facts and the contention of the applicant that this order is confiscatory in nature is completely denied by the respondents. The applicant has also filed a rejoinder to the counter affidavit in which he has submitted that the orders of the authorities were arbitrary in nature and this order was passed without further verification of the stocks when the applicant pointed out that some further Obsolete Tickets were located after the process of destruction.

4. Having perused the records of this case, I have heard learned counsels for both sides I find from Annex.A/1 that Obsolete Tickets were handed over to the present applicant who joined as the new Station Superintendent from 1.1.2013. After the destruction of the Obsolete Tickets because of the short-fall of 37 Obsolete Tickets, the Sr. TIA, Berhampur communicated a debit for loss amounting to Rs. 10,005 to the applicant with an advice to take this debit on hand and clear the same early. Thereafter, vide Annex.A/5 of this O.A. I find that on 28.8.2014 the applicant made a mercy appeal to the Sr. Divisional Commercial Manager, East Coast Railway at Khurda, making a prayer that the order of recovery may be waived. Again at Annex. A/6, I find a letter issued by the applicant to the Sr. Divisional Commercial Manager communicating that he had discovered some more Obsolete Tickets from the Stores which were earlier certified to have been burnt. Therefore, he pleaded that the disposal process was

not proper and he should be permitted to burn the Obsolete Tickets that he has subsequently found. At Annex.A/7 of this O.A. I find an order issued by the Senior Divisional Commercial Manager, Khurda directing that a debit of Rs. 10,005 will be recovered from the salary of the applicant in two equal instalments. As already discussed earlier in this order, the Tribunal had directed the authorities to dispose of the representation made by the applicant. At Annex A/8 of the O.A., an order dated 23.3.2015 has been enclosed in which it was communicated that in obedience to order dated 26.2.2015 of the Tribunal in OA No. 80/2015 the representation was examined by the competent authority and the applicant's appeal was not considered as it has no merit.

5. The purpose of dealing with the above documents filed as Annexures, is to verify whether as per the submissions made in the counter affidavit any minor penalty proceeding was initiated against the applicant. No such proceeding has been started. Therefore, the submissions made in the counter affidavit by the respondents is baseless. This was a case where a debit order was issued to the applicant. It was directed that the amount of loss may be recovered from the salary of the applicant. The respondents further submitted that in a minor penalty proceeding, there is no mandatory requirement of conducting an inquiry. Moreover, the applicant also never made a request to the respondents for conducting an inquiry. The question here is no minor penalty proceeding appears to have been initiated by the respondents. The submissions made in the counter affidavit are not supported by the facts of this O.A. These Obsolete Tickets had no current value and had to be disposed of by burning them into ash. Therefore, why the current price of the tickets was taken into account is also not understood. Another aspect of this case is also important. The Tribunal directed the authorities to dispose of the representation of the applicant. However, in the impugned order, the representation has not been discussed in a detailed manner. It has been observed that the same is rejected because it has no merit. While disposing of the representation, the concerned authorities should have mentioned what were the submission made in the representation and what was the decision of the authorities on the same. This deficiency is also glaring in the impugned order.

6. However, finally I come to the issue whether respondents could have passed an order of recovery from the applicant without initiating a minor penalty proceedings and without affording an opportunity to the applicant to put up his defence. I am of the opinion that the recovery is only a consequence of some proven diligence or negligence. Had this negligence been substantiated through a disciplinary proceeding the order of recovery would have been sustainable. Even if the authorities did not consider that a detailed inquiry was required in the matter since only a minor penalty was supposed to be imposed on the applicant, the minimum requirement was for them to initiate minor penalty proceedings. That would have been in conformity with the principles of natural justice. Imposition of the order of recovery without framing a minor penalty charge is considered to be inappropriate. Even in the counter affidavit the respondents themselves have submitted that in a minor penalty proceeding, a detailed inquiry is not mandatory. This also means that the authorities were aware that a minor penalty proceeding was required under the law to be initiated in the matter. The records however reveal that no such proceeding was ever initiated.

7. On the basis of the discussions as made above, I find that the order of recovery is not sustainable under the law and, therefore, the order dated 23.3.2015 which has been challenged in this O.A. is quashed and set aside. The O.A. is thus allowed with no costs to the parties.

(R.C.Misra)
Member (A)