I/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JODHPUR BENCH,
JODHPUR

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Date of Order :3.2.2003

O.A.NO. 115 OF 2001

Heera Chand aged about 49 years, S/o Sh. Tara Chand, by caste Tak, at present resident of G-205, Shastri Nagar, Jodhpur. Presently posted as Section Engineer (Fuel), Northern Railway, Diesel Loco Shed, Bhagat - Ki Kothi

.....Applciant.

VERSUS

1. Union of India through the General Manager (Operating), Headquarter, Baroda House, New Delhi.

2. Railway Board, Rail Bhawan, New Delhi.

3. Senior Divisional Mechanical Engineer (Diesel), Northern Railway, Bhagat Ki Kothi (Jodhpur).

4. Divisional Railway Manager, Northern Railway, Jodhpur.

5. The Divisional Accounts Officer, Northern Railway, Jodhpur.

6. The Divisional Mechanical Engineer (Power), Northern Railway, Jodhpur.

.....Respondents.

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CORAM :

Hon'ble Mr. J.K. Kaushik, Judicial Member

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Present :

Mr. Narpat Singh, Advocate, present on behalf of the applicant.

Mr. S.S. Vyas, Advocate, present on behalf of the respondents.

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O R D E R

PER MR. J.K. KAUSHIK :

Shri Heera Chand, has filed this O.A. assailing the impugned orders dated 30.4.2001, 22.3.2001, 9.3.2001, 1.3.2001, 24.7.2001, 18.5.1999 filed as Annexures A/1 to A/6 respectively along the O.A.

2. The material facts as necessary for resolving the controversy involved in this case, are that the applicant is holding the post of Section Engineer (Fuel), Diesel Loco Shed, Bhagat Ki Kothi. In September 1995 a Fuel Point was installed near the Jodhpur Railway Station. The applicant was entrusted with the work of Section Engineer, Loco Shed, Loco Lobby, Staff Car and Jeep maintenance and operation of fuel point. However, receiving and giving fuel and making relevant entries thereof in the ledger, were not the work of the applicant. The Ledgers were maintained by Clerks and other staff members and the applicant was to supervise these ledgers and registers. A surprise inspection was conducted on 14.11.1996 and a report was prepared on the same very date. In the report, a remark was made that there was a shortage of 15153 Litres of fuel at the fuel point. There has been lot of communications in the matter and from the Division side, a report was submitted on 2.6.1997 (Annex.A/9). On the basis of the said report 2698 Ltrs. of Fuel which was said to have been found deficient during the inspection on 14.11.1996 and valued at Rs. 21,800/-, was ordered to be written off vide letter dated 21.6.1999 at Annex. A/13. Thereafter, the impugned orders have been passed and the amount of deficiency has been recommended as 8,606 Ltrs. valued at Rs. 70,999/- in respect of Fuel and 283 Ltrs. of Spill Oil amounting to Rs. 2,334/- and accordingly, recovery has been ordered through impugned orders.

3. The further case of the applicant is that there has been mis-calculations and the actual amount of the fuel which was shown has already been written off. It is also submitted that he has not been given proper opportunity to defend his case in asmuch as no regular inquiry was conducted in the matter and no chargesheet was issued to any person in this matter. In fact, the concerned Clerk did not maintain the ledgers properly but the applicant has been singled out to face recovery without following the procedure established by law.

4. The O.A. has been filed on multiple grounds mentioned in the O.A. and I do not feel any necessity to mention all of them here since I propose to remand the case to the Departmental authorities for the reason stated in the later part of the order.

5. The respondents have contested the case and have filed a detailed counter reply contradicting the facts and the grounds raised in the O.A. It has been submitted that in surprise inspection, the shortage was found in respect of fuel for 15153 Ltrs. and the inspection report bears the signature of the applicant. The objections which were raised, have already been considered by the competent authority. The applicant has been primarily held responsible for the shortage of fuel, therefore, the recovery has been rightly ordered. The recovery cannot be said to be a penalty imposed without conducting an inquiry. It is not correct that once a certain order has been passed to write off, the respondents have no jurisdiction in the matter to pass any further order. The O.A. may be dismissed with costs.

6. I have heard the learned counsel for both the parties at a considerable length and have carefully perused the records of this case.

7. The learned counsel for the applicant has heavily stressed and contended that whatever was the deficiency which was revealed during the inspepction on dated 14.11.1996 was fully examined by the competent authority of the rank of General Manager and the same has been settled as early as 21.6.1999 (Annex.A/13) wherein, the complete deficiencies were written off. The issuance of the impugned order and opening the settled matter afresh would tentamount to double jeopardy and there is infringement of Article 20 of the Constitution of India. He has also submitted that there has been multiple variations in the very calculations carried out by the respondents. The calculation of fuel which has got certain special features in regard to the measurement of quantity of fuel in asmuch as the fuel has been found in pipes, special standard is required to measure but the same has not been followed by the respondents and in fact, there was no deficiency, besides, the one which has been written off, as indicated earlier.

8. The other contention which has been argued on behalf of the applicant is that the orders of the recovery have been passed without conducting any inquiry and the same tentamounts to imposition of penalty as the recovery finds place in the array of penalties as per Rule 6 of the Railway Servants (Discipline and Appeal), Rules, 1968 (for bravity 'the Rules'). The procedure for imposing the penalty have been prescribed in Rule 9 and 11 of the Rules. In the present case, the Rule 11 would have been applicable. He has also submitted that since the matter is complexd one and even the respondents themselves have been making inquiries but without any association of the applicant and there have been lot of variances in the calculations, it would have been fair if a detailed inquiry is conducted in the matter, though, he is not conceding that there was

deficiency other than the one written off.

9. On the contrary, the learned counsel for the respondents has elaborately narrated and has submitted fairly that there has been certain deficiencies and communication gap in dealing with this matter in asmuch as the information regarding the actual deficiency was submitted vide letter dated 18.5.1999 (Annex.R/4) but, the same was not connected with the file on which a decision for writing off was taken vide communication dated 21.6.1999 (Annex.A/13). However, the respondents too made efforts to reconsile the complete issue and after thorough investigation the shortage as mentioned in the Annexs. A/1 to A/6, was revealed and the final shortage came to be the shortage of Fuel of 8606 Ltrs. and Spill Oil of 283 Ltrs. He has submitted that since he was given a show cause notice, there was hardly any need to take recourse to the procedure meant for imposition of the penalty and in this view of the matter, no fault can be found with the impugned orders issued by the respondents.

10. I have considered the rival contentions submitted on behalf of both the parties. I find that the admitted position of the case is that the applicant does not admit that there has been shortage of fuel and spill oil as mentioned in Annexures A/1 to A/6 and admittedly, no inquiry has been conducted in asmuch as no chargesheet has been issued. It is also borne-out from the records that there has been lot of variances in the calculations and ascertaining the actual amount of deficiency in which the applicant was not associated despite the matter evolved certain peculiarity in shortage of fuel and oil. As far the rule position is concerned, it is a fact that the item 'recovery' is one of the penalty and which finds place in the array of penalties mentioned in Rule 6 of the Rules. The recovery may be of two types. One is, a person admits the debit

which is shortage in case of stores and in other case, one does not admit it. In case, one admits, then, there is hardly any procedure required to be followed and the same can be made without resorting to and invoking the provisions of the rules established by law for imposition of the penalty.

11. On the other hand, in case that the same is not admitted which is position in the present case, no recovery can be made except as a measure of penalty and the procedure established by law is required to be followed. In the instant case, there is also a complexity and the matter needs a thorough investigation in asmuch as during the arguments the learned counsel for the respondents has pointed out that the possibility of interference of certain interested persons or manipulations may not be ruled-out in asmuch as the revised information regarding the correct deficiency was communicated to the higher authorities on 18.5.1999 whereas, the same was not communicated or placed before the competent authority even after one month period when the order of writing off of the recovery was passed on 21.6.1999. Not only this when the complete matter was brought before the competent authority, the revised order was passed on 21.7.1999 (Annex.R/5) and the other orders which have been impugned in this case are only the consequential orders.

12. It is difficult to comprehend that present one is a case of double jeopardy i.e. violative of Article 20 of the Constitution of India in asmuch earlier the deficiency was written off as the same was considered within limits and alleged net deficiency of fuel excludes the written off quantity of fuel which was within the permissible limits. Thus, this contention of learned counsel for applicant stands over-ruled.

13. In this view of the matter, keeping in view the legal position and considering the peculiar facts and circumstances of the case, I deem it proper to dispose of this application with the following order :-

"The O.A. is allowed and the impugned orders dated 30th April, 22nd March, 9th March, 1st March 2001, 24th July, 2000 and 18th of May, 1999 respectively, are hereby quashed. However, the respondents are given liberty to take necessary action in accordance with the provisions of Railway Servants (Discipline and Appeal) Rules 1968, as per my aforesaid observation. It shall be scarcely necessary to mention that even though, the penalty of the recovery is a minor penalty and can be imposed without conducting a detailed inquiry, but, in the present case, the matter being complex one, in case, the respondents proceed to take action, they shall conduct a detailed inquiry as contemplated in Rule 9 of the Rules Read with Rule 11 of the Rules as expeditiously as possible and in any case not later than six months from the date of this order. However, there shall be no order as to costs.

[J.K. Kaushik]
Judl. Member

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Part II and III destroyed
in my presence on 14.5.08
under the supervision of
section officer ( ) as per
order dated 5.4.2008

Section officer (Record)

Received copy
of Judgement

for S.S. Nyas
06/02/03