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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.242/2004

Date of decision: 08.12.2009

Hon'ble Mr. Justice S.M.M. Alam, Judicial Member.

Hon'ble Mr. V.K. Kapoor, Administrative Member.

Shri Mohan Kumar S/o shri Ram Chandra aged 51 years, resident of 19/498 Chopasani Housing Board, Jodhpur at present working as a Station Master, Railway Station Jodhpur.

: Applicant.

Rep. By Mr. S.K.M.Vyas, : Counsel for the applicant.

Versus

1. The Union of India, through the General Manager, North Western Railway Headquarter Office, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur.
3. The Senior Divisional Operating Manager, North Western Railway, Jodhpur.
4. The Divisional Commercial Manager, North Western Railway, jodhpur.
5. The Additional Railway Manager, North Western Railway, Jodhpur.
6. The Divisional Personal officer, North Western Railway, Jodhpur.

: Respondents.

Rep. By Mr. Vinay Jain : Counsel for the respondents.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Shri Mohan Kumar, S/o Shri Ram Chandra aged about 56 years r/o 19/498, Chopasani Housing Board, Jodhpur, at present working as Station Master, Railway Station, Jodhpur has filed the present O.A seeking the reliefs that are as follows:

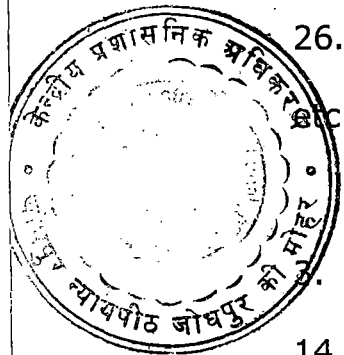
- 1) That the impugned order Annex. A/1 & A/2 may kindly be ordered to be quashed and set aside.
- 2) Any other relief which in the facts and circumstances of the case may kindly be granted to the applicant.

Y. K. Kapoor

3) Cost be directed to applicant.

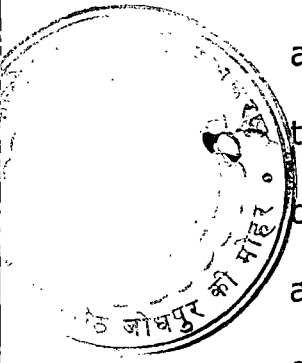
2. The factual matrix of the case is that the applicant was working as Station Master at Railway Station Thayat Hamira during the period 1997-1998; the post of Station Master of Railway Station Osian was lying vacant. That time cattle fair was going on at Osian; on 07.3.1998, the applicant booked 66 CRC BG wagons from Osian for Etawah, 36 Railway receipts were issued. Shri Manoj Puri, Wagon Movement Inspector (WMI) came to Osian on 07.3.1998, who worked out the freight rate of one CRC wagon; the amount worked out at Rs. 4077/- per wagon; this amount was displayed by Shri Manoj Puri, WMI, Jodhpur on notice board for traders' knowledge. After applicant's transfer from Osian to Hanwant Station, the applicant came to know that a sum of Rs. 75,258/- was worked out against him. The order by Addl. DRM, NWR, Jodhpur dated 13.09.2004 and the related documents Viz. Control Register, applicant's representation etc are appended therein as Annex. A.1/ to Annex. A/14. The appeal order dated 13.9.2004 (annex. A/1) and order of recovery amounting to Rs. 75,258/- (annex. A/2) are important related documents. The letter from Sr. Divisional Railway Manager, NWR, Jodhpur, letter of charges against the applicant dated 26.03.2004 and representation from the applicant dated 03.4.2004 are enclosed herein

The respondents submitted reply through their counsel on 14.7.2005, that the Ministry of Railway revised the freight rate on 06.10.1997, that became effective from 15.10.1997; these revised



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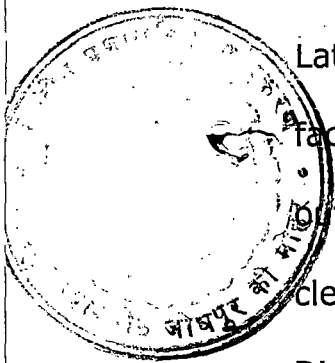
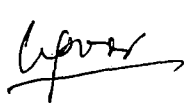
freight rates were circulated to all railway stations, Station Master, Osian Railway station is also in receipt of these revised freight rates. As the post of Station Master Osian was lying vacant, applicant held charge of this station in 1997. There was a cattle fair at Osian in March 1998, applicant sent 66 Wagons of livestock on 07.3.1998 from Osian to Etawah; applicant booked the wagons of livestock on old rates from the parties. Thereafter Dy FA & CAO, Jodhpur issued error sheet raising a debit of Rs. 75,258/- against the applicant. Applicant's negligence by charging less rates from the parties, resulted loss to railway revenue amount to Rs. 75,258/- As per para 1811 of IRCM (Vol. II) 1991 the forwarding station is responsible , in which cases the pre-payment of freight is compulsory; para 402 of IRCM speaks about prepayment of livestock; thus railway station Osian is responsible for under charges. The respondents held an enquiry against the applicant in which the amount Rs. 75,258 / was ordered to be recoverable from him. Applicant made no such message to or demand from the Control Room for booking livestock and the new tariff rates etc. Applicant's representation for waiving the outstanding amount, was turned down by the railway authorities on 02.4.2002. The relevant documents were supplied to the applicant, even then he did not submit reply; later reminder was given to him on 26.3.2004 to file reply within 03 days. Applicant was given full opportunity to defend his case, but he did not file reply to the charge sheet. Applicant filed an appeal, appellate order was clearly a speaking order. Applicant has no prima facie case in his favour, nor balance of convenience lies in his favour as applicant has caused irreparable loss to the railways. The respondents have


Upon

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submitted necessary documents relating to the matter in question, they range from Ann. R-1 to Ann.R-9 in support of their contentions.

4. (a) The learned counsel for the applicant in his lengthy arguments spoke that the applicant was posted at railway station Thayat Hamira during 1997-1998. He held an additional charge of railway station Osian, that time cattle fair was being observed. The livestock were to be transported from Osian to Etawah; applicant wrote/ talked about cattle freight rate list; he had no knowledge of cattle freight rate revision. Later, by erroneous sheet (Annex. A-4), a recovery of Rs. 75,258/- was issued against the applicant. (Annex. A-4) This is to state that Shri Manoj Puri, WMI had come from the HQ. Applicant filed reply on 01.01.2002 (annex. A-5). The freight for one wagon was worked out at Rs. 4077/- by WMI and accordingly 66 wagons full of livestock were sent from Osian to Etawah. Applicant sent message to the control room as regards freight rates; no reply given; but later on 14.3.2001, notice was issued to the applicant as regards under-rating by the Commercial Controller (Audit) (ann.A-4). Later a detailed representation was filed by the applicant narrating facts/details to the higher authorities (Ann. A-5). Enquiry was made against the applicant, decision/order dated 23.01.2002 is not clear (ann .A-6, ann. A-7); Applicant represented the matter to the Divisional Commercial Manager Northern Railway, Jodhpur on 17.09.2002 (Annex. A-8). The latter issued recovery order of Rs. 75,258/- on 22.09.2003 to be recovered in 20 instalments (annex. A-9). On 25.8.98 the demand was made for the applicant to deposit the amount (ann.A-10, ann.A-11). Charge sheet was issued to the applicant on 26.3.2004 by Sr. DRM, NWR, Jodhpur on 26.3.2004

applicant on 26.3.2004 by Sr. DRM, NWR, Jodhpur on 26.3.2004 (ann.A-12). This was actually no enquiry; charge sheet not issued properly; applicant asked for certain documents as per letters (ann.A-13, ann.A-14); these were not supplied; audit inspection report not given. Applicant has challenged both the orders, namely annex. A-1 and Annex. A-2; applicant has requested that proper opportunity of hearing was not given to him. As per rule 1811 of IRCM there is no liability of receiving station. Applicant has requested for refund of amount, arrears of Rs.75,258 be quashed.

4. (b) The respondents in reply have argued that the revised rate list was circulated to all station and the revised freight rates for the livestock were noted by him. The concerned documents were supplied to the applicant (annex. R-3); no such demand was made by the applicant; the control register has not recorded the message of the applicant on 07.3.1998. It is further averred that proper enquiry was conducted; appellate order is quite clear (annex. A-2). No representation was filed by the applicant (annex. A-13); Charge sheet was given to the applicant; but he did not submit reply (ann. R-7, ann.R-8). No ground was raised by the applicant; he was given 03 notices to file reply; opportunity was given to him; legality of procedure was followed. Applicant made a demand for unrelated documents. Applicant as Station Master of Osian station was supposed to have all information on revised freight rates etc.

(c) Applicant's counsel on the other hand in reply contended that the enquiry was not based on any document; charges not properly proved and legality of procedure not properly followed; order not

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clear and non-speaking. Proper opportunity for hearing was not given to the applicant; in case of confusion, fresh enquiry should be conducted. The counsel for the applicant has put forth the ruling of Rajasthan High Court viz. Chhoga Lal vs. Rajasthan Janjati Kshetriya Vikas Sabkari Sangh, Udaipur and ors. [2009 (4) RLW 3684 (Raj) that speaks about natural justice and ensures giving proper opportunity to the affected party.

5. This is an admitted fact that the applicant was posted at Thayat Hamira Station as Station Master during the period 1997-1998; he was in additional charge of station called Osian as the post of Station Master was vacant at that time. At that time i.e. during March, 1998, cattle fair was going on at Osian; the applicant booked 66 wagons of livestock from Osian to Etawah. As per applicant's version, there were no books or circulars pertaining to goods traffic freight rates etc. at Osian Railway Station. He sent message to control room on 07.3.1998, but no directions given; nor any reply came; Shri Manoj Puri, Wagon Movement Inspector (WMI) was sent; who worked out the freight of one CRC BG Wagon at Rs. 4077/- this amount was displayed at the notice board for traders' knowledge. After despatch of 66 livestock wagons, the applicant was informed to have caused loss to the railways, as old rates were charged for livestock movement, thus an amount of Rs. 75,258/- to be recovered from him (annex. A-2). This error sheet was issued on 14.3.2001 (annex. A-4) applicant has averred that there was no written order from Shri Manoj Puri WMI; applicant did not have knowledge about new freight rates. Applicant is said to have sent message to control room on 07.3.1998 (annex. A/3); but this was not found to be correct while checking the records on 07.12.2009. The revision of freight rates are indicated as Annex. R-1 issued by the Ministry of Railways on 06.10.1997, that became effective on 15.10.1997. This is contended by the applicant that he was not in know of


C. Puri

rates, whereas vide Anne. R-2, the respondents have reiterated that the Station Masters of the concerned stations had noted down the new freight rates. During the course of arguments, the learned counsel for the respondents drew our attention towards IREM Vol. II Rule 1811 (a) by which the receiving station is held responsible for recovery of under charges on goods traffic and rule 1811 (b) says that the above exception, however, do not relieve the receiving station of the responsibility for checking invoices; and un-charges detected at receiving station should be reported to the traffic accounts office. As regards undercharges, action is taken by the respondents as per annex. R-5 and ann. R-6.

6. This is stated that by way of using old freight rates, the railways were subjected to a loss of Rs. 75,258; the respondents have drawn our attention to the letters from the Divisional Commercial Superintendent dated 12.5.2004 (ann. R-6), 17.6.2004 (ann. R-7) and 23.6.2004 (ann. R-8) on the notices issued to the applicant to submit his reply; meaning thereby that due care and caution were taken to give notice to the applicant to file reply so that proper enquiry could be conducted in a stipulated time frame. The applicant's counsel while vehemently denying this, has stressed the point that no reply was given to his letters and that relevant documents have not been supplied to him so that he could put forth his case smoothly.

Applicant draws attention to letter dated 01.01.2002 (ann. A-5) and 17.9.2002 (ann. A-8). Applicant has strongly contended that the enquiry has been conducted behind his back and no opportunity has been accorded to him for defence. The original order on record is not specific and in this enquiry, opportunity to the applicant has not been given; whereas in appeal order dated 5/13th Sep. 2004, some better case/enquiry is made out, but still this enquiry/ appeal report/order lacks the opportunity part; i.e no right to natural justice is afforded to the applicant. There is need to hold proper enquiry in which sufficient opportunity should be given to him so that he

could come forward to defend his cause properly. The applicant has relied upon the citation of Rajasthan High Court Chhogalal vs. Raj Janjati Kshetriya Vikas Sabkari Sangh, Udaipur and ors. [2009 (4) RLW 3684 (Raj) through which Rule 16 of Rajasthan Civil Services (Classification, Control & Appeal) is clarified as under:

" this substantiates the grounds put forth by the applicant; thus it is obligatory on the part of the disciplinary authority to afford opportunity of hearing to the applicant; the respondents should conduct fresh enquiry, follow the prescribed procedure and pass an order that is speaking in itself. Accordingly this is difficult to sustain the orders passed by the respondents. Thus these are quashed"

Thus from a perusal of the facts and legalities involved herein, no opportunity is found to be given to the applicant. The whole exercise of enquiry is not based on any sound legal foundation, thus it is absolutely perfunctory as prescribed procedure has not been followed. Therefore, the said enquiry conducted against the applicant for causing loss to railways cannot withstand the test of times; so it is difficult to accept/retain the enquiry report or the procedure followed therein in the present form.

7. As per deliberations held above, the order passed by the respondents on 13.9.2004 (annex. A/1) and 20.7.2004 (annex. A/2) are hereby set aside; present O.A is partly allowed. The concerned respondents are directed to hold ^{fresh and sub} proper enquiry into applicant's case after giving him sufficient opportunity of hearing and subsequently pass the order. This is also directed to the respondents that no future deduction be made from applicant's salary till further orders. In the facts and circumstances of this case, there shall be no order as to costs.

[V.K. Kapoor]
Administrative Member

[Justice S.M.M. Alam]
Judicial Member.

jsv

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Part II and III destroyed
in my presence on 8/2/15
under the supervision of
section officer () as per
order dated 07/07/15

Section officer (Records)