

के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत त्रिव्युक्त प्रति
CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Original Application Nos. 364 & 365/2005
Date of decision: 18.09.2006

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.

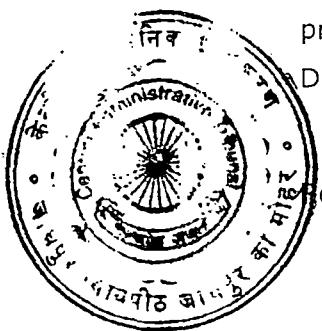
Jitendra Sharma, S/o Shri Genda Lal Ji Sharma, aged about 32 years, resident of - C/o Ghisa Lal Gour, Plot No. 2, Ramapeer Colony, Opposite to High Court colony, Jodhpur at present employee on the post of Khalasi Helper, working as A/C Coach Attendant under Senior Divisional Electrical Engineer, North Western Railway, Jodhpur (Raj).

: Applicant in O.A. No. 364/2005

Jaisa Ram. S/o Shri Harji Ram Ji, aged about 27 years, resident of - Plot No. 71, Ghanchi Colony, Pill Tanki, Bhagat Ki Kothi, Jodhpur at present employed on the post of A/C Khalasi, (Electrical) under Senior Divisional Engineer, North Western Railway, Jodhpur (Raj).

: Applicant in O.A. No. 365/2005

Rep. By Mr J K Mishra: Counsel for the applicants in both the OAs.



VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. The Senior Divisional Personnel officer, North Western Railway, Jodhpur Division, Jodhpur (Raj)
3. Senior Divisional Electrical Engineer, North Western Railway, Jodhpur Division, Jodhpur (Raj).

: Respondents in both the O.As

Rep. by Mr. Manoj Bhandari : Counsel for respondents

ORDER

Per Mr. J K Kaushik, Judicial Member.

In both these Original Applications the facts are identical and a common question of law is involved, hence they are being decided

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through this common order. I have heard the arguments advanced by both the learned counsel and carefully perused the pleadings as well as the records of this case.

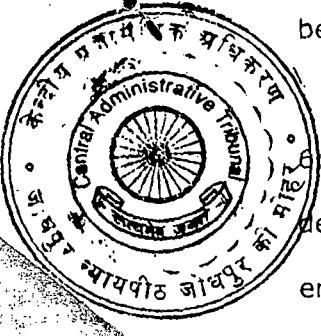
2. The factual panorama necessitating filing of these OAs is that the applicants are employed on the post of Air-conditioned Coach Attendants in the office of Senior Divisional Electrical Engineer N W Railway at Jodhpur. The amounts of Rs. 306/- and Rs. 397/- respectively, were recovered from the salaries for the month of October 2005 in the name of Audit RE. The total recovery is said to be Rs. 3,672/- and Rs. 9,528/-, respectively; to be recovered in twelve and twenty four instalments respectively. Neither any pre-decisional hearing nor any show cause notice was given. The details of shortages have also not been provided. The applicants were never informed about shortages of any article. The action of the authorities of effecting recovery has been assailed on the grounds of arbitrariness, colourable exercise of power and in defiance of Articles 14, 16 and 21 of the Constitution of India.

3. The respondents have contested the cases and have filed exhaustive replies. It has been averred that the applicants were not able to give any explanation for the missing linen in the coach. On stock verification, the shortage of linen has been found to the extent of Rs. 8,16,878/- as per communication at Annexure R/1 and therefore, the recovery is justified. The applicants have not been able to show infringement of any legal rights. These OAs are not maintainable.

4. Both the learned counsel representing the contesting parties have reiterated the facts and grounds enumerated in their respective

pleadings as noticed above. The learned counsel for the applicants has submitted that there has been breach of principles of natural justice in as much as the recovery is one of the penalties as per Railway Servants (D&A) Rules 1968 (for brevity the rules) but the due procedure prescribed for imposition of the penalty has not been followed. No liability has been fixed on them and the recovery has been made only on the basis of some audit objections. No specific written order for making recovery has been passed. Per contra the learned counsel for the respondents has opposed the said contentions and laid enormous stress on the defence stand as set out in the reply.

5. I have anxiously considered the submissions put forth on behalf of both the parties. As far as factual facets of these cases are concerned, it is a fact that no prior hearing has been given to the applicants. No specific written order of recovery has been passed by the competent authority. The details of shortage attributable to the applicants have not been disclosed even in the reply. The recovery has been effected only on the basis on some preliminary objection raised by the audit without any application of mind by the competent authority. The recovery was effected only from the salaries of the month of October 2005 and thereafter, the interim order staying the recovery came to be passed.



It is now a well-established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of

power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article 14 of the Constitution. (**H. L. Trehan and others. v. Union of India and others** AIR 1989 SC 568 Para 11 refers). Otherwise, also no recovery on the basis of audit objection alone can be made as held by Chandigarh Bench of this Tribunal in case of **Madan Lal vs. Union of India and others** [1990 (2) ATJ 189]. It may also be pointed out that no recovery can be effected until there is a specific written order since it is obvious that propriety of an unwritten or oral order cannot be effectively adjudged when the same comes for adjudication before a court of law. Thus the action of the respondents in making recovery from the salary of applicants cannot therefore be sustained.

7. Admittedly, the losses or shortages attributable to the applicants have not been ascertained. No recovery in such situations can said to be justified. In similar circumstances, Mumbai Bench of this Tribunal quashed the order of recovery in case of **Moti Ram Dayaram and others vs. Union of India and ors** [1991 16 ATC 785 (New Bombay), and held as under:

"Held:

The employees have a right to receive the salary to which they are entitled to. Any deduction from their wages can be made only on proper authority and with legal sanction. The respondents have admitted that deductions are being made from the salaries of these applicants on account of shortage of raw materials supplied to them and for breakages and losses in respect of crockery and cutlery. It is a deduction at a flat rate that is being made from the salary of each employee without ascertaining the individual responsibility.. It may be that on account of breakages or losses in respect of items entrusted to an employee pecuniary loss is caused to the administration. The concerned employee can no doubt be made answerable for such loss, and after proper assessment the damages can be recovered from his salary."

8. Now examining the controversy from yet another angle- the recovery is one of the penalties and a detailed procedure has been

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prescribed under the rules for imposition of penalties. The extracts of the relevant rules are reproduced as under:

"6. Minor Penalties: - (i) & (ii). Xxx

(iii. Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
iii-a , iii-b. & iv. Xxx

11. Procedure for imposing minor penalties.

1. Subject to the provisions of sub-clause (iv) of clause (a) of sub rule (9) of rule 9 and of sub-rule (4) of rule 10, no order imposing on a Railway servant any of the penalties specified in clauses (i) to (iv) of Rule 6 shall be made except after-

- (a). informing the Railway servant in writing of the proposal to take action against him and of the imputation of misconduct or misbehaviour on which it is proposed to take, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b). holding an inquiry in the manner laid down in sub-rules (6) to (25) of rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c). taking the representation, if any, submitted by the Railway servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d). recording a finding on each imputation of misconduct or misbehaviour; and
- (e). consulting the Commission where such consultation is necessary.

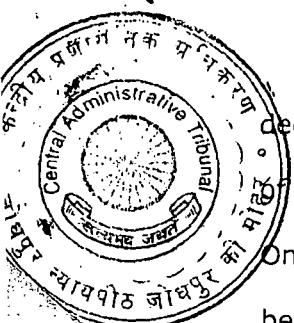
2. xxx

3. *Deleted*

4. The record of the proceedings in cases specified in sub-rule (1) and (2) shall include-

- i. a copy of the intimation to the railway servant of the proposal to take action against him;
- ii. a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- iii. his representation, if any,
- iv & v. xxx
- vi. the findings on each imputation of misconduct or misbehaviour; and
- vii. the orders on the case together with the reasons thereof.

The respondents have not followed the aforesaid procedure and deductions of the amounts towards alleged recovery from the salaries of the applicants tantamount to imposition of penalty of recovery. Once a specific procedure has been laid down, the same is required to be followed without any exception. I find support of this principle of law from a celebrated judgement in case of **Taylor v. Taylor**, (1875) 1 Ch. D.426, laying down hitherto uncontroversial legal principle that



where a statute requires doing a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. The action of the respondents does not meet the scrutiny of law and shall have to be held as inoperative and illegal.



The upshot of the aforesaid discussion leads to an inescapable conclusion that there is ample force in these Original Applications and the same stand allowed, accordingly. The respondents are directed not to make any recovery on the basis of audit objection and refund any amount (s) recovered from the salaries of the applicants, forthwith and in any case not later than two months from today. The interim orders passed earlier get merged in this order. This order shall not foreclose the respondents from taking appropriate action in the same matter in accordance with rules in force as observed above. No costs.

Let a copy of this order be placed in file of O&M. 365/2005.

Sd / -

[J.K.KAUSHIK]

MEMBER[J]

jsv

CERTIFIED TRUE COPY
Dated 25-8-2006

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अनुमति अधिकारी (न्याय.)
Section Officer (Jud.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायालय जोधपुर
Jodhpur Bench Jodhpur.

R/C 8/26/15
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