



**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 28/2007

Date of decision: 19TH May ,2011

**CORAM: HON'BLE Mr. JUSTICE S.M.M. ALAM, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Dinesh Kumar Asthana s/o Sh. J.B. Asthana aged about 59 years, r/o c/o Vipin Bhardwaj, Chopra Katla, Near Employment Exchange, Rani Bazar, Bikaner (Raj) at present employed on the post of Safety Counselor (Sr. Section Engineer P. Way) Ex-Cadre post under Divisional Safety Officer, D.R.M. Office, Bikaner (Raj.) N/W Rly.

..... Applicant

Mr. J.K. Mishra , Counsel for the applicant.

Versus

1. Union of India, through General Manager, North-Western Railway, Jaipur (Raj.).
2. Additional Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner (Raj.)
3. Sr. D. En. (Coordination), North Western Railway, Bikaner Division, Bikaner (Raj).
4. Divisional Engineer (Track), North Western Railway, Bikaner Division, Bikaner (Raj).
5. D.P.O. (Pay), North Western Railway, Bikaner Division, Bikaner (Raj.)

..... Respondents

Mr. Manoj Bhandari , counsel for respondents.

ORDER

Per SUDHIR KUMAR, Member (Administrative)

The applicant was initially appointed on the post of Permanent Way Inspector (PWI-III) on 7.5.1972 through Railway Recruitment Board. He was later posted on the post of Sr. Section Engineer(PW), and at the time of filing of the O.A. he was working on the ex-cadre post of Safety Counsellor under the under the Divisional Safety Officer O/o DRM, Bikaner. He is before us aggrieved by the order at



Annexure A/1 dated 17.11.2006 passed by the respondents ordering recovery from his salary in respect of shortages detected as per the Stock Sheet dated 6.1.2004. He has sought the following reliefs :-

- i) That the impugned order dated 17.11.2006 Annexure A/1 and recovery in pursuance of that order Annexure A/1 may be declared illegal, arbitrary and the same may be quashed with all consequential benefits.
- ii) That already recovered amount from the pay of applicant in pursuance of order Annexure A/1 may kindly be ordered to be refunded to applicant with interest.
- iii) That the action of the respondents in making any recovery pertaining to charge sheet S.F. 5 dated 9.5.200-5 prior to finalization of Disciplinary proceedings may be declared as illegal.
- iv) That any other order(s) or direction may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- v) That the costs of this Original application may also be awarded."

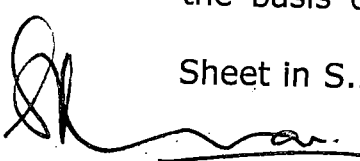
2. He had also made a prayer by way of interim relief that pending finalization of this O.A., any further recovery from his salary in pursuance of the impugned order may be stayed. The interim prayer was granted on 22.1.2007 and the respondents were restrained from making any further recovery from the salary of the applicant.

3. The case of the applicant is that when he joined his duties on 12.4.2002 at Ellnabad NWR, he was not handed over charge by his predecessor PWI Incharge, and no Stock verification could be done as his predecessor had been relieved/spared without properly



handing over and taking over the charge. The applicant requested the respondent authorities to make arrangements/give directions to his predecessor to hand over charge, and one such request dated 28.5.2002 was produced vide Annexure A/2. Before any such joint stock verification could be done, there was a vigilance check from 9.7.2003 to 19.7.2003 in which a shortage in respect of 21 items amounting to Rs. 79.59 lakhs (approx.) was detected. The applicant was issued a major penalty charge sheet in S.F.-5 format dated 9.5.2005, and a letter dated 8.3.2006 was issued by the respondent no.4 in regard to starting recovery from his salary for the shortages detected. Eight months later, another letter was issued by the Respondent no. 4 on 7.11.2006, asking the applicant to submit the stock sheet within 15 days, but the applicant replied that since the necessary documents had been ^esized by the Vigilance and not returned, a proper/correct reply is not possible to be provided by him. However, since the applicant was faced with the prospect of proposed recovery, he replied through his letter dated 21.11.2006 through proper channel (A/9). However, even without waiting for this reply, the impugned order (Annexure A/1) dated 17.11.2006 was passed, ordering for recovery of Rs. 9000/- per month from the salary of the applicant. The deduction was started from his salary for the month of December 2006.

4. The applicant has assailed the action of respondents as being without jurisdiction, and in violation of principles of natural justice, and a colourable exercise of powers, which deserves to be quashed as being violative of Articles 14 & 16 of the Constitution of India. He submitted that because of the some alleged shortages detected on ht the basis of stock sheet dated 6.1.2004, Memorandum of Charge Sheet in S.F.-5 format has already been issued, and the disciplinary

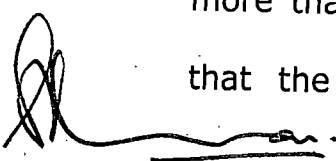




inquiry is pending, and the charges have yet to be proved, and responsibility has yet to be fixed on him, and therefore the order for recovery of the amount for the alleged shortages is illegal and arbitrary.

5. He further assailed the impugned order as having been passed without his having been given a reasonable opportunity to file his reply to the stock sheet, and the recovery of Rs. 9000/- p.m. having been ordered even prior to the time given to the applicant for filing a reply, only on the basis of presumption, without any time limit. He submitted that under Rule 6 of Railway Servants (D&A) Rules, 1968, recovery of pecuniary loss to Government or Railway Administration is a prescribed penalty, which cannot be imposed without following the procedure as prescribed under Rules 9 & 11 of the of those Rules. He assailed the impugned orders on the ground that he was never given any charge of stock, Ledger Register, and necessary documents by his predecessor, and that the alleged stock sheet had been prepared by him in the month of December 2003, much after the Vigilance Check. In view of these submissions the applicant had prayed for the reliefs as already mentioned in the opening paragraph above.

6. In their reply written statement the respondents stated that in the month of March 2002, the applicant had taken the inventory of the stores before he had assumed the duties on 21.3.2002, and that according to the travelling allowance journal for the month of April 2002, it is seen that the inventory of the stores was taken by the applicant. It was further submitted that while the applicant had assumed the duties on 21.3.2002, his predecessor was spared after more than one month, on 24.4.2002 (through Annexure R/3), and that the applicant had claimed T.A. upto 23.4.2002 for taking





inventory of the stocks from his predecessor. It was, therefore, submitted by the respondents that the task of the stock taking had been completed by the applicant through joint inspection of inventory alongwith his predecessor, and after this joint verification at the time of taking over and handing over the charge, there is no need of a fresh stock verification. It was submitted that after such joint inventory, new ledgers are opened by the new stock holder who has taken over the charge, and he has to deal with the stores and submit MAS returns for the stock during his tenure, and the person who has been relieved has to submit MAS returns in respect of his tenure, and the person who has taken charge has to receive same MAS return at the divisional office, and in case of any discrepancy, the person who has given the charge is responsible up to the date of such filing of MAS returns by him. They submitted that even though the applicant had been instructed and advised to submit MAS returns in respect of his tenure, he had failed to do so, and had not submitted the same till date.

7. It was further submitted that when the inventory of the stock was taken by the Vigilance team, it was after a joint inspection of the stock alongwith the applicant, and the ground balance of the stocks had been compared with the book balance lying in the Ledger, and the difference between the ground balance and the book balance was noted down, the stock sheet was prepared, and was signed by the applicant, and that allegation of his having been made to sign under duress by members of the Vigilance Team, who were all juniors to him, is absolutely false and baseless. The respondents had produced a copy of the said stock sheet through Annexure R/4. It was further submitted that the Vigilance Team had never refused to give a copy of the record seized by them to the applicant, and that he



was given an opportunity to submit the reply of the stock sheet outstanding against him by all levels of administration, but he has not bothered to do so. It was submitted that the recovery order had to be issued as the applicant was due to retire in the year 2007.

8. The respondents had justified their having taken action of recovery under the Indian Railway Code for the Store Department (Vol. II) 1993 filed by them as Annexure R/5. It has been prescribed at point no. 3263 of this code that where the shortages found as a result of stock verification are attributed to the neglect of the subordinates holding charge of stores, the cost of the missing articles is invariably recovered from the parties at fault. It was submitted that this recovery order made under the Indian Railway Code for the Store Department is without prejudice to any action taken against the applicant under the Indian Railway Servants (D & A) Rules, 1968, for which the Memorandum of charge under SF 5 had already been issued. The respondents pointed out the reminders issued to the applicant on 5.12.2006, 8.2.2007, 19.12.2006 and 12.2.2007, which the applicant had failed to reply to. It was submitted that the recovery could have been started in the year 2004, but was being effected now only, as the applicant had failed to give a proper explanation for the missing items.

9. The applicant had filed a rejoinder to this reply, and reiterated that he was not handed over the charge of Stores by his predecessor, and while he did go for on the site inspection of the stores for taking over all the stores, but no charge was made over to him as his predecessor was not present at the site. It was submitted that the T.A. claim filed by him only shows his movement, and not the handing/taking over of the charge of the stores. He further submitted that inquiry pending against him in respect of same charge



has already been finalized, and the applicant has already been imposed the penalty of reduction to the lower grade vide an order dated 29.6.2007, which had been further upheld by the Appellate Authority vide an order dated 30.8.2007. In view of these submissions, the applicant submitted that there is no question of making a recovery, since the penalty of recovery has not been imposed on the applicant in the pending disciplinary case, and even the amount of Rs. 9000/- ~~deducted~~ once from his salary deserves to be refunded to him.

10. Heard. Both the learned counsels for the applicant as well as for the respondents argued their case vehemently more or less in accordance with their pleadings, and took us through the various documents already filed by them.

11. Learned counsel for the applicant cited the case of **Ramesh Mathur Vs. Union of India & Ors.** O.A. No. 99/2008 decided by a S.B. of this Tribunal consisting of one of us, dated 22.10.2010, in which in a similar case the respondents had been restrained from making any further deduction from the salary of the applicant towards the alleged pecuniary loss caused to the respondents till the departmental inquiry instituted against the applicant was concluded. This case is not directly applicable in the present case, as in the instant case the departmental inquiry has already been completed against the applicant and penalty has also been imposed.

12. We have gone through the copy of the Vigilance check Memo prepared in respect of the vigilance check conducted during the period from 10.7.2003 to 18.7.2003, filed as pages 62 to 67 of the O.A. It is clearly seen that for a number of items, there are no shortages, and rather excess inventory has been found. On the other hand, shortages also exist in respect of a number of items. The




respondents have not denied the submission of the applicant that while the shortages were only in respect of 21 items, amounting to Rs. 79.5 lakhs, excess stock was found in the inventory in respect of 34 items, which amounted in value at Rs. 99.81 lakhs. Therefore, obviously the overall Railway inventory stocks were more than ^{Rs.} 21 l. lakhs in excess of the shortages detected by the Vigilance team. It was, therefore, obviously a case of negligence and mishandling of the stocks, but it cannot be held that this would amount to defalcation, or misappropriation of the stocks of the Railways. While para 3263 of the Indian Railway Code for the Store Items Vol. 2 (R/5) cited by the respondents does speak about the costs of missing articles (in case of shortages being found) being recovered from the parties at fault, we have failed to detect ^{to} any prescription in the said l. Rules regarding the treatment to be accorded to when inventory items are found to be in excess of the stock register. The only para which can perhaps explain such excess stocks in respect of 22 cited items is the very next para 3264 of the Code, which prescribes the shrinkage and ~~drayage~~ percentages in respect of 22 items given therein, where if the actual shrinkage and ~~drayage~~ is less than the l. prescribed percentages, the inventory stock would result in excess of the stock holding as per the stock register, which register would have taken into account only the prescribed standard percentages of l. shrinkage and ~~drayage~~. But it is not the case of the respondents that the excess stocks found were due to less amount of actual shrinkage l. and ~~drayage~~ than the standard percentages prescribed under para 3264 of the code.

13. Therefore, we hold that while the applicant was certainly guilty of gross negligence in maintenance of records, for which he has already been punished through Annexure A/11 dated 29.6.2007,



imposing the penalty under Rule 6 (VI) of Railway Servant (D & A) Rules, 1968, of reducing him to a lower salary grade and recovery, no case is made out for the respondents to try^{to} recover any portion of ~~Rs.~~ the shortages of Rs. 79.59 lakhs detected by the Vigilance Team in respect of 21 items, when the Railways is not going to re-compensate the applicant for the excess stocks in respect of 34 items found amounting to Rs. 99.81 lakhs.

14. The applicant has received due punishment through order reducing him to the lower grade, and recovery, therefore the impugned order of recovery in this O.A. has no reason to survive, and is therefore struck down. The O.A. is allowed, and the respondents shall refund the amount of Rs. 9000/- already deducted ~~from~~ ^{the} from the salary of the applicant in the year 2006 in pursuance of the impugned order at Annexure A/1. In view of these directions, there shall be no order as to costs.


(SUDHIR KUMAR)
MEMBER(A)


(Justice S.M.M. Alam]
MEMBER (J)

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