

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1472 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Sri Wakil Roy, S/o Late Surjya Narayan
Roy, r/o Satish Nager, Laloor Pokhar,
Monghyr (Bihar), Ex-Station Manager,
Monghyr, within Malda Division,
Eastern Railway

... Applicant

VS

1. Union of India, through General
Manager, Eastern Railway,
17, Netaji Subhas Road,
Calcutta - 700 001

2. Divisional Railway Manager,
Malda Division, Eastern Railway,
Malda Town;

3. Senior Divisional Accounts
Officer, Malda Division, Eastern
Railway, Malda Town;

4. Divisional Personnel Officer,
Malda Division, Eastern Railway,
Malda Town;

5. Sri A.K. Biswas, Sr. Divisional
Operating Manager, Malda Division,
Eastern Railway, Malda Town

6. Sri Ramchandra Prasad, Traffic
Inspector (M-1), Jamalpur, Eastern
Railway

.... Respondents

For the Applicant(s): Mr. M.A. Vidyadharan, counsel

For the Respondents : Mr. M. K. Bandopadhyay, counsel

Heard on 30.6.99 & 27.8.99 : : Date of order: 27.8.1999

O R D E R

The question involved in this case is whether the respondents are justified to recover Rs.80,712/- from the money to meet the recovery of the outstanding claims for loss of tickets Nos. OCME 0800-0999A Ex.Monghyr to Sahibganj, Guskara 005A -0099, Chupravarty II 0350 A-1399A, Mandirhil II 0500 A -05999A, which were found missing from the stock on 15.2.97 and

also for loss of Excess Fare Tickets. According to the applicant, he retired from service on superannuation 28.2.1997. But before his retirement loss of some tickets from the stock were detected. According to the applicant, the loss of tickets was promptly reported to the authorities concerned by telegraphic message. But after retirement, the respondents wanted to recover the price of the tickets from the applicant without making any inquiry as to ascertain the cause of loss of tickets, as required under Rules 227(b) and 229 of the Indian Railway Commercial Manual (Vol.I) which is a condition precedent for recovery of the said loss caused to the Govt. of ticket by the applicant and therefore, the respondents acted illegally and arbitrarily by way of recovery of Rs.69,700/- or 80,712/- as the case may be from the DCRG money of the applicant after retirement. According to the applicant, the entire action of the respondents in respect of recovery of price of such loss tickets is illegal and therefore, he is entitled to get interest at the rate of Rs.18% on the DCRG money from the due date of retirement till payment is made.

2. The respondents denied the claim of the applicant and they filed written statement in this case. It is stated by the respondents that the applicant, Shri Wakil Roy was transferred from Monghyr to Jamalpur under SM, Jamalpur in terms of DPO, MLDTs Office order No. ET-1/113/96 DKT under No.E/268-269/4/SM/T&C (C) dated 30.8.96. In defying the order of transfer of the above order, the applicant was retained at Munghyr till his retirement. But in terms of DPO/MLDT's office Order No.ET-1/159(A)/96 DKT under ET-1/Comml. Clearance/MLDT dated 12.12.96, Shri D.P. Mondal, RG/SM/MGR who was next junior to the applicant at Munghyr was deputed to look after the cash handling works at Munghyr, but Shri B. P. Mondal expressed his unwillingness to the authority concerned to look after the cash handling work at Munghyr due to domestic reason and on consideration of his appeal, Shri K. C. Gupta, ASM/MGR was

deputed to look after the cash handling works at Munghyr Station in place of Shri B.P. Mondal. That arrangement was done since the applicant would have retired from service, very shortly. But the applicant had not allowed other Station Master to handle the case though the applicant was instructed to do so. This shows clear indication of malintention on the part of the applicant in respect of cash handling job. Apart from this, the Sectional Traffic Inspector (Movements) under whose jurisdiction the applicant had worked, relieved the applicant from cash handling work vide letter dated 22.6.96. But the applicant disobeyed the instructions of his superiors. For this, a minor penalty chargesheet was issued against the applicant for not relinquishing the charge of cash handling work with malintention and after considering the representation against the chargesheet issued to the applicant the disciplinary authority, Sr.Divisional Operations Manager issued an order of "warning" upon him while keeping in view the early retirement of the applicant. It is also stated that the missing of the fare tickets (local) No.993550-99, 993600-49, 993650-99 and 814450-814499 were detected by the Traffic Inspector, Jamalpur on 30.10.96 prior to retirement of the applicant, and that was reported to the authorities. Accordingly debit was raised against the applicant and that debit was admitted by him. Besides, the matter of missing tickets was not informed by the applicant to the concerned authorities properly. It is also stated that an enquiry was conducted by CTI, Jamalpur and TI(A), Jamalpur respectively and they have submitted reports in this regard and wherein both of them held that the applicant was responsible for non-observance of the procedure as per extant rules. It is stated that the Divisional Commercial Office cannot issue commercial clearance without Accounts clearance-59 from Dy. CAO(TA)/CCC for releasing the DCRG, as alleged by the applicant. It is also stated by the respondents that accordingly the

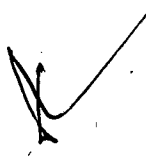
Divisional Commercial Manager, Malda by a letter dated 10.6.99 (Annexure 'R-1') stated that Rs.69750/- only is lying pending against the applicant on account of missing local EFT and BPT at Monghyr, but there is no departmental proceeding or vigilance case pending against the applicant. For this reason the amount of Rs.69,750/- was to be retained only for finalisation of the settlement dues of the applicant. Therefore, the application is devoid of merit and liable to be dismissed.

3. Mr. Vidyadharan, learned advocate for the applicant strenuously argued and submitted before me that the respondents recovered the money from the DCRG against the loss of ticket, as alleged by the respondents without following the statutory rules as embodied in Rules 227(b) and 229 of the Indian Railway Commercial Manual, published by Ministry of Railways, Railway Board, Government of India. Referring to the aforesaid provision of Manual, Mr. Vidyadharan contended that the recovery would be permissible if the authority after due enquiry under the rules is satisfied that the lost tickets in question were actually sold and money lost to the Railway. But for mere loss of tickets the recovery cannot be made, ~~for such loss of tickets~~. Ld. Advocate of the applicant further submitted that the said recovery was made by the respondents from the DCRG money after admission of the OA for hearing vide letter dated 9.8.99^{as} produced by the respondents at the time of hearing in violation of the provision of the A.T. Act, 1985 and the respondents have no jurisdiction to recover the money from the DCRG money when the case was admitted for adjudication under the provision of A.T. Act.

4. Mr. Bandopadhyay, learned advocate on behalf of the respondents contended that the question of further enquiry in this case did not arise in view of the fact that during enquiry made by the Traffic Inspector(A) and Chief Traffic Inspector, Jamalpur, the applicant had admitted the loss of tickets and since the applicant had admitted the loss of tickets as per report

submitted by CTI, Jamalpur on 8.6.97, the applicant was found responsible for missing or loss of tickets in question. He further submits that the matter was further enquired by another officer, Sr.TIA, Jamalpur and he submitted report on 14.11.96 and both of them held the applicant ^{was} responsible for the loss of the tickets. Therefore, the price of the loss of the tickets was rightly recovered from the DCRG money by the respondents. It is also stated by the learned advocate of the respondents that the fact of recovery had been stated in the written reply, though order of recovery dated 9.8.99 had been passed by the authority as final order regarding payment of DCRG money etc. after admission of the OA. So, the application is devoid of merit and liable to be dismissed.

5. During hearing Mr.Bandopadhyay, learned advocate produced the file containing the report dated 8.6.97 submitted by CTI, Jamalpur and the report dated 14.11.96 submitted by Shri K. M. Sahu, Sr. TIA, Jamalpur. I have considered the submission of the learned advocate of both sides and I have gone through the records. It remains admitted fact in this case that the applicant retired on superannuation from service with effect from 28.2.97. The respondents did not raise any claim against the loss of tickets as alleged by them, before the date of retirement of the applicant. It is found from the record that just before retirement the applicant has been transferred from the Station of Jamalpur. But in defiance of the said transfer order the applicant remained in the office for which disciplinary action was taken against him and he was discharged by issuing a letter of warning dated 15.6.97 against defiance of the order of lawful authority. According to the applicant, loss of tickets was detected and that has been promptly reported by telegraphic messenger to all concerned. It is found that within 13 days from the date of detection of loss of tickets, as stated by the applicant at para 10 of the application, the applicant retired



from service and thereby the respondents could not initiate any disciplinary proceeding for the loss of tickets, as alleged by the respondents. But I find that there is a provision in the manual itself regarding the action to be taken by the authorities in case of loss of tickets. Rule 227(b) of the Indian Railway Commercial Manual, Vol.I envisages as below:

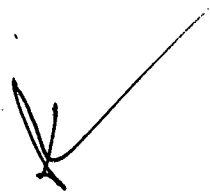
"When any tickets are missing, their commencing and closing numbers, including their total number must be recorded on both copies of the supply advice and also immediately reported by wire to the supplying officer, Station Master of the destination mentioned in the tickets, the Traffic Accounts Office and the Divisional Commercial Superintendent. On receipt of this wire, the Divisional Office should arrange for notifying the loss through railway gazette warning the staff to guard against the fraudulent use of missing tickets. The destination Station Master should be on the look out for the tickets in his daily collections and to procure the address of any person who may be found in possession of one or more tickets. Such persons should be questioned and asked to state how they come in possession of the tickets.

Should the supplying officer find that a mistake had been made in his office when despatching the tickets, he should advise the issuing Station Master, who will in turn advise all concerned to whom he communicated the loss, so that look out for the tickets may be discontinued and notification in the railway gazette may be cancelled or withdrawn."

The provision of Rule 229 runs as follows:

"If subsequent to the acknowledgment of the correct receipt of the supply of tickets, any deficiency or loss of tickets is noticed, the Station Master should take action according to the instructions contained in para 227(b). An enquiry will be made to determine the cause of loss and in case it is established that the ticket in question was actually sold and the money lost to the railway, the amount of loss will be recovered from the railway servant held responsible, in addition to any other disciplinary action as may be considered necessary according to the merits of each case. If, however, the result of the enquiry shows that the ticket was not actually sold and the value thereof was not actually lost, such disciplinary action as may be considered necessary according to the merits of each case will be taken against the staff responsible.

On receipt of intimation regarding loss of tickets, the Traffic Accounts Office will raise debit for the value of such tickets. The debit will, however, be withdrawn if the enquiries made by the Traffic (Commercial) Department reveal that the tickets in question were actually not sold."



On a perusal of the said provision, it is found that in case of deficiency or loss of tickets an enquiry ought to have been made to determine the cause of loss and in case it is established that the lost ticket in question was actually sold and the money lost to the Railway, the amount of loss will be recovered from the Railway servant responsible. The said provision of the Rule 229 of the said manual further indicates that in addition to recovery of loss, a disciplinary action may be considered by the authority according to situation. It is also envisaged in the Rule 229 that on receipt of the intimation regarding loss of ticket the Traffic Accounts Office will raise debit for the value of such tickets and the debit will, however, be withdrawn if the tickets in question were not actually sold. On a careful perusal of the Rule 229/Rule 227(b) of the said manual it is found that in order to make recovery of the loss of the tickets from the person responsible the Railway authority on enquiry should be satisfied before making recovery that the tickets lost were actually sold and loss has caused to the Railway. It indicates that if on inquiry it is found that if ticket in question was not sold and no loss was caused to the Railway, even then a disciplinary action may be taken against the officer responsible in addition to recovery. In the instant case the learned advocate for respondents strongly relied on the inquiry report dated 8.6.97 submitted by the CTI, Jamalpur. I have gone through the said report. It is mentioned in the report that a debit was raised against the applicant through debit memo dated 31.10.96, which has been admitted and acknowledged ^{by the applicant} in the month of December, 1996 and the said report was submitted by the CTI, Jamalpur after retirement of the applicant on 28.2.97. On a perusal of the said report dated 8.6.97 it is not clear as to what extent the applicant admitted the case of loss of tickets. But the said report does not disclose that the applicant made any admission that he sold out the tickets and caused loss to the Railway.

Similarly, I have gone through the report dated 14.11.96 submitted by Shri K. M. Sahu, Sr.TIA, Jamalpur. The said report also does not disclose that the lost tickets were sold out by the applicant to any passenger. So, it remains beyond doubt from the provision of Rule 229/227(b) of the said manual that for the purpose of recovery it must be established that the ticket was sold and money lost to the Railway. I find that both the ingredients are absent in this case since no enquiry to the effect as contemplated in the Rule 229/^{227(b)} has been done by the respondents to establish the fact that the loss of ticket was actually sold and money lost to the railway Department. So without holding any enquiry to that effect, the question of recovery did not arise at all and order of recovery cannot be said to be justified. Accordingly I direct the respondents to make payment of the entire DCRG money to the applicant without making any deduction from the same in connection with the alleged missing of the tickets within one month from the date of communication of this order. However, it be mentioned that respondents would be at liberty to start an enquiry in accordance with the rules and if on enquiry it is found that the missing tickets were actually sold out by the applicant and loss was caused to the Railway Department, then the Railway would be competent to realise the money by approaching the competent Court of Law for realising the said money from the applicant.

6. Regarding the claim of interest I find that the missing of tickets is not disputed by the applicant and therefore, the reasons for delay in making payment of DCRG cannot be attributed to the Department and so, the applicant is not entitle to get any interest on the ground of delayed payment of DCRG. Accordingly, I set aside the order No.E/Pension/MLDT/3197/WR dated 9.8.99 so far as recovery from the DCRG money of the applicant is concerned. Other part of the order remains open. With this observation the application is disposed of awarding no cost.


(D. Purkayastha)

MEMBER (J)