

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. C.A.385 of 1997

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

Hon'ble Mr.G.S.Maingi, Administrative Member.

SWAPAN KUMAR THAKUR

... Applicant

Vs.

1. Union of India through General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta-1.
2. The General Manager, Eastern Railway, 17, Netaji Subhas Road, Fairley Place, Calcutta-700 001.
3. The Chief Engineer, Eastern Railway, 17, Netaji Subhas Road, Calcutta-1.
4. The F.A. & C.A.O., Eastern Railway, 17, Netaji Subhas Road, Calcutta-1.
5. The Divisional Railway Manager, Eastern Railway, Dhanbad, Bihar.
6. The Divisional Railway Manager, Eastern Railway, Howrah.

... Respondents

For the applicant : Mr. Madhugudan Banerjee, counsel.
Mr. M.K.Banerjee, counsel.

For the respondents: Mr.P.K.Arora, counsel.

Heard on : 30.8.1999 & 31.8.1999.

Order on : 09.9.99

ORDER

Dhanbad, which is at annexure 'A/2' to the application. The said order dated 5.1.1990 addressed to the Assistant Engineer (Tr. I), Eastern Railway, Barkakana, was an ex-parte decision taken by the Divisional Engineer (Spl) on the memorandum dated 4.12.1989, when it had been decided to impose punishment on the applicant. This memorandum dated 4.12.1989 did not indicate any articles of charge, but only indicated the imputations of charges which are as under-

"You have failed to submit your initial reply within the target date i.e. 10.11.1989 in connection with S/Sheets sent to you long back in spite of several reminders.

Please explain as to why disciplinary action should not be taken against you."

It has also been stated in the letter dated 5th January, 1990, that excess materials to the extent of Rs.27,57,221.67/- was also recovered and for which a warning letter should be issued to the applicant which should be duly endorsed in his service record on the ground of failure of keeping proper accountal of materials by the stock holder and not submitting his item-wise initial reply. It is not known whether the applicant had protested against issue of a warning letter to him in this regard as there is no further discussion about it in the application as well as in the reply of the respondents. While the letter dated 5.1.1990 (annexure 'A/2'), directed that the recovery should be made in suitable instalments from the applicant, the letter dated 12.6.1990 at annexure 'A/3' of the Divisional Engineer (Spl), Eastern Railway, Dhanbad, stated that recovery @ Rs.500/-p.m. should be made from the month of January, 1990. Subsequently, in this very letter at annexure 'A/3' it was stated that as the applicant had submitted his initial replies of the stock sheets through the Assistant Engineer (Spl), Eastern Railway, Barkakana, the deductions from the salary of the applicant should be stopped and an intimation sent to the Divisional Engineer (Spl), Dhanbad, in this regard. Some reconciliation has taken place in the Accounts Office of the Eastern Railway and they stated in their letter dated 30.7.1992 at annexure 'A/5' that the recovery

of Railway material cost ^{of} which had been estimated at Rs.7,44, 847.88p. which subsequently got reduced to Rs.4,45,380/- as can be seen from annexure 'A/9' addressed by the CAD/SV/CCC to DRM (Engg.), Eastern Railway, Dhanbad. The latest recovery being effected from the salary of the applicant is Rs.3,913/- from February, 1995, onwards.

3. The applicant has submitted an application that he is not at all responsible for the alleged shortage of CST/9 plates, ^{Rails, wheels} Sleepers/ etc., is deemed to have occurred due to missing of wagons from Surekha Casting and Engineering Company, Calcutta, for which every step and action has been taken by the applicant to get the wagons traced, that the respondents had started making deductions from his monthly salary which should be stopped, that he had been issued a memorandum of charge sheet dated 4.12.1989 which is neither valid nor lawful and it is evident from the imputations of charges supplied to him alongwith the said memorandum that it was only a show-cause notice issued against him for initiation of disciplinary action for non-supply of reply within the target date. He has further stated that the memorandum of charge sheet is biased and had been issued with a pre-judged mind and it is not a charge sheet in the eye of law and is liable to be struck down.

4. The applicant has stated that he was drawing a salary of Rs.2600/- per month as basic pay and deduction of Rs.3913/- p.m. from his salary is neither bonafide nor lawful and this order of deduction was made without initiating any disciplinary proceedings against him and without holding an enquiry as to the reason for the real shortage for which the applicant is not liable, after affording a reasonable opportunity to state his case.

5. We have heard Mr. Madhusudan Banerjee leading Mr. M.K. Bandopadhyay for the applicant and Mr.P.K.Arora for the respondents.

6. Mr.Banerjee has strongly argued the case in favour of the applicant and reiterated the grounds for which the relief has been sought by the -

7. Mr.P.K.Arora, appearing for the respondents, submits his case and tries to justify the action of deduction from the salary of the applicant. Mr.Arora has emphatically stated that the matter was properly covered by the Indian Railway Code for the Stores Department, Vol. II (1990 Edition)- Revised). He has also submitted the stock sheets for the perusal and verification of this Tribunal. Mr.Arora has stated that this case was fully covered by the Indian Railway Code for the Stores Department and whatever action was being taken against the applicant, it had the statutory support as this code was also statutory. With respect to the memorandum of charge sheet issued to the applicant. Mr.Arora insisted that once action has been initiated against the applicant relying upon the Indian Railway Code for the Stores Department, no action was required to be taken under the Railway Servants (D & A) Rules, 1968.

8. We have considered the case very carefully. Mr.P.K.Arora has tried to emphasise the importance of the Indian Railway Code for the Stores Department, Vol.II. However, we find that it lays down various procedures, checks and balances for the Stores Depot such as receipt and custody of stores, issue of stores, various books for maintenance of proper record, issues to and receipts from workshops, returned stores, empties, etc. This Code is comprised of Chapter-12 to Chapter 33. In our view, this is only a manual laying down guidelines for dealing with the materials in the stores department of the Railways. It is neither a substitute for the Railway Servants (D & A) Rules, 1968, nor it can override these provisions. The completion of stock sheets only indicate that the stocks are being compared and reconciled. It can be seen from the facts indicated above that once the shortage of materials to the tune of Rs.24,32,601 and 77 p. was found, there is no ground to surmise that somebody had brought out the short materials and that resulted in the ^{shortage work} culmination of Rs.4,45,380/- It has been laid down in the Code that Chowkidars would not leave the depot unguarded at any time. This has to be kept in view while deciding this case. The respondents, on their own, have taken a decision on the charge sheet by

resorting to an ex parte order and decided the quantum of deduction to be effected from the monthly salary of the applicant. This is an important matter and the rights, duties and responsibilities of the applicant are involved. The very fact that the shortage has come down to a little more than 4 lakhs shows that if proper stock taking or stock keeping are conducted, there may be no shortage at all.

9. We make it clear that this case is not covered by the Indian Railway Code for the Stores Department, Vol. II, but would be covered by the disciplinary proceedings under the Railway Servants (D&A) Rules, 1968, which have been given a go-by on account of the provisions of the Indian Railway Code for the Stores Department. To us it appears that it is a case which should be pursued vigorously and taken to its logical end. It appears that conclusions have been reached without following the provisions of the Railway Servants (D&A) Rules, 1968 and following the records of the Accounts Department. In this view of the matter, we hold that this is a fit case which should be examined in the light of the provisions of the Railway Servants (D & A) Rules, 1968.

10. In the result, the application is allowed. The impugned orders at annexure 'A/3' dated 12.6.1990 and 25.4.1993 and subsequent order also directing recovery of Rs.3913/- p.m. from the salary of the applicant from the month of February, 1995, are hereby set aside. The respondents are directed to refund the amounts already deducted from the applicant within three months from the date of communication of this order. The respondents will be at liberty to proceed against the applicant as per Railway Servants (D & A) Rules, 1968, after issuing appropriate charge sheet and following the principles of natural justice, if they so desire.

11. No order is made as to costs.

G.S. Mungi
(G.S. Mungi)
Administrative Member

D.P. Purkayastha
(D.Purkayastha)
Judicial Member