

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

No. O.A. 399 of 1997.

Present : Hon'ble Mr. Justice A. K. Chatterjee, Vice-Chairman.
Hon'ble DR. B. C. Sarma, Member (A)

EDWIN YAFAT

Vs.

1. Union of India, through the
General Manager, E. Rly., 17,
N.S.Road, Calcutta -1.

2. Divisional Railway Manager, E.
Rly., Asansol.

3. Dy. Chief Accounts Officer
(TA), 14, Strand Road, Calcutta-1.

4. FA & CAO, E.Rly., Fairlie
Place, 17, N.S.Road, Calcutta - 1.

... Respondents.

For applicant : Mr. B. Chatterjee, counsel.
Ms. B. Mondal, counsel.

For respondents : Mr. C. Samaddar, counsel.

heard on : 20.8.97 :: ordered on : 10.9.97.

O R D E R

B.C.Sarma, AM

The dispute raised in this application is about the impugned action of the respondents in recovering from the applicant a sum of Rs.8,699/- from his wages for the loss of sold and unsold Excess Fare Ticket (EFT) Books from the custody of the applicant.

2. Briefly stated the facts of the application are as follows : The applicant, while functioning as travelling ticket examiner under the respondents, was on duty by 3032 DN on 6.11.88 working from Danapur to Madhupur, his EFT book was snatched away by some miscreants in between Patna and Fatwa railway stations. He made a complaint before the police at Fatwa railway station under Diary No.38/88 on 6.11.88 regarding snatching away of his EFT book and loss of the same in course of duty and a special report was submitted to the Senior

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Divisional Commercial Superintendent, ASansol, who was his controlling officer at the material time. It is the contention of the applicant that to the best of his knowledge not a single page of the EFT book was used and before the loss of the EFT book all ~~the~~ money~~s~~ collected upto the page used by him was deposited to the authorities as required under the rules. In terms of para 229 and 227(B) of the IRCM, Vol.I, the procedure to be adopted in the case of loss of EFT books is categorically mentioned and the respondents are required to produce, if they had taken the legal steps required in this case to absolve them of the responsibility and to prove that railways had undergone loss of revenue for the loss of the said EFT book from the custody of the applicant. But inspite of the facts and circumstances, the respondent No.3 ⁱⁿ to the application has raised debit of Rs.7,700/- against him by addressing a communication to the respondent No.2 and not to the applicant. Thus the applicant could not forward his defence to nullify the said claim which amounting to violation of fundamental rights and reasonable opportunity. The applicant contends that recovery of Rs.8,699/- from his monthly pay for the period from November,1992 to May, 1994 was illegal, wrongful and without jurisdiction. Being aggrieved thereby, the instant application has been filed with the prayer that a direction be issued on the respondents for refund of the sum of Rs.8,699/- illegally deducted from him.

3. The case has been opposed by the respondents by filing a reply. The respondents contend that the application is hopelessly barred by limitation. The bag which the applicant lost contained two EFT books, one containing pages from 300200 to 49 which was used and the other one containing pages 763200 to 763249 all unused as per the said special report dated 29.7.92 addressed to the Senior DCM, Asansol. On examinaion of the said report, respondents found that due to applicant's

negligence, the said bag was lost. Accordingly, as per advice of the Dy. CAO(TA), Calcutta, communicated under his letter dated 25/30.1.90, an amount of Rs.7,700/- was ordered to be recovered from the pay of the applicant. But an amount of Rs. 8,699/- was recovered from him erroneously making an excess recovery of Rs.999/-. When the payment of the said excess recovery to the applicant was under process, he has filed the present application. The respondents contend that the contentions made in the application are contradictory to his said special report. In the said report, he has stated that at Fatwa railway station the said bag ~~was~~ seemed to have been taken away by two young men, whereas in the present application he has stated that his bag was snatched in between Patna and Fatwa. Therefore, it is crystal clear that his bag was not taken away ~~by~~ by any miscreants; rather he himself lost the said local EFT books due to his gross negligence and absolute carelessness. The applicant might have lodged any report to the police, but no investigation report has yet been received. The applicant has also not submitted the accounts of the money receipt from which it could be ascertained that he deposited full money against the EFTs used. It is also the contention of the respondents that any one can misuse the said lost EFTs which, however, may or may not be detected at all and this practice is ^{wide-}spread all over the country. Hence, it cannot be said that the said EFTs have not been misused. The value of 100 pages of EFT at the rate of 100/- per EFT has correctly been recovered from the applicant for his loss of the same due to his gross negligence and, therefore, his appeal could not be entertained violating the railway rules. However, the excess amount, which was recovered from the applicant, has since been refunded which he has received. They have, therefore, prayed for dismissal of the case on the ground that it is devoid of merit.

4. The matter has been examined by us after hearing the ld. counsel for both the parties, perusing records and considering the facts and circumstances of the case. That the applicant had lost the EFT books contained both used and unused pages is not in dispute. This has since been admitted by the applicant. The issue now is whether the facts reported by the applicant have been accepted to be correct and proper procedure was followed by the respondents. As regards facts, a court or a tribunal does not sit in appeal over the decisions of the authorities. However, we note that while in the application the applicant contends that the bag containing both used and unused EFTs was lost in between Patna and Fatwa railway stations, in the said report regarding the theft of the applicant, he contends that the bag was snatched away at Fatwa railway station by two young boys. It is also stated that one ASI, GRP, Fatwa who was also on the platform ran after the miscreants alongwith him, but they failed to catch the miscreants. Therefore, there is discrepancy in the story made by the applicant. Moreover, in the said report the applicant stated that on being advised by the ASM, Fatwa he made a diary to the police and thereafter, a regular case was started in this case, whereas according to the application he made only a Gp entry and the result thereof is not known to him. Section 229 of the IRCM, Vol.I, itself says that 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. The applicant himself made a report to the Senior Divisional Commercial Superintendent. The respondents contend that the matter was considered. The respondents further contend that it is not possible to say with certainty that such unused EFTs will not be misused at all and that is why the necessary debit was raised. In view of the conflicting statements made by the applicant, we are of the view that the story given by the applicant is not acceptable

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and he lost the bag containing the EFTs because of his negligence or irresponsible conduct and the respondents have correctly recovered the loss from him since railways should not lose revenue because of the lapse or negligence of its employees.

5. We further find that cause of action in this case has arisen between 1990 and 1992 when, as per the admission of the applicant, a recovery was made from his pay and allowances, whereas the instant application has been filed only on 15.4.97. The delay in filing the application remains totally unexplained. No condonation application has also been filed by the applicant. As observed by the Hon'ble Apex Court in the case of Baliram Prosad Vs. Union of India & Ors, reported in 1997(2) SCC 292, ~~that~~ sufficient cause for not making application within the statutory period has to be made out in respect of the period of limitation. No such sufficient cause has been shown before us. We are, therefore, of the view that claim of refund of the amount is a stale claim and the application is also time barred.

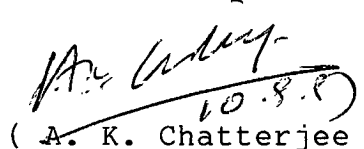
6. In view of the above, the application is dismissed, at the stage of admission itself, without passing any order as regards costs.



(B. C. Sarma)

MEMBER (A)

10/9/97



10.8.97

(A. K. Chatterjee)

VICE-CHAIRMAN.