

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 430/99

Wednesday this the 18th day of July, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.Gangadharan
S/o Late Shri K.Gopalakurup
Travelling Ticket Examiner
Singleman Squad
Southern Railway
Coimbatore
residing at Laxmi Niwas
Kottapura, Melepuram
Olavakot.

Applicant

[By advocate Mr.T.N.Sukumaran]

Versus

1. Union of India represented
by the General Manager
Southern Railway
Chennai.
2. The Financial Adviser and
Chief Accounts Officer
Southern Railway
Chennai.
3. Sr.Commercial Manager
Southern Railway
Palakkad.
4. Sr.Divisional Personnel Officer
Southern Railway
Palakkad.

Respondents.


[By advocate Mr. Mathews J.Nedumpara]

The application having been heard on 18th July, 2001,
the Tribunal on the same day delivered the following:

O R D E R


HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to declare that the decision of the respondents to recover an amount of Rs. 6721/- by monthly instalments commencing from the salary for the month of January, 1999 is illegal and arbitrary and to direct the respondents to refund the amount of Rs. 2721/- already recovered from his salary.



2. The applicant is a Travelling Ticket Examiner. On 23.11.88 while he was travelling in Train No.125A from Calicut to perform his duties as TTE from Palakkad to Renugunta, his line box kept in the AC two tier coach containing various articles was stolen from the train. He immediately lodged a complaint with the Railway Police Sub Inspector, Calicut. He also reported the matter to the Senior Divisional Commercial Superintendent, Palakkad. He was issued with a charge memorandum. He was awarded the penalty of censure. The Judicial Magistrate of Second Class I found the accused guilty under Section 379 IPC and sentenced him to undergo simple imprisonment of six months. It was noticed that from the salary received for the month of January 1999, an amount of Rs. 721/- was less as the same was recovered without giving any notice against an alleged error advice for a total sum of Rs.6721/-, which was not served on him. Thereafter he submitted a representation A-9 dated 4.2.99. Without considering the representation, the respondents have recovered at the rate of Rs. 1000/- from his salary for the months of February and March, 1999. In an identical case the respondents considered the issue and the amount recovered was ordered to be refunded.


3. Respondents resist the OA contending that as per "Para 229(b) of Indian Railway Establishment Manual (I.R.E.M.)", amount of loss will be recovered from the Railway servant responsible in addition to any other disciplinary action. Disciplinary action was initiated as per proceedings No.EA No.C 253/CA/PGT/304 dated 11.1.89 to recover an amount of Rs.



6721/- from the salary of the applicant. The said amount was the cost of the unused extra fare ticket foils lost. After due notice the recovery of the amount was commenced from the salary of the applicant from January 1999 onwards. The applicant has not made any representation when he was informed about the impending deduction from his salary. As the loss caused was established, the Audit Wing had raised a debit as per para 229(b). There was no evidence to prove that the missing excess fare ticket foils were not misused.

4. One of the grounds raised by the applicant is based on para 229 of Indian Railway Commercial Manual. What the respondents say on this aspect is that "As per para 229(b) of Indian Railway Establishment Manual, amount of loss will be recovered from the Railway servant responsible in addition to any other disciplinary action". At this juncture, it is pertinent to note that the pleading of the respondents is far from satisfactory. It is done in a very casual manner.


5. Para 229 of the Indian Railway Commercial Manual says that 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 any money lost to the railways, 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. So an enquiry is a must. Respondents do not say that an enquiry as contemplated as per rule 229 of Indian Railway Commercial Manual was conducted. What they say is only that as



the loss caused was established, the Audit Wing had raised a debit as per para 229 (b). What is the basis on which the loss caused was established the respondents have not stated. It is not enough to say that the loss caused was established. There must be proof of the same. In the absence of the respondents specifically making a plea that an enquiry was made and also in the absence of proof of any material to show that an enquiry was conducted it could only be said that there is non-compliance of para 229 of Indian Railway Commercial Manual.

6. Learned counsel appearing for the applicant drew our attention to A-11, copy of letter dated 12.11.1962 from the Joint Director, Finance (A), Railway Board, New Delhi. It says that subsequent enquiries made by the traffic department reveal that 'any ticket was not actually sold by the Accounts Office should after due examination withdraw the debit'. There is no case for the respondents that A-11 was not in force at the relevant point of time. On the basis of A-11 also, respondents are bound to make an enquiry and come to a conclusion. There is no material to show that the same has been done.

7. Applicant has got a case that the entire action was done behind his back and in violation of the principles of natural justice. Respondents say that a notice was issued to the applicant on 28.10.98 and he was reminded on 4.12.98. Applicant has denied the stand of the respondents in the rejoinder. The respondents have not produced the copies of the notice dated 28.10.98 and of the reminder dated 4.12.98. There is no reason also for non production of the copies. The



reasonable inference that could be drawn is that no notice was given to the applicant prior to the recovery.

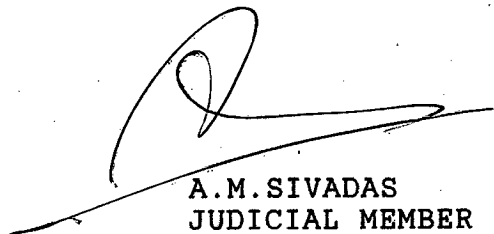
8. A-10 dated 16.8.93, the applicant says, is in respect of another incumbent identically placed and in that case it was ordered that no further recovery be made and the recovery already made be refunded to the concerned incumbent. The respondents have not mentioned anything in the reply statement about A-10. That being so, it is to be taken that A-10 is accepted by the respondents in toto. How the respondents could take a different stand in the case of the applicant is not known.

9. Accordingly the OA is allowed, declaring that the decision of the respondents to recover an amount of Rs. 6721/- by monthly instalments commencing from the month of January 1999 from the salary of the applicant is illegal and arbitrary. Respondents are directed to refund the amount of Rs. 2721/- already recovered from the salary of the applicant. We make it clear that this will not stand in the way of the respondents proceedings against the applicant in accordance with law.

Dated 18th July, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-9 True copy of representation dated 4.2.99 filed by the applicant.
- A-11 True copy of letter No.61/ACII/45/14 dated 12.11.62 issued by the Joint Director/Finance (A), Railway Board, New Delhi.
- A-10 True copy of order No.D.O.No.C/570/CI/CA/08/AOB dated 16.8.93 issued by Deputy Chief Accounts Officer, Traffic, Madras..