

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 483 of 2009

Wednesday, this the 26th day of May, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

N. Thiagarajan, aged 47 years,
 S/o. Nallagounder, Travelling Ticket Examiner,
 Sleeper/Southern Railway/Erode,
 Residing at Vellalar Street, Pakkaliyur, Sankari Post,
 Salem Dist.

Applicant

(By Advocate – Mr. TCG Swamy)

V e r s u s

1. Union of India represented by the General Manager,
 Southern Railway, Headquarters Office, Park Town P.O.,
 Chennai-3.

2. The Financial Advisor & Chief Accounts Officer,
 Coaching, Southern Railway, Thiruchirappalli Jn. R.S.
 and P.O. Thiruchirappalli, Tamil Nadu.

3. The Senior Divisional Commercial Manager,
 Southern Railway, Palghat Division, Palghat.

4. The Senior Divisional Commercial Manager,
 Southern Railway, Palghat Division, Palghat.

5. The Divisional Personnel Officer, Southern Railway,
 Salem Division, Salem.

6. The Financial Advisor & Chief Accounts Officer,
 Southern Railway, Head Quarters Office, Park Town P.O.,
 Chennai-3.

Respondents

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 17.5.2010, the Tribunal on

26.5.10 delivered the following:



ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

This OA has been filed with a prayer to direct the respondents to refund an amount of Rs. 33,086/- recovered from the applicant with interest @ 9% from the date of such recovery till the date of refund of the same.

2. The applicant was working as Travelling Ticket Examiner in the Palaghat Division of Southern Railway. He was incharge of four sleeper compartments in Train No. 1081 Express from Erode to Palaghat on 06/07.02.2006. He had kept his suitcase provided by the Railway in berth No. 25 in S-6 coach and went to S-4 and S-5 coaches for allotment of berths to passengers. On return to his seat in S-6 coach he found his suitcase broken open and his bag containing various items including Excess Fair Ticket (in short EFT) books worth Rs. 33,086/- stolen. He searched the place and made inquiry with the passengers but to no avail. On reaching Palaghat he filed a complaint with the Railway Police. On return to his headquarters he submitted a report regarding the loss of EFT books etc. to the Senior Divisional Commercial Manager, Southern Railway, Palaghat Division, the third respondent. An FIR was registered on 24.3.2006. The Police arrested the culprit who was infact a passenger sitting opposite to the berth in which the applicant had kept his suitcase. The accused passed away during the pendency of the trial in a road accident. In the month of May, 2006 a debit note for Rs. 33,086/- was raised without any notice to the applicant. The applicant had submitted a further representation on 18.1.2007 with a copy of Annexure A-2 order dated 25.4.2006 with a



request to withdraw the debit of Rs. 33,086/- . The third respondent issued the order dated 17.7.2007 at Annexure A-8 holding the applicant responsible for the loss of EFT book valued at Rs. 33,086/- and recovery was initiated. The applicant submitted a third representation on 16.10.2008. Vide Annexure A-10 letter dated 20.10.2008 recovery of the then outstanding amount of Rs. 30,586/- from the salary arrears was proposed. Without further notice to the applicant recovery was effected from the salary of the applicant for the month of November, 2008 to February, 2009. The applicant submitted a fourth representation dated 23.11.2008 pointing out that the lost EFT books were not mis-used and that the amount recovered from him should be refunded.

3. The applicant submits that orders of recovery at Annexures A-8 and A-10 are opposed to the principles of natural justice and contrary to law. The Railway have not suffered any loss on account of the lost EFT books, therefore, the recovery of the amount is arbitrary, discriminatory and contrary to law. Any loss if at all suffered by the Railway is the cost of the paper and printing charges of the EFT books only. Therefore, the Railway have no reason whatsoever to recover an amount of Rs. 33,086/- from the applicant. Such recovery is a penalty contemplated under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. The action of the respondents in terms Annexures A-8 and A-10 is contrary to the Indian Railway Commercial Manual (in short IRCM), Volume-I. Hence, the OA should be allowed.



4. In the reply statement submitted by the respondents it was submitted that the applicant was the custodian of the EFT books entrusted to him for the purpose of his duty and he had failed to secure the same. As per instructions laid in IRCM Volume-I Paragraph 229 necessary debit was raised against him for recovery of the due amount of Rs. 33,086/-.

Accordingly, the recovery was effected.

5. Arguments were heard and documents perused.

6. Paragraph 229 of IRCM Volume-I which deals with loss of tickets is reproduced as under:-

“229. Deficiency or loss of a ticket.- If subsequent to the acknowledgement 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.”

7. The Traffic Accounts office has raised debit for the value of the tickets lost by the applicant but no inquiry has been made to determine the cause of loss or to establish that the tickets in question were actually sold. Only if the money is lost to the Railway the amount of loss will have to be recovered



from the Railway servant held responsible. If the result of the inquiry shows that the ticket was not actually sold the question of recovering the amount of loss does not arise. In the instant case the respondents have not fully followed the procedure laid down in IRCM Vol.-I for action to be taken when tickets are lost. They have raised a debit note for Rs. 33,086/- but they did not conduct an enquiry to determine the cause of loss of the tickets or the amount of loss suffered by the Railway or the responsibility of the applicant for the losses. Recovery of Rs. 33,086/- from the applicant solely on the basis of the debit note without conducting an enquiry is not in accordance with paragraph 229 of IRCM Volume-I and therefore illegal. The recovery of Rs. 33,086/- from the applicant to square a loss that was not suffered by the Railway amounts to extortion.

8. The incident of theft took place in the premises of the Railway but it appears that no action was taken by the Railway to prosecute the thief. The applicant has responsibility to safeguard the property of Railway entrusted to him but that does not absolve the Railway from ensuring a safe work place for the applicant. The applicant is an employee in distress. He lost not only the EFT books entrusted to him for discharging his duties as TTE but he also suffered the loss of his mobile phone and other articles. The respondent authorities are concerned about the loss of money to the Railway but they are not concerned about the applicant whose protection also is the responsibility of the Railway. They should have been in the forefront to file a case of theft that happened in the premises of the Railway. Not doing so is abdication of responsibility on the part of the Railway.



9. From the fact that his suitcase was broken open, it appears that the theft took place inspite of the precautions taken by the applicant to secure the EFT books entrusted to him. On realizing that the EFT books were lost he had filed a complaint with the Police and apprised the higher authorities of the incident without loss of time and further followed it up. There was no negligence on the part of the applicant. Instead of going to the help of the applicant the Railway added insult to injury by recovering the value of the EFT books without ascertaining the actual loss. No laches on the part of the applicant was established by the Railway. It is not the case of the Railway that the applicant was in the habit of losing EFT books. The respondent authorities failed to appreciate the totality of the facts and circumstances of the case and applied a part of paragraph 229, without application of mind, with scant regard for the principles of natural justice.

10. Recovery of loss caused to Railway is a penalty under Rule (6) of the Railway Servants (Discipline & Appeal) Rules, 1968 as pointed out by the applicant. A penalty cannot be imposed without establishing the guilt of the employee through a process of inquiry as contemplated in the Railway Servants (Discipline & Appeal) Rules, 1968. The respondent authorities violated Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968 in recovering a loss that was not even suffered by the Railway. The only loss to the Railway is the cost of the paper and the printing charges of the EFT book. The recovery made from the applicant is the sale value of the ticket which is hugely disproportionate. Such an act on the part of the Railway should not be dismissed as a stray incident that does not impair the

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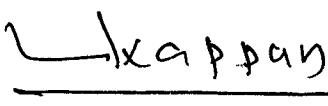
reputation of the Railway, the biggest PSU in the country that runs and the largest railway network in the world. It de-motivates the employees who actually need a helping hand from the Railway in a crisis. This incident should serve as an eye opener for the Railway to improve their employee relationship for better service to the public. An organisation that does not care for its employees cannot get the best out of them.

11. The applicant became a victim of theft while on duty in the premises of the Railway. He was not extended any help that a model employer would have extended to his employee. He further became a victim of recovery that amounted to extortion when the Railway recovered Rs. 33,086/- from him for a loss that was not suffered by the Railway, without following due procedure. It is only just and fair that the Railway should refund the amount recovered illegally from the applicant with interest. In the result the OA succeeds. Accordingly, it is ordered as under.

12. Annexures A-8 and A-10 orders are hereby quashed and set aside. The respondents are directed to refund the amount of Rs. 33,086/- recovered from the applicant, with 9% interest per annum from the dates of recovery till the date of refund within a period of 60 days from the date of receipt of a copy of this order. There shall be no order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

“SA”


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER