

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.312/2000

Friday, this the 21st day of June, 2002.

CORAM

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

N.K. Gopinadhan Chettiar,
S/o Krishnan Chettiar,
Office Superintendent (Gr.I),
Office of the Section Engineer/Permanent Way,
Southern Railway, Trivandrum.

Applicant

[By Advocate Mr T.C. Govindaswamy]

Vs.

1. Union of India rep. by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O.,
Madras-3.
2. The Financial Adviser and
Chief Accounts Officer,
Southern Railway, Construction,
Egmore, Madras-8.
3. The Deputy Chief Engineer,
Construction, Southern Railway,
Trivandrum.
4. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum.
5. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.

Respondents

[Smt.Rajeswari Krishnan]

The application having been heard on 5.6.2002, the
Tribunal delivered the following order on 21.6.2002.

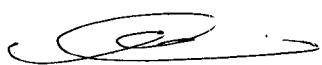
ORDER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant while working as Depot Store Keeper,
Construction, under the 3rd respondent since 1989 had received
1,58,566 Kgs. of Mild Steel (M.S) Rods as part of the store
material, on actual weightment basis. During March 1992, the



applicant ought to have a stock of about 127 Metric tonne of M.S. Rods (25 mm.dia). At the time of annual stock verification during March, 1992, the stock verifier, under the instructions of the then Executive Engineer, Construction, assessed the stock by resorting to linear measurement and sectional weight basis. The section weight is a notional figure of 3.853 Kgs. per metre of 25 mm.dia M.S.Rods. This weight is not based on actual weighment, which varies from product to product/company to company. Thus, the stock verifier assessed the stock verification done in March, 1992 as on the date, as 1,20,729.470 Kgs. as against the ledger balance of 1,27,116 Kgs. resulting alleged shortage of 6,386.530 Kgs. It is alleged in the application that the applicant suspected the bona fide of such a calculation and made actual weighment of few Rods in the presence of the stock verifier and found the rods weighing more than the sectional weight. The stock verifier, though realized this fact, refused to accept the same, apparently in the light of the orders of the Executive Engineer, Construction. Now, the post of Executive Engineer is operated in the higher scale of Deputy Chief Engineer. The applicant's remarks for the shortage which was forwarded by the then Executive Engineer under letter dated 16.6.93, duly recommending the closure of the stock sheet. The 2nd respondent had not accepted the contention of the Executive Engineer and submitted a detailed letter on 20.7.93. There was no response for the same and the applicant was transferred and repatriated back to the Open Line Organization during the period from March, 92 and upto the date of handing over charge on 12.1.94, he had disposed of the stock by the actual weighment to the extent of 1,22,576 Kgs. Therefore, the physical stock at the time of stock verification during March, 92 ought to have been 1,22,576 Kgs. as against the assessed stock of 1,20,729.470 Kgs. resulting in a shortage of



approximately 4,540 Kgs. In terms of the rules on the subject, a tolerable limit of 2% of the handled quantity is permissible and that this fact has also been confirmed by the 2nd respondent as per letter dated 24.6.93. There was no further action till September, 98 and the 3rd respondent by letter dated 5.10.98 (Annexure A-1), addressed to the Senior Divisional Personnel Officer, Trivandrum, directed recovery of an amount of Rs.30,815/- from the applicant's salary. The applicant immediately submitted a representation dated 24.11.98 (Annexure A-2) before the 5th respondent requesting to defer recovery till a final decision is taken by the 2nd respondent, but since the 5th respondent started recovery in a hasty manner, the applicant submitted another representation dated 27.11.98 (Annexure A-3) before the 4th respondent to stop the recovery. Thereafter, the applicant again submitted a detailed representation dated 19.4.99 (Annexure A-4) before the 2nd respondent. The respondents continued to make recovery and Annexure A-4 was rejected as per letter dated 24.9.99 (Annexure A-5) and the same was communicated to the applicant by the 3rd respondent as per letter dated 7.10.99 (Annexure A-6). The applicant submitted that he has not caused any pecuniary loss to the Railways and the entire process adopted by the respondents are arbitrary, discriminatory and unconstitutional. Aggrieved by the action of the respondents, the applicant has filed this O.A. seeking the following reliefs:

- "(a) Call for the records leading to the issue of Annexure A-5 and quash the same.
- (b) Declare that the recovery of Rs.30,815/- (Rupees Thirty Thousand Eight Hundred and Fifteen only) from the applicant's salary since, November, 1998 to March, 2000, in the name of alleged shortage in stock of Mild Steel Rods is arbitrary, discriminatory, contrary to law and unconstitutional.



(c) Direct the respondents to refund the entire amount of Rs.30,815/- recovered from the applicant's salary, with 18% interest calculated from the date of recovery of each instalment of the total amount of Rs.30,815/-, till the date of full and final settlement of the case.

(d) Award costs of and incidental to this application.

(e) Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case."

2. Respondents filed a reply statement stating that the verification was conducted as per para 3241 of the Indian Railway Stores Code Vol.II and Chapter 4 of para 3.8 of the Material Verification Manual. The sectional weight is not notional weight. The sectional weight is recommended by the supplier M/s Steel Authority of India Ltd (SAIL). The respondents denied the averments made in the O. A. and stated that there is no written record that a total weighment was made in the presence of the stock verifier. The remarks given by the applicant was not accepted. The percentage of discrepancy in stock (i.e., shortage) was 3.45% [6386.530 Kgs. of 25 mm. Tor Steel] over the total transactions. Remarks for the discrepancy in stock upto 2% of the total transactions of verification was accepted by the Accounts Officer in terms of para 3216 and 3263 of Indian Railway Stores Code (Vo.II). The weighment for liner measurement in respect of rods supplied by M/s SAIL is only 3.853 Kgs. per metre length of Rod whereas the original applicant has stated that weight for one metre length of rod is 4.01 Kgs. which is not factual and against the standard weighment given by the supplier M/s SAIL. In order to verify the factual position, the test weighment was also taken by the Departmental Officer of the original applicant which works out to 3.89 Kgs. per metre length of rod. In order to cover such marginal variations, 2% allowance during the transaction period for the quantity/period has been



given while assessing the net shortage as per code provisions. The shortage of 2586.210 Kgs. exceeding 2% of the total transactions (i.e., shortage as per stock verification report). The transactions made after the date of verification should not come under the purview of review of discrepancies reflected prior to the date of verification. This has not been provided under any of the rules of the subject matter as this will lead to manipulation of stock/record to suit the actual condition resulting in loss to the exchequer. It is said that the applicant has stated that the physical stock ought to have been 122576 Kgs. as against the assessed stock of 120729.470 Kgs. The tolerance limit of 2% of the total transactions upto the date of stock verification is agreed to and has already been allowed before deciding the recovery for the shortage of the material. Total value of the above tolerance works out to Rs.30185/- which the Railway Administration have agreed to bear in terms of the above code provisions. Since the applicant was responsible for the shortage of materials entrusted to him by the Railways, the recovery of the cost of shortage had to be continued till finalization of recovery of the value of the materials. The applicant caused pecuniary loss to the Railways on account of shortage of materials and the representations made by him were not found convincing and not as per the Railway rules, the Executive Engineer under whose control the applicant was working, had decided to recover the amount. Hence, the action of the Railway is justified. In terms of Financial Adviser & Chief Accounts Officer's order dated 30.6.61 (Annexure R-2), the administration could take up the shortage exceeding the value of Rs.5000/- even though the discrepancy (shortage) in stock within the permissible limit of 2% of the transactions made prior to the date of verification. The existing provisions of stock verification manual have been followed. The section weight was scientifically determined by



the producer M/s SAIL. Hence, determination of ground stock by the stock verifier on sectional weight is justified and based on practical consideration and norms in vogue.

3. The applicant has filed a rejoinder reiterating the contentions that determination of stock on section weight is not at all justified and no pecuniary loss was caused to the Railways and that the applicant has no liability to pay any amount to the Railways. The applicant was denied a reasonable opportunity to defend himself since the proceedings under Railway Servants (Discipline & Appeal) Rules was not followed. The recovery made from the applicant's salary is ex facie, arbitrary and totally unjustified.

4. We have heard the learned counsel for the parties and perused the records/documents/materials placed on record and given due consideration of their pleadings/rival pleadings.

5. Learned counsel for the applicant submitted that the loss, if any, sustained to the Railways is punishable under Railway Servants (Discipline & Appeal) Rules, 1968. But as a matter of fact the applicant was denied reasonable opportunity of defending himself since the proceedings were not followed under the said rules before imposing of the penalty, is highly arbitrary and discriminatory and opposed to the mandatory principles of natural justice and hence violative of Articles 14 and 16 of the Constitution of India.

6. Learned counsel for the respondents submitted that the shortage detected as per stock verification report (Annexure R-1) which was signed by the applicant in token acceptance of the acknowledgment and what has been stated in the remark column is not correct. Admittedly, it is a case of both the



parties that stock was entrusted to the applicant on actual weighment basis and the stock verifier has assessed the liner measurement and sectional weight basis. It is also the admitted case that tolerance percentage of 2 per centage of transactions was also considered to cover the recovery for the shortage of the material during the transaction period as per code provisions. The rationality of the Tribunal presupposes that there can be shortage of weight of steel rods for various reasons, such as shrinkage and climatical variations. One of the contentions taken by the applicant is that the materials kept in the yard were exposed to rain over the years and rested to a greater extent and therefore, naturally weight should be reduced. On perusal of Annexure R-1(2), in the remark column it is clearly stated as follows:

" During verification the rods were measured and a total of 3133.5 metric was available. Consolidation on the basis of standard weight of 3.853 kg./M this deficiency is revealed.

But on test weighment it is found that the actual weight comes to 4.01 kg/M. On this basis 31333.5 M.weights 125647.33 kg. resulting in a net deficiency 1468.67 kg. This being trivial out of 190016 Kg. handled may be condoned. This is taken in to effect on 31.3.92."

7. This document has been countersigned by the then Executive Engineer. According to applicant, this is signed after due verification by the concerned officer and that is why justifying this, the Railways had not taken any action for almost six years by then the applicant was repatriated into his parent organization.



8. The procedure adopted in taking the weighment /measurement of article is laid down in the Indian Railway Code for the Stores Department (Vol.II) wherein rules 3236, 3238, 3241 and 3263 are the relevant rules concerning the stock verification etc. which are reproduced as under:-

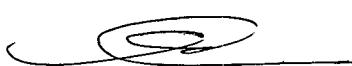
"3236. Units of Weight.- The Unit for verification should be the same as that of unit of accountal and the quantity shown in stock sheets should be rounded off to the nearest number of decimals as that of Priced Ledger."

"3238. Measurement Vs Weightment.- Measurement or average weighment to arrive at the total approximate weight of stocks of an article should be resorted to only if there are heavy balances in hand. To arrive at average weighment, at least 2 per cent in the case of steel and 10 per cent in the case of other material of stores, should be weighed, such stock should then be measured by length, area or cubic contents. The measurements of the entire stock should then be taken and then reduced to weight by the data furnished by the sample quantity measured and weighed. If the weight thus arrived at is approximately the same as the depot book balance, the latter should be accepted as correct, if however, a heavy difference is disclosed thereby, all figures for measurements and weighment should be carefully rechecked and an additional 2 per cent or 10 per cent (as the case may be) weighed and measured. Appendix III to this Code gives tables of weights and measurements for certain common items of stores."

"3241. Verification of Heavy Articles.- The weight of heavy stores, such as large steel plates, channels, rolled steel beams, etc. which cannot be easily handled or weighed, should be arrived at by very carefully taking the measurements of such articles, calculating the cross-section and then using appropriate formulae or conversion rate which should be prescribed for the purpose by each Railway Administration. Where no such formula have been prescribed, the conversion factors given in Appendix-III may be used."

"3263. Important points for scrutiny.- While scrutinising the stock sheets, the authorized Inspector should see:

- (i) that explanations recorded against discrepancies represent facts;
- (ii) that they are clear, intelligible and definite;
- (iii) that independent explanation are furnished against individual discrepancies and that excesses under some items are not adjusted against shortages in dissimilar items. In case of analogous items (where sizes only differ)



such adjustments may be passed upto 2% of the transaction since the date of last verification, but any bigger differences must be taken up.

(iv) that in case of items accounted for in numbers large differences do not arise; - that where shortages found as a result of stock verification are attributed to the neglect of the subordinate holding charge of stores, the cost of the missing articles is invariably recovered from the parties at fault. The amount so recovered should be noted in a manuscript register of recoveries (S.3263) maintained in the following form:

- (a) Date
- (b) Name of Division.
- (c) Name of person debited.
- (d) Amount recovered.
- (e) Authority.
- (f) Initials of stock verification clerk.

(v) at the close of the financial year, the amounts should be totalled up and incorporated in the statement showing the activities of the Stock Verification Section prepared for the purposes of the annual statement of Stores Transactions (S.3001); and

(vi) that in case of discrepancies arising as a result of improper classification/grouping, the shortages under one item are not set off compensating improper classification/grouping and excess posted under items."

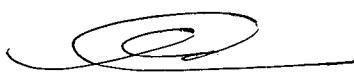
9. The sum and substance of the above rules is that the weight of heavy store, as such as large steel plates, steel rods etc. should be weighed taking the actual weight and also provides 2 per cent tolerance. In this case two different methods are being adopted while entrusting the stock and later when stocks were verified. Therefore, we find substance in the arguments advanced by the learned counsel for the applicant that the same method ought to have been adopted in both these actions which is not done in this case. Apart from that, the contention that the weight arrived at by the verifier on the basis of the sample quality measured is without any scientific data and accepted norms and this is not in conformity with the above rules. On the assertion made by the applicant, the actual weight comes to 4.01 kg/metre against 3.89 kg. per



meter length of rate assessed by the Department varies in its calculation which the department never tried to ascertain at the earliest opportunity. When Annexure R-1(2) was submitted which is duly signed by the Executive Engineer where the dispute was raised and the stock was available, the department should have taken appropriate steps to weigh the actual measurement especially when this was entrusted to the applicant on the same basis. The department slept over the issue for 6 years and started recovering the alleged amount without any reasons. In the circumstances, we find that the verification in that stocks can also be reduced on various factors including exposure to rain and sun over a long period. Considering this aspect, we are of the view that the differences calculated by the stock verifier is not based on correct method and procedure as laid down in the Indian Railway Code mentioned above. Apart from that, one of the contentions raised by the applicant is that he should have been proceeded under Rule 6 of the Railway Servants (Disciplinary & Appeals) Rules by which he should have given a reasonable opportunity to defend his case. Our attention is also brought to the Indian Railway Financial Code (Vol.I) Chapter-I where the procedure has been laid down as to losses, frauds and embezzlements of Railway property. Rule 1101 stipulates the responsibility for losses which reads as follows:

"1101. Responsibility for Losses.- Every public officer should exercise the same vigilance in respect of public expenditure and public funds generally as a person of ordinary prudence would exercise in respect of the expenditure and the custody of his own money. Means should be devised to ensure that every railway servant realizes fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part and also for any loss arising from fraud or negligence on the part of any other railway servant to the extent it may be shown that he contributed to the loss by his own action or negligence."

[Emphasis added]



10. Therefore, it is very clear that in fixing responsibility for the loss sustained by the Government/Railway the fraud or negligence on the part of the employee should be proved. Here, the respondents have not taken any plea in the written statement nor have a case that loss has been occurred due to negligence on the part of the applicant. Apart from that, none of the correspondence of the respondents either in Annexure R-1, R-2, the impugned order or any imputation has been made against the applicant for his negligence. Therefore, without the question of negligence, it is not possible to proceed against the applicant. In Rule 1105 of the same code stipulate the method of investigation of losses and Rule 1108 stipulate recoveries of losses which has not been done either in this case. If the loss exceeds Rs.25,000/-, it is a condition precedent in Clause (f) of Section 1103 for conducting 'disciplinary action' and proceed against the party at fault and to be reported to the General Manager, which denotes that disciplinary action should have been initiated against the employee and then recovery made. In this case the respondents had not adopted such a course of action and the proceeding is irregular and arbitrary, denying an opportunity to the applicant of being heard. Therefore, the impugned order (Annexure A-5) is not legal and therefore, only to be set aside.

11. In the conspectus of facts and circumstances of the case, we set aside Annexure A-5 letter dated 24.9.1999 and direct the respondents to refund the amount recovered from the applicant, if any, on this count. On the appreciation of



evidence, we hold that no interest need be paid as claimed by the applicant.

12. The Original Application is allowed as above. There will be no order as to costs.

Dated the 21st of June, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

APPENDIX

Applicants' annexure

Annexure A-1 Copy of the letter No.W.339/CN/TAVC dt.5.10.98 issued by the 3rd respondent.

Annexure A-2 Copy of the representation dt. 24.11.98 of the applicant to the 5th respondent.

Annexure A-3 Copy of the representation dt. 27.11.98 of the applicant to the 4th respondent.

Annexure A-4 Copy of the representation dt. 19.4.99 of the applicant to the 2nd respondent.

Annexure A-5 Copy of the letter No.S.339/SV/CN/MS/DW/CN/TVC /A/c Note dated 24.9.99 issued by the 2nd respondent.

Annexure A-6 Copy of the letter bearing No.339/W/TVC dated 7.10.99 issued by the 3rd respondent.

Respondents' annexure

Annexure R-1 Copy of Statement of Declaration of the applicant dated 28.3.92.

Annexure R-2 Copy of Procedure Order NO.S/71/P/VOL/3 dated 30.6.61 of Financial Adviser and Chief Accounts Officer.