

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 51/2008**

This the 7th day of August, 2009

**Hon'ble Dr. A.K. Mishra, Member(A)**

Janardan Kumar Rawat, Aged about 39 years, S/o late Sukhdeo Rawat, R/o 183/182, Mavaiya Mandir, Post Alambagh, Lucknow.

.....Applicant

By Advocate: Sri M.A. Siddiqui

**Versus**

1. Union of India through the G.M. N.E.R., Gorakhpur.
2. The D.R.M., NER, Ashok Marg, Lucknow.
3. The Sr. D.C.M., N.E.R., Ashok Marg, Lucknow.
4. The FA and CAO, N.E.R., Gorakhpur.
5. Sri K.K. Prasad, T.I.A, Sitapur through FA & CAO NER, Gorakhpur.
6. Sri M.P. Singh CCI through Sr. DCM, Lucknow.
7. DRM (P), LJP representing by APO Bill Lucknow.

.....Respondents

By Advocate: Sri C.B. Verma.

**ORDER**

This application has been made against debit orders relating to recovery of Rs. 1,47,109/- from the salary of the applicant and a prayer has been made for quashing the relevant orders at Annexures A-10, A-14, and A-15 and also to set-aside the confirmed debit shown as outstanding against Mehmudabad station for Rs. 2,32,686/-

2. Since the preliminary grievance of the applicant is against his liability for Rs. 1,47,109/-, I would confine my examination of the rival claims in respect of this amount. However, for better understanding, a brief background of the case leading to main recovery order is given as follows:



The applicant was working as Commercial Clerk at Mehmudabad Oudh station from 22.10.1982 onwards. Originally, he was looking after the responsibility relating to coaches, but subsequently on 15.12.2003 he was entrusted with the work relating to goods. Therefore, according to him, he was not very familiar with the regulations relating to dispatch of goods; neither was he given any refresher training in the matter, even in spite of his representations. The alleged incident took place, in such circumstances, during June 1994, when there was a requisition for dispatch of 41 wagons of wheat, which was registered on 21.6.2004. But, on examination of wagons by the merchants and station staff, it was noticed that four wagons were not fit for loading of wheat. The Technician dispatched from Gonda Jn. inspected these four wagons and after local repairs declared them as watertight. As roof of one wagon and body of other two wagons were badly damaged, the merchants loaded wheat in 38 wagons and declined to load three wagons, which according to them, were not in fit condition to carry food materials. According to the Railway Circular, the minimum number of wagons permissible for a rake load was 38 and in this case 38 wagons were loaded, thus fulfilling the loading requirement of the Railways. The counsel for the applicant has annexed circular no. 153 of 1.9.1997 to support this contention.

3. The respondent no.5, who is a supervisory official, visited the station during July, 2004 and allegedly demanded illegal gratification both from merchants and the applicant. He kept his inspection report with him and released it only in the month of February, 2005 after a long delay when his illegal expectations were not met. On the objection relating to two items involving Rs. 147198/- and Rs. 33,237/- respectively, the Sr. Commercial Manager has clarified in his letter at Annexure-9 that since 38 wagons were loaded, which was as per the minimum train load facility, there was no loss of revenue for the Railways; besides, the registration amount as well as demurrage charges for three wagons had already been forfeited as penal measures; further, revised RR was issued on that basis on 12.12.2004; therefore, there was no occasion for levy of any



under-charges. He had specifically recommended that the objection raised in the debit memo should be considered in the light of his clarification and the matter closed.

4. The issue was brought before this Tribunal in O.A. no. 574 of 2006 as the representation of the applicant against debit memo was not decided by the respondent-authorities. The Tribunal disposed of the O.A. on 10.9.2007 with a direction to the respondents to finally dispose of the representation of the applicant with a reasoned order within three months. The respondent no.3 finally passed the impugned order on 6.12.2007, in which the points raised in the representation were rejected and debit amount of Rs. 1,47,109 was confirmed against the applicant; hence this application.

5. The grounds taken in the application are that it was not the applicant's fault if the merchant did not choose to load three damaged wagons with edible commodity like wheat particularly when the requirement prescribed for rake loading was fulfilled; that the damages to roof and the body of wagons could not be set right by a technician at Mehmudabad station and they needed extensive patch work at base station workshop; that the then Senior D.C.M. fully appreciated the ground reality and clarified the matter in his letter at Annexure A-9 and his recommendations could not be reversed by his successor-in-office of the same rank. He has raised other grounds to the effect that under-charges could be recovered at the destination station, not at the dispatch station and that the statutory rule 1811 of IREM Vol. II had not been followed in passing the impugned orders.

6. The learned counsel for the respondents submitted that due allowances had been made to the observations of the previous Sr. DCM and the liability of the applicant was reduced by Rs. 33237/-; that the technician, who was dispatched to look after the repair work, declared the wagons as watertight; that the impugned orders were self explanatory giving detailed reasons while fixing liability on the applicant.

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7. On examination of rival contentions, I find that the minimum rake load both in terms of number of wagons and weight of goods had been satisfied. It is also found that four wagons had developed problems on their roof and body leading to legitimate apprehension about carriage of food-grains in such wagons. It was the merchant concerned who developed cold feet in dispatching wheat in such wagons, which were repaired not at the workshop, but by a technician on site. It is a fact that the then Deputy Commercial Manager, who was in the know of actual state of affairs, had recommended for dropping the audit objections. It does not stand to reason how a poor clerk could be asked to pay for entire freight charges relating to three wagons, when, admittedly, registration and demurrage charges had already been collected from the party. The personal liability of the applicant in the matter of under-charges claimed in the debit memo has not been explained satisfactorily. I also find that the successor-in-office could not reverse the recommendation, which had already been given by the Sr. D.C.M., who was the authority in charge at the time of the incident.

8. For all these reasons, I find that there is sufficient force in the contentions raised by the applicant. Accordingly, the impugned orders contained at Annexure A-10, A-14, and A-15 are quashed. The respondents are directed not to enforce recovery from the applicant of the amount covered under these orders.

9. In the result, the application is allowed. No costs.

  
 (Dr. A.K. Mishra)  
 Member-A