

**Central Administrative Tribunal Lucknow Bench Lucknow**

**Original Application No. 240 of 2010**

**This, the 4<sup>th</sup> day of October, 2013**

**Hon'ble Mr. Navneet Kumar, Member(J)**

Mohd. Rais, aged about 56 years, son of Shri Mohammad Ali, resident of Village & Post- Isauli, Mohalla Paithana, Sultanpur.

**Applicant**

**By Advocate Sri Praveen Kumar.**

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. The Assistant Personnel Officer, Northern Railway, Lucknow.
4. The Divisional Railway Manager, Northern Railway, Ambala Division, Ambala.

**Respondents**

**By Advocate Sri Ashish Mishra holding brief for Sri M. K. Singh.**

**(Order Reserved on 26.9.2013)**

**ORDER**


**By Hon'ble Shri Navneet Kumar, Member (J)**

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (a) To quash the recovery initiated against the applicant as indicated in the LPC vide order dated 17.11.2009, contained as Annexure A-1 to this OA with all consequential benefits and recovered amount if any is liable to be refunded with interest @ 12% P.A.
- (b) To release withheld salary for the period as indicated in para 4.19 during which the applicant was under waiting for orders with interest @ 12% PA till the actual date of payment.
- (c) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- (d) Cost of the present case."



2. The brief facts of the case are that the applicant while working on the post of Assistant Station Master was transferred from Lucknow Division to Ambala Division by means of an order dated 17.4.2006. Against the said order, the applicant preferred O.A. 350 of 2006 which was subsequently decided by the Tribunal vide order dated 6.9.2006. The said order was challenged before the Hon'ble High Court in Writ Petition No. 876(S/B) of 2007. The Hon'ble High Court was pleased to enough to pass an order of stay dated 06.09.2006. Subsequently, the respondents passed another order dated 25.7.2008 by which, the respondents have transferred the applicant to Ambala Division. The applicant subsequently, decided to proceed in accordance with the transfer order dated 25.7.2008 and before he could be relieved to join the Ambala Division, the applicant fallen sick and remained in the sick list of the Railway Doctor in the Railway Hospital. Subsequently, the applicant was relieved by means of an order dated 01.07.2009 for joining in Ambala Division and he was spared by the respondents on 23.7.2009. But his last pay certificate was issued for the first time on 17.11.2009 by which the last pay drawn by the applicant has been revised by the respondent No. 4 and the recovery of Rs. 46889/- has been directed to be made from the salary of the applicant. It is also pointed out by the learned counsel for the applicant that from 01.7.2009 to 23.07.2009, the applicant remained as waiting for orders therefore, for all practical purposes, the said period ought to have been treated as spent on duty and he should have been paid salary from the Lucknow Division itself. The applicant has also submitted the representation to the



- 3 -

authorities which was also not decided by the respondents and the said recovery was ordered without any notice whatsoever upon the applicant. As such, the applicant submits that the impugned recovery order to be quashed and the applicant be given an opportunity of hearing and failure to do so will attract violation of principle of natural justice.

3. The learned counsel appearing on behalf of the respondents have filed their reply and in their reply, it was pointed out that the applicant while as ASM/Musafirkhana,, was transferred to Ambala Division and after completion of Disciplinary Proceedings against him, again the transfer order was issued on 25.7.2008 and it is also pointed out by the learned counsel for the respondents that the applicant was spared for joining to Ambala Division vide order dated 20/21.7.2009. As such, it cannot be said by the applicant that the applicant was waiting for his relieving orders from 1.7.2009 to 23.7.2009. The learned counsel for the respondents has also pointed out that he was paid salary for the sick period by mistake therefore a recovery of Rs. 46889/- has been worked out and the same was to be deducted from the salary of the applicant.

4. The learned counsel appearing on behalf of the applicant has filed their rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. It is once again pointed out by the learned counsel for the applicant that the applicant fallen seriously ill during 15.1.2009 to 27.2.2009 and thereafter 6.3.2009 to 30.6.2009, as such he remained in the sick list of the Railway Doctor in the Railway Hospital and the applicant was subsequently relieved but without assigning any

w

~y~

reasons, a sum of Rs. 46889/- was recovered from the salary of the applicant. The learned counsel for the applicant has once again categorically pointed out that the said recovery order has been issued without any reason and without following the principle of natural justice. Apart from this, the learned counsel for the applicant has also pointed out that he has also submitted a representation on 15.12.2009 which is annexed as Annexure A-7 to the O.A. and such representation is still pending for final adjudication.

5. Heard the learned counsel for the parties and perused the record.

6. A short question which is involved in this case is that whether before issuing the recovery of a sum of Rs. 46889/-, the applicant was given any notices whatsoever or not. It is correct to state that the applicant was transferred from Lucknow Division to Ambala Division and he has preferred O. A. 350 of 2006 which was decided by the Tribunal vide order dated 6.9.2006 and the said order was subsequently challenged before the Hon'ble High Court and the Hon'ble High Court has been pleased enough to stayed the judgment and order of the Tribunal dated 6.9.2006. Subsequently another order transferring him to Ambala Division vide order dated 25.7.2008 was issued. After the said order of the transferred, the applicant was supposed to go and join at his transfer place but, as mentioned by the applicant that he fallen seriously ill during 15.1.2009 to 27.2.2009 and thereafter 6.3.2009 to 30.6.2009 and he remained in the sick list and was spared by the respondents only on 23.7.2009. As such, only thereafter he has joined at his transferred place. The averments of the

~w~

respondents also cannot be disputed to the extent that the applicant was paid the salary for the sick period erroneously therefore a recovery of sum of Rs. 46889/- has been worked out for deduction from the salary of the applicant. Neither in the counter reply or any of other documents annexed by the respondents shows that the applicant was given an opportunity before passing such an order of recovery. Even during the course of arguments, the learned counsel for the respondents also fail to indicate or show any document which may indicate that the applicant was given an opportunity to show cause before passing any order of recovery.

7. As observed by the Hon'ble Apex Court in the case of **State of Orrisa Vs. Dr. Ms. Binapani Dei reported in 1967 Supreme Court Cases 1269** where the Hon'ble Apex Court has been pleased to observe that ***"Even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice."***

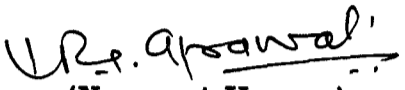
8. In the case of **Davinder Singh and others Vs. State of Punjab and others reported in (2010) 13 Supreme Court Cases, 88**, the Hon'ble Apex Court has also been pleased to observe that ***"opportunity of hearing is to be given to the delinquent before passing an order."***

9. In the instant case, it is explicitly clear that no opportunity of hearing was given to the applicant before passing the order of recovery, as such the applicant has made a case for interference by the Tribunal and the O.A. is deserves to be allowed.

W

10. Accordingly, the O.A. is allowed. The impugned order dated 17.11.2009 contained in Annexure A-1 to the O.A. is quashed. However, the respondents are at liberty to pass fresh order after giving due opportunity of hearing to the applicant.

11. With the above observation, O.A. is allowed. No order as to costs.

  
(Navneet Kumar)  
Member (J)

vidya