

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 364 of 2007

This, the 20th day of December, 2013.

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

V. S. Tewari, aged about 49 Years, son of Late Shri Shanti Swaroop Tewari, resident, resident of Budhwa Taal, Subhash Nagar, Hardoi.

Applicant

By Advocate Sri Praveen Kumar.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway Moradabad.
3. The Sr. Divisional Operating Manager, Northern Railway, Moradabad.

Respondents

By Advocate Sri S. Verma

(Reserved on 6.12.2013)

ORDER

By Hon'ble Mr. 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:

- "1. To quash the order dated 7.8.2007 annexed as Annexure No. A-1 to this O.A. with consequential benefits.
2. To direct the respondents to refund the amount recovered from the applicant along with interest @ 12% p.a.
3. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
4. Cost of the present case."

2. The brief facts of the case are that the applicant was initially appointed on the post of Token Porter in 1978 and subsequently, after qualifying selection, he was promoted on the post of Assistant Station Master and while working on the said post, he was posted at different places/stations. In the year 2003, the applicant was promoted and posted from the post of Assistant Station Master to the post of Station Master and posted at Chanehti and thereafter transfer to Tilhar Station w.e.f. March 2004. After a substantial period of time, the applicant received a letter date 18.11.2005 by virtue of which, he was asked to deposit a sum of Rs. 93,377/-. In pursuance of the said order, the applicant immediately represented to the respondent No. 3 indicating therein that even after inspecting and verification by the T.I.A. at the time of transfer to Karna Station, no debit came out over the applicant. The

respondents instead of taking any decision kept silent on the representation of the applicant and subsequently the applicant has also submitted a reminder. When the respondents instead of deciding the claim of the applicant started the recovery of the aforesaid amount. The applicant was left with no other option except to approach the Tribunal and file the O.A. 372 of 2006 wherein, the Tribunal directed the respondents to consider the case of the applicant and dispose of his representation and in pursuance of the said direction, the applicant submitted the copy of the order to the respondents. But the respondents ignored the judgment of the Tribunal and issued notice on 13.12.2006 and granted 10 days time to the applicant for submitting his explanation in most arbitrary manner. Not only this, the learned counsel for the applicant also submitted that the aforesaid debit pertains to the year 2001-2006 it can be reveal from the show cause notices. The applicant has given reply, but instead of disposing of his reply/objections, the respondents started recovery and has also passed the impugned order dated 7.8.2007 after expiry of more than the time provided by the Tribunal. The main contention of the applicant is that during the period, when this recovery is shown, the applicant was not working as Station Master at Tilhar Station, as such, the entire action of the respondents is illegal and liable to be struck down.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was pointed by the respondents that the applicant failed to submit his explanation in response to the letter dated 13.12.2006 within the prescribed time, however, he has submitted his representation, subsequently, which was considered by the competent authority and after considering the same, the respondents have passed an order dated 7.8.2012. Not only this, it is also categorically pointed out by the respondents that out of the total recovery of Rs. 93377/- an amount of Rs. 30317/- has been credited against the applicant after taking clearance from the Senior Traveling Inspector of Accounts, Bareilly vide his credit advice dated 26.2.2006 and it is also pointed out by the respondents that the amount of Rs. 1549/- has also been credited from the debit amount. As such, as per the record, a total amount of Rs. 47466/- is still outstanding against the applicant. The learned counsel for the respondents also submitted that it is evident that commercial debit outstanding against the applicant relates to his tenure when he was in charge of Tilhar Station. As

regard, an amount of Rs. 14000/- has also been deducted from the salary of the applicant.

4. The learned counsel appearing on behalf of the applicant has filed the rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. However, it is once again pointed out by the applicant that the alleged debit might be related to the period after 21.6.2005 when the applicant was not posted and was transferred to the Karna Station and thereafter to Hardoi Station. When the applicant is posted on the post of Station Master at Tilhar Station the respondents issued the impugned order in the name of the applicant itself. Not only this, through rejoinder, it is also submitted by the learned counsel for the applicant that the impugned order is a non speaking order. Apart from this, it is also argued by the learned counsel for the applicant that the respondents have totally ignored the direction of the Tribunal and passed the orders without application of mind as such, it requires interference by the Tribunal.

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

6. The applicant was appointed in the respondents organization and was promoted to the post of ASM in the year 2003 and was posted at Tilhar w.e.f. March 2004 to the post of Station Master. It is also seen from the record that the order dated 13.12.2006 contained in Annexure A-8 to the O.A that a notice was given to the applicant indicating therein that while the applicant was posted as Station Master between 2002 -2005, a commercial debit was raised and the applicant was asked to submit his explanation in response to the said debit. As per the averment of the applicant, he has worked at Tilhar Station as Station Master w.e.f. 31.3.2004 to 21.6.2005 and the commercial debit shown is also only of the said period. The applicant has also submitted the explanation on 28.12.2006 indicating therein that from 2001 to 2006, the entire commercial debit was levelled against the applicant and he has also mentioned number of other facts through his representation but the bare perusal of the impugned order shows that the authorities have cursorily and in a very casual manner passed the impugned order on 7.8.2007. Undoubtedly, the impugned order is a non speaking order as such, it requires interference by this Tribunal.

7. As observed by the Hon'ble High Court in the case of **Hari Shanker Srivastava vs. Special Land Acquisition Officer, reported in 1993 (11)**

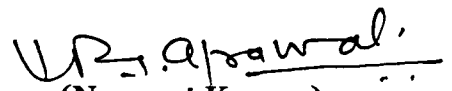
LCD 441 that “ an order adversely affecting an employee has to be a speaking order.”

Apart from this the in **A. K. Kraipak Vs. Union of India AIR 1970 SC 150**, the Supreme Court has laid down that requirement of fair play extends even to administrative decisions. The Court remarked in that context that the line between administrative and judicial decisions is getting almost obliterated and it is not always easy to distinguish one from another.

In **I. J. Rao, Assistant Collector of Customs and others Vs. Bibhuti Bhushan Bagh and another (1989) 3 SCC 202** the Supreme Court has laid down that where rights of a person are adversely and prejudicially affected by an order made by an authority in a proceeding, such person is entitled to an opportunity whether the proceeding is judicial, quasi judicial or administrative in nature.

8. The bare perusal of the impugned order shows that though the reply dated 28.12.2006 submitted was considered but the grounds taken in the said reply is not considered in the impugned order, as such, it requires interference. Indeed any decision whether Judicial, quasi Judicial or administrative has to be fair and reasonable and not arbitrary or discriminatory.

9. Accordingly, the O.A. is allowed. The impugned order dated 7.8.2007 is quashed. The respondents are at liberty to pass fresh orders considering all the grounds taken in the reply dated 28.12.2006 within a period of three months from the date of certified copy of this order is produced and the decision so taken be communicated to the applicant. No order as to costs.


(Navneet Kumar)
Member (J)

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