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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~XXXXXXXX~~

T.A No. 372/87

198

DATE OF DECISION 10.7.1991.

Shri M.R. Nonarkar Petitioner

Shri P.C. Marpakwar Advocate for the Petitioner(s)

Versus

D.R.M., Nagpur & Others. Respondent

Shri P.N. Chandurkar Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. P.S. CHAUDHURI, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether in needs to be circulated to other Benches of the Tribunal ?
- } *No*

P. S. Chaudhuri

(P.S. CHAUDHURI)
MEMBER(A).

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, CAMP : NAGPUR

Tr.A.No.372/87.

Shri M.R. Nonarkar,
R/o. Ghora Dongri,
Distt- Betul (M.P.)

.. Applicant.

V/s.

1. The Divisional Railway Manager
(Commercial),
Central Railway, Nagpur.
2. The Divisional Personnel Officer,
Central Railway, Nagpur.
3. Union of India, through
Secretary,
Law, Justice & Company Affairs,
New Delhi.

.. Respondents.

CORAM : Hon'ble Justice Shri U.C. Srivastava, Vice
Chaiman.
Hon'ble Shri P.S. Chaudhuri, Member (A).

Appearances:

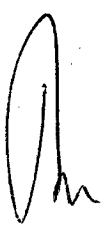
Mr.P.C. Marpakwar, Advocate
for the applicant and
Mr.P.N. Chandurkar, Advocate
for the respondents.

ORAL JUDGMENT

• DATED: 10.7.1991.

¶ Per : Shri P.S. Chaudhuri, Member (A) ¶

This application has come to the Tribunal by way of transfer under Section 29 of the Administrative Tribunal, Act, 1985 from the Nagpur Bench of the Bombay High Court in terms of its order dated 4.11.1986 on Writ Petition No.805/86 which was filed before it on 15.4.1986.



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2. In it, the applicant who was working as Deputy Station Superintendent at Ghora Dongri on Central Railway is challenging the orders dated 7.2.1986 and 19.3.1986 by which the respondents have issued directions to transfer the debit of Rs.52,072/- to the Goods admitted side and recover the same through the wages of the applicant at Rs.500/- per month. While the matter was pending before the High Court, interim stay of recovery was granted. The applicant had made a representation in the matter prior to his retirement on superannuation but no final orders have yet been passed as the matter was before, first, the High Court and then the Tribunal.
3. We have heard Mr.P.C. Marpakwar, learned counsel for the applicant and Mr.P.N. Chandurkar, learned counsel for the respondents. At the outset, Mr.Marpakwar submitted that the applicants' prayer challenging the validity of the Administrative Tribunals Act, 1985 was not being pressed.
4. It is not disputed that the said recovery is founded on the charge that the applicant permitted unauthorised stacking of steam coal to the merchants with malafide intention to defraud the railway revenue. The respondents have opposed the application by filing their written statement in which they have said that Rule 2709 of the Indian Railway Commercial Manual, Volume-II says:

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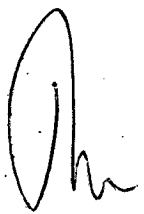
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"Every debt or disallowance against a Station by the Traffic Accounts Office or Cash Office, whether arising from error in charging fare or freight, short remittance of cash, base coins or other causes, is payable by the person through whose fault it has been incurred. It is, however, the duty of the Station Master that on receiving the advice of the internal check, error sheet or any other advice of debit, he should thoroughly check the same with connected initial documents and in case the debit is admitted, through (sic) determined by who the amount is payable. In disputed or doubtful cases, the Traffic/Commercial Inspector may be consulted."

There is no way in which the charge on the basis of which the recovery is being made can come within the ambit of this rule. Even the provision regarding "other cases" has to bear some relation to the main specific provisions of the Rule. There is no way in which an alleged malafide intention regarding misuse of licenced plots can come within the ambit of an admitted goods debit. Of course if the applicant is alleged to have committed some misconduct or acted contrary to rules, the respondents are always at liberty to have taken or to take appropriate action against him in accordance with the applicable rules.

5. In this view of the matter we are of the opinion that the application deserves to be allowed and the impugned order deserves to be quashed and set aside.

6. We accordingly quash and set aside the orders dated 7.2.1986 and 19.3.1986. We would make it clear that the respondents are at liberty to proceed with the



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disciplinary action that they have already initiated against the applicant in conformity with the applicable rules and in accordance with law, in case they so desire. In the circumstances of the case there will be no order as to costs.



(P.S. CHAUDHURI)
MEMBER(A).



(U.C. SRIVASTAVA)
VICE CHAIRMAN.