

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. : 1098/99

Date of Decision : 02-7-2003

R.P. Devlekar Applicant

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri Kuldip Singh, Member (J)

The Hon'ble Shri Shanker Prasad, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library of

(KULDIP SINGH)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1098/99

Dated this the 02nd day of July 2003.

CORAM : Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

R.P.Devlekar,
Head Booking Clerk
working under Station
Superintendent,
Matunga Road,
Western Railway,
Mumbai.

...Applicant

By Advocate Shri C.M.Jha

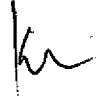
vs.

1. Union of India
through its General Manager,
Western Railway, Churchgate,
Mumbai.
2. Divisional Railway Commercial
Manager (Chg.), Western Railway,
Bombay Central, Mumbai.
3. Sr.Divisional Commercial Manager,
Western Railway, Bombay Central,
Mumbai.
4. Wizcraft, the Entertainment
Agency, A/102, Rizvi Palace Hill
Road, Bandra (W), Mumbai.
5. Mr.S.P.Balan,
C.B.S. Booking Office,
Dadar, Western Railway.

...Respondents

By Advocate Shri V.S.Masurkar

.2/-

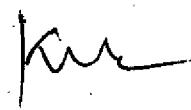


O R D E R

{Per : Shri Kuldip Singh, Member (J)}

Aggrieved from the order of penalty of recovery of Rs.89,599.50 the applicant has filed this OA. The applicant was proceeded departmentally. The facts as alleged by the applicant are that the applicant was working as Senior Commercial Clerk and was deputed to work at Bandra Terminus for special duty under the direct control of Chief Booking Superintendent Mr.Balan at Bandra Terminus.

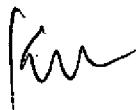
2. On 22.8.1994 one M/s Wizcraft Entertainment Agency is stated to have approached for booking a special coach. The applicant was assigned the duty to book the same. Though the applicant was reluctant to issue the ticket but still under the guidance of Mr.Balan applicant agreed to issue the ticket. The applicant then prepared a special ticket and remitted the sum of Rs.78,986/- and also obtained an undertaking from the Wizcraft Entertainment Agency that they shall make good if any debit is raised by Accounts Office. But in all these process, it is alleged that the applicant had issued the ticket where there was undercharge of Rs.1,79,199/- and which was ordered to be recovered from the applicant. The applicant challenged this action stating that it was recovered without holding any enquiry. The OA.No.406/97 was allowed. The Tribunal was pleased to grant stay on the recovery which was being made from the applicant.



.3/-

3. However, thereafter regular enquiry was held after issuing a chargesheet to the applicant. Charges were framed against the applicant stating that he had failed to maintain proper working procedure by charging less while preparing special ticket thereby causing loss to Railway Revenue to the tune of Rs.1,79,199/-. Therefore, the applicant was charged with careless and negligent working and lack of devotion to duty thereby violating Rule 3(1)(ii) of Railway Service Conduct Rule,1966. Ultimately, in the enquiry the applicant was found guilty and the disciplinary authority passed the order for recovery of Rs.89,599.50 as 50% of the undercharges, which would be recovered Rs.1,000/- p.m. as a deduction from his salary.

4. The applicant preferred an appeal which was rejected. Thereafter, revision petition was filed. The same was also rejected. Then, a mercy petition was taken up which was also rejected. The applicant in the present OA. assailed all these orders. The first ground taken is that he has not been given any personal hearing by the appellate authority, therefore, the order is bad in law. The next contention of the applicant is that while issuing the ticket the applicant merely obeyed the orders of Mr.Balan and who had given directions to prepare Ticket and accept the amount calculated by him on a piece of paper, the undercharges was due to the Chief Booking Clerk. Thus, he alleged that no recovery can be made from his salary. Besides that, the applicant also pleaded that under Para 659 of Railway Commercial Manual the Railway has a right to recover the undercharge from M/s.Wizcraft and even under Rule 659, the Railways can recover the amount only from Chief Booking Clerk or Station Master and the applicant should not have been made to pay the undercharge amount or imposed any penalty for the same:



5. The OA. is being contested by the respondents. The respondents pleaded that the action of the respondents is strictly in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968 and there is no flaw or defect in the procedure. The respondents further submitted that they are not in direct contact with M/s. Wizcraft Entertainment Agency, though they had issued various letter till then. As regards Shri Balan is concerned, it is also alleged that a separate chargesheet had been issued penalty of withholding of next increment for a period of 10 months with future effect has been imposed.

6. We have heard the learned counsel for the parties and gone through the record.

7. The first contention of the applicant was that he had not been given any personal hearing by the appellate authority, as regards the same was concerned, we find that on record though the applicant has made an exhaustive statement of facts and law while challenging the order of disciplinary authority in his appeal similarly, he has made exhaustive statement in law and facts while preferring a revision petition and mercy petition. Even in personal hearing probably the applicant could not have expressed better than what he has stated in writing while preferring an appeal and revision. We do not think that the applicant has been prejudiced on any account for the reasons that the applicant had issued the ticket though initially he was reluctant to issue the ticket. Thus, there is denial on the part of the applicant that he had not issued the ticket and as regards the fact that he had



..5/-

charged the fare as per the calculations provided to him by Mr.Balan, the enquiry officer as well as disciplinary authority had found that the applicant did not lead any evidence to show that Mr.Balan had given him the exact figure of amount or any calculation sheet for the amount which he has charged from M/s. Wizcraft Entertainment Agency. On the contrary, he himself being a Senior Commercial Clerk was under a legal duty to calculate the fare in accordance with the rules as per the directions of the superior authorities which he had failed to do so and which show his negligence in calculating the amount. Thus, we find that the applicant has no merits in his OA.

8. The applicant submits that under para 659 of Railway Commercial Manual could have recovered from the consumer or from the Chief Booking Clerk or Station Master who are responsible for the same. As regards this, it shows that the Railways have different rules to recover the amount but the applicant was proceeded under Rule 9 of the Discipline and Appeal Rules and the penalty prescribed also show that the Railways have a right to impose a penalty for recovery of loss caused to the Railways by the delinquent employee. Hence, to our mind, the OA. does not call for any interference. The same is hereby dismissed. No order as to costs.

Shankar Prasad

(SHANKAR PRASAD)

MEMBER (A)

mrj.

Kuldeep Singh

(KULDIP SINGH)

MEMBER (J)