

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 771/2000

Dated this Friday, the 22nd day of June, 2001.

B.F.Garode Applicant.

Shri S.V.Gole Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri Mishra for Ms.Indira Bodade Advocate for the
Respondents.

CORAM : Shri Justice Birendra Dikshit, Vice-Chairman.

- (i) To be referred to the Reporter or not ? Not.
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- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
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- (iii) Library. No.
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B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

Original Application No.771/2000.

Friday, this the 22nd day of June, 2001.

Shri Justice Birendra Dikshit, Vice-Chairman.

B.F.Garode,
Mitra Nagar,
Plot No.99,
Behind Balaji Nagar,
Manewada Road,
Nagpur.

(By Advocate Shri S.V.Gole)

... Applicant.

v.

1. Sr. D.C.M.,
Nagpur Division,
Central Railway,
Nagpur.

2. Chief Commercial Manager,
Central Railway,
Mumbai CST.

3. Union of India,
through General Manager,
Central Railway,
Mumbai.

(By Advocate Shri Mishra for
Ms. Indira Bodade, Counsel
for Respondents).

... Respondents.

: ORDER (ORAL) :

Shri Justice Birendra Dikshit, Vice-Chairman.

Heard Learned Counsels Shri S.V.Gole for the
applicant and Shri Mishra for Ms.Indira Bodade, for
Respondents.

2. The applicant by this application has challenged
the order passed by the Senior Divisional Commercial
Manager, Nagpur Division, Central Railway, Nagpur on
25.9.2000 vide letter No.NGP/C.Misc/Pt.II/AIR/NGP-Cog/May'98,
ordering recovery of Rs.32,000/- from the pay of the
applicant, who was a Chief Booking Supervisor at Nagpur
Railway Station. The present controversy has arisen, as at

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a particular time, when the applicant was incharge and responsible for booking reserved coach for parties for travel from Nagpur as provided by Coaching Tarrif, he booked an A/C Two-tier and a Three-tier coach for journey of marriage party Ex-Nagpur to Hyderabad and back in the name of one Shri R.K.Chordia. The journey was scheduled to start on 8.5.1997 by attaching the two coaches as per requisition, for which a security deposit of Rs.10,000/- was tendered by Shri R.K.Chordia as per rules towards his application. The applicant on received^{ed} a message of General Manager (Operating) on 21.3.1997 to allot coaches. All the charges were required to be paid 24 hours before commencement of journey on 8.5.1997, which should have included the haulage charges of empty coaches if they are brought to the starting point from other base station. But, in this case, ticket was required to be prepared six days earlier. According to averments made in application, this was done due to political influence under which Divisional Commercial Manager ordered the applicant^s over telephone personally as well as through Marketing Inspector Shri Nampalliwar, to issue the Ticket to the party on that day itself i.e. 2.5.1997. The applicant claims that as it was not known to him whether the coaches reserved are to be hauled from another base station, the haulage charges could not be calculated and collected. The applicant's case is that he served a letter dt. 8.5.1997 on the Station Manager, Nagpur that Coaches be not attached as haulage charges were to be recovered. This letter has been—
disputed by the Respondents. The Station Manager attached
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the coaches and the party did not pay the haulage charges, thus causing Railways a loss of Rs.22,000/-, ¹⁰ ¹⁰ and this is the amount which is being recovered from the applicant arising out of loss.

3. The Ld. Counsel for the applicant has argued that no enquiry was conducted by the Divisional Railway Manager and liability has been fixed on applicant, which is unfair; that loss has occurred due to interference of senior Officers viz. Divisional Commercial Manager, who directed the applicant to book the coaches without haulage charges being paid; that applicant made efforts to recover the amount from the party, so that the loss of the Railways be made good; that as per para 2719 of the Commercial Manual, Vol. II the authority competent could have written off the amount in question i.e. Rs.22,000/-; that in any view of the matter, assuming that the loss has occurred due to the fault of the applicant, the Respondents are not justified in recovering Rs.32,000/- as the loss occurred to Railways is Rs.22,000/- and they have already withheld the security deposit of Rs.10,000/- deposited by the party.

4. The Ld. Counsel for the Respondents opposed the arguments and contended that applicant cannot raise the grievance about not conducting an enquiry for the reason that on 16.2.2001 in view of interim order of this Tribunal he made a representation which has been decided against him; that applicant has not challenged that representation, hence the Railways have correctly calculated the amount of recovery Rs.32,000/-.

5. This Court by an interim order dt. 16.2.2001 allowed the applicant to make representation to the Competent

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Authority and directed the authority to dispose of the same within two months on receipt of representation. It is apparent from the record before us that applicant made a representation, which has been rejected by the Senior DCM, Nagpur (R-1). Thus, even if enquiry was not conducted officially for recovery, the applicant cannot now raise these issues in view of the opportunity provided by this Tribunal.

6. So far as interference of senior authorities in preparation of ticket is concerned, there is no material on the record, which may justify the stand of the applicant. The applicant's stand cannot be accepted in this respect. As far as his efforts to get the party pay the amount is concerned, he might have made efforts, but that does not absolve him from the liability when the party has not paid.

7. The next argument which requires consideration is about not invoking power to write off the loss. The applicant cannot raise any grievance if the Officers have not invoked power under para 2719 of Commercial Manual, whereby they are empowered to write off any amount which is un-recoverable. It is the discretion of the authorities which they are to exercise in each case considering the circumstances. Here the loss has occurred for which responsibility has been fixed on applicant and, therefore, the recovery has to be upheld.

8. Lastly, so far as the recovery of Rs.32,000/- for the loss of Rs.22,000/- due to fault on the part of the applicant is concerned, the Railways suffered a loss to Rs. 10,000/-

the tune of Rs.22,000/-. The Railway can recover the amount of loss only, therefore, the said amount of Rs.22,000/- ^{and not Rs.32,000/-} can be recovered, which alone applicant has to bear. Admittedly, the Railways have withheld a security amount of Rs.10,000/- which was deposited by the party. The Ld. Counsel for applicant could not place any material to show that Rs.10,000/- were adjusted against any other liability of the party. In absence of any material which could justify the Railways to have it adjusted against any other item, the Railways was liable to adjust the amount while fixing the liability on applicant. It cannot take an undue advantage of Rs.10,000/- by appropriating the amount without any reason by recovering the whole amount from the applicant. When the security is deposited by a party for rendering any service in advance then the amount remains to be of the person who has tendered the money. In this case, the title to Rs.10,000/- remains with the party who booked the carriage and when in rendering the service Rs.22,000/- has arisen, the amount is to be adjusted against the party's liability of Rs.22,000/- . Thus, taking into account, this aspect into consideration, ~~(I am)~~ of the opinion that the liability of applicant works out to Rs.12,000/- which alone the Railways is entitled.

9. For the aforesaid reasoning, the OA is partly allowed and the Railways are restrained from recovering ^{B.aint}

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the amount mentioned in order dt. 25.9.2000 (Annexure - 'A' to the petition) except Rs. 12,000/- as stated above.

No costs.

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
REVIEW PETITION NO. 2009/2001
IN
ORIGINAL APPLICATION NO.771/2000.

Friday, this the 05th day of April, 2002.

Shri Justice Birendra Dikshit, Vice-Chairman,

Union of India through
General Manager,
Central Railway,
Mumbai CST.

...Respondent in
Original Application.

v.

Shri B.F.Garode,
Ex. Chief Booking Clerk,
Central Railway,
Nagpur.

...Applicant in
Original Application.

: ORDER ON REVIEW PETITION BY CIRCULATION :

Birendra Dikshit, Vice-Chairman

By this Review Petition under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, the applicant has made following prayers :

"1. To call for the records of OA No.771/2000 and after perusing the order dt. 22.6.2001, be pleased to review its order and modify the amount of Debit recoverable from the Respondent herein from Rs. 12,000/- to Rs.22,000/- after adjusting the Security Deposit of Rs. 10,000/- deposited by the Party".

2. To grant any other relief as this Hon'ble Tribunal may deem fit in the interest of justice."

The ground on which this review has been filed is that the applicant in OA mis-informed and mis-guided this Tribunal by annexing Annexure - 'F' which is an error sheet of the Traffic

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Accounts Department, showing that the Department has debited an amount of Rs. 22,000/- Empty Haulage Charges as not collected, which was subsequently corrected to Rs.32,000/- by the Accounts Department. It is alleged in Review Petition that applicant was well aware that Rs.32,000/- was recoverable towards Empty Haulage Charges instead of Rs.22,000/-, but he did not file the subsequently corrected error sheet and obtained the order by mis-guiding the Tribunal. To justify its stand, the Review Petitioner has filed the error sheet about correction. The Review Petitioner's case in Review is that the error sheet was subjected to a counter check by Accounts Department, in September 2000 by Senior Traffic Inspector, which shows that the error sheet, Annexure 'F', was corrected to Rs. 32,000/- in accordance with the Rules given in Coaching Manual. In short, the main ground on which this Review Petition has been filed is that the document indicating corrected error sheet viz. Balance Sheet for the months of September and October, 2000, were not traceable and could neither be annexed to the Written Statement nor could be made available on the date of hearing inspite of the best efforts by the Review Petitioners herein and applicant of Original Application mis-guided the Tribunal by concealing said fact. Thus, review of judgment is being sought on said ground.

2. The ground on which this Review Petition has been filed cannot be taken to be the error apparent on the face of record. The case which Review Petitioner wants to make out for review can either be considered to be a case where the judgment could be different if new material had been on record or it can be taken to be a case of concealment of fact which may amount to

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fraud upon the Tribunal.

3. The principles for reviewing a judgment are well settled and if we test Review Petitioner's case on said principles then we find that the document was in existence when O.A. was heard and therefore it should have been filed together with the written statement or at least before the delivery of the Order by Tribunal. It appears from the record of OA that the Learned Counsel for Respondents had opportunity to place material in respect of the difference of Rs. 10,000/-. When case was heard, it could not be shown and explained by respondents. The error sheet for Rs.22,000/was taken to be correct in absence of any material to the contrary. In case, I take the statement made by Review Petitioner to be correct, then also I have to see that, will it be a good ground for review as the applicant cannot be dragged to Court again merely due to negligence on the part of officers of the Department. What can be said at the most is that if the Department has suffered due to negligent conduct of the case on part of its officials, then it has to blame its officials. Negligence on the part of officials in conducting defence cannot be ground to allow Review Petitioner's to get the matter re-opened. If department finds negligence on the part of Officers in conducting the case then it has ample power to recover the loss after fixing the liability and taking appropriate proceedings for negligence of its officers. But, the matter cannot be re-opened by way of review merely because the judgment might have been different had particular evidence been

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produced by department, which was not produced. The power to review has not been conferred on this Tribunal to re-open matters finalised where a party has not taken due care in producing evidence which it had opportunity to produce, had it been careful.

4. So far plea of mis-guiding the Tribunal or fraud upon Court is concerned, except for the fact alleged that applicant was in know of correction in error sheet, there is nothing further on record. Although I have not issued notice and sought reply of applicant of OA, but even if it is accepted that applicant of OA with-held said fact, then it will neither be fraud nor mis-representation upon Tribunal. The reason is that it is a case where Review Petitioner knowing fully the case of applicant, having full opportunity to bring relevant evidence on record, did not bring it. If the decision is given on the basis of evidence on record by Tribunal then that cannot be fraud on Tribunal merely because a material piece of evidence was not produced. It does not amount to fraud upon Tribunal. In such circumstance, Tribunal cannot review its order under Section 17 of the Administrative Tribunals (Procedure) Rules.

5. For the aforesaid reasons, the Review Petition is dismissed. No costs.

B. Dikshit
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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dt: 5.4.2002
order/~~document~~ despatched
to Applicant/Respondent (s)
on *22.4.2002*

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