

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.1035/99

DATE OF ORDER : 19.07.2000

Between :-

D.Ramakrishna

And

...Applicant

1. The Divisional Railway Manager,
Hyderabad Division, S.C.Railway,
Sec'bad.
2. The Divisional Mechanical Engineer,
Diesel Loco Shed, SC Railway, Moulali,
Hyderabad.

...Respondents

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Counsel for the Applicant : Shri S.Laxma Reddy

Counsel for the Respondents : Shri K.Siva Reddy, SC for Rlys

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CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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...2.



(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri S.Laxma Reddy, learned counsel for the applicant and Sri K.Siva Reddy, learned standing counsel for the Respondents.

2. An amount of Rs.1,72,556.20ps is ~~is~~ sought to be recovered from the salary of the applicant being the half amount of the total pecuniary loss caused to the Administration when it was noticed ~~that~~ ^{the} alleged over drawal of the material from the Stores, by impugned order dt.31.5.1999 (Annexure-V page-17 to the OA) ~~and~~ recovery was ordered.

3. This O.A. is filed to set aside the impugned proceedings No.YM.III.DSL.MLY dated 31.5.1999 and quash the same as totally illegal and without jurisdiction and violative of articles 14 and 16 of the Constitution and to issue direction to the respondents to refund the amount already recovered from the applicant and not to ~~make any~~ recovery in future.

4. An interim order was passed in this O.A. on 19.7.1999 whereby the impugned recovery is suspended until further orders. Hence only a part of recovery is done and remaining part of recovery is to be done.

5. In the reply it is stated that the applicant is alleged to have over drawn the material from stores and it has not reached the Shed for proper use while attending to the engines and hence the pecuniary loss has been ordered to be recovered from the salary of the applicant under Financial Code Volume-1 paras- 1108 and 1109.

6. The learned counsel for the applicant submits that Audit party noticed some large withdrawals and no where it is stated as to how the material drawn is utilised. In that view it is stated that the overdrawn material is handed over to the Shed and there is no pecuniary loss. Further he also adds that if pecuniary loss^{is} caused to the Department, the applicant has to be dealt with in accordance with the Discipline and Appeal Rules of the Railways. Mere issuance of the memo is not a substitute for adhering to the Discipline And Appeal Rules for recovery of the pecuniary loss, which is a minor penalty. Hence the impugned order dt.31.5.1999 has to be set aside.

7. It is an admitted fact that recovery of the pecuniary loss is one of the penalties incorporated as minor penalty under Rule-6. The Rule-6 contemplates that the pecuniary loss caused to the government can be recovered by following^{the} procedure. The procedure involved is to issue a notice in SP-11 and on that basis the reply should be obtained from the delinquent employee and after taking decision by the Disciplinary Authority in regard to the pecuniary loss caused to the Department, the recovery is to be ordered.

8. The learned counsel for the Respondents submit that an enquiry was conductedⁱⁿ/association with the applicant and a final decision is taken to recover the pecuniary loss caused to the Department. Hence the principles of natural justice have been fully followed.

9. The learned counsel for the applicant submits that on the basis of the decision of the Disciplinary Authority, for recovery

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of pecuniary loss, major/minor penalty charge sheet has to be issued and the rules pertaining to disposing of the major/minor penalty charge sheet has to be followed.

10. Considering the above points, it is observed that recovering the pecuniary loss on the basis of the Financial Code referred to above is contrary to the procedure involved in the Discipline and Appeal Rules. As per the Financial Code procedure even without giving any opportunity, the pecuniary loss can be recovered from the applicant whereas under the Discipline and Appeal Rules the charge sheet has to be issued in the proper form and then the final decision has to be taken on the basis of the charge sheet for major penalty or minor penalty. Such a decision has to be taken by the Disciplinary Authority. Whether a major or minor penalty charge sheet has to be issued need not be gone into at this stage and it is to be decided and action taken accordingly by the Disciplinary Authority in accordance with the rules. As stated earlier, following the instructions of the Financial Code will be an easier method which may cause prejudice to the case of the delinquent employee and also violative of principles of natural justice. Eventhough in this case it is stated that the principles of natural justice have been followed, we feel that the procedure for awarding penalty has to be followed as per the Discipline & Appeal Rules and mere issuing memo without adhering to the Discipline and Appeal rules and passing an order on the basis of that memo is not in order. In view of what is stated above, we set aside the impugned order dated 31.5.1999.


11. As the impugned order dated 31.5.1999 is set aside on the technical deficiencies, liberty is given to the respondents

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to follow the proper method and take further action if the respondents decide to recover the pecuniary loss caused to the Department.

12. Original Application is disposed of accordingly. The amount already recovered from the applicant has to be refunded to the applicant without interest. But as per the liberty given to the respondents, if the respondents decide for recovery of the pecuniary loss, they can re recover the pecuniary loss caused to the Department by following the Discipline & Appeal Rules.

13. No order as to costs.




(R. RANGARAJAN)
Member (A)



(D. H. NASIR)
Vice-Chairman

Dated: 19th July, 2000.
Dictated in Open Court.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD

COPY TO:-

1ST AND 2ND COURT

1. HON'G

TYPED BY CHECKED BY
COMPARED BY APPROVED BY

2. HRRN (ADMN) MEMBER

3. HBSJP (JUDL) MEMBER

THE HON'BLE MR. JUSTICE DH. NASIR
VICE - CHAIRMAN

4. D.R. (ADMN)

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

5. SPARE

THE HON'BLE MR. S. JAI PARAMESHWAR
MEMBER (JUDL)

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER

19/7/2000

MA/RA/CP. NO

IN

CA. NO.

1035/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C. P. CLOSED

R. A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

(6. copy)

