

Central Administrative Tribunal, Jabalpur Bench, Jabalpur

.....
Original Application No.165/ & 207/99

Jabalpur : this the 8 th day of August, 2003

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Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

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1. Naveen Kumar Kanojia
S/o Shri N.P. Kanojia,
Clerk, Aged 29 Years,
Senior Parcel Clerk,
Jabalpur.
2. Gregry George S/o T. George,
Aged about 29 years, Diding Clerk
Birla Jute Mfg. Sdg.,
Satna, C.Rly.

..... Applicants.
OA 207/99

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D.K. Jharla S/o Shri M.L. Jharla,
Head Booking Clerk,
Central Railway,
Saugor (MP)

..... Applicant
OA 165/99

(By Advocate : Mr. M.R. Chandra)

Versus

1. The Union of India
through the General Manager,
Central Railway,
Mumbai, Maharashtra
2. Divisional Railway Manager (C),
Central Railway, Jabalpur (MP).
3. The Financial Advisor & Chief A/Cs. Officer,
(Traffic Accounts Branch),
Central Railway,
Mumbai, Maharashtra.

..... Respondents

(By Advocate : Mr. S.K. Mukerjee)

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ORDER

BY J.K. KAUSHIK :

The facts of both the cases are of similar nature and the question of law involved is also the same, therefore, it is considered expedient to decide them by a common order.

2. The brief facts of O.A. 165/99, necessary for adjudication of the controversy involved are that applicant was employed as Head Booking Clerk in Parcel Office of Central Railway at Jabalpur during 1996-97. He was assigned the job of booking parcels and perishables, green panifal (Singharah) etc. to various stations. He charged the correct rates for the parcels booked during the said period which were as per the tariff rates in force. His work was being checked by the Head Parcel Clerk, Commercial Officer and Accounts Officer several times and were satisfied that correct parcel freight charges were collected and there was no short realisation by him. Certain debits were raised by the Audit Department which consisted of 'Accepted Debits' and 'Non Admitted Debits'. A list of Non-admitted debits amounting to Rs. 2,31,445/- was forced by the Accounts Department and its clearance was objected to.

An amount of Rs. 2,000/- ^{every month from the applicant's salary} was deducted and it was continued uniformly for latter months and the reason for the recovery as shown in the Pay Slip is 'Sarkari Rokadh Hani'. He has not been given any notice and neither any reason has been indicated nor the amount of ^{total} deduction/number of instalments were indicated. A representation was made by applicant

for stopping the so called recovery but respondents continued to make the same without giving any reply or intimating reasons for such recovery. In this way he submitted that he ^{was} put to financial hardship and harassment for such illegal recovery. The salient grounds which have been adduced in support of the relief claimed are that alleged recovery is un-authorised, without notice and the same is violative of Articles 14, 19 and 21 of the Constitution. The applicant has acted according to rules and no loss was caused to the Railways. If there is any under-charge, the person responsible for collecting the same before delivery of the consignment. No revision in the rates was ever brought to the notice of the applicant.

As far O.A.207/99, the facts are similar except that the amount of per month recovery being made from the applicants' i.e. Rs. 3000/- from applicant No. 1 and Rs. 1500/- from the applicant No.2.

3. Reply has been filed. It is seen from the record that there is one additional return also on record. As per reply, it is submitted that applicant while discharging duties of Head Booking Clerk have charged at a lower rate and in fact higher rate was fixed in respect of the items during the year 96 to 97. The main defence of the respondents as set-out in their reply is that Singhara is enlisted under the CFS Rates w.e.f. 1.8.96 and not CPZ Rules as applied by the applicant. This has resulted in under-charging the commodity Singhara. The other persons also were accountable for similar under charges which has resulted in Government loss and, therefore, deductions from the salary were ordered which are just and proper. It has also been averred that in such cases, the Booking Clerk

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only is to be held responsible. The applicants have utterly failed in charging correct tariff in respect of Singhara.

4. A rejoinder has been filed ~~in ex 15~~⁵ annexing thereto a communication dated 31.7.1996 (Annex.RJ/1) vide which the Divisional Railway Manager (C) (Respondent No.2), had taken up this matter with the higher authority at the Headquarter, clearly spelling-out that applicants have charged the correct tariff. On this, respondents have annexed along with their additional return the correction slip as Annexure R/2. An extract of Chapter XVII Station Outstandings from Commercial Manual has also been placed on record.

5. We have heard the learned counsel for the parties and have given our anxious consideration to the submissions made, pleadings and the records of these cases.

6. The learned counsel for applicants has submitted that applicants have correctly charged the tariff as per rules in force and the correct position is borne-out from communication put-forward by the respondent No.2 to the higher authority vide letter dated 25.3.1998. He has specifically invited our attention to Para 3 of such letter and has submitted that nothing wrong has been committed by applicants. He has also submitted that there is no communication after this letter. He has next contended that applicants have not admitted the debits and this position is clear from the impugned order which is styled as 'Not Admitted Debits'. ~~and this position is also clear from the recovery~~ The recovery has been ordered to be made simply on the basis of certain objections raised by the audit and they have not been furnished

any detail and were not given any pre-decisional hearing in the matter before passing final orders. He has also invited our attention that specific mandatory procedure is prescribed as per the Station Outstandings (supra) but the rules in force have been thrown over the board and applicants have been taken by surprise. No inquiry whatsoever was conducted in the matter. The applicants are being subjected to an un-warranted harassment and being victimised by over-burdening with uncalled for recovery and causing him financial hardship in addition to mental agony. He has also submitted that recovery is one of the penalty as per Rule 6 of the Railway Servants (Discipline & Appeal) Rules and the same can be imposed only after following the procedure established as per rules, no such course of action has been resorted to and recovery has been ordered in a very extra-ordinary way. The action of the respondents is in clear infringement of Articles 14 and 21 of the Constitution of India.

7. On the other hand, counsel for respondents has submitted that the action of the respondents was in consonance with the rules inasmuch as the item 'Singhara' was to be charged a higher tariff w.a.f. 1.8.1996 and it has not been done by the applicants. It is also submitted that communication which was made by the Divisional Railway Manager (C) to the higher authority, was also decided and a direction was given to effect the recovery for under charges. He has also submitted that since the matter has been pointed-out by the Audit and ex facie, there has been less charges in respect of a particular commodity, hence, there was hardly any need to follow the procedure or give a notice to the individuals. If, such procedure was to be followed

the result would have been the same that there has been under charge. Thus, there is no illegality or impropriety in passing the impugned order and making recovery from the applicants' pay.

8. We have considered the rival contentions. The admitted case of the parties is that applicants' have not been given any hearing prior to passing of the recovery order as also they have not even been given a show cause notice and the recovery has been started without following the principals of natural justice. The rule position is also very clear that recoveries in respect of Not Admitted Debits which may be called as objectionable debits, ^{if effected simpliciter,} would tantamount to imposition of recovery as envisaged in Rule 6 of Railway Servants (Discipline & Appeal) Rules. The procedure for imposing penalty under that rule is prescribed in rules 9 and 11 and admittedly, the same have not been applied in the instant case while recovery ordered to be made.

9. Now, examining the issue from another angle. We find that learned counsel for respondents has not been able to satisfy us as to whether the rules mentioned in Chapter XXVII of the Commercial Manual, have at all been followed and neither reply nor annexures thereto countenance this position. Thus, it is also a fact that relevant rules have not at all been followed and until they are followed, recovery cannot be said to be justified.

There is yet another point which is significant in the matter in hand to be considered as to whether any order which visits the employee with civil consequences can be passed without giving a pre-decisional hearing to an individual.

On this point, law is well settled by now that no order which adversely affects an employee and visits him with the civil consequences, can be passed without following the principles of natural justice and giving hearing prior to making such decision and this proposition is held by Hon'ble the Supreme Court in the law laid down in H.L.Trehan Vs. Union of India reported in AIR 1989 SC 569. Thus, the impugned order also suffers from infraction of Article 14 of the Constitution of India and the same cannot be sustained. Hence, we find that there is substance in the argument of learned counsel for the applicants. We are of firm opinion that the impugned orders in both these OAs are ex facie illegal and inoperative. The M.A.459/02 in OA 165/99 for filing documents ^{is allowed.} _h

10. In the premises, we find ample force and substance in these O.As, the same are hereby allowed. The Respondents are directed not to make any recovery but refund all the amount which have been recovered from the applicants towards the ^{alleged} debits raised by the Audit, within a period of three months from the date of receipt of a copy of this order. However, it shall be scarcely necessary to mention here that this order shall not preclude the respondents from passing any fresh order in the matter after following the due process in accordance with law. In the facts and circumstances of this case, the parties are directed to bear their own costs.

Sd/-
(Anand Kumar Bhatt)
Administrative Member

Sd/-
(J.K.Kaushik)
Judicial Member