

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of April, 2011

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Original Application No.469/2008

Mrs. Glendis Dickson
w/o Subodh Mathur,
Matron, Divisional Railway Hospital,
Ajmer, NW Railway, Ajmer,
r/o Plot No.60, Shakti Nagar,
Subhash Nagar, Ajmer.

.. Applicant

(By Advocate: Shri S.S.Seera)

Versus

1. Union of India
through General Manager,
North Western Railway,
Jaipur
2. Chief Medical Director,
North Western Railway,
Hasanpura Road, Jaipur
3. Chief Medical Superintendent
Divisional Hospital,
North Western Railway,
Ajmer.
4. Sr. Divisional Medical Officer (Nursing),
Divisional Railway Hospital,
Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

2

Original Application No.470/2008

Mr. Virginia Wilson
w/o Kalvin Wilson,
Matorn, Divisional Railway Hospital,
NW Railway, Ajmer
r/o 1903, Hajari Bag,
Railway Colony, Ajmer.

.. Applicant

(By Advocate: Shri S.S.Seera)

Versus

1. Union of India
through General Manager,
North Western Railway,
Jaipur
2. Chief Medical Director,
North Western Railway,
Hasanpura Road, Jaipur
3. Chief Medical Superintendent
Divisional Hospital,
North Western Railway,
Ajmer.
4. Sr. Divisional Medical Officer (Nursing),
Divisional Railway Hospital,
Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER (ORAL)

Both the OAs involving similar question of law and facts are
being decided by this common judgment.

(Signature)

2. Facts of applicant Mrs. Glendis Dickson in OA No.469/2008 are taken as leading case.

3. The applicants are working as Matron in Operation Theatre of the Divisional Railway Hospital, North Western Railway, Ajmer. One instrument named Fibreoptic Bronchoscope was brought from TB Ward on 29.11.2003 and was kept in a box over the Almirah in the Operation Theatre. This machine was kept in the charge of Smt. Bina Hai another Matron who is incharge of all the T&P items of Operation Theatre of the Railway Hospital.

4. On 18.9.2006, T&P incharge Smt. Bina Hai, Matron reported S.H.O. Ramganj Thana, Ajmer that Fibreoptic Bronchoscope machine worth Rs. 25000/- is stolen from the Operation Theater Ajmer and FIR No.207/06 dated 19.9.2006 was registered.

5. The SHO, Ramganj Thana, Ajmer submitted FR No.63/2006 in J.M.F.C. No.1, Ajmer which was approved by the Court on 7.11.2006. The Inspector, R.P.F. C&W Workshop Ajmer after conducting enquiry submitted his report on 25.1.2007 fixing responsibility of loss on the three Matrons, Smt. Bina Hai, Smt. Virginia Wilson and Smt. Glendis Dickson and cost of the instrument has been assessed as Rs. 156000/- by the Inspector, R.P.F. in his report Ann.A/5.

6. The learned counsel appearing for the applicants submitted that the enquiry conducted by the Inspector, R.P.F. is not maintainable in the eyes of law and referred to Railway Property (Unlawful possession) Act, 1966. As per clause (d) of Section 2 railway property includes any goods, money or valuable security or

animal, belonging to, or in the charge or possession or, a railway administration. In Section-3 penalty of unlawful possession of railway property is prescribed. Section-8 deals with inquiry how to be made against arrested persons. Clause-(1) of Section-8 deals with when any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person. As per sub-clause (a) of clause (2) of Section 8, if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case or forward him in custody to such Magistrate. The learned counsel also referred to the Railway Protection Force Act, 1957. Section 11 speaks about the duties of members of the force. As per clause (b) of Section 11, the main duty of the force is to protect and safeguard railway property, passenger area and passengers and as per clause (d) of Section 11 to do any other act conducive to the better protection and security of railway property, passenger area and passengers. As per Section 41, general powers and functions of enrolled members of the Force are mentioned. As per clause (2)(iii) of Section 41, the function of enrolled members shall be to aid co-operate and co-ordinate the measures of other railway agencies or the Police or other authorities in implementing other appropriate measures for ensuring prevention of crime against the property and providing for its better security and as per clause 2(v) to register and take up enquiries under Railway Property (Unlawful Possession) Act.

2

1966, apprehend the offenders and participate in subsequent legal proceedings connected therewith. As per clause 2(vi) of Section 41 to register or to promptly pass on reports for registration to the local Police of all cognizable offences against the railway property, conduct enquiries and collect evidence for localizing the crime or which is otherwise considered necessary and render such other assistance as may be possible in investigation of such cases. Section 265.1 deals with court of inquiry when to be held. A court of inquiry may be held to investigate into any offence alleged to have been committed by any enrolled member of the Force or into any disciplinary matter or any other matter of importance relating to the Force.

7. Emphasizing Rule 265, the learned counsel appearing for the applicants submits that Railway Protection Force is not authorize to conduct inquiry with regard to employees of the Railway Hospital, thus, the inquiry conducted by the Railway Protection Force is per se illegal and contrary to the provisions.

8. The learned counsel appearing for the respondents does not dispute the fact that the inquiry conducted by the Railway Protection Force is without jurisdiction and therefore, the inquiry report Ann.A/5 dated 25.1.2007 submitted by the Inspector of R.P.F. is also illegal and is hereby quashed and set-aside.

9. Now the controversy remains with regard to the inquiry conducted by the Panel of three Medical Officers fixing responsibility of loss/theft and the Committee held Smt. Veena High (Smt. Bina Hai), Matron responsible for official accountability and

FA

responsibility for the loss/theft of the equipment having charge over it as per T&P record, whereas the applicants were held responsible for the official accountability and responsible for periodical maintenance of the equipment from time to time.

10. The Panel of Doctors after the inquiry held the applicants responsible for the loss and they were required to deposit Rs. 37055.66 separately, which was to be recovered in 25 installments of Rs. 1482/- per months vide Ann.A/1.

11. The inquiry report as well as the recovery order are challenged by the applicants on the ground that the applicants are only responsible for maintenance of the equipment in question but so far as custody is concerned, Smt. Veena High, Matron is only responsible for the loss caused on account of theft of the said instrument. It is also alleged by the learned counsel appearing for the applicants that in police report value of the instrument was shown only Rs. 25000/- whereas recovery is made considering valuation of the instruments as Rs. 156000/- whereas its depreciated value as worked out is Rs. 111167/-. Thus, recovery of monthly installments of Rs. 1482/- vide letter dated 10.1.2008 is per-se illegal and excessive.

12. Per contra, the learned counsel appearing for the respondents submits that the equipment-Fibreoptic Bronchoscope was lost/stolen, hence pecuniary loss was caused to the railway administration on account of negligence of the applicants. The loss in terms of money would be recovered from the railway servant, as such, order Ann.A/1 has rightly issued by the Disciplinary Authority

after taking into consideration the representation of the applicants. The Disciplinary Authority has recorded the findings in Ann.A/1 and taken a lenient view for imposing the penalty and the same was assailed by the applicants before the Appellate Authority and vide Ann.A/2 by a speaking and reasoned order the appeal has rightly been dismissed, as such, there is no illegality committed by the respondents. Before the panel of Doctors the applicants have admitted this fact that she was negligent regarding custody and maintenance of the equipment. In support of his submissions, the learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in the case of B.C.Chaturvedi vs. Union of India and Others reported at (1995) 6 SCC 749 and submitted that before the Inquiry Officer the applicants admitted that they were negligent to discharge their duties and in such circumstances as held by the Hon'ble Supreme Court in the aforementioned judgment, judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

13. We have heard the rival submissions of the respective parties and carefully perused the material placed on record as well as Ann.A/1. We have also carefully perused the enquiry report conducted by the panel of Doctors and it is not disputed by the applicants that the inquiry conducted by the panel of Doctors was in accordance with the provisions of law and stands in the eyes of

law and upon perusal of the findings given by this panel, the applicants are held equally responsible for the loss of the instrument causing financial loss to the railway administration. In our considered view, the railway authority taking a lenient view has rightly ordered to recover this amount from the both the applicants in 25 installments of Rs. 1482/- each, and we find no illegality in the findings of the inquiry as well as in Ann.A/1 dated 10.1.2008.

14. Accordingly, as observed hereinabove, the OAs are disposed of in the aforesaid terms with no order as to costs. */*

copy given to
No. 4868487
19/4/11

(ANIL KUMAR)
Admv. Member

(JUSTICE K.S.RATHORE)
Judl. Member

R/