

18/10/2012

OA 282/2009 a/w MA 311/2011

Present : Mr. P.N. Jatti counsel for the applicant.
Mr. D.K. Pathak counsel for the respondents.

This case has been listed before Joint Registrar
due to non availability of Bench. Let the matter be listed
before the Hon'ble Bench on 30/10/2012.


(Gurmit Singh)
Joint Registrar

Vv

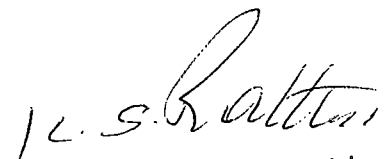
30/10/2012

OA NO. 282/2009 with MA NO. 311/2011

Mr. P.N. Jatti, Counsel for applicant.
Mr. D.K. Pathak, Counsel for respondents.

Heard.

O.A. and M.A. are disposed
of by a separate order on the
separate-sheets for the reasons
recorded therein.


[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 30th day of October, 2012

ORIGINAL APPLICATION No.282/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, JUDICIAL MEMBER

K.G. Sharma
s/o Shri G.L. Sharma,
r/o New Guard Colony,
Phulera presently Retd.
as Station Superintendent
Bhanwsa (BNWS) under
D.R.M.Jaipur.

.. Applicant

(By Advocate : Shri P.N.Jatti)

Versus

1. Union of India
through the General Manager,
North Western Railway,
Jaipur
2. Divisional Railway Manager,
North Western Railway,
Jaipur
3. Divisional Commercial Superintendent,
North Western Railway Jaipur
c/o D.R.M. Officer,
Jaipur

.....Respondents

(By Advocate : Shri D.K.Pathak)

ORDER (ORAL)

The present OA is directed against the order dated 31.5.2008 (Ann.A/1) by which a total amount of retiral benefit to the tune of Rs. 12,55,648/- has been sanctioned but payment of Rs. 8,83,441/- was made and rest of the amount was withheld without serving any show-cause notice to the applicant.

2. It is submitted by the applicant that at the relevant point of time, he was working as Station Superintendent at Bhanwsa Station under D.R.M., Jaipur. The Bhanwsa Station was opened by the railway authorities in the year 2004 vide order dated 10.11.2004 and sanction of extension was issued in the year 2005. The live stock loading was done on 13/14.5.2005 and 16.5.2005. It is also submitted that the work of loading live stock was assigned to Shri Lal Chand Verma who was deputed to deal with booking of live stock. Shri Kamal Mathur, Inspector was also deputed to supervise the work of loading and collection of freight of the live stock loading and therefore, work of loading of live stock and to collect the correct freight was the duty of both these officials i.e. Shri Lal Chand and Shri Kamal Mathur.

3. Further submitted that the applicant was only looking after the duty of train operation and to remit the cash collection handed over by the Goods Clerk as the applicant was working as Station Superintendent at the relevant point of time and has



nothing to do with booking of the live stock. Therefore, withholding a sum of Rs. 1,78,735/- (Rs. 3,57,471-1,78,736 amount already deposited in applicant's account) from the gratuity amount of the applicant is without jurisdiction.

4. In support of his submissions, the learned counsel appearing for the applicant referred Para 104 of the IRCM Part-I (Ann.A/5), which deals with duties of commercial staff, which is reproduced as under:-

"104 Duties of commercial staff.- (a) All member of the commercial staff must make themselves thoroughly conversant with the relevant rules and regulations laid down in the various Tariffs, Codes, Indian Railway Commercial Manual and other manuals, book and circulars issued from time to time by the railway administration for the performance of their respective duties.
(b)"

The learned counsel for the applicant also referred to para 1811 and 1820 of IRCM Vol.II, which is in the following terms:-

"1811. Responsibility of Stations for undercharges.- (a) Receiving stations are held responsible for recovery of undercharges on goods traffic, both local and through, whether Paid or Topay except in the following case, which are debitable to the forwarding stations:

- (i) In all cases where prepayment of freight is compulsory;
- (ii) Undercharges of, and under, one rupee in freight paid by credit note; and
- (iii) Percentage charge due on animals, birds and goods containing excepted articles.

(b) The above exceptions, however, do not relieve the receiving station of the responsibility for checking the invoices. Undercharges in the excepted items

detected at receiving stations should be reported to the Traffic Accounts Office and to the forwarding station. In the event of no such report having been made by the receiving station, it will be held responsible for such undercharges if, when debited by the Traffic Accounts Office to the forwarding stations, they are declared to be irrecoverable.

"1820. Recovery of railway dues before delivery of goods.- Before delivery of goods, it should be seen that all railway dues and other charges have been paid. Wharfage and demurrage charges should be levied under tariff rules and recovered from the consignees before the removal of goods from railway premises. Similarly, all undercharges noticed as a result of check of invoices, weighment of goods, etc. should be recovered from consignees before delivery of goods. As regards over charges claimed at the time of delivery, the procedure indicated in Chapter XXI should be followed."

Further referred to para 1449, 1450 and 1451 of IRCM Part.II, which is reproduced as under:-

"1449. Collection and accountal of freight, etc., charges.- When freight, etc. is prepaid, the Station Master or Goods Clerk, who actually receives the amount should put his dated initials against the 'Paid' entries in the forwarding note and enter the amount in the goods cash book.

1450. Any railway servant, who receives money on account of railways and who, with intent to defraud, does not enter it immediately in the cash book or other prescribed record is liable to the prosecuted.

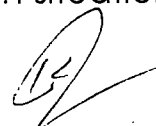
1451. Grant of receipt foil of invoice to consignors.- (a) As soon as an invoice is prepared and the freight and other charges, if any due, have been collected, the receipt foil of the invoice should be given to the sender, who will forward it to the consignee to enable the latter to obtain delivery of the goods at destination station.

(b) Railway receipts (i.e. receipt foils of invoices) should not be granted till goods tendered for dispatch have been correctly examined and weighed. When senders are required to load their consignments, the railway receipts should not be given until the loading has been completed to the satisfaction of the railway.

(c) There should be no undue delay in the issue of railway receipts to consignors. These must be made over to them on the very day the consignments are accepted for booking or in the case of consignments required to be loaded by the consignors, on the day the consignments are loaded. At large stations, however, where it is not feasible to do so, the Divisional Commercial Superintendent may permit the issue of railway receipt not later than the day following the day of acceptance or of loading of the goods, as the case may be."

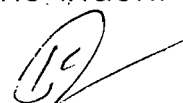
5. After referring the aforesaid provisions, it is contended on behalf of the applicant that as per Para 104 of the IRCM Part-I all members of the commercial staff must make themselves thoroughly conversant with the relevant rules and regulations. Further referred to Para 1811 in support of his submissions that receiving stations are held responsible for recovery of undercharges on goods traffic and in view of Para 1820 before delivery of goods, it should be seen that all railway dues and other charges have been paid.

6. Per contra, the learned counsel appearing for the respondents has strongly controverted the submissions made on behalf of the applicant, It is contended that the order dated 31.5.2008 was rightly passed and amount of Rs. 1,78,735/- has rightly been withheld on account of losses incurred by the railway owing to the negligence of the applicant. It is further submitted that at all the small railway stations, the commercial work is done by the Station Superintendent/Station Master for which they are given training prior to their recruitment. Only in situations of excess



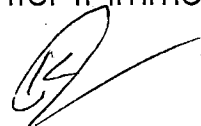
work, the commercial staff is appointed. At Bhanwsa station, the commercial work is done by the Station Superintendent/Station Master only. In the present case, the work of the marking of the indent, booking, charging and collection of freight was done by the applicant only. Due to the work load Shri Lal Chand Verma was sent from Phulera station only for the purpose of making receipts. It is wrong to say that the entire work of loading the live stock and the booking of the live stock was assigned to Shri Lal Chand Verma. In fact the correct position is that this entire work was to be performed by the applicant only.

7. The learned counsel appearing for the respondents further submits that the applicant failed to perform his duty and failed to obtain the signatures of Shri Lal Chand Verma on the assurance register. Only in the situation, had the applicant read over the commercial circular to Shri Lal Chand Verma and obtained the signature on the assurance register, liability could have been affixed on him. In the present case, indent should have been for wagon load instead the applicant accepted the indent for train load. The registration fees of Rs. 50000/- only was received as against the train load, however, a registration fee of Rs. 60000/- as freight should have been charged and collected, as the freight for 1 wagon was Rs. 1500 and there were 40 wagons in all. Since the Bhanwsa Station was opened for wagon load and not for train load, the applicant ought to have issued the indent for wagon



load only instead of train load because at the relevant point of time he was discharging the duties. The freight paid receipt was issued by the applicant himself and Shri Lal Chand Verma had made the same under the instructions of the applicant. Had Shri Lal Chand Verma been shown the assurance register, he would not have committed any mistake. It was the duty of the applicant to ensure that Shri Lal Chand Verma was specifically appraised about the fact whether train load was open at Bhanwsa station or not. It is further submitted that Shri Lal Chand Verma was also held equally accountable for the mistake in preparation of the incorrect freight receipt and equal liability of Rs. 1,78,736/- has been affixed on him and same was almost recovered from his salary and Shri Verma has not challenged the order of recovery.

8. I have heard the rival submissions of the respective parties and carefully perused the relevant provisions of the rules referred by respective parties and also the material placed on record. As per para 1449 of IRCM Vol.II as relied by the learned counsel appearing for the applicant regarding collection and accountal of freight etc, when freight etc. is prepared the Station Master or Goods Clerk, who actually receives the amount, should put his dated initials against the 'Paid' entries in the forwarding note and enter the amount in the goods cash books. As per Para 1450 any railway servant, who receives money on account of railways and who with the intent to defraud, does not enter it immediately in



the cash book or other prescribed record, is liable to the prosecuted. The applicant has placed heavy reliance on Para 1811 to show that responsibility lies with the receiving station.

9. It is submitted by the respondents in their reply that at Bhanwsa station commercial work is done by the Station Superintendent/Station Master only and admittedly the applicant was functioning as Station Superintendent as well as handling commercial activities and it is also not disputed that the applicant's duty is to receive the amount and to check whether under charge on the live stock has been charged or not. Thus, the applicant is also equally responsible in the process of receipt and respondents have not committed any mistake for holding applicant and Shri Lal Chand Verma equally responsible for the losses caused to the railway.

10. In view of the aforesaid discussions, I am of the view that the respondents have not committed any mistake for holding applicant and Shri Lal Chand Verma equally responsible and no interference whatsoever is required by this Tribunal.

11. Consequently, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.



12. In view of the order passed in OA, no order is required to be passed in MA No.311/2011, which stands disposed of accordingly.


(JUSTICE K.S.RATHORE)
Judl. Member

R/