

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/001722/2015

DATED THIS THE 11TH DAY OF JANUARY, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

R. Eshwar
S/o. Shri Ramu,
Aged about 36 years,
Working as Senior Ticket Examiner,
Office of the Sleeper Based Bangalore,
South Western Railway,
Mysore.

... Applicant

(By Advocate Shri Izzhar Ahmed)

Vs.

1. Divisional Commercial Manager,
South Western Railway,
Mysore Division,
Mysore.

2. Senior Divisional Personnel Officer,
South Western Railway,
Mysore Division,
Mysore.

3. Senior Divisional Finance Manager,
(Accounts Department)
South Western Railway,
Bangalore Division,
Bangalore.

4. Union of India,
through the General Manager,

South Western Railway,
Kasavapura,
Hubli.

...Respondents

(By Shri J. Bhaskar Reddy, Railway Standing Counsel)

ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The present OA has been filed seeking the following reliefs:

- i. Set aside the minor charge memorandum vide no. Y/G.415/DAR/Mr./RE/SBC/28/15 dated 06.04.2015 (Annexure-A8) as illegal, arbitrary and against the parameters of the rules prescribed in the Commercial manual,
- ii. Direct the Respondent No.1 to refund the recovered amount from pay with interest of 18 percent with consequential benefits.

2. According to the applicant while he was working as Senior Ticket Examiner he was issued two Excess Fare Ticket books (EFT). The first EFT book No. 389950 was received on 17.10.2014 and second EFT book No. 747301 on 18.12.2014 and each book is of 50 pages. According to the applicant he used the folio pages of first EFT book No. 389950 to 389999 and remitted the excess fare paid against these folios on different dates. The first EFT statement was for Rs.5,010/- for 5 folios, the second one was for Rs.10,590/- for 32 folios and deposited on 01.11.2014 and the Rs.2,910/- for 3 folios. Though further details have not been indicated he submits that he had remitted cash of Rs.18,510/- for the first EFT book on different dates (Annexure-A3). In respect of second EFT book, he has used 4 folios for Rs.1,000/-. Thereafter while on duty in Train No. 16524 on 31.12.2014, he

lost his brief case containing EFT books and he had filed FIR dated 01.01.2015 with the Sub-Inspector of Police, City Railway Police Station, Bangalore (Annexure-A5). He also submitted representation to Respondent No. 1 on 01.01.2015 regarding loss of EFT books during duty hours and enclosing a copy of the FIR (Annexure-A6). However the Assistant Financial Advisor, Traffic issued an advice dated 21.01.2015 against the applicant for the loss of two EFT books without verifying the records. Further the respondents initiated minor penalty proceeding under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 dated 06.04.2015 and issued a show cause notice in which it was indicated that loss of EFT is a serious misconduct. The applicant filed a reply dated 21.04.2015 (Annexure-A9) for the charge memo (Annexure-A8) and the same is pending. Though the respondents have not passed any specific order for recovery, they have recovered the entire amount from his pay. The applicant filed a representation on 03.07.2015 to Respondent No.3 against recovery of the amount and submits that the respondents have not investigated the matter based on the facts mentioned in the representation made by the applicant and recovered the amount without verifying the records and blindly on the advice of Respondent No.3. The recovery of Rs.57,500/- based on calculation at the rate of Rs.575/- for 100 folios is completely unjustified and irregular when he had already remitted money against the EFT books and therefore he is entitled to the relief as sought for by him.

3. The respondents have filed a reply statement in which they have submitted that the applicant while working in Train No. 16524 on 31.12.2014 from Mangalore to Bangalore reportedly lost his brief case containing two EFT

books, 2nd class Duty Card Pass, ID Card and Complaint book for which he had lodged a complaint with the police at Bangalore Railway Station on 01.01.2015. The procedure to deal with loss of EFT books is spelt out in Railway Board Commercial Circular No. 8/2007 dated 23.01.2007 (Annexure-A17). As per procedure, the cost of EFT is worked out based on the distance as working place to farthest junction has to be calculated and recovered from the employee and in this case action has been taken accordingly. Further in terms of the guidelines, a committee of Officers ought to have conducted an enquiry based on FIR but in case of the applicant the complaint has been lodged but no FIR is filed. As per procedure in vogue, the applicant was issued minor penalty charge sheet vide memorandum dated 06.04.2015. However in spite of repeated advices the applicant has neither submitted his defence statement nor cleared the debit. Hence arrangement was made for recovery of the said amount from the salary of the applicant as per rules. The loss of such documents while performing the duty indicate serious negligence of the applicant. If he had lost the EFT books, he must file FIR before the Railway Police and copy submitted to the administration for processing further. Only on receipt of FIR copy and other related documents, enquiry will be conducted. There is no evidence available from any other sources to come to a conclusion that the loss of EFT books are detected or not misused. Hence the action taken by the respondents are in order.

4. Applicant has filed a rejoinder in which he has reiterated the submissions already made in the OA and also made reference to an order of the Ernakulam Bench wherein recovery order against loss of EFT book was set aside.

5. We have heard the learned counsel for the parties. The learned counsel for the applicant reiterated the submission made in the original application and submitted that the applicant based on loss of his duty brief case filed FIR and sent a copy of the intimation to the authority but it was not considered. Moreover even though he had remitted calculated amounts against one used EFT and 4 folios of the other EFT, recovery has been made for the entire two EFT books which is not proper. Further without any further investigation and verification of records, the minor penalty show cause notice have been issued which is also unjustified. Therefore he prayed for quashing the charge memo and also issue a direction on the respondents to refund the amount already recovered.

6. The learned counsel for the respondents on the other hand reiterated the submission made in the reply statement and submitted that action has been taken in terms of rules.

7. We have carefully considered the facts and also submissions made by both side. From the details available on record and the submissions made during the hearing, it is evident that the applicant was issued a charge memo of minor penalty on 06.04.2015 which he sent a reply simply saying that a police complaint has been filed with the Government Railway Police, Bangalore and the matter is under investigation. Therefore he is unable to offer a reply to the abovesaid memorandum since the investigation is still pending. Even though the investigation has not been completed at that point of time the applicant in response to the show cause notice should have furnished the details in the representation enclosing a copy of the FIR. His reply does not convey anything. We also note that in spite of not getting any

response from applicant, the respondents have not proceeded further in the minor penalty proceeding. They ought to have taken the matter to its logical conclusion. On the issue of recovery, it appears that the recovery has been made by respondents against the entire two EFT books, though according to the applicant he had remitted amounts against the entire one EFT book and 4 folios of the other book. The respondents ought to have verified the entire facts before arriving at an amount which is recoverable. It is also seen that no order of recovery has been issued. The respondents ought to have passed a specific order giving details of amount to be recovered rather than simply recovering an amount which they deemed appropriate from the salary of the applicant. Therefore it is clear that there is lapses on the part of the applicant as well as the respondents both in the matter.

8. On detailed consideration of the matter we are of the view that it would be appropriate if the applicant submits a detailed representation in response to the charge memo based on which the respondents shall take a final decision in the minor penalty proceeding. Similarly on the issue of recovery, the applicant shall submit a detailed representation giving the details of remittance made by him on EFT books based on which the respondents shall examine the matter and pass a speaking order if any recovery is to be made. In case more amount has already been recovered than what is required to be payable by the applicant, then the respondents shall refund the excess amount recovered. The representation shall be submitted by the applicant within a period of 15 days from the date of receipt of a copy of this order and the respondents shall pass necessary orders on the said representation within a period of 3 months thereafter.

9. The OA is accordingly disposed of in terms of the aforesaid direction.

No order as to costs.

(P.K. PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

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