



CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH

Original Application No.784 of 2013

Date of hearing: 26.02.2019

Date of Order: This the 11/4/2019

**THE HON'BLE SMTI MANJULA DAS, JUDICIAL MEMBER
HON'BLE MR.N.NEIHSIAL, ADMINISTRATIVE MEMBER**

Shri Prabir Kumar Mazumdar,
S/O-Late B.K.Mazumdar,
Aged about 56 years,
working as Manager/Catering(E-3),
residing at 17 Pubpara
Belghoria, Kolkata-700056

..... Applicants

By Advocate: Mr.A.Chakraborty

-And-

1. The Union of India
through the General Manager,
S.E. Railway, Garden Reach,
Kolkata-70043
2. The Financial Adviser and Chief Administrative Officer,
S.E. Railway, Garden Reach, Kolkata-70043
- 2.(a) Chief Commercial Manager, S.E.Rly,1,
Strand Road, Kalcutta-1.
3. The Assistant Financial Adviser,
S.E. Railway, Garden Reach,
Kolkata-70043.

Manjula Das

4. The Dy.General Manager(Fin),
IRCTC/EZ,
3 Kolaghata Street.

.... Respondents

By Advocate: S.E.Railway

ORDER

Per Mr.N.NEHSIAL; MEMBER(A):

1. This O.A. has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-"

"8.(a) Office Order dated 3.7.2013 issued by FA & CAO(CD)GRC in respect of the applicant is bad in law and therefore, the same may be quashed.

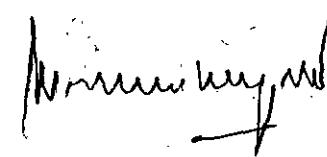
(b) Office order dated 10.7.2013 issued by Deputy General Manager (Finance) IRCTC cannot be acted upon and therefore the same may be quashed."

2. The brief facts of the case is that the applicant was initially appointed as Catering Manager-II under the authority of Chief Commercial Manager of South Eastern Railway. Thereafter, he was promoted to the post of Catering Manager-1 and thereafter to the posts of Sr. Catering Inspector and Chief Catering Inspector

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respectively. Thereafter, he joined IRCTC/Eastern Zone as Assistant Manager and thereafter as Manager/ Catering (E-3).

3. Learned counsel for the applicant submitted that the applicant was served with one Office Letter dated 10.07.2013, from which, most astonishingly, it has been learnt by the applicant that the Competent authority had decided to recover the full amount of outstanding railway catering debit from the salary of the applicant. Thereafter, it has also been learnt by the applicant that the aforesaid order of recovery was issued on the basis of one Office Order dated 03.07.2013 forwarded by respondent No.2 to respondent No.4 with an advice that finalized catering debit against each staff may be recovered from salary immediately. That, the applicant was also served with the Office Order dated 25.05.2013 stating inter-alia that Rs.6,000/- was being deducted from his salaries towards catering debit as advised by SE Railways for the period June, 2007 to August 2011 and on his request recovery was

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stopped on the ground of non-submission of final table reconciliation by the Railways. The applicant was advised to submit the same at an earliest.

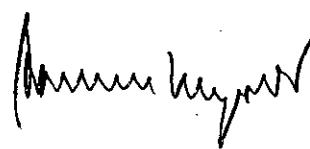
4. Learned counsel further submits that since the copy of the table reconciliation was not served upon him by Railways, the applicant could not submit final reconciliation table. Railway also failed to make the same and without making such final reconciliation took a decision to recover the amount from the salary of the applicant. Approaches were also made before the Dy.CCM (SPI) to arrange for finalization of his debit amount in accordance with the TR but to no avail. The applicant is not aware of the fact that finalized catering debit lying against him. No table reconciliation was ever conducted before coming to the conclusion and thereby deciding the finalized catering debit lying against him to the tune of Rs.54,94,680/-

5. Learned counsel for the applicant further submitted that the respondent authorities misdirected

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themselves in deciding recovery of the catering debit to the tune of 54,94,680/- on the followings:-

- (a) That at the time of posting of the applicant from Railways to IRCTC, the applicant was issued with one document dated 23.03.2007, in which, catering debit was shown as Rs.7,51,389/- of which an amount of Rs.1,44,000/- had already been stated to have been recovered by the Railway and advise was accorded to recover the balance amount at the rate of Rs.6000/- per month through salary bill generated by IRCTC but in the said document there was no mentioning of existence of any finalized/unfinalized debit. The recovery was also effected to that effect from June, 2007 to August, 2011, an amount to the tune of Rs.3,07,389/- was recovered. Since, no step was taken by the railway in finalizing TR, approach was made till completion of the same. In the aforesaid last pay certificate, there was no whisper of aforesaid recoverable debit.
- (b) Last Pay Certificate was issued by the authority after collecting all the data from all concerned with regard to the loan, Liability/PF advance/HB Advance/Co-Op Loan etc. And as such the sudden raise of debit to the tune of the aforesaid amount, that to after 7 years of serving lien from Railways, cannot be sustained in the eye of law. Without quantifying the total amount, no debit is supposed to be raised. The recovery advise was forwarded in contravention of the railways instruction. The TR conducted has not been finalized during his tenure in Railway even after his absorption under ITCTC and after these long days, the



respondents made a gross error in raising the huge amount.

(c) The said amount of Rs.54,94,680/- has been stated as pending debits without mentioning the details and period relating to the same. The respondents erred in saying that TR process is only for unfinalized debit. That any debit raised against an individual through an Inspection report, must be reconciled across the table and decision arrived at should be accepted by the authority competent for the same after which the question of recovery can be raised. Such amount cannot be also said to be finalized one without supported by the relevant vouchers.

6. During the hearing on 30.7.2013, recovery of the contested amount of Rs.54,94,680/- has been stayed by the Tribunal with the following remarks:-

" As the applicant in O.A.703/13, O.A.704/13, O.A.705/13 and O.A 706/13 were granted stay on recovery, we direct that in the meantime the respondents shall not make any recovery as proposed with the order dated 03.07.2013, in case the applicants are found similarly circumstanced as the applicant in O.A.703/13, O.A 704/13, O.A 705/13 and O.A.706/13."

7. On the next date of hearing, on 10.01.2018, the Tribunal has observed as under:-

"Accordingly, we are of the view that the respondent have not conducted the enquiry. The respondents are directed to issue notice of enquiry. After conducting an enquiry, they

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have to take a decision after hearing the applicants. We direct the respondents to conduct enquiry give an opportunity to the applicants and conclude the enquiry after proper adjudication and issue necessary reasoned and considered order."

8. In the written statement submitted by the respondents on 26.02.2014 they have submitted as under:-

"With regard to the statements made in paragraphs 4.1. to 4.6 of the said Application, save and except what are matters of record, all other allegation/statements made therein are strongly denied and disputed. It is categorically submitted that AFA/CD/SERLY/GRC, on behalf of FA & CAO/SERLY/GRC, issued a letter to the Dy.General Manager(Fin)/IRCTC/EZ/Kolkata vide No.CD/1/Outstandiudng Debit/GRC/114 dt.03.07.2013 to recover the finalized debit only for Rs.54,94,680/- (AM-47) Part-1 debit Rs.66,38,685.70-11,44,005.68 the amount which was recovered through salary and post facto sanction etc). The figures of Rs.11,44,005.68p. were already minus debited as per the dictum of Joint Procedure Order dated 24.5.99 framed by three H.O.Ds i.e. CPO(Admn), FA&CAO(WST) and CCM(Catg). Vide No.A/Catg/JPO/99/877 dt.24.5.99. In para No.3 of the said JPO-99 it is mentioned that "Amount of debit, thus completed as Part-I should be remitted on the spot by the Catg. Manager." As such Part -1 amount i.e finalized debit which was reflected in the AM-47 is different period was supposed to be paid /remitted by the Manager on that date. In each and every case the defaulting managers are not paying the part 1 Catering Debit with

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/remitted by the Manager on that date. In each and every case the defaulting managers are not paying the part 1 Catering Debit with some argument or other lame excuses. **Non payment of Govt. money in time is criminal offence since National exchequer is not being credited with the due amount.** As such the finalized catering debit (Part-I) may be recovered from the defaulting catering managers and the same be credited to the proper head of accounts.

9. However, subsequently, in their clarification reply submitted on 28.02.2018 at Para- 2 they have specifically stated as under:-

" That in terms of JPO-99, Part-I debit is an absolute and finalized debit to be remitted by the Catering Manager at the spot or as early as possible after the part-I debit is raised. Accordingly, for the recovery of the finalized debit does not attract any enquiry before passing order of recovery or finalized debit."

10. We have gone through the records, submissions and pleadings made by the parties.

11. It is observed that the respondents are claiming outstanding debit of Rs. 57,54,011/- against the applicant. Since, the outstanding debit has been contested by the applicant in Tribunal, it was directed vide this order dated

(Signature)

30.04.2010 to conduct a proper enquiry and come to transparent and fair conclusions after affording reasonable opportunity to the applicant. In the initial written statement they took a stand that non payment of Govt. Money in time is a criminal offence since National Exchequer is not being credited with the due amount. As such the finalized catering debit (Part-1) may be recovered from the defaulting catering managers and the same be credited to the proper head of accounts. However, in the subsequent reply filed by the respondent authorities on 28.02.2018, it was stated that in terms of JPO-99, Part-I debit is an absolute and finalized debit to be remitted by the Catering Manager at the spot or as early as possible after the part-I debit is raised. Accordingly, for the recovery of the finalized debit does not attract any enquiry before passing order of recovery or finalized debit.

12. Considering the facts that the claim of such heavy amount from a Government servant is considered not misconduct or any misbehaviour not attracting conduct of

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proper inquiry even at the direction of this Tribunal, we are constrained to conclude that the claim may not be genuine and the respondent are not interested to pursue the case effectively and meaningfully. Therefore, their claim is liable to be dismissed and allow the O.A of the applicant.

13. Accordingly, the O.A is allowed and no recovery shall be made from the applicant. There will be no order as to costs.

(N.NEIHSIAL) *7*
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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