

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA /050/00983/2018

Date of order 07.08.2019

CORAM

HON'BLE MR. JAYESH V. BHAIKAVIA, MEMBER (J)

- 1 Bijendra Kumar Mehta, son of Late Shiv Narayan Mehta, Chief Goods Clerk, UTS Centre, East Central Railway Patna Junction, Patna-800001 (Bihar).

..... Applicant.

By advocate: Sri M.P. Dixit.

Verses

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O. Digghi Kalan, P.S.-Hajipur (Sadar), District-Vaishali, PIN code-844101 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.-Digghi Kalan, P.S.-Hajipur (Sadar), District-Vaishali, PIN code-844101 (Bihar).
3. The Principal Chief Commercial Manager, East Central Railway, Hajipur, P.O. Digghi Kalan, P.S.-Hajipur (Sadar), District-Vaishali, PIN code-844101 (Bihar).
4. The Financial Advisor & Chief Accounts Officer (Traffic), East Central Railway, Mahendrughat, Patna-800004 (Bihar).
5. The Divisional Railway Manager, East Central Railway, Danapur District- Patna, PIN CODE- 815101 (Bihar).
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur District- Patna, PIN CODE- 815101 (Bihar).
7. The Senior Divisional Commercial Manager, East Central Railway, Danapur District- Patna, PIN CODE- 815101 (Bihar)..
8. The Senior Divisional Financial Manager, East Central Railway, Danapur District- Patna, PIN CODE- 815101 (Bihar).

..... Respondents.

By advocate: Sri Vinaya Kumar.

ORDER (ORAL)

Per JAYESH V. BHAIKAVIA, MEMBER (J)- In the instant OA, the applicant has prayed for quashing and setting aside the Order dated 18.07.2018 passed by respondent no.7 (Annexure-A/7) and also Order dated 10/11.08.2016 passed by Senior TIA (Annexure-A/3) whereby commercial debits has been raised against the applicant and for it an order for recovery from the monthly salary of the

applicant has also been issued. The applicant has further prayed for direction to the respondents to refund the recovered amount from his salary, if any.

2. The applicant has mainly contended as under:-

(i) The applicant was posted as Chief Goods Clerk at Magadh Pristine Infrastructure, Bihta in short MPIB, Bihta on 08.10.2015 under the Railway department.

(ii) It is submitted that during his at MPIB, Bihta, the Railway Board has issued Rates Circular dated 02.05.2016 of running the new service booking system i.e. "ROLL ON- ROLL OFF" (in short RO-RO) for the first time. In response to it, vide Rates circular (Goods) dated 20.05.2016 (Annexure-A/1) was issued by Chief Commercial Manager /FM of EC Railway, declaring working procedure to deal RO-RO service between PET Bigha and Turkey, initially for 6 months. Subsequently, the Railway Board issued addendum to Rates Circular No. 15 of 2016 dated 23.05.2016 (Annexure - A/2) whereby it is informed to CCM, EC Railway Hajipur for freight for special RO-RO class will be notified by Zonal Railway under Section 32 of the Railway Act, 1989 as lump sum, station to station rate and further instructions issued under para 2 with respect to collection of service tax, other tax, cess etc. (Annexure-A/2) and the same was installed by railway at Bihta only on 30.05.2016.

(iii) It is submitted that for the period from 23.05.2016 to 29.05.2016, the applicant has performed his duty manually and realized the freights against the booking on the basis of old booking system as per the existing guideline dated 20.05.2016, which is in accordance with control message of Respondent No.7.

The said "ROLL ON- ROLL OFF" service booking was neither activated at Bihta nor was circulated at Bihta. The applicant had not received any training or guidelines about the newly introduced system, i.e. "ROLL ON- ROLL OFF" during the period from 23.05.2016 to 29.05.2016.

(iv) It is further submitted that while the applicant was working at Bihta, he came to know that respondent no.4, has raised commercial debit by way of issuing statement of errors in traffic for the period of 23.05.2016 to 29.05.2016 against the applicant (Annexure-A/3 series). Against which, immediately the applicant has submitted his objection on 18.10.2016 (Annexure-A/4), therein he has stated that this is a new pattern of Traffic and RO-RO booking system which was even started in TMS only from 01.06.2016, whereas manual booking was started from inaugural date 23.05.2016 till 31.05.2016, that too without any specific guideline. It was not possible to collect charges like busy season surcharge, development charge & Digha Bridge charge and, therefore, the applicant had requested to credit for the same.

It is also stated in his objection that booking of RO-RO was done as per Rates Circular (Goods) No. 26/2016 dated 20.05.2016. In Para (2) of the said circular it is clearly mentioned that "Digha Bridge Surcharge and Service Tax as per rates applicable should be levied". Nowhere in the notification/circular, levy of other charge e.g. busy season surcharge, development charge and other misc. charges have been referred, as such same is not referred. Therefore, he has requested to grant credit for the said debit (Annexure-A/4).

(v) It is further submitted that applicant has submitted various representations, dated 05.11.2016, 05.03.2017, 31.08.2017 and 09.01.2018, (Annexure-A/5 series) thereby he has requested the respondent no.7, that in circular dated 20.05.2016, no guideline was mentioned about the collection of busy season surcharge and misc. charges, hence the same is not collected.

It is also submitted that the debit raised has been kept as objected debit in the month of September, 2016 and he came to know that the account department is going to convert in "admitted debit", therefore, the said stand of Account Department is highly objectionable as his representation and explanation has not been considered in its true spirit. In his representation, he has also requested the concerned authority, if necessary thorough inquiry, under the railway rules be carried out or withdraw the said debit.

It was also requested that deposit of concerned party is lying with the station and same can be realized against any short fall of freight. However, no action has been taken by the respondents till date.

(vi) It is further submitted that the applicant has worked at Bihta up to 10.01.2018, and there is no allegation against him for not adhering the "ROLL ON- ROLL OFF" service booking system since 30.05.2016 to 10.01.2018. Therefore, the applicant cannot be held responsible for any administrative discrepancies with respect to short collection of freight under "RO RO" for the period from 23.05.2016 to 29.05.2016. It is submitted that, there is no allegation of any misuse/misappropriation of government money, therefore, on this ground, no recovery against said commercial debits can be realized from the applicant.

Again, the applicant has submitted his representation dated 07.07.2018, but the same is also un-responded. (Annexure-A/6).

(vii) It is further submitted that impugned order dated 18.07.2018 issued by the respondent no.7, whereby the recovery of Rs.2,15,435/- has been ordered to be commenced towards commercial debits (treated it as admitted debit) from the monthly salary of the applicant. The said impugned order is against the rules, punitive, based on wrong facts, therefore,

the same is requested to be quashed and set aside. (Annexure-A/7).

(viii) It is further submitted that the recovery from the pay is one of the penalty as stipulated in Rule 6[iii] of the Railway Servants (D & A) Rules 1968. In the case of the applicant, vide impugned order, the respondents have ordered to start recovery amounting to Rs. 2,15,435/- under the head of “Admitted Debit” without initiating any proceeding either as per Rule 9 or 11 of the Railway Servants (D&A) Rules, 1968 for the purpose of imposing penalty of recovery. Therefore, the impugned order is bad in law.

(ix) It is further submitted that the applicant is low paid Group-‘C’ employee and if the recovery is allowed to be implemented, it will cause great financial hardship to him and his family.

(x) Learned counsel for the applicant has placed reliance on Order passed by this Tribunal in similar cases, i.e. OA 184/2018 decided on 15.05.2018, OA 322/2018 decided on 31.05.2018 and OA 984/2018 decided on 23.05.2019 and submitted that since the applicants of the aforesaid cases had never admitted or accepted the said commercial debit, therefore, the decision of the respondents Railway Department to commence recovery from the pay was quashed and set aside mainly on the ground that such recovery cannot be allowed without

following the procedure under Railway Servants [D&A] Rules. Therefore, in the case of the applicant also the respondents ought not to have imposed such penalty of huge amount upon the applicant without following due procedure of law including disciplinary inquiry for the purpose of establishing negligence or breach of order on the part of the applicant, hence this OA.

3. The respondents have filed their written statement wherein it is stated as under :-

(i) It is contended that the respondents have not violated any rules or norms with respect to their decision to recover of an amount of "Admitted Debit" from the pay of the applicant. The case of the applicant is hit by principles of law of estoppel.

(ii) It is submitted that the applicant was posted as CGC/MPIB/BTA in the year 2015 for looking after all works related to goods traffic at MPIB/BTA. He was posted on behalf of railway administration at MPIB/BTA, therefore, the applicant is supposed to be well acquainted with rules and he should have worked as per rules and procedure in the interest of railway administration. In the year 2016, RO-RO service was started for transportation of loaded trucks through railway wagons. Necessary circulars were issued by Railway Board/New Delhi vide Rates circulars 15/2016 dated 02.05.2016 & addendum vide dated 23.05.2016. The E.C. Railway has also issued Rates Circular (Goods) No. 26/2016

dated 20.05.2016 regarding booking of traffic. It was the duty of the applicant to follow the said circulars for correct realisation of freight and to work properly for smooth functioning of the new service started by the railway. (Annexure-R/1 and R/2). However, he failed to perform his duty in terms of said circular and collected a less freight which caused revenue loss to the railway.

(iii) It is further submitted that RO-RO service has been started w.e.f. 23.05.2016 and railway receipts were issued manually for booking of traffic up to 29.05.2016 by the applicant. During the course of booking of traffic, the applicant could not realize the correct freight due to non observance of para 2 of circular of E.C. Railway dated 20.05.2016 and para 2(v) of Railway Board circular dated 23.05.2016 (Annexure-R/2). Due to non realisation of correct freight, office of Financial Advisor & Chief Accounts Officer (FA&CAO), ECR/HJP has raised the debit of Rs.2,15,435/-, vide error sheet dated 10.08.2016 (total 16 error sheets) (Annexure-A/3 series).

(iv) It is submitted that the aforesaid error sheets were accounted as objected debit in goods balance sheet of MPIB/BTA for the month of September, 2016, since the applicant has objected the said debit. The said objected debit was transferred to admitted debit jointly by Sr. TIA & Sec. CTI after examination of the accounts by joint team of accounts & commercial department, vide memo dated 25.01.2018 which

has been accounted as admitted debit in balance sheets of January 2018. (Annexure-R/4).

(v) It is further submitted that being an in-charge of MPIB/BTA, the applicant should have realised the debited amount from the party concerned but the applicant failed to do so during his tenure at MPIB/BTA. Due to the negligence of the applicant, railway has suffered a loss of revenue of Rs. 2,15,435/-.

(vi) It is further submitted that as per provision of Paras 2719 (ii) and 2721 of Indian Railway Commercial Manual Vol-II, the office vide letter dated 18.07.2018, has requested Head Quarter for taking necessary action for recovery of above debited amount from the salary of the applicant. (Annexure-R/5).

(vii) It is further submitted that correspondence has also been made by Dy.CCM/FM to Railway Board for giving exemption of surcharge of RO-RO service and requested the Sr.DCM E.C. Railway, Danapur to re-examine the matter before advising deduction from salary of the staff by transferring into admitted debit (vide letter dated 26.07.2018) (Annexure-R/6). However, vide letter dated 26.10.2018 Sr. DCM, Danapur informed the Dy. CCM/FM EC Railway, Hajipur, that the Railway Board has not considered for giving exemption in busy season surcharge on RO-RO service so debit stands due. It is

submitted that prior information was given to Sri Mehta (applicant herein) to be present during examination of debit jointly by Sr. TIA and CTI. Thereafter, debit was transferred to admitted debit jointly by Sr. TIA and Sec. CTI vide memo date 25.01.2018, which has been accounted as admitted debit in January, 2018. Sri Mehta could not realise the debit amount from the concerned parties during his working as GSS. Therefore, it was intimated to take necessary action for deduction of said admitted debit from the salary of the applicant for clearance of outstanding amount (Annexure-R/7).

(viii) It is further submitted that since debit was raised by accounts office so its correctness was beyond doubt. Even though, after correspondence a team of accounts & commercial department was formed and the debit was jointly enquired/examined by Sr. TIA & CTI (accounts and commercial) and the reason for objection submitted by the applicant has not been found proper, hence not accepted, therefore, the said debit then transferred to as "admitted debit", vide joint memo dated 25.01.2018 (Annexure-R/8).

(ix) It is also submitted that the statement made by the applicant regarding non circulation of circular dated 23.05.2016, is not true. The said circular (all circulars issued by Railway Board are readily available on Railway Board websites which can easily be seen and implemented) was available on railway websites and must have seen by the applicant.

Therefore, the applicant was under obligation to implement the said RO-RO scheme with immediate effect but he failed to do so as also he failed to update himself with current rules and regulations, due to which correct freight could not be realised and railway has to suffer financial loss. For this loss, the applicant is responsible. Hence, the respondents have no other option except to issue impugned order for recovery of said admitted debit from the salary of the applicant, which is just and proper as per rules.

4. Heard the parties and perused the materials on record.

5. It is noticed that commercial debit memo dated 10/11.08.2016, amounting to Rs.2,15,435/- has been raised against the applicant while he was working as CGC/MPIB/BIT for not collecting correct freight charges for the period from 23.05.2016 to 29.05.2016 as per the terms of Rates Circular No. 15/2016 issued by the Railway Board 02.05.2016 and 23.05.2016 including Rates Circular (Goods) no. 26/2016 with regard to newly introduced RO-RO services.

6. It is noticed that the applicant has objected the said debit on 18.10.2016 (Annexure-A/4) mainly for the reason that new scheme for collecting freight under Ro-Ro scheme which was introduced on 20.05.2016 and made effective from 23.05.2016 was not known to the applicant while he was working at Bihta. The applicant has collected the freight by following existing guidelines/policies for the period from 23.05.2016 to 29.05.2016 by way of manual collection of

freight. From 01.06.2016 till date he was remained at the said station, i.e. MPIB/BIT. The freight was collected for the said period as per the RO-RO Scheme.

7. It is noticed that the representation of the applicant as contained in Annexure-5 series, has not been considered by the respondents. It is also noticed that applicant has continuously submitted that the said commercial debit is not admitted by him. It is also noticed that applicant has requested to initiate thorough inquiry for so called less collection freight during 23.05.2019 to 29.05.2016 due to non implementation of newly introduced RO-RO scheme.

8. It is further noticed that Rates Circular No. 15/2016 dated 02.05.2016 was issued by the Railway Board, directing the CCM, EC Railway Hajipur, that proposal of running RO-RO service across the Ganga over EC Railway, the power vested under the section 32 of Railway Act 1989 to the Railway administration to quote station to station lump sum rate for carriage of any commodity, EC Railway may decide tariff for such RO-RO service in the best interest of Railways. Pursuant thereto, Chief Commercial Manager/FM, EC Railway issued Circular (Goods) No. 26/2016, dated 20.05.2016, whereby guidelines were formulated for running of RO-RO service between PFT/Bihta and Turki and working procedure to new stream of tariff for RO-RO service has been issued. It is noticed that subsequent thereof, in continuation of rates circular no. 15/2016, the Railway Board had issued addendum to it on 23.05.2016 wherein in para 2(V), it is stated that service taxes and other taxes/surcharge/cess will be

levied as per extant guideline. The applicant had submitted that the said circular and guideline stipulated therein were not known to him on 23.05.2016, and as per the instructions of his higher officials manual booking was done for the period 23.05.2016 to 29.05.2016 as there was no instruction with respect to collection of busy season surcharge and development charges under the newly introduced RO-RO sachem, therefore, the same could not be collected.

9. It is also pertinent to note that vide letter dated 26.07.2018, the office of Pr. CCM, Hajipur addressed a letter to Sr. DCM, EC Railway, Danapur wherein it is brought to the notice that the charges applicable on Base Freight and Normal Tariff Rate should not be charged on "RO RO" Service. The Divisional Office has also recommended to AM [Commercial]/Railway Board for giving exemption of busy season surcharge on RO RO Service, but the Board has not considered so far. In this regard, the copy of representation of the applicant was also forwarded for consideration with a request to re-look into the matter.

10. The aforesaid letter stipulates that at the relevant time there was no clear guideline/instruction or any clarity with the higher officers to collect separate busy season surcharge and development charges. Subsequently, vide letter dated 26.10.2018 Sr. CCM, Danapur informed the DY, CCM/FM Hajipur that debit was raised due to violation of para 2(V) of Railway Board circular (addendum) to Rates Circular No. 15/20146) dated 23.05.2016. The Railway Board has not given exemption, so the said debit stands due, and as per the

report of Sr. TIA and CTI, the said debit has been accounted as admitted debit in January, 2018 and further directed to realise the debit amount by way of deduction from the salary of the applicant (Annexure-R/6). These two letters sufficiently established the fact that the higher official of the applicant did not have the clarity about correct amount/surcharge to be collected under the RO-RO scheme introduced w.e.f. 23.05.2016, even the respondents had issued addendum rates only on 23.05.2016. Since, there was no clear instruction made available to the applicant by his higher authority, it cannot be said that applicant was served with complete details and modality for collection of freight under the newly introduced RO-RO scheme on 23.05.2016.

11. Under the circumstance the objection raised by applicant ought to have dealt with in the light of aforesaid discussion. There was no material placed on record that the applicant was served with the show cause or any written intimation by the Sr. TIA and CTI before submitting their report dated 25.01.2018 by which the said “debit” has been transferred and accounted as “admitted debit”.

12. As noticed hereinabove, the applicant has not accepted the debit and same was continued as objected debit in the balance sheet of September 2016 itself, however vide report dated 25.01.2018, the same has been accounted as admitted debit, that too without considering the representation of the applicant.

13. The learned counsel for the applicant placed reliance on the orders passed in identical cases (*supra*). This decision interprets the relevant rules of the department and very clearly concluded that the order of recovery of huge amount from the salary of applicant amounts to imposition of penalty which cannot be done without holding departmental inquiry under the Railway Servants (D&A) Rules, 1968.

14. The recovery of so called loss which is alleged to be occurred due to carelessness and negligence of the applicant and the same is also in violation of rules, in that event, the concerned authority has to initiate appropriate departmental enquiry to establish the charge of negligence to justify the recovery from the pay of the applicant. until and unless the charge/allegation is established by way of detailed inquiry and the said negligence of the applicant is proved, the punishment of recovery cannot be imposed.

15. It is further held by the Tribunal that since the debit was never admitted by the concerned employee and his objection is not considered in its true spirit, the said debit is required to be considered as "Objected debit" and recovery of the whole or part of any pecuniary loss by railway servant to the Railway Administration by negligence or breach of order is enumerated penalty under rule 6 (III) of Railway Servants (D & A) Rules 1968. The said orders (*supra*) relied upon by the applicant are squarely applicable in the present case of the applicant.

16. It is seen that the huge amount of recovery has been ordered to be recovered from the salary of the applicant mainly on the ground that he failed to perform his duty by not following the so called guideline and due to his so called negligence respondents have caused revenue loss. Though, the applicant himself has requested to carry out detailed inquiry as per the Railway Servant (D & A) Rules 1968, but the respondents failed to do so.

17. It is further apt to note that as per the provision of para 2732 of IRCM [Indian Railway Commercial Manual] Vol. II which reads as under :-

“If the ground of objection to the debit as furnished by the Station Master concerned are not found to be in order, the Traffic Accounts Office, Inspector of Station Accounts or the Outstanding Branch where one exists, will advise the Station Master of the reasons therefore, and ask him to realize the debit. If necessary, the Divisional Office will be asked to initiate action in accordance with the procedure laid in the Establishment Code, for imposing a penalty of recovery from the pay of the staff concerned for the pecuniary loss caused to the administration by his negligence or breach of orders. The final orders imposing the penalty will be communicated to the staff concerned in writing and the amount due recovered from his salary.”

18. It can be seen that in view of aforesaid provision stipulated in para 2732 for the purpose of imposing a penalty of recovery from the pay of the staff concerned for the pecuniary loss caused to the administration due to negligence or breach of orders, the Divisional Office be requested to initiate action in accordance with the procedure laid down in the Establishment Code. In the present undisputedly, the respondents without following the procedure laid

in establishment code/Rule 9 or 11 of Railway Servants [D&A] Rules, 1968, imposed the penalty of recovery upon the applicant, therefore, the impugned decision is in my considered view is contrary to the provision of para 2732 of IRCM Vol.II.

19. The impugned order, in my considered view is suffering from infirmities in light of facts as illustrated hereinabove as also in light of various orders passed by this Tribunal (supra) in identical cases. In the aforesaid backdrop, the impugned recovery order dated 18.07.2018 (Annexure-A/7) issued by respondent no.7 against the applicant is not sustainable in the eye of law.

20. In conclusion, as discussed here in above, the impugned order dated 18.07.2018, is hereby quashed and set aside. The applicant is entitled to receive the amount, recovered from his salary, if any by the respondents henceforth. The OA is disposed of with liberty to the respondents to take appropriate decision with regard to realization and recovery from the concerned official in accordance with the provision of Establishment Code as also in the light of discussions made hereinabove. No costs.

[JayeshV. Bhairavia]/M[J]

Bp/mps