

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8067 of 2017

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Sabita Kumari Chaudhary, Wife of Late Sunil Kumar Chaudhary,
resident of Permanent Address: Tarkeshwari Niwad, East Indira
Nagar, New Bypass Road, Kankarbagh, Patna. At present: In front of
North Lane of Mohan Cinema, Mohalla- Babu Bazar, Police Station-
Ara Town, District- Bhojpur.

.... Petitioner

Versus

1. The Union of India through the General Manager, East Central
Railway, Hajipur, District- Vaishali.
2. The Chief Personnel officer, East Central Railway Hajipur,
Vaishali.
3. The Divisional Railway Manager, Danapur, Patna.
4. The Divisional Railway Manager, Danapur, Patna.
5. The Divisional Railway Manager(Operating), Danapur, Patna.
6. The Senior Divisional Finance Manager, Danapur, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kumar, Advocate
Mr. Rahul Nath, Advocate
For the Respondents: Smt. Chhaya Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 08-08-2017

Heard learned counsel for the petitioner and
learned counsel for the respondents Railway.

Original Application (in short the "O.A.") No.
20/2009 was filed by the husband of the present
petitioner who died during the pendency of the O.A.,
therefore, the widow was allowed to be substituted and



thereafter the O.A. was heard and partly allowed restraining the respondents from realizing or recovery of a sum of Rs. 1,17,890/- but refusing to debar the respondents make other adjustment and recoveries to which the ex-employee or the wife would be entitled to.

The O.A. was filed for quashing of the two orders which are dated 04.11.2009 making a demand of Rs. 6,86,169/- and letter dated 05.08.2008, whereas recovery of Rs. 7,64,319/- was ordered. The matter related to the husband of the present petitioner when he was posted as Station Manager at Banahi under Danapur Division, he took charge in the month of July 2007, and it was his case that he did so without proper verification and calculation of the tickets. It is only subsequently that he realized that alot of tickets were missing or stood destroyed for which the valuation of Rs. 1,17,890/- was done. Looking at the loss of revenue an inquiry was initiated, the husband of the present petitioner stood suspended and since nothing further moved so the O.A. was filed. However, from the narration of facts in the order impugned dated 24.07.2015 it emerges that besides the domestic inquiry, even a CBI case was instituted against the husband of the present petitioner for the misappropriation of public fund. The



erstwhile employee died on 29.12.2010, and therefore, the inquiry as well as the criminal case had abated. However, when the authorities on the basis of the debit note which was said to have been submitted by the husband of the present petitioner a liability of Rs. 7,64,319/- was worked out. The details thereof have been enumerated in paragraph 10 and 11 of the order of the Tribunal which are reproduced hereinbelow:

“10. Learned counsel for the respondents submitted that the applicant is intermingling admitted debits of the deceased employee with disputed missing ticket liability. Learned counsel for the applicant argued that without initiating disciplinary proceedings, the department cannot realize any amount from an employee. We are not impressed by such argument as Chapter XXVII of Indian Railway Commercial Manual, Vol.II deals with station outstanding. It may be reiterated that for every misappropriation or deficit, the Railway Authorities can resort to recovery of admitted and objected debits under the parameters of IRCM, Vol.II starting from para 2701 to para 2747. Learned counsel for the respondents drew attention of this Tribunal to the details of outstanding dues enumerated in Annexure-R/ 1 which needs to be extracted for better appreciation of the dispute in controversy-

Loss of Railway Revenue is tabulated below during the posting of the applicant -

Error-sheet No.	Nature of Discrepancy	Reported by	Amount
C/BYN/NGV-FA/TIA-CTI/DNR-ARA/07 dated 30.07.2007	Missing of PCTs	Sr. TIA/DNR-B	Rs. 76,749/-
C/BYN/NGV-FA/TIA-CTI/DNR-ARA/07 dated 11.09.2007	Non Remittance	Sr. TIA/DNR-B	Rs. 87,745/-
NGV/TIA-/DNR-B/08/BYN dated 16.04.08	Short Remittance	Sr. TIA/DNR-B	Rs. 1,46,677/-
NGV-KKC/MFA/Insp/08/Cash/BYN dated 17.04.08	Short Cash	Sr. TIA/DNR-B	Rs. 18,143/-
C/BYN/NGV/TIA/DNR B/08	Missing to PCTs	Sr. TIA/DNR-B	Rs. 45,099/-



<i>dated 19.05.08</i>			
<i>C/BYN/NGV/MKO-RKS/TIAs/DNR/08/02&03 dated 04.06.08</i>	<i>Missing of PCTs & Money Value Book</i>	<i>Joint Team of Sr.TIA of/HQ & Sr. TIA/DNR-B</i>	<i>Rs. 3,89,906/-</i>
		Total	<i>Rs. 7,64,319/-</i>

The total misappropriated amount comes to Rs. 7,64,319/- (Rupees Seven lakh sixty four thousand three hundred and nineteen only)

11. Learned counsel for the official respondents Shri A. Haider drew attention of this Tribunal to Annexure-R/1 series where debit memos have been annexed and in all the debit memos issued by the authorities, the deceased employee has signed with endorsement as admitted. So once there is an admitted debit, the respondents are not duty bound to prove such loss as is required in a disciplinary proceeding. Since parameters have been set in IRCM regarding recovery of admitted debits, no further arguments can be entertained vis-à-vis admitted debits as these are not disputed. Even if for the sake of arguments, it is admitted that the debits were disputed there was ample opportunity for the deceased employee to explain how he was not liable. However, he failed to satisfactorily avail this opportunity during his life time and now his wife cannot be permitted to take benefit which her husband could not obtain during his life time. Para 2719 and para 2721 of IRCM Vol.II clearly deals about clearance of admitted debits and recovery of admitted debits from pay bills. Even para 2730 deals with clearance of objected debits. In such premises, when the deceased employee had admitted the content of the debit memo, he was duty bound to refund the same and we did not find anything illegal or irregular in the conduct of the official respondents in adjusting the said liability from retiral and outstanding dues of the deceased employee. Hence, ordered.”

Learned counsel for the petitioner submits that the amount has been variable. The acceptance by the husband of the present petitioner was only



acknowledgment of the fact, not of the liability and that no recovery can be made against a dead person nor can it be done from the legal heir or heirs.

Such submission is misplaced kind of submission not supported by any law. The factual position which has emerged in paragraph 10 and rightly explained in paragraph 11 of the order which has been reproduced in earlier part of the order does create an obligation and liability. The extent of relief, which could be given to the present petitioner has already been extended because certain defaults or misappropriation especially amounting to Rs. 1,17,890/- has not been ordered to be recovered because that calculation could not be established since the inquiry was not completed before the death of the employee. However, since the debit note and the outstanding dues, as enumerated, does have acceptance on the part of the husband of the present petitioner where not only the word 'admitted' and his signature has been endorsed therein, the loss of revenue of the Railway cannot be allowed to go unnoticed or waived due to the above contingencies. The relevant rule with regard to the Indian Railway has already been quoted and dealt with in the impugned order passed in the O.A. and reading of the same does create a liability



and the Railway have the necessary rule to support the recovery of admitted debits.

In view of the above, the Court is not inclined to interfere with the order of the Tribunal beyond the extent of relief which has already been extended to the petitioner, who is also an employee now, serving on a Class-III post, under compassionate ground.

The writ application is dismissed.

Before parting, learned counsel for the petitioner submitted that the excess amount has been recovered beyond the debit of Rs. 7,64,319/-. This is a matter of verification of accounting. If it is so, the respondent Railway authorities are directed to take remedial measures of refund or explain the reason for such deduction to the petitioner. This must be done within a period of six weeks from the date of production of a copy of this order.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.08.2017
Transmission Date	NA

