IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18464 of 2019

==

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 Divisional Railway Manager, East Central Railway, Danapur, District- Patna, Pin Code- 801105, Bihar.
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, District- Patna, Pin Code- 801105, Bihar.
6. The Senior Divisional Commercial Manager, East Central Railway, Danapur, District- Patna, Pin Code- 801105, Bihar.
7. The Senior Divisional Financial Manager, East Central Railway, Danapur, District- Patna, Pin Code- 801105, Bihar.

... ... Petitioner/s

Versus

Kailash Prasad, Son of late Ram Murat, Booking Supervisor, East Central Railway, Dildarnagar Under Danapur, Division.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Advocate
Mr. Kumar Priya Ranjan, Advocate

For the Respondent/s : Mr. M.P. Dixit, Advocate

Mr. S.K. Dixit, Advocate
Mr. Sanjay Kumar Choubey, Advocate
Mrs. Swastika, Advocate
Mr. Shailendra Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-10-2019

Heard Shri D.K. Sinha, learned senior counsel for the petitioners and Shri M.P. Dixit, learned counsel for the respondent.

2. The challenge raised to the impugned judgment is on the ground that the respondent-applicant had practically admitted the loss caused to the Railways and, therefore, in terms of Rule 229 of the Indian Railway Commercial Manual (IRCM) the liability was clearly on the respondent-applicant. Hence, the debit-memo issued for recovery of the loss caused is perfectly in order.

3. Shri Sinha submits that Rule 229 read with Rule 2721 of the IRCM, where an admitted debit is required to be recovered according to the procedure prescribed therein, the respondent-applicant was rightly served with a debit-memo and

therefore the realization made from him is in conformity with the said rules. The contention in short appears to be that since the missing of the tickets has not been denied by the respondent-applicant, therefore, he is also liable to make good the loss to the Railways.

4. We have considered the submissions raised and we have also heard Shri M.P. Dixit who has appeared after notices were issued on 6th September, 2019 calling upon the respondent-applicant to put in appearance so as to answer this position.

5. The contention of Shri Dixit is that the liability has been fixed without holding any inquiry, and as a matter of fact, there is no actual loss caused to the Railways. Accordingly, in terms of Rule 229, as relied on by the petitioners themselves, no such recovery could have been made and, therefore, the Tribunal has justifiably issued a direction to refund the amount and has left it open to the petitioners to proceed in accordance with law.

6. Having heard learned counsel for the parties, Rule 229, which is applicable to the controversy, is extracted hereinunder:-

> "**229. Deficiency or loss of a ticket.-** If subsequent to the acknowledgment of the correct receipt of the

supply of tickets, any deficiency or loss of tickets is noticed, the Station Master should take action according to the instructions contained in para 227 (b). An enquiry will be made to determine the cause of loss and in case it is established that the ticket in question was actually sold and the money lost to the railway the amount of loss will be recovered from the railway servant held responsible, in addition to any other disciplinary action as may be considered necessary according to the merits of each case. If, however, the result of the enquiry shows that the ticket was not actually sold and the value thereof was not actually lost, such disciplinary action as may be considered necessary according to the merits of each case will be taken against the staff responsible.

On receipt of intimation regarding loss of tickets, the Traffic Accounts Office will raise debit for the value of such tickets. The debit will, however, be withdrawn if the enquiries made by the Traffic (Commercial) Department reveal that the tickets in question were actually not sold."

7. A perusal of the Rule leaves no room for doubt that even if there has been no actual loss caused to the Railways still an inquiry can be held for taking appropriate action.

8. The Tribunal in the last paragraph of the impugned judgment has observed as under:-

5. In the light of the aforesaid, the OA is allowed. The impugned orders dated 25.05.2018 and 26.08.2018 (Annexure A/1 and A/2) by which debit memos are raised for recovering the amount of missing tickets from the applicant, are hereby quashed and set aside. Any recovery already made following these debit memos will be refunded to the applicant within two months of receipt of this order. Respondents are, however, free to take further action under the rules to find out if any loss has occurred on account of these missing tickets and to realize the loss from the concerned persons after following due procedures. The MA is disposed of accordingly. No costs."

9. We find that the aforesaid observations made by the Tribunal amply protects the action that may be taken by the petitioners in the light of the allegations made, but it will not be possible for us to accept that the respondent-applicant had admitted the loss of any particular amount on account of the loss of the tickets. In such a situation, the recovery could not have been made, and consequently the Tribunal was justified in issuing a direction for refund.

10. We, therefore, find no reason to interfere in the matter without prejudice to the rights of the petitioners to proceed to take appropriate action as already indicated in the

impugned judgment.

11. The writ petition is accordingly dismissed with the said observations.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	15.10.2019
Transmission Date	