

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
WRIT PETITION No.13976 OF 2019

10.07.2019

Between:

Union of India and another

...Petitioners

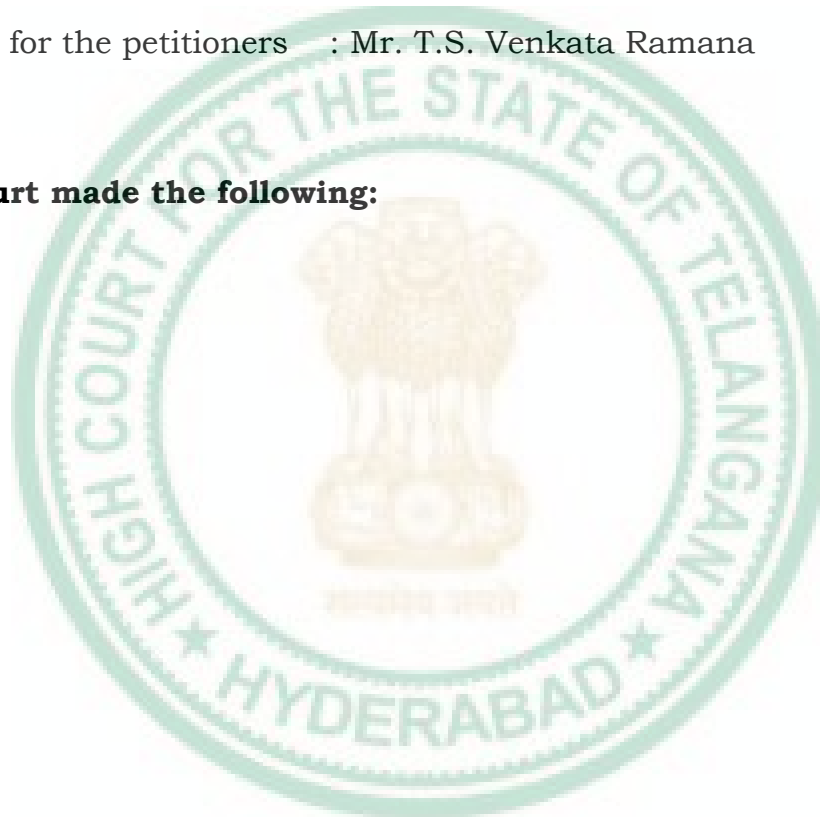
and

The Registrar,
The Central Administrative Tribunal, and another

...Respondents

Counsel for the petitioners : Mr. T.S. Venkata Ramana

The Court made the following:



ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The petitioners are aggrieved by the order dated 26.04.2019, passed by the Central Administrative Tribunal, Hyderabad ("the learned Tribunal" for short) in O.A.No.642 of 2016, whereby the learned Tribunal has allowed the O.A filed by the respondent-applicant, and has directed the petitioners to refund an amount of Rs.1,38,933/- to the respondent-applicant, within a period of ninety days from the date of receipt of the order. The learned Tribunal has further directed that the respondent-applicant would not be entitled to any interest or costs.

Briefly, the facts of the case are that on 12.04.2001, the respondent-applicant was appointed as an Assistant Station Manager in the South Central Railways. In November, 2005, he was promoted as a Station Master. However, during the course of his service, the Senior Divisional Commercial Manager, South Central Railways, (the petitioner No.2 before this Court), issued an order dated 31.07.2012 directing recovery of an amount of Rs.1,21,778/- as the outstanding amount against the respondent-applicant since June, 2012, towards admitted debit at Tukaithad Station. The respondent-applicant was further informed by the said order that in case he fails to clear the debit amount within a period of seven days, the said amount shall be recovered from his salary in instalments of Rs.9,800/- per month.

Immediately, the respondent-applicant submitted his reply on 08.10.2012. He claimed that he had not issued the tickets. In fact, they were issued by one Mr. Gopal Lal Gupta, ASM/TTO. Therefore, he prayed that the recovery should be stopped from his salary. Since the reply did not elicit any response, the respondent-applicant submitted a letter dated 09.04.2013 to the petitioner No.2. He

brought it to the notice of the petitioner No.2 that before being relieved from Tukaithad Station, there was no debit against him. Hence, he sought refund of Rs.92,689/-, which was already recovered from his salary. But, despite these two representations submitted by the respondent-applicant, the petitioners continued to recover the amount from his salary. Therefore, the respondent-applicant was forced to file an O.A, namely O.A.No.1503 of 2013, before the learned Tribunal. By order dated 24.03.2015, the learned Tribunal directed the petitioners (the respondents in the said case) to furnish the details of the outstanding debits.

In compliance of the order dated 24.03.2015, the petitioners issued a letter dated 21.07.2015, wherein the details of the outstanding debits were enclosed. The petitioners also directed the respondent-applicant to file his representation, if any, within a period of ten days. Therefore, on 07.08.2015, the respondent-applicant submitted a representation. He brought it to the notice of the petitioner No.2 that atleast the letter signed by Mr. Gopal Lal Gupta, ASM/TTZ, does not have any date on which it was prepared. The taking over and handing over of the cash was done with reference to the daily transaction cash book. However, even this representation fell on deaf ears. Therefore, the respondent-applicant submitted another representation dated 25.01.2016, wherein he prayed that the amount so recovered from his salary should be refunded, as the recovery was patently illegal. Since even the said representation was not replied, the respondent-applicant had no other option, but to file O. A. No. 642 of 2016. By order dated 26.04.2019, the learned Tribunal allowed the O.A in the aforementioned terms. Hence, this petition before this Court.

Mr. T.S. Venkata Ramana, the learned counsel for the petitioners, submits that since the misconduct committed by the respondent-applicant was discovered, since it was confronted by the petitioners with regard to the alleged misconduct of selling the tickets to travel agencies, the petitioners are well justified in recovering the amount from the respondent-applicant. Therefore, the impugned order deserves to be set aside by this Court.

This Court has asked the learned counsel for the petitioners two pointed queries whether the departmental enquiry was ever initiated against the respondent-applicant or not? If it were initiated, what is the present status of the departmental enquiry?

To these two queries, the learned counsel for the petitioners submits that, indeed, a departmental enquiry was initiated against the respondent-applicant. However, so far, the departmental enquiry has not culminated in any punishment order. For, the departmental enquiry is presently pending. This Court has also pointed out to the learned counsel for the petitioners that since the departmental enquiry has not been finalised, and is incomplete, they are certainly unjustified in recovering any amount from the respondent-applicant. For, the recovery is being made, ostensibly, on the ground that the respondent-applicant is guilty of the alleged misconduct. However, so far, the enquiry is incomplete. Thus, the respondent-applicant cannot be pronounced "to be guilty of misconduct". Hence, the petitioners have put the cart before the horse. It is precisely for this reason that the learned Tribunal directed the petitioners to refund the amount so recovered from the respondent-applicant.

Therefore, this Court does not find any illegality or perversity in the impugned order. However, it is made abundantly clear that once the departmental enquiry is complete, and in case the respondent-

applicant were found to be guilty of the alleged misconduct, the petitioners shall be free to take appropriate action for recovery of the amount, but strictly in accordance with law.

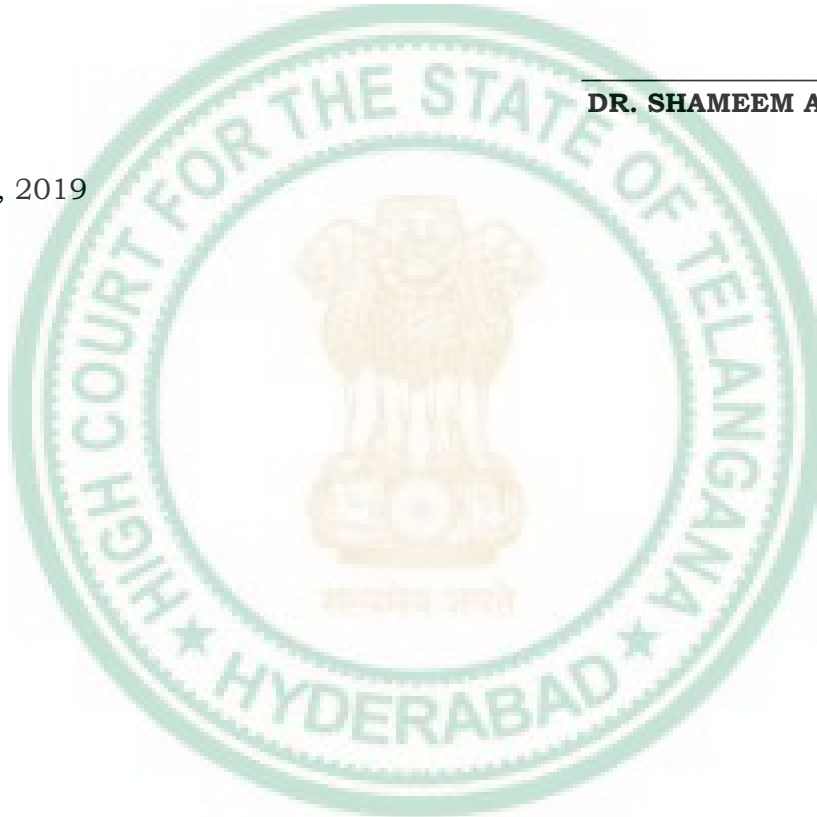
With these directions, the writ petition stands disposed of. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

DR. SHAMEEM AKTHER, J

10th July, 2019
JSU



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