

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9565 of 2019

-
-
1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
 2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
 3. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
 4. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar).
 5. The Senior Divisional Commercial Manager, East Central Railway, Samastipur (Bihar).
 6. The Senior Divisional Operating Manager, East Central Railway, Samastipur (Bihar).
 7. The Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar).

... .. Petitioner/s

Versus

Raj Kumar Sinha Son of Late Baidya Nath Prasad, resident of Village and P.O.- Thumma, P.S.- Runnisaidpur, District- Sitamarhi (Bihar), Ex-Station Superintendent, East Central Railway, Raxaul under East Central Railway, Samastipur Division (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dr. Anshuman, Adv. Mr. Sanjay Kumar, Adv.
For the Respondent/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Adv. Mr. S.K. Dixit, Adv. Ms. Swastika, Adv. Mr. Sanjay Kumar Choudhary, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN



ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 20-01-2020

In the present case, the petitioner is challenging the order dated 01.06.2018 passed in O.A. No. 183 of 2016 whereby and whereunder the Tribunal has allowed the O.A. application holding that the Railway has an authority to act upon and they can adjust the loss from recovery of the amount from the person concerned subject to following the rule of natural justice. But in the present case, the order has been passed directing the amount of loss to be recovered without giving any chance to the petitioner to explain his conduct with respect to the purported loss incurred by the Railway. In the present case, a loss has been calculated an amount of Rs. 15,14,124/- suffered by the Railway. It appears from the record that one M/s Maa Brinda Express Carrier had booked the coaches of Railway by Train No. 13021-13022 Express HWH-RXL-HWH vide letter no. C.375/Tender Leasing of VP/Pt. XVI/PB (PH-15) Kolkata but the party had some breaks in journey on that account the period for which he has booked and deposited the money was exceeded as the Railway coaches remained in use during extended period, there by caused the loss to the Railway to the extent of Rs. 15,14,124/-.

For this loss, a committee was constituted and the committee after verification the records found that on account of



use of extra time of the Railway coaches, the Railway has received a loss. In the said Enquiry Committee, the petitioner was also a member. The joint committee report is dated 29.07.2015 wherein it has been found that the railway has incurred the loss of Rs. 4,12,454/- which bears signature of the petitioner, R.K. Sinha as being a member of that committee. After superannuation from service on 31st August, 2015, the Railway Administration has passed the impugned order on 30.11.2015 and has directed for the debit of Rs. 4,12,454 and this amount was accordingly not paid to the petitioner. He has approached to the Tribunal and Tribunal has found that the action of the Railway Administration is wrong in the sense that before passing the impugned order they were required to act as per the Railway Services Pension Rule, 1993 but before passing the impugned order no such inquiry was conducted nor any opportunity was given to the present petitioner. The Tribunal has given the example in this manner that if a person books the coach for journey for tourist purposes has to approach the Railway Administration with detailed programme with the number of coaches required and date of journey name of station where they wish to stay and accordingly the programme is accepted by the Railway station and if the program changes or there is detention or alteration of movement in the commencement of journey than in



that circumstances the charges in the sense demurrage is to be realized from the person concerned.

Counsel for the petitioner (Union of India) submits, as the Railway Administration received a loss on that account, in order to re compensate deduction to the extent was effected on the basis of report of a joint committee. The Joint Committee after proper inquiry submitted the report wherein the petitioner was also a member and identified the Railway Administration has received the loss of the aforesaid amount and as such his stand that he has no knowledge about the loss or he has not been given any notice or was not allowed to furnish his explanation, has no substance in the law when he was party to the inquiry, admittedly he himself along with others has found that the Railway has received the loss than he cannot take stand of no notice and challenge the action of the Railway for re compensating itself of the loss incurred.

Counsel for the respondent submits that the petitioners was posted at Raxaul and this train started from journey from Hawarah to Raxaul and returned to same destination so if any change has been made or the coach was detained at originating station in such circumstances, the originating station would prepare charge of loss for detention if any, if on the way, the coaches remained standing the only station master where the coach



was detained will make a claim of the extra amount which the Railway has suffered loss. But in the present case, the petitioner was not posted the originating station nor the station where the coaches was detained so he cannot be fastened the liability of the loss incurred to the Railway. Further, submitted that there is no doubt that he was a member of the Joint Inquiry Committee but the report does not reflect showing that it be deducted from the petitioner or any loss has been caused by the petitioner and if the Railway Administration so sanguine then the Railway Administration should have held the proper inquiry giving notice to the petitioner and would take decision in accordance with law.

Having considered the rival contentions of the parties, the law is very much settled that the employee in during service period commits some wrong, later on superannuation, the same is found, proper notice to be served in the matter of recovery or in the sense of inflicting the order of punishment in such circumstance it is sine quo non that before passing any order adverse to the interest the employee, the authority would hold the inquiry and arrived at a finding giving due opportunity to the person concerned and only thereafter the authority will be at liberty to deduct the amount from the admitted dues or from any retiral dues. In such view of the matter, we do not find any error in the order of the Tribunal as the



Tribunal has rightly interfered with the action of the Railway Administration in setting aside the order of deduction of the amount from his money due which cannot be allowed to stand in the sense that no order can be passed without giving any proper opportunity of hearing. If the Railway Administration is so desire, they may proceed in terms of the existing Rule in accordance with law.

With the aforesaid observations and directions, this writ petition is dismissed .

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2020
Transmission Date	NA

