



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD) No.14054 of 2017

T.C.Thangaraj .. Petitioner

Vs

1. The Central Administrative Tribunal,
Chennai.

2. The Divisional Railway Manager,
Madurai Division,
Southern Railway,
Madurai.

3.The Senior Divisional Commercial Manager,
Madurai Division,
Southern Railway,
Madurai.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records relating to the orders made in O.A./310/00203/2016 dated 28.02.2017 on the file of 1st Respondent and the proceedings of the 3rd Respondent made in No.UC419/Coaching/EFT/Missing/05 dated 31.03.2015 and quash the same and consequently direct the Respondents to refund the recovered amount with interest.

For Petitioner : Mr.K.Govindarajan

For Respondents 2 and 3 : Mr.S.Manohar

ORDER

[Order of the Court was made by
The Hon'ble Chief Justice]

The petitioner before us is aggrieved by the impugned judgment of the Central Administrative Tribunal, Madras Bench, dated 28.02.2017, whereby, his Original Application, seeking relief



against recovery advice dated 31.03.2015, has been rejected on the ground that the petitioner has not filed an appeal and exhausted the remedy available to him against the recovery order.

2. We may point out that recovery appears to be on account of deficiency or loss of tickets as envisaged under Rule 229 of the Indian Railways Commercial Manual. Rule 229, according to the petitioner, envisages the proceedings of enquiry and then imposition of recovery advice, but no such enquiry was held and recovery advice was issued contrary to the stipulations as contained in Rule 229.

3. Learned counsel for the petitioner would submit that there is no remedy of appeal provided under the said manual or any other provision and urged that even the recovery advice is contrary to the law as has been already declared by the Division Bench of the Karnataka High Court in the case of **Divisional Commercial Manager, Souther Railway vs. K.Vijayakumar [AIR 2006 KARNATAKA 41]**.

4. The learned Counsel for the Railways on the other hand has invited the attention of this Court to the Commercial Circular No.8 of 2007 dated 23.01.2007, to urge that the procedure for issuing the recovery advice has been followed in terms thereof and it is open to the petitioner to seek his remedy before the appropriate authority.

5. Having considered the submissions made, no satisfactory answer has been given by the learned Counsel for the Railways with regard to the provisions for any appeal under any law or circular governing such disputes. The counter affidavit referred to the Discipline and Appeal Rules (DAR Rules), but no such appeal against such recovery proceedings appears to be provided for under the provisions. The Tribunal has dismissed the application on this ground as if an appeal remedy is available before the competent authority, but it has neither disclosed the said authority or the provision of appeal in the impugned order dated 28.02.2017.

6. We have also perused the judgment of the Karnataka High Court, cited by the learned Counsel for the petitioner and paragraph No.5 of the said judgment is gainfully reproduced hereunder:-

"5. Rule 229 of the Rules reads as follows:--

"Rule 229 : Deficiency or loss of 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



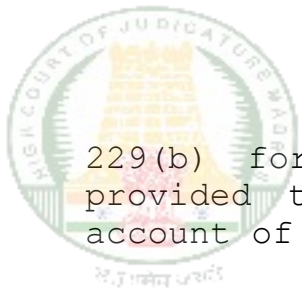
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money lost to the railway, the amount of loss will be recovered from the railway servant held responsible, in addition to any other disciplinary action as may be considered necessary according to the merits of each case. If however, the result of the enquiry shows that the tickets were 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."

The language of Rule 229 is plain, precise, unambiguous and it does not admit more than one meaning. A careful reading of Rule 229 would show that **the rule maker has envisaged two contingencies in order to proceed against an official who causes loss of the tickets entrusted to him. The first category includes a situation wherein the department, on enquiry and appreciation of evidence on record, would conclude that the tickets in question were actually sold thereby causing money loss to the department. If there is such proof against an official, then, Rule 229 enables the department to recover the actual loss sustained by the department. Another situation arises where the department after enquiry would conclude that the official has merely lost the tickets, but there is no evidence to show that he sold the tickets for price thereby causing loss to the department. In such situation. Rule 229 would only enable the department to proceed against such employee department ally and Rule 229 would not enable the department to recover the price of the lost tickets.** The above is the clear intendment of Rule 229. It is impermissible for the Court to interpret the provisions of Rule 229 in such a way as to wipe out the clear distinctions made by the Rule-maker himself between the two situations noted above. The phrase "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" occurring in Rule 229 would not leave any doubt in our mind that the **recovery is possible only when it is satisfactorily established that the railway servant has sold the tickets and thereby caused loss to the railways."**

7.We do not find any provision of appeal being referred to under Rule 229. The law as indicated by the Division Bench of the High Court of Karnataka also indicates that the provision of Rule

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229(b) for recovering the amount can be pressed into service, provided there is an actual loss sustained by the Railways on account of the tickets having been sold.

8. We have also been able to lay our hands on another Division Bench judgment of the Patna High Court **dated 14.10.2019** in **CWJC No.18464 of 2019 [Union of India vs. Kailash Prasad]**, authored by one of us (A.P.SAHI., J), where the said Rule has been discussed in paragraph Nos.6 and 7. The same is extracted hereunder:-

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

"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."

In that case, the Railway had come up before the High Court contending that the Tribunal had issued an incorrect direction to refund the amount by applying aforesaid Rule. Paragraph Nos.8 to 10 of the said judgment is reproduced in order to fortify the submissions that have been advanced in the present matter:

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



decide as expeditiously as possible, keeping in view the fact that the matter has been remanded after three years. The decision may be taken preferably not later than six months. No costs.

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Assistant Registrar (Writs)

// True Copy //

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Sub Assistant Registrar(CS)

sj/pkn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Central Administrative Tribunal,
Chennai.

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-20317[F] dated 16/10/2020)

+1 CC to M/s.S. MANOHAR, Advocate (SR-20260[F] dated 15/10/2020)

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AP (28.10.2020) 6P 4C