12
25.09.2024
Ct. No. 11
rrc

WPCT 262 of 2023

(Union of India & Ors. Vs. Nikhil Ranjan Basu)

Mr. Soumak Bera
Ms. Tanusree Ghosh
..... For the petitioners

Mr. Prasenjit Burman
Ms. Payel Koley
...... For the respondent

Affidavit-of-service, as filed, be kept on record.

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 12th May, 2023 passed by the learned Tribunal in the original application (in short, OA), being OA 898 of 2023.

Mr. Bera, learned advocate appearing for the petitioners submits that the learned Tribunal arrived at a conclusion on the basis of the rules which were not applicable towards determination of a loss pertaining to Excess Fair Ticket (in short, EFT). The impugned order was passed being oblivious of the memo dated 23rd January, 2007 wherein under clause VI it has been specifically stated that recovery of loss assessed and advised may be ordered by the Divisional office from the salary of the employee and that initiation of a separate disciplinary proceeding would have no bearing on the recovery of loss from the employee.

He argues that the learned Tribunal erred in law in arriving at a finding that ascertainment of loss by the competent enquiry committee was presumptive in nature though the enquiry report would reveal that the loss of original EFT was quantified to be Rs.82,156/-. Such loss of EFT cannot be equated with a loss of tickets as the latter is a journey ticket with fare established on the face of the ticket.

He contends that indisputably there was a loss of EFT. The error sheet dated 12th August, 2016 of Rs.82,156/- was issued by the competent authority being the Traffic Accounts office. The enquiry was conducted by a duly constituted enquiry committee upon granting adequate scope to the respondent to defend himself. Such arguments, as advanced before the learned Tribunal, were glossed over and no finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Burman, learned advocate appearing for the respondent, however, denies and disputes the contention of Mr. Bera and drawing our attention to the enquiry report as well as the provisions of the Indian Railway, Commercial Manual, Volume I (in short, IRCM), submits that no guilt beyond any reasonable doubt was established against the respondent. It is not a case that the fare of the tickets was misappropriated by the respondent moreso when the loss of such EFT was immediately reported by lodging a complaint before the police authorities. In the midst of the proceedings, the petitioners had debited an amount of Rs. 10,954/- from the salary of the respondent.

Drawing the attention of the provisions of Rule 229 of IRCM, Mr. Burman argues that the petitioners had no jurisdiction to direct recovery of any amount pertaining to such EFT inasmuch as there was no assessment and determination to the effect that the loss was directly attributable to the respondent culminating in deprivation of the actual fare to the railways. In the event the loss of EFT was due to fire, dacoity, floods etc., i.e, circumstances beyond the control of an employee, jurisdiction stands conferred upon the railways to write of even an actual loss.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the alleged incident occurred on 6th June, 2016. A complaint to that effect was immediately lodged by the respondent on the selfsame date. The disciplinary proceeding was initiated against the respondent by a minor penalty chargesheet and the findings in the said proceeding have no nexus with the alleged actual loss.

Rule 229 of the IRCM specifically provides that *'an enquiry will be made to determine the cause of loss and in the 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 the instant case, the petitioners failed to establish the tickets were sold by the respondent and the money was lost to the railways. The loss was beyond the control of the respondent. Suspicion, howsoever high, cannot be a substitute for proof.

In the said conspectus, we do not find any infirmity in the order impugned. The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error in the order impugned.

Accordingly, the writ petition is dismissed.

There shall, however, be no order as to costs.

All parties shall act on the service copies of this order duly downloaded from the official website of this Court.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**