CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi, dated this the 15th day of July, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

(6)

O.A. No. 893 of 1997

Shri Vinod Fonia,
S/o Shri K.S. Fonia,
First Secretary,
Embassy of India, Kiev
C/o Ministry of External Affairs,
New Delhi-110011. .... APPLICANT

Versus

1. Union of India through
the Foreign Secretary,
Ministry of External Affairs,
South Block,
New Delhi.

2. Embassy of India,
Kiev (Ukraine)
C/o Ministry of External Affairs,
South Block,
New Delhi.

.... RESPONDENTS

O.A. No. 2385 OF 1997

Shri Pavan Kapoor,
S/o Shri Mahesh Kapoor,
Special Assistant in
High Commission of India,
London.

Versus

1. Union of India through
the Foreign Secretary,
Ministry of External Affairs,
South Block, New Delhi.

2. Embassy of India, Kiev
through the Head of Mission/
Chancery
C/o Ministry of External Affairs,
New Delhi.

3. The High Commissioner of India,
London through the Head of Misssion,
C/o Ministry of External Affairs,
New Delhi. .... RESPONDENTS

Advocates: Dr. D.C. Vohra for applicants
in both OAs
Shri N.S.Mehta for Respondents

ORDER (Oral)

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

(7)

As these two OAs raise similar questions of law and fat they are being disposed of by this common order.

2. Applicants impugn respondentss' order dated 3.9.96 (Ann. A8) in OA-893/97 directing recoveries to be made from concerned India based officials including themselves in respect of loss of US$ 21,000/- due to snatching of a money bag at the entrance of Indian Embassy, Kiev on 28.4.95. The aforesaid sum which represented salaries and contingent office expenses was being brought by the Embassy cashier accommpanied by the accountant and the driver from the bank to the Embassy Office which was located in a hotel. When the above officials who were carrying the money were about to enter the hotel, some unidentified individuals are reported to have snatched the money bag from the cashier and run away.

3. We have heard applicants' counsel Dr. Vohra and respondents counselo Shri Mehta.

4. Respondents state in their reply that after the loss of the aforesaid amount, the Embassy made another drawal of an equal amount and met the expenditure for which the earlier drawal was made, which resulted in overdrawal and

disbursal . by the Embassy without seeking Government's sanction to write off and regularise the loss in the following manner.

i) US$ 1073.67 was disbursed as salaries of the local staff.

ii) US$ 19452.81 was disbursed as pay and allowances to the India based persons.

iii) US$ 473.52 was incurred against contingent office expenditure.

5. Thereupon respondents deputed a special team from HQrs. to conduct an on the spot investigation in August, 1996 and on the basis of their investigaton the team recommended.

(i) Writing off US$ 1073.67 on account of salaries of local staff as they were entitled to be paid their salaries in cash as per the term of their appointment.

(ii) Recovery of overpaid amount to the India based personnel (including the two applicants) as they were supposed to draw their pay and allowances through banking channel. Unless there was special sanction of Govt. for disbursing the amount in cash and in the case of the Indian Embassy at Kiev there was no such sanction.

(iii) Recovery of loss of US$ 473.52 on account of office expenses as Embassies are not authorised to draw cash amounts from the bank accounts for office expenses unlesss there is specific sanction of Govt. to this effect. In the present case there was no such sanction and hence this sum was recommended for recovery from Head

of Chancery (Applicant), Attache (Admn.), Accountant and Cashier prospectively.

(9)

6. These recommendations were accepted, pursuant to which the impugned recoveries were made.

7. It is well settled through a catena of judgments of the Hon'ble Supreme Court, some of which have been cited by applicant Shri Fonia's counsel in his legal notice dated 29.1.97 addressed to respondents (Ann. A/25 in OA-839/97) that before any order imposing civil consequences is issued to an employee an opportunity should be given to him of making out his case. This is in accordance with the principle of natural justice. Admittedly no such opportunity was given to the two applicants.

8. In the case before us we have no hesitation in holding that the impugned orders dated 3.9.96 directing recoveries to be made from the two applicants, without giving them a reasonable opportunity to show cause to be heard before the recoveries were ordered, cannot be legally sustained, and under the circumstances the aforesaid orders to the extent that it has ordered recovery from the two applicants before us, is

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quashed and set aside, leaving it open to the parties to proceed in accordance with law.

9. This O.A. stands disposed of in terms of Para 8 above. No costs.

(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

(S.R. ADIGE)
Vice Chairman (A)

/GK/

28/7/98

Section Officer
Central Administrative Tribunal
Principal Branch, New Delhi