

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 248 of 1993.

~~TA/NO~~

DATE OF DECISION 24-6-1993

Managaji Hariji Thakor, Petitioner

Mr. M.A. Kadri, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

Managaji Hariji Thakor  
Aged about 57 years,  
Occupation Service  
residing at Rly.Colony  
Block No. 37/T  
Room No. B, near Water Tank,  
Near Railway Police Chowky,  
Viramgam.

..... Applicant.

(Advocate: Mr. M.A.Kadri)

Versus.

1. Union of India, owning and representing through the General Manager, Western Rly Headquarter Office, Churchgate, Bombay.
2. The Divisional Rail Manager, Western Railway, Baroda Divisional Office at Pratapnagar, Baroda.
3. The Sr.Divisional Accounts Officer, Baroda Division, Western Railway Divisional Accounts Office at Pratapnagar, Baroda.

..... Respondents.

(Advocate: Mr. N.S.Shevde)

ORAL ORDER

O.A.No. 248 OF 1993

Date: 24.6.1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. M.A.Kadri, learned advocate for the applicant and Mr. N.S.Shevde, learned advocate for the respondents.

2. This application under section 19 of the Administrative Tribunals Act, 1985, is filed by the Shunting Jamadar, serving with the respondents, seeking the following reliefs.

ms  
"(a) Be please <sup>me</sup>quash and set aside and declare the Annexure A-1 is null and void and not

binding to the applicant.

(b) Be please further directions may please be given not to recover any amount mentioned in annexure A-1 from his wages/salary and/or from his retirement benefits and further direction may be given to the respondent to pay the amount of the offig. allowances salary etc. which are recovered from his wages i.e., 1920/- or so much amount which received from his wages/salary. Further directions may be given to the respondent to promote him as shtg master before his retirement date i.e. 30.6.93 so that he can get the benefits of the higher amount after his retirement.

(c) Be please further direction may be given to the respondents to supply his correct leave record and balance of LAP + HAP which are due to the applicant.

(d) Any other just deem and fit order may please be passed.

(e) The cost, special cost and/or interest may be paid to him for mentally and financially loss to the applicant."

The learned advocate for the applicant at the time of hearing has pressed only relief 8(a) and has not pressed other reliefs because it will amounts to multiple reliefs. The respondents filed reply today which is taken on record. The matter is admitted. By consent of learned advocates this matter can be disposed of today.

3. The case of the applicant as pleaded in the application regarding the impugned order Annexure A-1 dated Nil-4-92 is that the respondents have committed an error in showing his absence <sup>for</sup> ~~of~~ number of days for the years mentioned in the summary annexed with the impugned order Annexure A-1. It is also urged by the

applicant that the summary supplied by the respondents is not correct, that the absence for the period of 17 months and 22 days ranging from 1976 to 1991 is also illegal, that the respondents have no legal right to ~~make~~ the recovery on the ground of alleged absence and that the said order Annexure A-1 for the recovery of the amount of Rs.30,000/- be quashed and set aside. It is also the case of the applicant that the respondents have not given <sup>him</sup> any opportunity to give reply to the impugned order Annexure A-1 and hence there is a violation of principles of natural justice.

4. The respondents have filed reply contending that the applicant has availed of leave when there was no leave to his credit but had obtained salary and hence for the over-payment <sup>recovery</sup> is to be made as per the impugned order Annexure A-1. The respondents have denied the other allegations made in the O.A.

5. I have heard the learned advocates for the parties and I have gone through the pleadings and documents on record. I agree with the submission of learned advocate for the applicant that the respondents have not given any opportunity to the applicant to have his say on Annexure A-1 and no showcause notice was issued for recovery before actually passing Annexure A-1 order for the recovery of the amount of Rs. 30,000/- for the absence of 532 days ranging from 1976 to 1991. He submitted that it is very

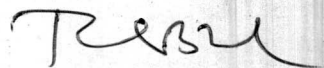


strange and also not possible to believe that the respondents paid the salary of those years without properly verifying about <sup>the applicant's presence</sup> ~~his presents or absence~~. He submitted that in any case there is a violation of principles of natural justice in passing an order for recovery of this amount without first issuing show-cause notice to the applicant to explain as to why this amount should not be recovered <sup>and without giving him an</sup> ~~or without~~ giving him an opportunity to explain about this recovery. I agree with him that the order passed for recovery without giving an opportunity to the applicant to explain against that action of the respondents is illegal and in violation of principle of natural justice. The respondents can not straight away pass an order of recovery of the amount without first giving an opportunity to the applicant to explain about the said action of the respondents. Hence the following order is passed.

ORDER

Application is partly allowed. So far relief 8(a) is concerned, <sup>and</sup> ~~and~~ the respondents are directed to issue showcause notice in the first instance <sup>to</sup> ~~to~~ the applicant about the proposed action of recovery of the amount for the period mentioned in the impugned order Annexure A-1 and after giving an opportunity to the applicant to have his say on the proposed action of recovery of the amount, the respondents to pass necessary order according to rules about the same. The

respondents are restrain from recovery of any amount  
mentioned in the impugned order Annexure A-1 till  
the above direction is carried out and till the order  
according to law is passed by the respondents after  
giving an opportunity to the applicant to show-cause  
about the proposed action of recovery. In case the  
respondents pass any order adverse to the applicant,  
the applicant would be at liberty to approach this  
Tribunal according to law. The applicant has not  
pressed other reliefs in para-8. The application is  
disposed of accordingly. No order as to costs.

  
(R.C. Bhatt)  
Member (J)

vtc.

AHMEDABAD BENCH

Application No. OA/248/93 of 19

Transfer Application No. \_\_\_\_\_ Old w.Pett.No

CERTIFICATE

Certified that no further action is required  
to be taken and the case is fit for consignment to the  
Record Room (Decided).

Dated: 28/06/93

Countersigned : 1280

*CP Shalgaonkar*  
9-7-93

Section officer/Court officer.

Signature of the  
Dealing Assistant.

## INDEX SHEET

NAMES OF THE PARTIES M. H. Theberge

U. of T. & O. 198.

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