

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO..: 138 of 1999.

Dated this Tuesday, the 25th day of April, 2000.

Shri G. D. Dixit, _____ Applicant.

Shri M. S. Lad, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri Suresh Kumar, _____ Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? *no*
- (iii) Library.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Dated this Tuesday, the 25th day of April, 2000.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

G. D. Dixit,
Ex. O.S. (I) Linen,
494/16, Gurukaul Bhavani Chowk,
Opp: Ashok Nagar Public Chowki,
Satgur, Nashik.

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Applicant.

(By Advocate Shri M. S. Lad)

VERSUS

1. Union of India through
The General manager,
Central Railway,
C.S.T. Mumbai.
2. Chief Personal Officer,
Central Railway,
C.S.T. Mumbai.
3. Divisional Railway Manager (M),
Central Railway,
C.S.T. Mumbai.
4. Chief Mechanical Engineer,
Central Railway,
C.S.T. Mumbai.
5. Sr. Divnl. Mechanical Engineer
(Coaching),
Divisional office,
Mechanical Branch,
Central Railway,
C.S.T. Mumbai.

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Respondents.

(By Advocate Shri Suresh Kumar).

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant seeking a direction to the respondents to pay him the with-held gratuity amount of Rs. 70,864.00 together with interest @ 18% per annum

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from 30.06.1996 till the date of payment. Respondents have filed reply opposing the application. We have heard Mr. M.S. Lad, the Learned Counsel for the applicant and Shri Suresh Kumar, the Learned Counsel for the respondents.

2. The applicant was working as Office Superintendent, Grade-I (Linen) in the Central Railway. He retired from service on 30.06.1996. He has received all retirement benefits except the gratuity amount. Since the respondents have not paid the gratuity amount, he has approached this Tribunal for the relief mentioned above.

3. The respondents in their reply have justified the with-holding of gratuity amount on the ground that during the time when the applicant was in-charge of the Stores Section, there was loss of linen and a preliminary fact finding enquiry has revealed that loss on account of shortage was to the tune of Rs. 98,680/-. It is, therefore, stated that applicant is not entitled to get back the gratuity amount.

4. The Learned Counsel for the applicant contended that even if there was some shortage of linen, the amount cannot be recovered from the applicant unless a regular departmental enquiry is held and applicant is found guilty and an order for recovery of loss is passed and placed reliance on a judgement of a Division Bench of this Tribunal (to which I was a party) in the case of Dilip Baburao Pawar V/s. Divisional Railway Manager reported in 2000 (1) ATJ 553. On the other hand, the Learned

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Counsel for the respondents contended that after the fact finding enquiry a notice was issued to the applicant dated 02.09.1998 calling upon for his explanation but applicant did not submit explanation and has rushed to this Tribunal by filing this O.A.

4. Nodoubt, the preliminary enquiry report shows certain loss of stock of linen and the loss has been attributed to Mr. V. G. Dalvi and the present applicant, G. D. Dixit. Admittedly, no disciplinary enquiry has been held against the applicant as per rules. But the Learned Counsel for the respondents contend that if it is a case of admitted debit, then there is no necessity to hold a regular enquiry. The applicant's counsel has joined issue on this point and submits that the applicant is seriously disputing this liability and, therefore, the question of passing an order of admitted debit does not arise unless the applicant is found guilty of the alleged misconduct by holding a regular enquiry.

5. Without expressing my final view in one way or the other, I feel that the application is in a way premature since the applicant has not replied the notice dated 02.09.1998, which is in the nature of show cause notice. The letter itself shows that certain shortages have been noticed, and it has been proposed to recover the amount from the applicant and he is called upon to give his explanation. The applicant's counsel submit, that though he asked for number of documents to give a reply to the said notice, he was not given all the documents, except the preliminary enquiry report. I feel that in the interest of

justice, the applicant should be given liberty to inspect the documents mentioned in his letter dated 10.11.1998 and take notes and then on the basis of his inspection of documents, he can submit a reply to the notice dated 02.09.1998 within a period of four weeks after the date of inspection of documents. It is open to the applicant to take all legal defence open to him in giving reply to the notice, including the present contention urged before me that he cannot be penalised and no order for recovery can be made without holding a regular departmental enquiry. Then it is for the competent authority to apply his mind and take a final decision about the liability of the applicant regarding shortage and he will also consider the applicant's contention that he cannot be penalised without holding a regular enquiry. Then the competent authority shall pass a speaking order one way or the other. Needless to say, if the applicant is aggrieved by any such order, he may challenge the same according to law. Since the applicant's gratuity amount has been with-held, I feel that the competent authority should be directed to expedite the matter and pass the final order as aforesaid within two months after receiving the reply of the applicant to the letter dated 02.09.1998.

Applicant's counsel today tenders a xerox copy of the letter dated 10.11.1998 to the respondents' counsel for reference.



6. In the result, the O.A. is disposed of at the admission stage subject to the observations mentioned above. The respondents should give inspection of the documents mentioned in the applicant's letter dated 10.11.1998 within a period of 15 days from today.


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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