

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:490.99

DATE OF DECISION: 8th November 2009

Sohrab Khan Applicant.

Shri K.B. Talreja. Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Shri Suresh Kumar. Advocate for
Respondents

CORAM

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No other Benches of the Tribunal?

(3) Library. Yes

S.L.JAIN
(S.L.JAIN)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:490/99

the 8th day of ^{November} 2000

CORAM: Hon'ble Shri S.L. Jain, Member (J)

Sohrab Khan
Catering Inspector
under Chief Commercial
Manager, Central Railway,
Mumbai CST.Applicant.

By Advocate Shri K. B. Talreja.

V/s

1. The Union of India thorough
The General Manager,
Central Railway, Mumbai CST.
2. The Chief Commercial Manager,
Central Railway, Mumbai CST.
3. The Chief Personnel Officer,
Central Railway,
General Manager's Office,
Central Railway, Mumbai CST.
4. The Divisional Railway Manager,
Central Railway, Jhansi
Division - Jhansi.Respondents.

By Advocate Shri Suresh Kumar.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for a direction to the respondents to refund the recoveries made and restrain them not to recover till the alleged loss is proved against the applicant. A further direction to the respondents that the alleged debit-excess raw material booked belatedly cannot be recovered afater 6/12 months from the applicant in terms of various provisions of IREM and there is provision of 'Wirte off' in terms of Sections 2704/2705/2703 and 10114(b) of IREM

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2. The applicant has approached this Tribunal vide OA 731/97 which was decided on 4.1.1999 and the following directions were issued to the respondents:

In the result the OA is disposed of with a direction to the respondents not to make any recovery in pursuance of the impugned order dated 13.11.1996 (Exhibit B page 21 of the paper book), till the applicant gives a representation and administration passes a speaking order on the samed. Liberty to the applicant to make a detailed representation in response to the enhanced recovery as per letter dated 13.11.1996 and on receipt of such representation the competent authority may pass a speaking order within a period of two months. Needless to say that in case of any adverse order is passed the applicant can challenge the same according to law.

3. The applicant made a detailed representation on 3.3.1999 to the respondents vide (Annexure A-8). the respondents have passed the so called speaking order on 14.5.1999 (Annexure A-1).

4. The grievance of the applicant is that vide Annexure A-1, the respondents have passed the impugned order of recovery with a predetermined mind and without following due process of law and without caring for the orders of this Tribunal. The above action on the part of the respondents is bad in law, arbitrary, capricious and malicious as conclusions have been drawn without affording an opportunity to pursue the records. The Railway servants' Discipline and Appeal Rules were not been followed thereby there is violation of Principles of Natural Justice. Indian Raillway Commercial Manual para 2704/2701/2954 have been violated. There is a time limit of six months in respect of recovery under IREC Volume I para 323 (iv)(b). The loss occurred to the department due to its own administrative error or fault, the same cannot be recovered from the employee belatedly. The said recovery cannot be made without giving any prior notice to

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an incumbent and without his defence in the matter. The action of the respondents is in violation of Statutory Rules, 2851, 2852, 2853, 2854, 2703, 2704, 2705 of the Indian Railways Commercial Manual. It is also in contravention of Article 14, 16 and 311 and 21 of the Constitution. Hence this OA for the above said reliefs.

5. The respondents have resisted the claim and alleged that the application is not maintainable as the same is based on mis-quoting of various provision which do not apply in the present case. The applicant has not disclosed any cause of action which can be entertained by this Tribunna. An amount of Rs. 13,81,387 is due as on February 1999 to be recovered from the applicant. Provisions contained in IRMC Vol.II are relevant which are 2831, 2834, 2851, 2854 as under:

2831. Objectives - Departmental catering and vending is required to set the standards for the supply of tasty and wholesome food at reasonable prices combined with efficient and courteous service. The catering and vending contractors should also follow and emulate the same standards.

2834 Catering Inspectors - Catering Inspectors are responsible for the general supervision and control over the catering and vending units under their jurisdiction. They should ensure efficient service to the traveling public and should also see that the instructions issued from time to time in regard to the maintenance of accounts and other related matters are correctly understood and carried out by the staff concerned.

2851. Debit Register (a) Each Unit Manager will maintain a debit register in the proforma appearing at Appendix XXVIII/G, in which he will post the value of shortages of equipment or raw materials from day-to-day, indicating the name of the party responsible for each shortage. For this purpose, stock of all equipment and stores which have been taken out for use should be checked daily. In the case of crockery and cutlery, the butler or Head Bearer, or in their absence the senior most paid Bearer, should be made responsible to keep an account of all such materials and fix responsibility for their breakage or loss. Similarly, the Head Cook senior most Cook should be made responsible for

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the kitchen equipment. Any loss or breakage noticed should immediately be recorded in the debit register, and steps taken for the realisation of the amount due from the person responsible.

2854. Monthly stock checking (a) On the last day of each month, the Unit Maanager should prepare a statement of consumable stores on hand indicating the balance of quantity and value of each item of the stores as per the stock ledger and as per actual stock on hand on that day. The correctness of this statement will be certified by an official nominated for this purpose by the Accounts Office concerned. In case of a difference between the book balance the stock ledgers will be corrected to accord with the ground balance by passing a receipt or issue entry, as the case may be quoting reference to relevant statement. The value of shortages, if any, may be recovered from the staff held responsible or written off under sanction of the competent authority depending upon the merit of each case.

6. The applicant was posted as Incharge of the Base Kitchen at Jhansi after the retirement of Shri R.K. Trivedi, Chief Catering Inspector with effect from May 1993. An amount of Rs.13,81,387/- is due against the applicant. The recovery is enhanced observing Rule 7(2)(2) of the payment of wages Act 1936. It is true that enquiry report and findings therein are awaited from Enquiry Officer regarding charges levelled against the applicant for using excess raw material and not clearing debits raised against him. As the service of the applicant is balance for 56 months only and he has already admitted the said debits and challenged in earlier application regarding enhanced recovery, hence the present recovery after hearing and providing sufficient opportunity to the applicant is just and appropriate. The date of birth of the applicant is 1.4.1944 hence he is due for retirment after 56 months including May 1999. His gross pay per month in the month of April 1999 was Rs. 9515/-. After deducting compulsory deduction an amount of Rs. 4428/- p.m.

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recoverable from his salary. In view of the deduction of HBA, ECC Loan, Festival Advance etc. the deduction and enhanced recovery should be reviewed every year in the month of January. The representation of the applicant dated 8.3.1999 was replied. An order dated 8.5.1999 was passed by the competent authority justifying the debits and enhanced recovery. The enhanced recovery of Rs. 1626/- has again started with effect from May 1999. Departmental enquiry has also been expedited. The issue of charges in departmental enquiry are different from the admitted debit outstanding recovery. After completion of enquiry the applicant shall be taken up for the penalties in excess of the debit outstanding being recovered from his pay sheets. The respondents have followed para 2704, 2701 and 2854 of IRCM. There is no administrative fault or error in the instant case. Admitted debit for the consumption of excess raw material is being recovered from the regular pay sheets to make good of the losses to the Railway administration. Hence prayed for dismissal of the OA alongwith costs.

In pursuance to the direction given by the Tribunal vide order dated 4.8.2000 the respondents have brought the latest position on record which is as under:

1. Charge sheet (S.F.S.) for the debit raised against the applicant for the period December 92 to November 1993 - By Jhansi Division Amount involved Rs. 31068/-
2. As per penalty order No. C-180-FD-DAR-SK II dated 31.7.2000 a sum of Rs. 38659.47 ordered to be recovered from the salary in regular instalment.
3. As per penalty order No. C/180-FD-DAR SK III dated 31.7.2000 a sum of Rs. 7,09,462/- ordered to be recovered from the salary in regular instalment.
4. Another charge sheet No. C-180-FD SK II dated 10.2.1998 issued for outstanding debit of Rs. 59742.59.

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7. The total amount so far recovered by Jhansi Division is Rs. 29,472/- and by Head quarters office CSTM from September 1996 till January 2000 is Rs. 47070/-. Thus the total recovery comes to Rs. 76,542/-.

8. I have carefully perused the order in earlier OA 731/97 decided on 4.1.99 and find that the recovery was in respect of shortage of stock of value Rs.31,068.87. Thus keeping in view, the total recovery, I am of the view that no recovery is to be made in respect of the said charge sheet now as it is already done and there is an excess recovery of (Rs.76,542/- - 31,068.87 = Rs.45,473.13) The said recovery which is up to January 2000 only and any further recovery is to be added and adjusted against the charge sheets mentioned at serial No. 2 & 3. As the recovery of Rs. 999/- p.m. which is in respect of stock of Rs. 31,068.87 was not challenged in OA 731/97, the applicant is now estopped to challenge the same.

9. Rule 2831 of IREM Vol. II deals with Objectives of Departmental catering and vending. Rule 2834 deals with responsibilities of Catering Inspectors regarding their supervision and control over the catering and vending units under their jurisdiction. It further deals with the responsibilities of maintenance of accounts and other related matters. Rule 2851 deals with maintenance of accounts particularly in respect of debit register regarding postage value of shortages of equipment or raw materials from day to day, indicating the name of the party responsible for each shortage, also regarding crockery and

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cutlery, the butler or Head Bearer or Senior most Cook is responsible for the kitchen equipment. Rule 2854 deales with monthly stock checking. None of these rules ^{helps} the applicant on the other hand in view of Rule 2834, he being Catering Inspector was responsible for maintenance of accounts and other related matters.

10. Rule 2701 deals with Station Outstanding. In the said Rule Admitted debits is also ^{not} mentioned. Rule 2704 deals with time limit for raising debits against stations, which is as under:

Except in special circumstances and in case of errors detected by the Inspectors of Station Accounts and the officials of the Audit Department, no debit will ordinarily be raised against stations more than six months after the month of account of transactions in station returns.

11. On perusal of the same I find that no debit against Station more than six months after month of account of transaction in the station list. Rule 2705 deals with Error Sheets, Rule 2703 deals with Origin of Accounts Office debits. On perusal of the same I find that it relates to Traffasic accounts office. Rule 2851 deals with Debit Register and the applicant's case is covered by this Rule. Hence he is not entitled to seek any protection under Rule 2704 because ; it is a case admitted debits.

12. The respondents have alleged that they are recovering against the admitted debit, which is not rebutted. The various provisions relied by the applicant in his OA are not at all applicable to admitted debit. Hence the excess recovery can be adjusted against the orders as stated above in para 2 and 3 of the order.

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13. In the result we do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.JAIN
(S.L.JAIN)
Member(J)

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