

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 974.99

DATE OF DECISION: 8th November 2020

Sohrab Khan Applicant.

Shri K.B. Talreja. Advocate for
Applicant.

Versus

The Union of India and others Respondents.

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 974/99

the 8th day of November 2000

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

Sohrab Khan
Catering Inspector
Central Railway, Mumbai CST.

...Applicant.

By Advocate Shri K.B. Talreja.

V/s

1. The Union of India through
General Manager,
Central Railway, Mumbai CST.
2. Chief Commercial Manager,
Central Railway,
New Administrative Building,
2nd floor, Mumbai CST.
3. Divisional Railway Manager,
Central Railway, Jhansi Division,
Jhansi.

...Respondents.

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 seeking a direction to the respondents to stop recovery as the same are bad in law, specially when no enquiries are made for the charge memorandum. A further releif is sought for a direction to the respondents to repay the recoveries made so far till date along with penal interest.

2. The applicant has filed an OA 731/97 which was decided by this Tribunal on 4.2.1999 and the following order was passed.

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

S.L.J. ...2...

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

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the day of OCTOBER 2000

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Sohrab Khan
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Central Railway, Mumbai CST. ...Applicant.

By Advocate Shri K.B. Talreja.

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administration passes a speaking order on the same. 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 grievance of the applicant is that in view of para 2704 of Indian Railway Commercial Manual, Vol. II, no debits can be raised against the station in respect of account of transaction which are more than 6 months old. A charge sheet (Annexure A-2) was issued to the applicant which was in respect of improper working. The applicant submitted an application for supplying him the relevant documents and nominated his ARE, on 10.4.1994. Further in pursuance of the issue of charge sheet dated 10.2.1994, no further action to proceed with the enquiry has been taken no enquiry has been conducted and in anticipation of the enquiry then a sum of Rs. 90,000/- has been recovered. The recoveries are still being continued even the so called charges are of debits amounting to Rs. 31,068.87 due to irregular working. The applicant protested against the said illegal recovery and also sought the relief of payment of the said amount vide letter dated 12.3.1999 and 22.10.1999 (Annexure A-4 and A-5) respectively. Wrongful recoveries being made as a penalty in anticipation of any departmental enquiry as required under Railway Servant (Discipline and Appeal) Rules 1968, is bad in law, violative of Rules of Natural Justice, as no person should be punished 'Unheard' and reasonable opportunity should be afforded before coming to any conclusion. In the present case the recoveries have been made without any enquiry, even though charge sheet is pending for more than 5 years. Hence this OA for the above said reliefs.

Page 2

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3. The grievance of the applicant is that in view of para 5704 of Indian Railway Commercial Manual, Vol. II, no debits can be raised against the station in respect of account of transaction which are more than 6 months old. A charge sheet (Annexure A-2) was issued to the applicant which was in respect of improper working. The applicant submitted an application for supplying him the relevant documents and nominated his ARE, on 10.4.1994. Further in pursuance of the issue of charge sheet dated 10.2.1994, no further action to proceed with the endury has been taken no endury has been conducted and in anticipation of the endury then a sum of Rs. 20,000/- has been recovered. The recoveries are still being continued even the so called charges are of debits amounting to Rs. 31,068.87 due to irregular working. The applicant protested against the said illegal recovery and also sought the relief of payment of the said amount vide letter dated 12.3.1999 and 22.10.1999 (Annexure A-4 and A-5) respectively. Wrongful recoveries being made as a penalty in anticipation of any departmental endury as required under Railway Servant (Discipline and Appeal) Rules 1968, is bad in law, violative of Rules of Natural Justice, as no person should be punished 'Unheard' and reasonable opportunity should be afforded before coming to any conclusion. In the present case the recoveries have been made without any endury, even though charge sheet is pending for more than 5 years. Hence this OA for the above said reliefs.

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5. The respondents have resisted the claim of the applicant 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 application do not disclose any cause of action which can be entertained by this Tribunal. After an order in OA 731/97 which is quoted in para 2 of this Order, the applicant has made representation dated 3.3.1999 against the recovery order dated 13.11.1996 which was considered by the competent authority and speaking order has been passed on 8.5.1999 which is marked as exhibit R-1. The recovery has been enhanced to Rs. 2624/- per month from Rs. 999/-. The total amount recoverable is Rs. 13,81,387/- as on February 1999. The said order is challenged by the applicant in OA 490/99. Earlier by an order in OA 731/97 the respondents were permitted to recover Rs.999/- p.m. OA 490/99 has been admitted for hearing. The applicant has suppressed this fact in the present OA and wanted the stay of recovery which has not been permitted by this Tribunal vide order dated 14.6.1999 and thereafter. Therefore the present application is required to be dismissed on this ground. The recovery has been made as per the order dated 8.5.1999 passed by the competent authority after considering the representation of the applicant dated 3.3.1999. The recovery has been made as permitted by the Tribunal vide order dated 14.6.1999. The recovery is not in anticipation of the departmental enquiry as the departmental enquiry has nothing to do with the recovery. The charge sheet dated 10.2.1998 is issued to the applicant and the applicant has received the same. The applicant while working as Catering Inspector in the grade of Rs.

Sd/-

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1400 -2300 in Jhansi Base Kitchen during the period from March 1992 to April 1996 was responsible for preparation of required number of meals, breakfast and other catering items for sale on trains RMSs and P/Fs. Hence excess raw materials to the extent of Rs. 13 lakhs for which debit of Rs. 13 lakhs has been raised against the applicant, which he has not cleared which amounts to an act of unbecoming of a Railway servant. The applicant is not concerned about the recovery against Shri R.K. Trivedi. The respondents shall take care of the same. The provision of IRCM Vol.II has been followed. The fact of issuance of the charge sheet has been suppressed by the applicant.

6. 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 orderNo. 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.

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/.

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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 cutlery, the butler or Head Bearer or Senior most Cook is responsible for the kitchen equipment. Rule 2854 deals 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.

Page 2

10. Rule 2701 deals with Station Outstanding. In the said Rule Admitted debits is also 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.

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)