

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A.No.673/2001

Dated this Friday the 29th Day of March, 2002.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)

Shri Rohidas J. Barane,
Residing at Building No.6-B,
Flat No.21, Kothrud, Pune-29.
(By Advocate Shri S.V. Marne)

A.P. Lavale

B Bahadur Applicant.

Versus

1. General Manager, Central Railway Chatrapati Shivaji Terminus Mumbai.
2. Chief Commercial Manager, Central Railway Chatrapati Shivaji Terminus, Mumbai.
3. F.A. & C.A.O. (T), New Administrative Building, Fourth Floor, C.S.T. Mumbai.
4. Divisional Railway Manager, Pune, Pune Division, Central Railway, Pune-411001.
5. Divisional Traffic Manager Pune, Pune Division, Central Railway, Pune - 411001.

(By Advocate Shri R.R. Shetty)

Suresh Kumar ... Respondents

B Bahadur

ORDER (Oral)

{ Per : B.N. Bahadur, Member (A) }

This is an application made by Shri Rohidas Jagannath Barane seeking the relief as follows:-

"a) The respondents be directed to refund the amount illegally deducted by them from the pay of the applicant @ Rs.2000 from October 2000 w.e.f.
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September 2000 to August 2001 (except Nov.2000), for a period of eleven months amounting to Rs.22,000/-.

b) The respondents be directed to initiate & finalise the departmental enquiry expeditiously which is pending against the applicant.

(c) Cost of this application be awarded to the applicant.

(d) Any other just and equitable order in the interest of justice may be passed".

The facts of the case made out by the applicant are that he is working in the Railways since 1987 with unblemished record and that he has been issued with a major chargesheet (SF-5) dated 5.1.2001, charging him as per details contained in the chargesheet (copy at page 25 & 26). It is submitted that the applicant is aggrieved that the Railways made the recovery of an amount of Rs.31,964/- through monthly instalments from his salary and that the amount of Rs.2000/- per month has been deducted from September, 2000 except in November, 2000. He is aggrieved that proper procedure has not been followed and that no opportunity has been provided to him before the recovery was started / made.

2. Another ground taken is that DTMA, Pune was of the specific opinion that invalid season ticket was offered as can be seen from the letter dated 9.11.2000, a copy of which is at Exhibit 'B'. The applicant also

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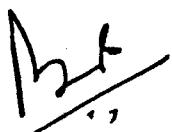
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states that no progress has been made in the inquiry and when the charges are being proved the deduction of an amount from the pay is wrong and illegal.

3. The various grounds taken by the applicant in his OA were argued by his learned counsel Shri A.P. Lavate. The respondents have filed a written statement of reply resisting the claims of the applicant and making the point that this was a case of admitted debit and no objection has been raised to the same, stating that an amount of Rs.2000/- per month has been deducted for the month of November, 2000 and beyond. The respondents also take the stand since the petitioner has acceted the debit and allowed refunds for recovery, the applicant has not raised any dispute or challenge the same. Parawise comments are made in the written statement elaborately seeking to meet the averments made by the applicant in the O.A. It is also stated in the written statement that there is loss of Rs.31,964/- to the Railways.

4. Learned Counsel for the applicant Shri Lavate highlighted the points raised by in his O.A. and the rejoinder and specifically focused on the allegation that without an inquiry being conducted the respondents have taken a action to recover such an huge amount of Rs.31,964/-. He made a point that the amount be refunded

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to him and that the inquiry be conducted in a specific time framed and as per law. He also made the point that although 15 months having been elapsed no progress have been made even though the applicant has submitted the reply to the chargesheet. Learned Counsel specifically took me over the letter dated 9.11.2000 at page 15, arguing that the reply of the DTM, Pune had established that this was a clerical error and the railways had not suffered a loss as large as Rs.31,964/-. This communication was seems stongly depended upon by Learned Counsel for Applicant.

5. Learned Counsel for the Respondents, Shri Suresh Kumar reiterating the point that nothing has been raised in regard to admitted debit and that once debit has been admitted the only right of the applicant was that the departmental enquiry could be completed early. He strongly resisted the prayer for the refund of the amount and cited the case in support decided earlier by this Bench of the Tribunal, in the matter of Sohrab Khan Vs. Central Railway in O.A.731/97 decided on 4.1.1999. Learned Counsel drew my specific attention to para 5 and 6 also made the point that with reference to Exhibit R-2 dated 1.6.2000, where certain general conclusions have been reached. He depended on Respondent's written statement for other arguments / facts.

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6. I must focus my attention at the very start on the relief sought. In fact the relief sought is only for refund of amount already recovered, as also for a direction to finalise departmental enquiry expeditiously. I will, therefore, not go into the merits of the case in the departmental enquiry, therefore, let it be clearly stated that there is no interference being made to the enquiry process. Despite 15 months having elapsed no progress has been made in the enquiry. Learned Counsel for the applicant informed me that the process of evidence etc. has not started. Let us now focus attention to the main grievance and relief sought that is recovery already made. In normal course if there is admitted debit there are perhaps a rule in the railways where recovery can be made without reaching departmental enquiry. Even in that case a show cause notice becomes necessary to observe the principles of natural justice. Admittedly no show cause notice has been issued. Learned Counsel Shri Suresh Kumar pointed out that the applicant knew of the recovery process and should have, therefore, protested. In this connection, Learned Counsel for the applicant stated that he had in fact protested the inquiry as can be seen from the copy of letter at page 38 and 39 of the paper book, when it is letter addressed by the applicant to Chief Reservation Supervisor, Central

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Railway, Pune requesting that the debit may be kept under "NOT ADMITTED DEBIT". Thus it cannot be said that the applicant had not protested.

7. Even otherwise, it is difficult in the facts and circumstances of the case to accept the stand taken by the respondents (in para 6 of the written statement) where they go so far as to say that since the applicant had accepted debit and made payment, he is estopped from challenging the same. The applicant has challenged the same in fact. This is obviously very wrong legal argument. It make the action of recovery of huge amount more serious.

8. The important point that has to be considered here is that the departmental enquiry has admittedly been ordered on the very same grounds on the basis of which recovery has already been started i.e. on the decision that the loss has been caused to the Government. It is not proper for this action to be taken, once an Enquiry has been ordered on the same subject, which action amounts really to be pre-judging of issues. The recovery of substantial amount has been made on the one hand and on the other, despite 15 months having elapsed there is virtually no progress in the Enquiry. The latter fact makes action of recovery even worse. No reasons are forthcoming for the delay in this enquiry either in the

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written statements of the respondents or during the arguments. Thus recovery of the monetary loss is thus premature. The point was raised even about the calculation of the amount of Rs.31,964/- and the dispute arose whether the amounts should have been calculated as has been done or on loss on season tickets. The difference is colossal. I will not decide this issue as this also a matter to be decided by the inquiry officer/disciplinary authority.

9. The point as to basis on which the amount of Rs.31,964/- has been collected was discussed and it was pointed out that this was collected on the loss that would be occurred on daily tickets. I will not go into this point as it will perhaps be looked into by the inquiry officer/disciplinary authority. However, the amount appeared to be initially large and the query was made in the context of what appears in the letter at page 15 dated 9.11.2000. Learned Counsel for the ~~applicant~~ ^{Respondent} ~~Applicant~~ ^{Sohrab Khan} has tried to take support from the case of Sohrab Khan. It is clear from the reading of the order that no law has been laid down. The Judgment has been made in the facts and circumstances of the case and hence not binding. It is, therefore, clear that while the inquiry certainly can continue and completed on merits and as per rules, the

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- Respondents are not justified in recovering the amount of already made, and the recovery already made is liable to be restored by refund.

10. The O.A. is, therefore, disposed of with the following directions/orders. The amount recovered from the applicant shall be returned forthwith but in no case later than ~~one~~ ^{three months} ~~from~~ ^{by} ~~receipt of~~ ^{copy of} this order by the respondents. The enquiry shall be completed within a period of 3 months from the date of receipt of copy of this order. Needless to say that the applicant will cooperate with the authorities as per rules. No order as to costs.

B.N. Bahadur

(B.N. Bahadur)
Member (A).

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