

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO:599/2001

THIS THE 07TH MARCH,2002

CORAM:HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri S.S.Vakani,
Ex.Catering Manager,
Solapur, under Executive
Control of Chief Commercial
Manager, Central Railway,
Mumbai

... Applicant

By Advocate Shri K.B.Talreja

Versus

1. The Union of India,
through the Chief Commercial Manager
(Catering)/Central Railway,
Mumbai CST.
2. The Divisional Catering Manager,
Solapur Division, Central Railway,
Solapur. ... Respondents

By Advocate Shri R.R.Shetty

O R D E R (ORAL)

Hon'ble Smt.Shanta Shastri, Member(A)

The applicant is a Senior Catering inspector while he was so working at Solapur, a notice was issued by the Office of the DRM, Commercial Branch, Solapur on 15/5/2001 informing the applicant that the records since 1996 of Catering Unit Solapur were scrutinised by Chief Catering Inspector/Solapur accounted for in the month of January 1999 and found that debit of Rs.7,17,851.85 towards shortage in DCU/SUR. Seven persons were held equally responsible for this debit. The debit was distributed equally amongst the seven persons including the applicant. The applicant was therefore informed that the same would be recovered from his

wages. It was further pointed out that incorrect record was being prepared since 1994 and as soon as the record is available, the concerned persons will be held responsible and debit will be raised against them. Orders were issued to recover the amount of Rs.1,02,550.26 i.e. share of the applicant from his wages. Being aggrieved by this the applicant has approached this Tribunal. The applicant has also represented against the recovery order on 23/5/2001.

2. The contention of the applicant is, this action on the part of the respondents is not at all justified. According to the provisions laid down in paras 2851 to 2855 of the Indian Railway Commercial Manual (IRCM), Railway authorities cannot recover the due arbitrarily. This lays down that 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 merits of each case. It has been further laid down in Rule 2704 of Vol.II of the IRCM that except in special circumstances and in case of arrears deducted by 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 accountal of transactions in Station returns. The raising of a debit after a lapse of five years cannot be made now.

3. The applicant also submits that such recovery cannot be made without giving prior notice to the employee and without

giving an opportunity being heard. It has been so decided in Nirmala Narula V/s. Lt. Governor Govt. of NCT of Delhi & Ors-June, 1997-Part-6 Vol.(ATJ-LXIV) dated 7/6/97.

4. Making such recovery amounts to penalty under Rule-6 of the Railway Servants' (D&A) rules, 1968 and such penalties cannot be imposed without following the due process of law. The applicant has therefore sought the relief to restrain the respondents from making any recovery till such time, the records are scrutinised and it is proved beyond any reasonable doubt that the applicant is responsible for such debit and to direct the respondents to follow the provisions as laid down in Paras 2704/2705/2703 of Indian Railway Commercial Manual, before coming to any conclusion about the debit, if any due against the applicant.

5. The respondents state that being a Senior Catering Inspector, the applicant was to ensure curbing shortage of remittances and attending to all matters relating to platform vending through Commission Vendors and remittances of the Railway dues. Since the applicant failed in his duty, he has to be held responsible and he has been called upon to pay Rs.1,02,550.26P i.e. an equal portion of the debit raised which was to the tune of Rs.7,17,851.85P. Six others also had been held responsible. The learned counsel for the respondents submits that the debit raised is by way of legitimate recovery and make up the actual losses caused to the Railway Administration. There is no question of penalty

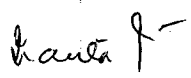
...4.

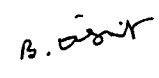
14

in case of legitimate recovery. Therefore no enquiry is required to be conducted to effect recovery of losses. The learned counsel also submits that the paras 2703, 2704, 2705 as well as paras 2851 to 2855 of the Indian Railway Commercial Manual, are of no help in this case as the applicant himself delayed the submission of the profit and loss account for three years and he cannot be rewarded for causing such delay. The learned counsel however was not able to produce any record to show as to whether any detailed enquiry had been conducted into the matter or whether the respondents had come to the final conclusion that the applicant was responsible.

6. We have heard the learned counsel on both sides. In our considered view, it is against the principles of natural justice that recovery should be ordered without giving opportunity to the applicant and to hold him responsible, particularly where it is one person but six others have been involved held responsible together. Responsibility has to be fixed individually and conclusively. Natural justice demands that the applicant is given due notice and an opportunity of being heard in the matter before ordering any recovery.

7. In the facts and circumstances of the case, the impugned order dated 23/5/2001 is quashed and set aside. The respondents shall not recover any amount from the applicant against the debit raised. We however leave all the other issues open. OA is allowed to that extent. No costs.


(SMT. SHANTA SHASTRY)
MEMBER(A)


(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan