

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. : 679/2001

Date of Decision : 19th December 2002

S.S.Vakani Applicant

Advocate for the
Applicant.
Shri K.B.Talreja

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

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

(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 Yes

fil (S.L.JAIN)
MEMBER (J)

mr. j.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.679/2001

Dated this the 19th day of December 2002.

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

S.S.Vakani,
C/o. K.B.Talreja
Advocate,
Phulwadi, Plot No.16,
Dev Samaj Road, Ulhasnagar.

...Applicant

By Advocate Shri K.B.Talreja

vs.

1. Union of India
through the Chief
Commercial Manager,
(Catering), Central
Railway, Mumbai CST.

2. The Divisional Railway Manager,
(C), Solapur Division,
Central Railway, Solapur.

...Respondents

By Advocate Shri R.R.Shetty

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 direction to the respondents not to effect recovery from any debit raised against any other catering staff, specify the losses if any sustained on account of applicant's failure, dereliction of duty or on any other account and for direction to follow I.R.C.M. para 2703, 2704, 2705.

JWJ/-

2. The applicant was working as Catering Manager in the year 1991, Catering Inspector in the same year and Senior Catering Inspector in 1997 and Divisional Catering Inspector in the year 1998. He was served with minor penalty chargesheet dated 21.1.1998 issued by Respondent No.2 (Annexure-2), to which he replied vide his reply letter dated 29.1.1998. The disciplinary authority awarded the penalty of Censure vide order dated 30.4.1998.

3. The applicant was served with major penalty chargesheet dated 8.6.1999. After an enquiry, the disciplinary authority awarded the penalty of dismissal vide its order dated 7.4.2000. The applicant preferred an appeal against the said order which was partly allowed by modifying the penalty vide its order dated 31.1.2001 by two grades from grade of Rs.5500-9000 to grade Rs.4000-6000 fixing his pay at Rs.4500/- for two years with non cumulative effect.

4. The applicant was served with letter dated 9.5.2001 to which he replied vide his reply dated 23.5.2001. The respondents intend to recover from the applicant's salary an amount of Rs.1,87,642/- towards catering debit which is against the principles of natural justice & IRCM. Hence, this OA. for the above said relief.

5. It is true that the said order of penalty of Censure dated 30.4.1998 has become final and the said penalty can not be agitated by filing an OA. on 25.9.2001.

6. The order of reduction by two grades dated 31.1.2001 is said to be subject of another OA. As such, the legality of the same cannot be examined in the present OA.

7. The respondents have stated in their written statement that the applicant was working as a Sr.Catering Inspector, has been imposed upon a recovery of a sum of Rs.1,87,642/- on account of losses caused in the catering department by mismanagement. A chargesheet was issued to the applicant dated 21.1.1998, upon issue of the said chargesheet and thereafter the applicant managed to clean an amount of Rs. 2,01,000/- out of the said outstanding admitted debit of Rs.3,88,621.74ps. and paid to the respondents. Accordingly, the remaining amount which was required to be recovered and continued to be a debit outstanding was only Rs.1,87,000/-. On being held guilty in the said minor penalty chargesheet, the logical consequence of imposition of penalty of Censure was to ensure that the same is to be recovered from the applicant which is now sought to be done. The recovery has been ordered against the applicant as a logical consequence of imposition of penalty for short remittance by the applicant. The applicant used to collect money from the Vendors and Bearers for items given to them for sale and thereby created a shortage in the remittance. The amount deliberately being shown short thereby he managed to commit the fraud against the Railway administration to the tune of Rs.4,43,478/- by showing the said amount short in the name of 28 Bearers. The present recovery has been ordered against the applicant not by way of penalty but by way of recovery of loss caused to the Railways. It is further

100/-

..4/-

clarified that the present recovery is in respect of a shortage of Rs.3,88,621.74 - after adjustment of Rs.2,01,000/- the remaining amount is Rs.1,87,000/-. It is further stated that the applicant has managed to get signatures of the Vendors/Bearers and has shown a letter of outstanding amount against them for Rs.4,43,478/-. Relying on this statement, administration has made cash recoveries from the Bearers to the tune of Rs.1,05,500/- and also recovered an amount of Rs.1,50,335.70 has been recovered from commission and salary of the Vendors/Bearers. However, when the Bearers have gone on strike under the banner of Janata Dal and enquiry was made into the aspect and finally it has come to the notice that the amount which was being shown in the statement was erroneous and in fact the applicant has made the money from the Vendors/Bearers and they have been double jeopardized for this payment.

This fact stated by the respondents plays an important bearing in deciding the present OA. for the reason that the Vendors and Bearers have made the payment to the Railway Administration. As such, there is no case for loss of any amount to the Railway administration.

8. The learned counsel for the respondents relied on 1999 SCC (L&S) 57 - Union of India & Ors. vs. B.Dev, wherein it is stated that power of recovery is independent of and is in addition to the power to withdraw/withhold pension. Relevant para 11 of the said authority in which the said fact is being mentioned is being extracted below :-

8.1

"One of the powers of the President is to recover from pension, in a case where any pecuniary loss is caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the respondent, therefore, that Rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable."

Perusal of the same makes it clear that the Apex Court was dealing with it Rule 9 of CCS (Pension) Rules, 1972. By the said fact, it cannot be assumed that without there being a liability saddled on the applicant, a loss caused to the Government can be recovered.

9. The learned counsel for the applicant relied on 2002 (1) ATJ 283 - J.M. Makwana vs. Union of India & Ors., wherein the proposition laid down is that one who is not directly responsible for causing any pecuniary loss to the Government, cannot be made responsible for recovery of the loss sustained by the Government. I agree with the said proposition of law and keeping in view the said proposition of law, the responsibility of the applicant is to be adjudicated in the present case.

10. I have perused the chargesheet dated 21.1.1998 (Minor penalty chargesheet) wherein the applicant was imposed the penalty of Censure which has become final. The charge is extracted below :-

PLG/ -

.6/-

"On the basis of complaint received, Vigilance check was conducted on 20.12.97 on the aspect of debit outstanding at Department Catering Unit, Solapur. During the check, it was noticed that an amount of Rs.3,88,621.74ps. was outstanding in the month of Nov.97, in the names of various Com.Vendors/Com.Bearers. Scrutiny of last 6 months revealed that most of the vendors/bearers under his control are found defaulting regularly."

The perusal of the same makes it clear that the amount was outstanding against the vendors/bearers and a duty was cast upon the applicant to recover the same. On account of the slackness in recovery, he was awarded the penalty of Censure.

11. I am not in agreement with the learned counsel for the respondents that as the applicant failed to discharge his duty i.e. recovery, the amount from Commercial Vendors/Commercial Bearers the amount will be recovered from the applicant. Negligence/dereliction towards duty is one fact or omission and amount in debit against the applicant is another fact. Deleriction from duty can not be turned as an admitted debit case.

12. The learned counsel for the applicant also relied on an order passed in his own case in OA.NO.599/2001 decided by this Bench wherein it has been held that 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.

P.UW/-

..7/-

13. The applicant has replied to the notice vide his reply dated 23.5.2001. It is the duty of the respondents to consider the said reply and if reply is not found to be satisfactory one, after issue of chargesheet as per rules, if the respondents arrive to a finding that the applicant is imposed with the penalty of recovery of the said amount, the respondents may be said to be acting in accordance with law and not otherwise.

14. In the result, OA. is allowed. The recovery ordered by the respondents amounting to Rs.1,87,642/- is quashed and set aside. No order as to costs.

SLJ -
(S.L.JAIN)

MEMBER (J)

mrj.