

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 90/1997.

Date of Decision: 25/6/97

Vijay Kumar Pathak,

Petitioner/s

Shri G. S. Walia,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others.

Respondent/s

Shri V. S. Masurkar,

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B. S. HEGDE)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 90/97.

Dated this 25th, the Archived day of June, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Vijay Kumar Pathak,
Working as Senior Guard
Grade 'A', (Suburban),
C/o. Area Regional Office,
Western Railway,
Churchgate,
MUMBAI - 400 020.

... Applicant

C/o. G. S. Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street, Fort,
MUMBAI - 400 001.

(By Advocate Shri G.S. Walia)

VERSUS

1. Union Of India through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Mumbai Central,
Mumbai - 400 008.

... Respondents.

3. Assistant Area Officer,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.

(By Advocate Shri V.S. Masurkar)

: O R D E R :

PER.: SHRI B. S. HEGDE, MEMBER (J)

Heard Shri G. S. Walia for the applicant and

Shri V. S. Masurkar for the respondents.

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2. After hearing the submission of the learned counsel for the applicant and in view of the impugned communications dated 06.12.1996 and 30.12.1996 by which the respondents intend to recover an amount of Rs. 2000/- from the applicant's salary in connection with alleged loss of an amount of Rs. 1,26,000/- due to his negligence, the Tribunal vide its order dated 21.01.1997 granted interim relief in respect of recovery for the month of January 1997 payable in February 1997, effective for a period of fourteen days. Further, on account of his negligence, a separate charge-sheet has been issued on 13.05.1996. It is true that recovery is one of the minor penalty imposed against the applicant under Rule 6(iii) of Railway Servants (Discipline and Appeal) Rules, 1968, but the learned counsel for the applicant submits that, till the completion of the disciplinary proceedings, the respondents should not be allowed to recover any sum unless they found him guilty for the alleged loss. Accordingly, the Tribunal directed the respondents not to recover for the month of January 1997 payable in February 1997 and the interim order continued thereafter till today.

3. The respondents have filed their reply on 03.06.1997 and stated that due to the negligence of the applicant and others, the department has suffered a loss of Rs. 1,26,000/- and in view of Rule 2448 and 2447 of I.R.C.M., it is permissible for the department to recover the amount from the persons involved in the loss, therefore, the recovery of the amount from the concerned persons should not be linked up with the pending enquiry against the applicant. It is noticed, though the alleged loss has taken place sometime in the month of December 1994, the charge-sheet has been issued against the applicant on 13.05.1996, after a lapse of nearly 17 months. The counsel
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for the respondents was unable to explain at what stage the enquiry is progressing. Regarding the recovery also, though the loss took place in the month of December 1994, the respondents started recovery from his salary from the month of January 1997, therefore, the balance of convenience is in favour of the applicant. Accordingly, the interim order is made absolute and we direct the respondents to complete the pending enquiry at an early date, preferably within a period of four months from the date of receipt of a copy of this order. In case the applicant fails to participate in the pending enquiry, the respondents are at liberty to proceed with the enquiry ex-parte and arrive at a conclusion on the basis of available records. Till the completion of the enquiry, the recovery is stayed.

4. The O.A. is disposed of with the above directions. There will be no order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B. Hegde

(B. S. HEGDE)
MEMBER (J).

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