

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 365/97.

Date of Decision: 25.7.97.

R.S.Gupta

.. Applicant

Shri G.S.Walia

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar.


.. Advocate for  
Respondent(s)

CORAM:

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

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

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 365/1997.

25th, this the Friday day of July, 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri M.R.Kolhatkar, Member(A).

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

.... Applicant.

(By Advocate Shri G.S.Walia)

V/s.

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

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

3. Station Superintendent,  
Churchgate Station,  
Western Railway,  
Churchgate,  
Mumbai - 400 020.

.... Respondents.

(By Advocate Shri V.S.Masurkar).

O R D E R

{Per Shri B.S.Hegde, Member(J)}

Heard Shri G.S.Walia, counsel for the applicant  
and Shri V.S.Masurkar, counsel for the respondents.  
In this O.A., the applicant is challenging the  
impugned order passed by the Respondents dt. 13.3.1997  
by which it has been ordered to make a recovery of  
Rs.38,500/- from the monthly salary at a minimum  
instalment of Rs.1000/- per month.

2. The applicant is working as a Guard in the sub-  
urban section of the Western Railway and has been

...2.

chargesheeted on 20.8.1996 for negligence and shortage of a bag from TC (Safe) when the applicant was working as a Guard on Suburban section of Western Railway. The Enquiry Officer has been appointed on 15.1.1997 to inquire against the charges levelled against the applicant. The applicant replied vide his letter dt. 5/6.1.1997 denying the charges and requested that no recovery shall be made unless the charges are proved against him in the departmental inquiry. Further it is contended that since the departmental has not been started and no finding is against him, no recovery shall be made from his salary without giving the applicant an opportunity to defend. As against this, the learned counsel for the respondents Shri V.S.Masurkar urged that the alleged impugned order is not addressed to the applicant, it is only an internal communication to the department, thereby no cause of action has arisen. The O.A. filed by the applicant is a premature one. Further, it is submitted that the recovery of commercial debit in the name of the applicant which amounts to Rs.38,500/-, the said amount is a loss of cash amount of Railways which is a collection from Santacruz Station. The present application is devoid of merit, the same is required to be dismissed. Further it is absolutely necessary to recover the loss incurred and simultaneously have Disciplinary proceedings against the erring employee. The applicant has not exhausted the departmental remedies as per Sec.20 of the Administrative Tribunals Act, they also stated that

*As*

...3.

of this case would squarely apply to the facts of the present case and accordingly we direct, that unless the department completes the enquiry proceedings against the applicant it is not open to the respondents to recover the amount.

4. Accordingly, we direct the respondents to complete the inquiry against the applicant as early as possible and if the department finds him guilty thereafter proceed to recover the loss committed to the department in view of the Rules referred to above. Till the completion of the inquiry no recovery shall be made from his salary. The O.A. is disposed of with the above directions. No order as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
MEMBER (A)

*B.S. Hegde*

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

B.