

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 533/97

Date of Decision: 10.12.97

Shri N.T. Phabiani —————— Applicant.

Shri S.N. Pillai. —————— Advocate for  
Applicant.

Versus

Union of India and others. —————— Respondent(s)

Shri Suresh Kumar —————— Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (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 (J)

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH 'GULESTAN' BUILDING NO:6  
PRESOCOT ROAD, MUMBAI:1

Original Application No. 533/97.

Wednesday the 10th day of December 1997.

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

N.T. Phabiani  
Residing at  
103/3546, Nehru Nagar,  
Kurla East, Mumbai. ... Applicant.

By Advocate Shri S.N.Pillai.

V/s.

Union of India through  
The General Manager,  
Central Railway, CST,  
Mumbai.

The Controller of Stores,  
Central Railway,  
CST, Mumbai. ... Respondents.

By Advocate Shri Suresh Kumar.

O R D E R (ORAL)

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

Heard counsel for the parties.

2. The learned counsel for the applicant states that an amount of Rs. 33,000/- has been withheld after the retirement of the applicant. A portion of the withheld amount, amounting to Rs. 17,656/- has been paid on 1.9.95 and balance amount of Rs. 15,344/- has been paid on 15.10.97. The applicant has been imposed penalty of recovery of Rs. 15,343.50 towards 25% of the cost of loss of Tarpaulins. The applicant has preferred an appeal which was decided by the Disciplinary Authority and exonerated the applicant from the penalty. The respondents are not justified to keep the balance amount of Rs. 17,656/- till 1.9.95.

: 2 :

3. In the circumstances, I hereby direct the respondents to pay interest at the rate of 12 % from 1.2.1993 to 31.9.1995 and to the balance amount at the rate of 12 % from 1.9.1995 to 15.10.97, within a period of two months from the date of receipt of this order. No costs.

*B.S. Hegde*  
(B.S. Hegde)  
Member (J)

NS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

R.P.NO. 25/98 in OA.NO.533/97

Dated this the 21<sup>st</sup> day of October 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

N.T.Phabhiani ... Applicant

By Advocate Shri S.N.Pillai

V/S.

Union of India & Ors. ... Respondents

By Advocate Shri Suresh Kumar

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

This Review Application has been filed by the respondents seeking review of the order dated 10.12.1997 in OA.NO. 533/97.

2. Since the Hon'ble Member who has passed the order has since retired, the Review Application has been listed for preliminary hearing.

3. ✓ Notice was issued to the applicant and the reply has been filed by him.

4. Heard the arguments of Shri Suresh Kumar, learned counsel for the respondents who has filed the Review Application and Shri S.N.Pillai, learned counsel for the applicant.

5. On going through the averments made in the Review Application, it is noted that review of the order dated 10.12.1997 is sought bringing on record the order dated 9.1.1995 of the appellate authority and stating that the appellate authority has exonerated the applicant of penalty of Rs.15,343/taking into consideration that the applicant had already suffered loss by way of interest on the gratuity amount of Rs.33,000/which was held on account of disciplinary proceedings under process. The respondents have taken a plea that copy of this order could not be produced before the Bench at the time of hearing as the matter was appearing under the caption "Admission".

6. The order dated 10.12.1997 had been passed directing the respondents to pay interest of 12% on the gratuity amount of Rs.33,000/- part of which Rs.17656/- was paid <sup>late</sup> back and other was held up to recover the loss of Rs.15343/- and paid later on. This order has been passed taking into consideration that the appellate authority had exonerated the applicant of the penalty of recovery of loss and therefore there was no justification to with-hold the payments due to the applicant. The order was passed when the counsel for the respondents was present. The respondents had also filed the written statement for the OA. Therefore, the respondents had adequate opportunity to bring on record the copy of the appellate authority's order which has been now brought on record for seeking review based on the same. I am

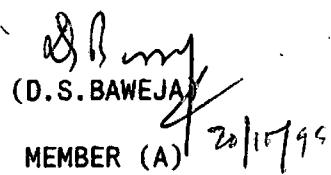
(X)

therefore unable to accept the contention of the respondents that this letter could not be brought on record as the OA. was listed under the caption "Admission". Apart from this, the order of the appellate authority does not give any cause for seeking a review. On going through the order of the appellate authority, it is noted that what is addressed to the applicant and it is stated that the applicant is exonerated of the penalty of recovery of Rs.15343/- . On the office copy of the order, some endorsement has been made where the appellate authority appears to justify his appellate order indicating that <sup>the</sup> applicant has already suffered a loss of interest on account of with-holding of his gratuity. This endorsement is not a part of the order of the appellate authority and cannot be taken note of. The order of appellate authority as conveyed is that the applicant has been exonerated of the charge. If the appellate authority had exonerated the applicant of the penalty of recovery of loss in view of the fact that he had already suffered a loss on account of interest on the amount of gratuity withheld, this should have been so stated in the appellate authority's order. The appellate authority's order has to be taken as conveyed to the applicant and not otherwise. Based on the order of the appellate authority as brought out by the respondents in the written statement, the Bench had held that with-holding of the payment of Rs.17656/- out of gratuity was not justified. In view of these observations, I do not find that the respondents have made out a case for review of the order. The power of review can be availed if some new material or facts come to the knowledge which could not be brought on record by the person seeking review even

(A)

with due diligence or 0 there is an error apparent on the fact of the record. None of these parameters are obtaining in the present Review Applications.

7. In the result of the above, I do not find any merit in the Review Application and the same is accordingly dismissed.

  
(D.S. BAWEJA)  
MEMBER (A) 20/10/94

mrj.