

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 721/97

Date of Decision: 17-03-98

Shri Krishna K. Applicant.

Shri C.M. Jha. Advocate for Applicant.

Versus

Union of India and others. Respondent(s)

Shri V.S. Masurkar. Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri.

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

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, 'GULESTAN' BLDG. NO. 6,
PRESCOT ROAD, FORT, MUMBAI-400001.

ORIGINAL APPLICATION NO.: 721/97.

Dated this Provenance the 17th day of March, 1998.

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

Krishna K.,
Junior Clerk,
Canteen, C&W,
Lower Parel,
Mumbai.

... Applicant

(By Advocate Shri C.M. Jha)

VERSUS

1. Union Of India through
General Manager,
Western Railway,
Churchgate,
Mumbai.

2. The Chief Works Manager,
Western Railway,
Carriage & Wagon Workshop,
Lower Parel, Mumbai.

... Respondents.

(By Advocate Shri V.S. Masurkar)

: ORDER :

{ PER.: SHRI M.R. KOLHATKAR, MEMBER(A) }

In this O.A. the applicant who is working as Cash Clerk in the Canteen has challenged the impugned order dated 17.08.1996 by which recovery of Rs. 16,012/- has been ordered from monthly salary in suitable instalments. The applicant's contention is that the recovery began from his monthly salary of July 1996 onwards. From the pay slip of August 1996 (exhibit 'B'), it is seen that the recovery was started even before the impugned order. The applicant made a representation on 22.08.1996 (exhibit 'C'). He made further representations on 23.09.1996 and on 26.09.1996. It is contended that the

applicant is not responsible for cash, it is the Manager who is responsible for cash and he challenges recovery without any formal enquiry. A reply was sent by the respondents to the applicant on 30.09.1996 in which the applicant was referred to the decision of the Canteen Committee in terms of which the recovery was ordered. The applicant has, therefore, filed this O.A. challenging the recovery of the amount.

2. The first contention of the Learned Counsel for the applicant is that no show cause notice has been issued to him and thus, the principles of natural justice have been violated. Therefore, the recovery is bad in law. Secondly, the Counsel contends that the recovery is also in violation of Railway Servants (Discipline & Appeal) Rules. Under Rule 6(iii), the recovery from the pay of the whole or part of any pecuniary loss caused by a railway servant to the Government or Railway Administration by negligence or breach of orders is a minor penalty and the procedure for imposition of minor penalty was not followed. Thirdly, it is contended that the order of recovery is also in violation of Payment of Wages Act. As per Section 10 of Payment of Wages Act, a deduction shall not be made under Clause (c) or clause (m) or clause (n) or clause (o) of sub-section (2) of Section 7 until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

3. The applicant has, therefore, prayed for the relief of quashing and setting aside the order dated 17.08.1996 and directing the respondents not to deduct the sum of Rs. 445/- from the salary of the applicant every month.

4. The respondents have opposed the O.A. and filed a written statement. According to the respondents, the decision to make recovery of 50% of the shortage in Canteen Account from the applicant was in terms of the decision of the Canteen Committee. In this connection, the Learned Counsel for the respondents draws my attention to Exhibit R-1 being the minutes of the Canteen Committee Meeting, in which it is stated as below :

"It is well-known fact that cash handling done by Manager/Asstt. Manager while accountal of stock is done by Stores Clerk. Shri Raju Shetty and Shri Krishna K. have been handling the cash and the following shortage is noticed -

- (i) Rs. 27,995.70 .. In the year 1993.
- (ii) Rs. 1,100.00 .. In the year 1996.
- (iii) Rs. 754.80 .. On account of Gas Cylinder 1996.
- (iv) Rs. 173.00 .. Outstanding against Shri Raju as per his own explanation.
- (v) Any outstanding dues on account of non-receipt of bills.

The Manager/Asstt. Manager may jointly decide upto 30.06.1996 about the bifurcation of the above account and pay the same within 15 days i.e. upto 15th July, 1996 failing which the settlement dues of Shri Raju Shetty who is retiring on 31st Augst, 1996, will be held up."

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5. According to the Learned Counsel for the respondents, it is incorrect to state that the recovery was started without giving an opportunity to the employee to show cause. According to him, exhibit R-1 shows that the Minutes of the meeting held on 13.06.1996 were sent to the Canteen Manager on 21.06.1996 i.e. well before August 1996 when the recovery was made. The Learned Counsel for the respondents has stated that prior to the communication of the letter dated 17.08.1996, the applicant was handed over the minutes of the meeting on 10.08.1996 and copy of the minutes was earlier sent on 21.06.1996 to Shri Raju Shetty who was supposed to inform the applicant immediately. According to the counsel for the respondents, the recovery of amount as contemplated in Discipline and Appeal Rules, arises in different circumstances. In the present case, the applicant was cash clerk in the Canteen and he is responsible for all the cash and since there was shortage of cash, he was strictly responsible and was bound to make good the shortage. He further states that Canteen Committee fully went into the question of recovery and it was only after considering all the aspects of the matter that the decision of recovery of 50% shortage from the salary of the applicant was taken.

6. In the rejoinder, the Learned Counsel for the applicant, apart from reiterating the legal submissions, also relied upon the following decisions :

- (1) Smt. Nirmal Narula V/s. Lt. Governor Govt. of NCT of Delhi and Others ¶ 1997 (1) ATJ 506 dated 26.12.1996 ¶. In this case, the Tribunal granted relief on the ground that

the recovery cannot be made without giving any prior notice to an incumbent and without hearing his or her defence in the matter.

- (2) Inderjeet Ram V/s. Union Of India & others [1997 (1) ATJ 283]. This was a case relating to recovery in connection with loss of one bundle of ticket. The Tribunal held that the procedure as laid down for disciplinary action for minor penalty not properly followed and action to make recovery in connection of loss of ticket was vitiated.

7. I have consider the matter. It appears to me that the applicant was not given opportunity of showing cause because the actual recovery was started from July 1996 salary drawn in August 1996 and impugned order was issued on 17.08.1996. The written statement of respondents shows that the applicant was given copy of the minutes of meeting of Canteen Committee only on 10.08.1997. It would, therefore, appeal that a decision to make recovery was made without giving a hearing to the applicant as to what he has to say about his liability for shortage. Secondly, it does not appear as if the employee was personally responsible for the cash loss. In fact, if there is any strict liability, it appears to rest with the Manager. The decision of the Committee also states that cash handling is done by Manager/Assistant Manager. The major part of the loss is for the year 1993 amounting to Rs. 27,995.70. It also appears that the Manager is required to make security deposit and not the cash clerk. Thirdly, the contention of the applicant is that it was the Manager who is responsible for the loss. The decision of the Canteen Committee to ask Manager and

Cash Clerk to settle among themselves as to who is responsible for the loss and failing the same, to saddle applicant with 50% liability cannot be called arbitrary, based on a crude argument that as two people are responsible for the loss, therefore, each of them is liable to pay to the extent of 50% of the loss. The applicant can well argue that the manager had got away lightly by repaying only 50% of the shortage when he is responsible for the whole of shortage.

8. I am, therefore, of the view that the principles of natural justice have not been observed nor the procedure for imposition of minor penalty prescribed in the Railway Servants (Discipline and Appeal) Rules, followed by the respondents. The impugned order, therefore, is not sustainable. The same is, therefore, quashed and set aside. The amount recovered so far from the salary of the applicant should be refunded to him within a month from the date of communication of the order. The respondents are at liberty to follow ~~with~~ the procedure as laid down in Railway Servants (Discipline & Appeal) Rules and then direct recovery, if he is found liable. There will be no order as to costs.

M. R. Kolhatkar

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

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