

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 731/97

Date of Decision: 4.1.1999

Shri Soharab Khan

Applicant.

Shri K.B. Talreja.

Advocate for
Applicant!

Versus

Union of India and others.

Respondent(s)

Shri Suresh Kumar.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri.

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 731/97

Monday the 4th day January 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Sohrab Khan
Residing at
Senior Subordinate
Rest House, Parcel
Office Building,
4th floor, Bombay.

... Applicant.

By Advocate Shri K.B. Talreja.

V/s.

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

Chief Commercial Manager,
Central Railway,
New Administrative
Office Building,
2nd floor, Mumbai CST.

Chief Personnel Officer,
Central Railway,
General Manager's Office
Mumbai CST.

Divisional Railway Manager
Central Railway,
Jhansi Division,
Jhansi.

... Respondents.

By Advocate Shri Suresh Kumar.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶


In this application, the applicant is
challenging the recoveries initiated by the
respondents from the pay of the applicant. The
respondents have filed reply justifying the action
taken by them. I have heard the learned counsel
for both the sides.

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2. The applicant is working as Catering Inspector in the office of Chief Commercial Manager, Central Railway, Bombay. It appears that for alleged shortage of stock of value of Rs. 31,068.87, the respondents have issued charge sheet against the applicant on 10.2.94. In the meanwhile the respondents have initiated recovery of Rs. 999/- from the salary of the applicant from September 1996 onwards. Subsequently the respondents have issued a fresh demand showing the value of shortage of stock of Rs. 12,28,609/- directing the concerned officer to enhance the recovery from the salary of the applicant as per the order dsted 13.11.96 (page 21 of the paper book). The applicant being aggrieved by the issuance of the fresh order dated 13.11.96 apprehending the increase in recovery from the pay has approached this Tribunal. His contention is that the respondents cannot make any recovery unless he is found guilty in the regular departmental enquiry. The applicant therefore wants the recovery proceedings should be quashed.

3. The respondents in their reply justified the action taken by them. According to the respondents in case of admitted claims the debit can be made and recovered either in cash or recovered through pay, without prejudice to hold departmental enquiry. It is also stated that the Departmental Enquiry is pending. The respondents have also taken a stand that the applicant has not taken any steps to challenge the earlier recovery.



4. At the time of argument the learned counsel for the respondents submits that the applicant has not given any representation to the Administration regarding the impugned demand in the letter dated 13.11.1996. The learned counsel for the applicant submits that since ^{he} apprehended enhanced recovery he rushed to this Tribunal. The learned counsel for the applicant submits that as far as earlier recovery is concerned the applicant has already made representation to the administration. He **therefore** submits that no recovery should be made till the disciplinary enquiry is held and the applicant is found guilty.

5. After hearing both the sides, in my view, the point of dispute can be decided at this stage. Rightly or wrongly the applicant has ^{not} approached this Tribunal to challenge the earlier recovery made from his salary. The applicant has approached this Tribunal only in August 1997. Therefore at this stage I do not find any ground to restrain the respondents in making the recovery of Rs. 999/- from the pay of the applicant. As far as the enhanced amount of 12 lakhs and odd is concerned the applicant has not given any representation. I feel that this unilateral increase of the amount should be stayed till the applicant gives a representation to the administration and the administration passes a speaking order. As far as the departmental enquiry is concerned the administration should expedite the enquiry. **I therefore** feel that without prejudice to the rival contention some direction should be given to the respondents. It is also made clear that in case the applicant succeeds

in the departmental enquiry then the applicant can make a representation to the administration for refund of the amount recovered from his salary together with interest as per rules. That question is left open.

6. In the result the O.A. is disposed of with a direction the respondents not to make any recovery in pursuance of the impugned order dated 13.11.1996 (exhibit B page 21 of the paper book.), till the applicant gives a representation and administration passes a speaking order on the same. Liberty to the applicant to make a detailed representation in response to the enhanced recovery as per letter dated 13.11.1996 and on receipt of such representation the competent authority may pass a speaking order within a period of two months. Needless to say that in case of any adverse order is passed the applicant can challenge the same according to law.

3. This order will not come in the way of the respondents in continuing the recovery of Rs. 999/- from the salary of the applicant as per the earlier order. The Tribunal has not expressed any opinion regarding the correctness or legality of the order. That question is left open.

The respondents are also directed to expedite the departmental enquiry pending against the applicant as early as possible.

All the rival contention on merits taken by both the sides are left open.

In the circumstances of the case there will be no order as to costs.

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(R.G. Vaidyanatha)
Vice Chairman