

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 960 of 1997.

Dated this Wednesday, the 26th day of April, 2000.

Nirmal Kumar Biswas, Applicant.

Shri G. S. Walia, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

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

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.


(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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

Nirmal Kumar Biswas,
Guard Grade 'A' working under
Divisional Operating Manager,
Mumbai Division,
Mumbai Central,
Mumbai - 400 008.

... Applicant.

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India through
The General Manager,
Western Railway, H.Q. 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)

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant for quashing the impugned order for recovery dated 16.10.1997. The respondents have filed reply. An interim order has been granted directing the respondents not to make any recovery in pursuance of the impugned order dated 16.10.1997 and the said interim order



is still in force. We have heard Shri G.S. Walia, the Learned Counsel for the applicant and Shri V. S. Masurkar, the Learned Counsel for the respondents.

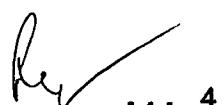
2. The applicant was working as a Railway Guard at the relevant time. It appears, on 25.10.1995 certain cash bags were dropped in the T.C. Safe of the train. After the train reached Churchgate Station, the cash was checked and it was found that one cash bag of Bandra Station was missing and the missing amount was stated to be of Rs. 1,05,000. The Railway Administration issued a charge-sheet to applicant and some other officials alleging that due to negligence the loss has occurred. As far as the applicant is concerned, the Railway Administration has apportioned the loss to the tune of Rs. 52,500/- vide impugned letter dated 16.10.1997 for recovery of the said amount from the applicant. Being aggrieved by this letter, the applicant has approached this Tribunal. Applicant's case is that he is no way responsible for any such alleged loss of cash. Even otherwise, the applicant cannot be saddled with any liability unless a regular enquiry is held under the Disciplinary & Appeal Rules and he is found guilty.

3. The respondents in their reply have justified the action taken against the applicant. It is alleged that applicant is responsible either directly or indirectly for the loss of Rs. 1,26,000/- to the Railway administration and the applicant's liability has been apportioned to Rs. 52,500/-.

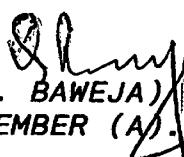
4. After hearing both sides and going through the materials on record, we find that we need not go into the question on



merits but only concerned about the question of liability of the impugned letter dated 16.10.1997 in ordering the recovery of amount from the applicant without holding a regular enquiry. We had occasion to consider similar or identical matter in the case of one D. B. Pawar V/s. Western Railway in O.A.No. 917/97 decided on 31.01.2000. In the said order we have held that in a matter like this, where there is allegation of negligence or misconduct, which has resulted in loss of money to the Government and the official has disputed his liability, then in such a case no recovery can be ordered unless a regular enquiry is ^{held} ~~fit~~ and he is found guilty and an order is passed for recovery of the loss to the Railway administration. We follow the same reasoning in the present case also. Here also the applicant is disputing his liability in the alleged loss. The administration itself has issued a charge-sheet against the applicant dated 18.09.1997 alleging that due to negligence on his part the loss has occurred. A copy of the charge-sheet is at page 12 of the Paper Book. As on today, we do not know as to what is the result of the disciplinary enquiry. But in our view, unless the applicant is found guilty in the said enquiry and there is an order for recovery of loss to the Government, no recovery can be made from the applicant on the basis of the impugned letter dt. 16.10.1997. We do not go into the other questions about the liability of the applicant and whether he is personally responsible for the alleged loss, etc. All those questions are left open, since any view expressed by us may cause prejudice to the disciplinary enquiry.

A handwritten signature in black ink, appearing to read 'Rey' followed by a checkmark and the number '4'.

5. In the result, the application is disposed of with a direction to the respondents not to make any recovery in pursuance of the impugned letter dated 16.10.1997. Further, this order is without prejudice to the respondents to recover any amount that is due from the applicant, according to law, after the disposal of the Disciplinary enquiry case in pursuance of the charge-sheet dated 18.09.1997. All questions on merits are left open. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

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