

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A.NO.** /216/93  
**T.A.NO.**

DATE OF DECISION 30.11.2000

Miss Krishna K. Mukhoti Petitioner

Mr. K.K. Shah Advocate for the Petitioner [s]  
Versus

Union of India & Others Respondent

Mr. N.S. Shevde Advocate for the Respondent [s]

**CORAM**

The Hon'ble Mr.

V. Ramakrishnan, Vice Chairman

The Hon'ble Mr.

A.S. Sanghavi, Member (J)

**JUDGMENT**

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

Miss Krishna K. Mukhoti  
Ex. Head Clerk  
Residing at 67 Varahi Society  
Kali Road, Near 'D' Cabin  
Ahmedabad- 380 019.

Applicant

Address for service of notices: C/o.

~~Advocate~~: Mr. K.K. Shah  
Advocate  
3, Achalayatan Soc. Div. III  
Near Memnagar Fire Stn.  
Ahmedabad.

Advocate: Mr. K.K. Shah

Versus

1. Union of India, notice to be served through the General Manager Western Railway, Headquarter office Chrchgate, Bombay.
2. Addl. Divl. Railway Manager (II) Divisional Office, Pratapnagar Western Railway, Baroda.
3. Sr. Divisional Engineer (North) Western Railway, Baroda.
4. Shri Sahebsingh  
Inspector of Works  
Western Railway, to be served through the Respondent No. 3 Ahmedabad.

Advocate: Mr. N.S. Shevde.

JUDGEMENT

IN

Dated 30.11.2000

O.A./216/93

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicant is a lady employee of the Railways in the clerical cadre. She has filed this O.A. challenging the charge-sheet dated 6.12.91 as at Annexure A, the order

of the Disciplinary Authority dated 7.10.92 as at Annexure A-1 which removes her from service and the order of the Appellate Authority dated 4.12.92 which reduces the penalty of removal from service to that of reversion to the lower scale for a period of one year (non-cumulative.)

2. The applicant functioned in the clerical cadre in the Railways. She was promoted to the level of Head Clerk under the Inspector of Works, Ahmedabad. She was served with a charge-sheet dated 6.12.91 as at Annexure A which charges her as follows:-

" On 15.7.91 at about 8.45 hrs. after coming to IOW ADI 's office you disturbed the working of IOW Office and started in speaking unparliamentary and abusive language and threatened to cause bodily harm to IOW ADI. You also tampered with the attendance register of IOW ADI office for the month of June & July 90-91. You thereby acted in a manner unbecoming a Rly. Servant and thereby violated rule 3(i) (iii) of Rly. Services (Conduct) Rules, 1966."

The charge-sheet refers to the names of nine employees who ~~xx~~ would be examined as witnesses. It also states that the copy of the attendance register of IOW for June 91 and July 91 ~~would~~ could be relied upon. The Inquiry Officer conducted an inquiry where the applicant did not participate even though she was given notice and the inquiry was held ex-parte. The Inquiry

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Officer after examining one Shri Manilal Carpenter who is one of the witnesses mentioned in the chargesheet and after going through the office records came to the conclusion that the charges against the applicant were proved. The Disciplinary Authority had removed the applicant from service by its order dated 27.10.92 with immediate effect. An appeal was filed which was decided on 4.12.92 which reduced the penalty of removal of service to that of reversion as Senior Clerk for a period of one year non-cumulative. These are challenged in the present O.A. She has approached the Tribunal seeking re-instatement continued service, and full backwages to be released for the period of suspension and also to award cost of the present application.

3. We have heard Mr. K.K.Shah for the applicant and Mr. Shevde for the respondents. We have also gone through the relevant Departmental Inquiry.

4. Mr. K.K.Shah states that the applicant was an unmarried person at that time and he alleges that she was being harassed by Respondent No. 1 Shri Sahebsingh who was Inspector of Works on undesirable motives and she was sought to be victimised by these proceedings. The applicant is a cancer patient and was under treatment which was not dealt with sympathetically by

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Shri Saheb Singh also has filed some complaint before police which subsequently he withdrew. Mr. Shah submit, that even though Shri Sahebsingh has been made a party respondent by name he has not chosen to file any reply and as such, the allegation against him should be taken as established. The applicant was placed under suspension with effect from 15.7.91 by an order dated 10.9.91 which was revoked later by an order dated 14.11.91.

Mr. Shah brings out that the applicant was placed under suspension with retrospective effect which is not permissible. Besides, she was not given copies of the relevant documents.

The respondents had not cited Shri Saheb Singh Inspector of Works as witness <sup>though</sup> when the applicant is stated to have used abusive language against him. The applicant was ill and had made a request for postponement of the inquiry but her request was not considered. The Inquiry Officer also seems to have relied upon some letter dated 11.7.92 to which the applicant had no access. It also appears that the Inquiry Officer has proceeded on the basis of the written report from some employees and it is not clear whether he had examined any of them. ~~Mr. Shah~~

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Mr. Shah further states that the proceedings cannot be sustained as the main person namely Shri Saheb Singh has not been examined nor he has even been cited as a witness.

5. Mr. Shevde for the respondents submits that there are no irregularities in holding that <sup>the</sup> an ~~was~~ inquiry <sup>or</sup> was in the order of ~~charges~~. <sup>M</sup> the authorities. The charge against the applicant was that she used abusive language and threatened to cause bodily harm to I.O.W., on 15.7.91 at about 8.45 hours. During the relevant period I.O.W. was not present but the outburst of the applicant was in the presence of a number of employees who had given a report. As I.O.W. was not a witness to the incident <sup>and as such</sup> even though <sup>she</sup> the applicant had used abusive language against him he was not cited as a witness. There was also a charge that she had tampered with the attendance register and the Inquiry Officer after going through the records has held the charge as proved.

Mr. Shevde does not agree that there has been any violation of principles of natural justice. The applicant was given access to the attendance register in IOW Office of June 91 to July 91 and also copies of statement of nine employees in the office. It is for

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her to decide whether to inspect the same or not. There is no requirement that copies of these should be furnished so long as the inspection is made available. Inquiry Officer also had given sufficient notice to the applicant for participating in the inquiry but she has declined to do. Mr. Shevde also draws our attention to the relevant file where the Inquiry Officer has examined in person one of the witnesses cited namely Shri Manilal, the carpenter. He has confirmed what has been stated in the application given from the staff of the office of the I.O.W. He has also brought out that the applicant had thrown the name plate of I.O.W. outside the office and that she had abused the I.O.W. The applicant could have cross-examined this witness, but as she did not choose to attend the inquiry, she <sup>did</sup> could not do so. The Inquiry Officer also had gone through the relevant attendance register and found that the applicant had put unwanted and misleading remarks in her own hand-writing in the Muster, a copy of which is at page 30 of the D.A.R. case. In other words, he came to the conclusion on the basis of the records that charge of tamper with the office records was also proved. The <sup>Y</sup> of the Inquiry Officer's report was given to the applicant by a forwarding letter date

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10.8.1992. She gave a reply where she has contended that the statement of witnesses does not seem to have been given on their own but seems to have been ~~given~~ taken under some force or pressure. This reply <sup>was</sup> considered by the Disciplinary Authority who had ordered removal from service but the Appellate Authority on compassionate grounds had reduced the penalty to that of reversion as Senior Clerk for a period of one year (non-cumulative). Mr. Shevde says that these orders are passed with due application of mind and do not call for any interference.

6. We have carefully considered the submissions of both the sides. It is now well settled that the Tribunal can interfere <sup>with</sup> ~~in~~ the orders of the Disciplinary Authority etc. only in limited circumstances and cannot substitute its opinion to that of the competent authority. The Tribunal can interfere only if it is found that the proceedings had been vitiated by mala fides ~~and had not been deferred to~~ or if the orders of penalty have been issued by incompetent authority or if the principles of natural justice had not been adhered to or if there is no evidence at all to substantiate the charges and the finding of the authorities is perverse which no reasonable person could have arrived at in the circumstances.

7. In the present case, there was an allegation that the Senior Divisional Officer Noarth Baroda is not a competent authority to issue the chargesheet. This is denied by the respondents who have brought out that the Senior Divisional Officer North is the controlling officer and is competent to issue chargesheet in accordance with the schedule of powers issued by the Railway Board. The applicant has not effectively rebutted this in the rejoinder statement.

8. The applicant has alleged about violation of principles of natural justice. She says that the evidence was recorded behind her back and she has not been given copies of the statement of nine persons whose names are given in the charge memo. There is an allegation that the Inquiry Officer has acted on the written complaint without examining any witness. It is also contended that Shri Saheb Singh the I.O.W. has not been brought forward as a witness.

9. We find both from the written statement and also from the relevant file that a number of notices were sent to the applicant to be present during the inquiry. She was aware of the inquiry dates but had not participated in the same. The respondents have clearly stated that they have given access to the documents

relied upon and there is no need to give a copy of these documents. This assertion has not been effectively rebutted by the applicant. As such the fact that the inquiry was ex parte was on account of action of the applicant herself <sup>in</sup> ~~for~~ not participating in the inquiry and not because she was not informed of such inquiry. When she has chosen not to participate in the inquiry she cannot make a grievance that <sup>this</sup> inquiry was held behind her back. 10. There is also an allegation that the I.O.W. was harassing the applicant and his evidence would have been primary evidence. The charge against the applicant was that she had disturbed the working of the I.O.W. office on 15.7.91 at about 8.45 hours and started speaking in abusive language and threatened to cause bodily harm to I.O.W. There is also another charge that she tampered with the attendance register. The respondents have stated that I.O.W. was not physically present at the relevant time and the complaint has been given by the staff of the office who were present at the spot. When the I.O.W. was not physically present, there is no question of his being examined as a <sup>witness</sup> ~~binding~~. The applicant had levelled some allegations against the I.O.W. but has not led any evidence in support of the charge ~~of~~

There is total absence of any material <sup>for</sup> laying the foundation to sustain the charge of mala fides and vague allegations and insinuations cannot take the place of solid evidence. We therefore reject the contention of mala fides against Shri Saheb Singh. The omission of Shri Saheb Singh to file a reply in the present O.A. or the omission of respondents in examining him in the inquiry as witness has not in any way vitiated the proceedings.

11. Mr. K.K.Shah has also referred to the endorsement in the Inquiry Officer's report to some letter dated 11.7.92 from the office of the Inspector of Works. He says this is not one of documents relied upon in the charge memo. We find from the relevant file that this is only a letter which states that the post of Head Clerk had remained unoccupied and in the absence of the applicant one Shri Vyas was posted as Head Clerk who had retired on 30.6.92 and makes a request to the Assistant Engineer to post a Head Clerk. It is not clear as to why this was sent to the Inquiry Officer but this is an innocuous letter seeking posting of the Head Clerk in the I.O.W. Office and Inquiry Officer has not relied upon this letter in coming to his finding. As such the fact that a copy of this letter somehow reached the Inquiry Officer is not very material.

12. This is also not a case of no evidence. Shri Manilal had given a complaint where he has clearly stated that the applicant had used abusive language against the I.O.W. and had threatened his safety. She had also thrown out some office furniture etc. and had disturbed the working of the IOW's office. He was examined as a witness by the Inquiry Officer and he had confirmed that he had personally signed the application dated January 1992 regarding the alleged mis-behaviour of the applicant. He had also confirmed that he has personally seen the applicant throwing the name plate of I.O.W. outside. In other words, he has corroborated what he had given in his written statement to the Inquiry Officer. The applicant could not cross-examine him as she did not participate in the inquiry and did not avail herself of this opportunity. There is nothing to show that such a complaint written by a number of people was at the instigation of Saheb Singh. Shri Manilal had categorically confirmed ~~that~~ what he had written in the complaint before the Inquiry Officer. As such, there is some evidence in support of the allegation that the applicant had disturbed the working of the I.O.W. office and had used abusive and unparliamentary language and threatened to cause bodily harm to I.O.W.

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13. The second charge pertains to the tampering with the attendance register in IOW Office. We find from the file that the Inquiry Officer has got photo copies of the extracts from the attendance register. There are some remarks purported to be the remarks *made by the applicant* in these extracts and he came to the conclusion that this was proved as can be seen from the copy of the register. for July 1991 a copy of which is at page 30 of the DAR case.

In para 3 of her reply dated 3.3.1992 the applicant ~~who~~ also submits that as soon as one receives the name of disease "CANCER" one gets into a panic which directly affectes one's mental and physical ability and sometimes leads to somewhat psychological inbalance. And acts done under such circumstances, cannot be put on the balance with acts done by other persons having peaceful mind". So no guilt can be fastened for the same. ". The applicant has not denied the charge of tampering with the muster, as concluded by the Inq-uiry Officer but shesays that this should not be taken as a guilty act.

14. In the circumstances, we hold that there is some evidence to substantiate both the charges in the charge memo and the finding of the Inquiry Officer *is not* as perverse.

15. We find that after getting the Inquiry Officer's report, the Disciplinary Authority who is the Senior Divisional Officer, North, Baroda had passed the following orders dated 7.10.92 :-

" Removal from service with immediate effect- This has ref. to this office SF/5 of even no. dtd. 18.11.91. EO's findings dtd. 3.8.92 Your defence dtd. 9.9.92.

Speaking order:- I have gone through the E.O.'s findings and defence submitted by Miss Krishna K. Mukhoti, Hed. Clerk, IOW ADI office. The defence submitted by her is not accepted.

The employee has to report for duty well in time which she had often failed. Moreover she had tampered with the muster sheets of IOW ADI's office and acted in a manner unbecoming of a Railway servant."

~~xxx~~. He has referred to the failure to report for duty in time which is not one of the charges. However, this is not material in the context of the orders of the Appellate Authority.

16. The Appellate Authority had taken a compassionate view and reduced the charge. It is <sup>contended</sup> ~~recently stated~~ that the appellate authority had not applied its mind and merely because she was a cancer patient the penalty imposed by the Disciplinary authority was reduced. The Appellate Authority's order dated 4.12.92-Annexure A-2 reads as follows:-

" I have gone through the case papers and heard the employee on 30.11.92. Her misconduct in misbehaving with her superior and tampering with the muster sheet for July/1991 has been clearly brought

out in the enquiry under DAA Rules, It is however noticed that she had undergone surgery for Cancer in 1990 and had been recommended light duty by the doctor. Perhaps this had put her under mental strain. On careful consideration of all aspects of the case the penalty is reduced to reversion as Sr. Clerk (scale Rs.1200-2040) at the stage she had reached prior to her promotion as Head Clerk, (at Rs.1410/- per month) for a period of one year (Non-cumulative).

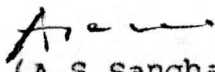
Intervening period from date of removal to date of reinstatement is treated as dies non".

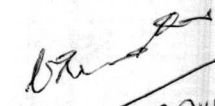
It would be clear from this that the appellate authority had come to the finding that the Inquiry Officer has clearly established that she had misbehaved and tampered with the muster. The applicant had herself highlighted in her reply dated 9.9.92 to the Inquiry Officer's report about her mental condition and in the appeal also she had referred to her statement in her reply dated 9.9.92. The Appellate Authority ~~had~~ even though <sup>it</sup> he had held the charges to be proved, had taken a compassionate view and reduced the penalty. We see no infirmity in the orders of the appellate authority.

17. Mr. K.K. Shah had brought out that the applicant was placed retrospectively under

suspension by an order dated 10.9.91 w.e.f. 15.7.91 - a copy at Annexure A-3. The same was revoked by a subsequent order dated 14.11.91- copy at Annexure A-6. It is clear that the suspension was given effect to retrospectively and this is not permissible. In the circumstances, we quash the order dated 10.9.91 with the result that the order dated 14.11.1991 (copy at Annexure A-6) also stands quashed and we direct the respondents to regulate the entitlements of the applicant for the relevant period from 15.7.91 to 14.11.91 as if she was not placed under suspension.

18. Subject to the observation in the preceding paragraph, we hold that the O.A is devoid of merit and we dismiss the same with no orders as to costs.

  
(A.S.Sanghavi)  
Member (J)

  
(V.Ramakrishnan)  
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/CP/ 216193 of 200

Miss. K. M. Mykhuti

APPLICANT (S)

VERSUS

OCT & OCS

RESPONDENT (S)

I N D E X ----- S H E E T

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4)	Rejoinder	72 to 79
5)	Judgement Dated 30.11.2000	16 pages

'C' part

14 pages

Certified that the file is complete in all aspects.

[Signature]

Signature of S.O. (X)

[Signature]

Signature of Dealing Hand.