

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.:: 468 of 2000.

Dated this Friday, the 8th day of December, 2000.

Smt. Annie G. Solomon, _____ Applicant.

Shri M. S. Ramamurthy, _____ Advocate for the
applicant.

VERSUS

Union of India & Another, _____ Respondents.

Shri S. C. Dhavan, _____ Advocate for
Respondents.

CORAM : Hon'ble Shri B.S. Jai Parameshwar, Member (J).
Hon'ble Smt. Shanta Shastry, 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.


(B. S. JAI PARAMESHWAR)
MEMBER (J)

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Hon'ble Smt. Shanta Shastry, Member (A).

Smt. Annie G. Solomon,
Head Clerk,
TMS (M/Control),
Central Railway,
Loco Workshop Parel,
Mumbai - 400 012.

... Applicant.

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union of India through
The General Manager,
Central Railway,
C.S.T., Mumbai 400 001.

2. Deputy Chief Mechanical
Engineer (P), Central Railway,
Loco Workshop, Parel,
Mumbai - 400 012.

... Respondents.

(By Advocate Shri S. C. Dhavan).

OPEN COURT ORDER

PER : Shri B.S. Jai Parameshwar, Member (J).

Heard Shri M.S. Ramamurthy, the Learned Counsel for the applicant and Shri S. C. Dhavan, the Learned Counsel for the Respondents.

2. While the applicant was working as Junior Console Operator, Sal.No. 956892, SS. Comp. Cell, was issued with a Charge Memo dated 10.02.1995, Exhibit 'F', Page 33. An enquiry was conducted into the charge memo. The Inquiry Officer submitted the report holding that the misconduct alleged against

the applicant is not proved. The Disciplinary Authority furnished a copy of the report of the Inquiry Officer to the applicant. The applicant submitted her representation dated 10.06.1998 followed by reminders requesting the Disciplinary Authority to pass final orders. The Disciplinary Authority has passed the order dated 02.02.1999 which is exhibit 'A' page 27. The relevant para in the letter is reproduced here below :

"With reference to your aforesaid representation, it is to inform you that, it has been decided to conduct enquiry denovo against you.

It is further advised that the corrigendum to Annexure-III of the above said Chargesheet/Charge Memo as relied upon documents after Sr. No. 01 to be added is as under :-

2) A copy of Notification for Formation of Computer Cell No. E1/104-A/Genl. dated 15.09.1986 alongwith a copy of eligibility condition and rules observed for promotion of Sr.Con. Opt.

3) A copy of DY.CME (Mod.), PR's L.No. PR/MOD/Computer dated 24.04.1987 and 25.05.1987.

4) A copy of CWM.PR's L.No. E1/104-A/Genl. dated 28.5.1987.

5) Office Note No. E1/104-Comp. dated 19.09.1990.

6) Office Order No. 258/1990 issued under Memo No. E1/104-A Computer dated 21.09.1990."

3. The applicant has filed this application for the following reliefs :

"8.a) that it be declared that the decision to conduct the enquiry de-novo, conveyed under letter dated 2.2.1999 is illegal, contrary to law and rules, without application of mind, on the dictates of the Vigilance Branch and in violation of the principles of natural justice, improper and vindictive and therefore the same is liable to be quashed and set aside.

b) that this Hon'ble Tribunal be pleased to quash and set aside the decision to hold the de novo enquiry in respect of the Charge sheet dated 10.02.1995 as conveyed under letter dated 2.2.1999 and also the decision to amend the charge sheet by adding documents to Annexure-III.

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c) that the Respondents be permanently restrained from taking any further steps pursuant to the decision conveyed under letter dated 2.2.1999."

4. The Learned Counsel for the respondents argued the matter justifying the action taken by the Disciplinary Authority.

5. Whereas the Learned Counsel for the applicant submitted that the Inquiry Officer had recorded the finding in her favour. That when once the Disciplinary Authority has furnished a copy of the same it amounts to acceptance of the finding of the Inquiry Officer. That the Disciplinary Authority could not have by the impugned letter dated 02.02.1999 directed de novo enquiry and further issued a corrigendum to the charge memo. From the impugned letter the Disciplinary Authority desires to conduct a de novo enquiry by adding five more documents to the charge memo.

6. The Disciplinary Authority appears to have not understood the distinction between denovo trial and a further enquiry. If the Disciplinary Authority was of the opinion that further enquiry was necessary, it was not necessary for the Disciplinary Authority to furnish a copy of the report of the Inquiry Officer to the applicant and he could have directly sent back the enquiry report to the Inquiry Officer to conduct further enquiry, if the circumstances justified. It is the contention of the applicant that when once the Disciplinary Authority furnished a copy of the Inquiry report to her, it amounts that he, in all respects, accepted the findings recorded by the Inquiry Officer.

7. Though that may be the normal proposition, we cannot accept it as a legal one. It is still open to the Disciplinary

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Authority to accept or reject the report of the Inquiry Officer. Merely because the Disciplinary Authority has furnished a copy of the Inquiry report to the applicant, it does not amount to say that he has already formed a opinion to agree with the findings recorded by the Inquiry Officer.

8. The Disciplinary Authority should have proceeded in accordance with Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 on receipt of the report of the Inquiry Officer. If he felt any additional documents were necessary and further examination of any witness was necessary, he could have recalled the earlier enquiry and ordered further enquiry as per rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968. Under the said rule he could have sent the matter to the Inquiry Officer for further enquiry. The terminology used by the Disciplinary Authority in the impugned letter gives an impression that the Disciplinary Authority wants to introduce a fresh evidence to fill up the lacuna. In our opinion, such a ~~Course of action proposition~~ is not permissible. It is only on this ground we are setting aside the impugned letter dated 02.02.1999.

9. When the impugned letter is set aside, then it is for the Disciplinary Authority to consider the report of the Inquiry Officer afresh and to pass final orders in accordance with Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968. Hence, the following directions are given :

- i) The impugned letter dated 02.02.1999 (Annexure 'A' to the O.A.) is hereby set aside.



- ii) The Disciplinary Authority shall pass final order on the charge memo dated 10.02.1995 in accordance with the rules.

10. With the above directions, the O.A. is allowed. No order as to costs.

Shanta

(Smt. SHANTA SHASTRY)
MEMBER (A).

B.S. Jai Parameshwar
(B.S. JAI PARAMESHWAR)
MEMBER (J).
8/12/00

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