

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.
OA No.352/2000

This the 13th day of October, 2000.

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MRS.SHANTA SHAstry, MEMBER (A)

Smt. Mumtaz Illiaz Khan
working as Helper Khalasi
under DRM(P), Bhusawal
Residing at
Railway Quarter No.K-455
Sr.DAO's Office Compound
Bhusawal-425201.

.... Applicant

(By Advocate Shri S.V. Marne)

vs.

1. The Union of India
Through
The General Manager
Central Railway
Head Quarters Office
Mumbai CST
Mumbai-400 001.
2. The Divisional Railway Manager
Bhusawal Division
Central Railway
Bhusawal
3. The Sr.Divisional Personnel Officer
Bhusawal Division
Central RAILway
Bhusawal.
4. The Assistant Personnel Officer (M)
Central Railway
Bhusawal Division
Bhusawal.

.... Respondents

(By Advocate Shri R.R.Shetty)

ORDER (ORAL)

Smt.Shanta Shastry, Member (A):

The relief sought in this application is to quash and set aside the orders dated 13.4.2000 and 22.05.2000, the report of the inquiry officer dated 17.05.2000 and to change the inquiry officer for conducting the enquiry proceedings against her. The applicant has also requested for opportunity to cross examine

Shri B.S.Bagade and Shri Arun Nagorao and to lead her own evidence and to submit her defence brief.

2. The applicant was appointed as a Helper Khalasi against the quota for the handicapped. While she was working so, she had certain problems with her superiors and she had taken legal action for prosecuting some of the employees in the same office. A chargesheet was issued to the applicant on 28.10.1996. The applicant sought ~~to~~ redress by filing OA No.403/1997 before this Tribunal challenging the chargesheet dated 28.10.1996. Interim orders were passed restraining the respondents from dismissing the applicant from service. Thereafter, the respondents proceeded with the enquiry. After the report of the enquiry officer was submitted, she was dismissed from service vide order dated 28.7.1997 even while her OA was pending before this Tribunal. Her appeal was also rejected. Her OA No.403/1997 was finally heard and rejected at the admission stage with a direction to the disciplinary authority and the appellate authority to consider all the points raised in the OA. The applicant challenged her dismissal by filing another OA No.735/1998. The Tribunal allowed the OA vide its judgement dated 30.11.1999 and came to the conclusion that the applicant was not given an opportunity to cross examine the 2 witnesses and, therefore, remanded the matter back to the enquiry officer to examine Shri B.S.Bagade and Shri Arun Nagorao. The respondents set aside the dismissal order in compliance with the directions of the Tribunal and put the applicant under suspension with effect from the date of dismissal from service vide order dated 28.12.1999. Thereafter, the first date of hearing of the enquiry was fixed on 12.01.2000 and the applicant was informed

about the date of hearing vide letter dated 6.01.2000 which was received by her on 11.01.2000. The applicant made a representation to the enquiry officer that she could not depute her ARE within the short span of time given to her and that her daughter was also not well. Proceedings were adjourned by the enquiry officer for seven days. Again the applicant sought further adjournment on the ground that her daughter was suffering from small pox and the hearing was adjourned to 15.2.2000. In the meanwhile, the applicant made a representation to the respondents that she should be paid the subsistence allowance to enable her to attend the enquiry. She also informed that she had already withdrawn the name of her previous ARE and she wanted to engage a legal practitioner to defend her case. This request for engaging the legal practitioner was rejected. She made one more representation again alleging that the enquiry officer was highly prejudiced to her and, therefore, the enquiry officer should be changed. Her representation was replied and her request to change the ARE was not accepted. The case was again fixed for hearing. The request of the applicant to adjourn the hearing fixed on 15.2.2000 was also rejected. Applicant again made a representation on 15.2.2000 to the enquiry officer and the respondents finally accepted her request to change the enquiry officer on 29.2.2000. Thereafter the enquiry was fixed for hearing on 6.4.2000. She attended the hearing on 6.4.2000 along with her ARE and raised an objection that the enquiry officer is biased. The applicant states that the ARD also gave the instances on which the enquiry officer acted in a biased manner. The matter was referred to the disciplinary authority and the reviewing authority. Thereafter an order was passed that all the

principles of natural justice were being followed in the enquiry and the enquiry be proceeded further. The enquiry was again fixed for 24.4.2000. The applicant gave an application on 24.4.2000 stating that the enquiry officer was biased and requested that the enquiry officer should be changed. This went on for some time. Thereafter the applicant received a letter dated 22.05.2000 i.e. the impugned order from respondent No.4 stating that the enquiry officer has completed the enquiry and the applicant should send her submission on the report of the enquiry officer within a period of 15 days. She was also given a copy of the report of the enquiry officer dated 17.05.2000. She also received a copy of the daily proceedings dated 24.04.2000. The applicant is aggrieved that in spite of her repeated prayer to change the enquiry officer, no suitable action was taken and the enquiry report has been completed without her cross examining the aforesaid two witnesses.

3. We have heard the learned counsel for the applicant as well as the respondents. The learned counsel for the applicant stressed that in the earlier OA No.735/1998 decided on 30.11.1999, the Tribunal had clearly directed that the enquiry officer should examine the two witness, Shri B.S.Bagade and Shri Arun Nagorao and allow the applicant to cross examine them. In spite of this clear direction, the applicant has not been allowed to cross examine the aforesaid witnesses and nor ^{has} the enquiry officer ~~has~~ examined them. The learned counsel for the respondents submits that enough opportunity was given to the applicant to attend the hearing but on one excuse or the other, she went on praying for adjournments of the date of hearings. Therefore, the respondents were unable to examine the two

witnesses and in turn the applicant could not cross examine them. The respondents are not at all at fault in this matter. They tried their best to implement the directions of this Tribunal. The learned counsel for the applicant once again harped on the prejudice of the enquiry officer.

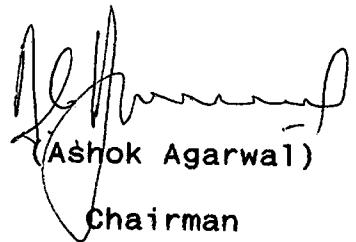
4. We have given careful consideration to the arguments advanced on both sides. We find that as far as the directions of this Tribunal given in OA No.735/1998 are concerned, they have not been complied with so far whatever be the reason. As far as the prejudice of the enquiry officer is concerned, the applicant's request to change the enquiry officer was examined and was rejected. We also find that had the enquiry officer been really prejudiced, he would not have granted her adjournments from time to time as can be seen from 12.1.2000 to 24.4.2000 enough opportunities were given to the applicant. It is the applicant who has been persistently raising one objection or the other and has thus delayed the enquiry proceedings. We cannot, therefore, accept that the enquiry officer is prejudiced in the matter. In our view, however, natural justice demands that the applicant is given due opportunity to cross examine the witnesses. We, therefore, remand the case back to the enquiry officer for ~~cross~~ examining the witnesses and to give an opportunity to the applicant to cross examine them. For this purpose, the enquiry officer should give a suitable date for hearing providing enough time to the applicant to be able to present herself at such hearing and thereafter complete the enquiry. She should be given opportunity to cross examine the

two witnesses were not examined and the applicant did not get a chance to cross examine them.

witnesses and lead her own evidence and submit her defence brief and the enquiry officer should complete the enquiry as per rules.

5. The OA is disposed of in the aforestated terms. No costs.

Shanta S.
(Shanta Shastray)
Member (A)


(Ashok Agarwal)
Chairman

sns