

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 403/97

Date of Decision: 7.1.1998

Smt. Mumtaz Iliyas Khan,

Applicant.

Shri D.V. Gangal.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R. Shetty.

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. M.R. Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not? *wo*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *wo*

R. G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 403/1997.

Wednesday, this the 7th day of January, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Smt. Mumtaz Iliyas Khan,
Quarter No. K-455/A, Station
Road,
Bhusawal.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India through
Secretary, Ministry of Railways,
Railway Board,
New Delhi.
2. Shri Ramvilas Paswan,
Honourable Minister for Railways,
Ministry of Railways,
Rail Bhavan,
New Delhi.
3. The General Manager,
Central Railway,
Mumbai C.S.T. 400 001.
4. The Divisional Railway Manager,
Central Railway,
Bhusawal.
5. The Asstt. Mechanical Engineer,
(ROH) Central Railway,
Bhusawal.
6. Shri P.P.Tiwari,
Asstt. Mechanical Engineer(F.T.),
Central Railway,
Bhusawal.

... Respondents.

(By Advocate Shri R.R.Shetty).

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging the issuance of charge sheet and for the consequential reliefs. The respondents have filed their reply opposing the application. We have heard both the sides.

2. The applicant who is working as a Khalasi in the Railway Administration has challenged the charge sheet.

...2.

dated 28.10.1996. Her case is that the charge sheet is based on false allegations, that the charge sheet does not disclose any mis-conduct under the rules. Then there is an allegation of sexual harassment of the applicant who is a woman. Then there is some allegation about the conduct of enquiry without giving an opportunity to the applicant to engage a legal practitioner to defend herself. She has also pointed out in the application that the charges are based on false allegations.

The respondents have filed a detailed reply denying all the allegations in the application on merits. Then they have also taken the stand that the present application is pre-mature and not maintainable in law.

3. The learned counsel for the applicant Shri D.V.Gangal has taken us through the charge sheet and some other relevant documents and contended that the charge sheet does not disclose any mis-conduct as per rules. He, therefore, argued that the charge sheet is not legally maintainable and is liable to be quashed. On the other hand, while supporting the issuance of charge sheet, the learned counsel for the respondents raised a preliminary objection that the present application is not maintainable.

4. After hearing both the sides, we find that this is not a fit case where interference is called for at this stage. *It may be seen that* ~~At this stage~~ the charge sheet is dated 28.10.1996 ^{and} then the enquiry was started, the applicant has participated in the enquiry for some time. Then materials on record disclose that the Enquiry Report was prepared by the Enquiry Officer on 22.4.1997, to which the learned counsel for the respondents made a submission at the bar that even ^{Authority} the Disciplinary ~~has~~ prepared his order, but he could not issue the same in view of the interim orders *for*

passed by this Tribunal. Therefore, we find that as on to day the full enquiry has been completed, the Enquiry Officer has prepared his report, even the Disciplinary Authority has prepared his report.

Therefore, the question of quashing of the charge sheet or quashing of the Disciplinary Authority's order at this stage does not arise at all. ^{It} is only the applicant had rushed to this Court at the stage of receiving the charge sheet, the consideration would be different, but as on to day when evidence ^{have} been recorded and findings have been given by the Enquiry Officer and even when the Disciplinary Authority has prepared the final order, we do not think this Tribunal should interfere at this stage.

5. The learned counsel for the respondents invited our attention to ^a the recent decision of the Supreme Court in the case of The Deputy Inspector General of Police V/s. K.S.Swaminathan (1997(2) LLJ 1011) where the Supreme Court has observed that even if the charge sheet is vague and does not disclose any mis-conduct, still the Tribunal or Court would not be justified in interfering at that stage and going to the question whether the charges are true or not. In our view, this decision squarely applies to the facts of the present case. But here as already pointed out, even after the issuance of the charge sheet, the Enquiry ~~has been~~ completed. Therefore, the question of quashing the charge sheet, strictly speaking, does not arise.

6. The learned counsel for the applicant has raised many contentions and referred to some authorities

which according to us are not relevant for our present purpose. Some of the arguments are not relevant and some of the points urged bear upon the merits of the case, which we cannot go into at this stage. His argument that Articles 3,4,6 and 7 of the charges do not disclose mis-conduct may have prima facie some merit, but since we have reached the conclusion that this is not the stage at which interference is called for, we do not want to say anything finally on any of the charges in the Articles of Charges. All the contentions urged by the learned counsel for the applicant about the merits of the case are left open and they have to be urged at the appropriate stage either before the Disciplinary Authority or Appellate Authority or before this Tribunal, in case adverse order is passed against the applicant. Therefore, we find that the application has to be disposed of at the admission stage without considering the merits of the case. The learned counsel for the applicant also made an alternate submission that the Disciplinary Authority or the Appellate Authority may be directed to take a lenient view regarding the punishment in view of the circumstances of the case and in view of the fact that the applicant is a handicapped woman. In our view, we need not give any direction. However, we give liberty to the applicant to press this alternate contention regarding punishment before the appropriate authority and if such contention is taken, then the appropriate authority may consider them sympathetically and pass appropriate orders according to law.

7. In the result, the application is disposed of at the admission stage with liberty to the applicant

to urge all the contentions before the Disciplinary Authority or the Appellate Authority and if any adverse order is passed she can approach this Tribunal according to law. M.P. No.675/97 is allowed by permitting annexed documents to be taken on record. The Interim Orders is vacated. No costs.

At this stage, the learned counsel for the applicant prayed for extension of interim relief ✓
~~The interim order granted earlier~~ in this case, in our view, since we are rejecting the application on the basis of the law laid down by the Supreme Court there is no question of extending the interim order. Hence the oral application for extension of interim order is rejected.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.

R.G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE- CHAIRMAN