

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 599/98

Date of Decision: 28.9.1998

Mrs.H.I.Daulatani

.. Applicant

Shri D.V.Gangal

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for  
Respondent(s)

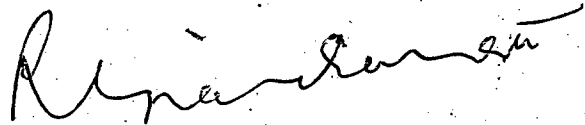
CORAM:

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

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

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal ?

  
(R.G.VAIDYANATHA)  
VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 599/1998.

Monday, this the 28th day of September, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member(A).

Mrs.H.I.Daulatani,  
Bk.167/B, R. No.1,  
Ulhasnagar 421 001.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India,  
through the Secretary,  
Ministry of Telecommunications  
New Delhi.
2. The Chief General Manager,  
Mahanagar Telephone Nigam Ltd.,  
Prabhadevi, Dadar, Mumbai-28.
3. The Divisional Engineer (Ext.1),  
Office of the Deputy General  
Manager (PW-1), MTNL,  
Gandhi Nagar, Vikhroli (W),  
Mumbai - 400 083.
4. The Assistant General Manager  
(Adm.) E-I, O/O. General  
Manager (E-I), MTNL, Kailash  
Commercial Complex, LBS Marg,  
Vikhroli (W),  
Mumbai - 400 088.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

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

The applicant is challenging the issuance of charge sheet by the Respondents on the ground of alleged unauthorised absence of the applicant from 1.10.1989 and onwards. The Respondents have filed their reply opposing the application. We have heard both counsel regarding admission and interim relief.

2. Now the law is well settled that a Court or

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Tribunal should not interfere at the stage of issuance of charge sheet. If any authority is needed for this proposition, it may be found in the latest judgment of the Supreme Court in the case of The Deputy Inspector General of Police V/s. K.S. Swaminathan (1997(1) SC 211 259), where the Supreme Court has observed that even if the charge sheet is vague and does not disclose any mis-conduct, the Tribunal or Court would not be justified in interfering at that stage. It has further observed that if it is a matter of production of evidence before the Enduring Authority and consideration of the same by the Competent Authority, the Court or Tribunal cannot quash a charge sheet at that stage.

3. We may also refer to another judgment of the Apex Court in the case of Transport Commissioner of Madras V/s. A. Radhakrishna Murthy (1995(1) ALT 299), where also the Supreme Court has observed that at the stage of issuance of charge sheet, court or Tribunal cannot go into the question of truth and correctness of the charges. Therefore, we find that in view of the law declared by the Supreme Court we cannot interfere at the stage of issuance of charge sheet.

4. The only ground urged by the learned counsel for the applicant is that the issuance of charge sheet on the ground of unauthorised absence is not maintainable since the applicant was prevented from joining service and he placed reliance on a number of letters written by the applicant to the Administration. He also contended that for certain periods the applicant had sent leave letters. These two points pressed by the learned counsel for the

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...3.



applicant are nothing but a defence to the charge sheet. That means the applicant wants to say that her absence was not unauthorised, but for certain periods she has submitted leave application and for remaining period she was prevented from joining duties. This Court cannot go into the defence of the applicant to the charge sheet at this stage. This is not a case where the charge sheet is attacked on the ground that charge sheet is issued by an in-competent officer or that the charge sheet is legally invalid on any ground. A charge sheet cannot be quashed on the ground of facts stated by the applicant which are in the nature of defence to the charge sheet. Hence we do not want to consider any of the contentions by the applicant on facts challenging the issuance of charge sheet.

5. It is open to the applicant to file a defence or written statement in the Disciplinary Enquiry taking all grounds open to her both on facts and law. Then it is for the competent authority to decide whether the applicant is guilty of mis-conduct or not. If the applicant is aggrieved by the order of the Disciplinary Authority she has a statutory right of appeal before the Competent Authority and then she can approach this Tribunal according to law. Hence we are not expressing any opinion on merits on the number of contentions urged by the learned counsel for the applicant and the respondents. All contentions on merits are left open.

6. In the result, the application is rejected at the admission stage itself. However, since the point pertains to alleged unauthorised absence which was in

the year 1989, we feel that the Competent Authority should be directed to dispose of the Disciplinary Enquiry case by a final order within a period of six months from the date of receipt of this order. In the circumstance of the case, there will be no order as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)

  
(R.G. VAIDYANATHA)  
VICE - CHAIRMAN

B.