

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 735/98

DATE OF DECISION: 30th Nov. 97

Smt. Mumtaz Illias Khan Applicant.

Shri D.V.Gangal Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri R.R.Shetty Advocate for
Respondent(s)

CORAM

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

Hon'ble Shri S.L. Jain Member (J)

- (1) To be referred to the Reporter or not? No.
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No.
- (3) Library. No.

S.L. Jain
(S.L. Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:735/98

the 30th day of NOVEMBER 1999

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

Hon'ble Shri S.L.Jain, Member (J)

Smt. Mumtaz Illias Khan
Residing at
Quarter No. K -455/A
Behind D.A.O's Office
Station Road, Bhusawal,
Dist. Jalgaon.

...Applicant.

By Advocate Shri D.V.Gangal

V/s

1. Union of India through
The General Manager
Central Railway,
Mumbai CST.
2. The Assistant Personnel
Officer (Mech.)
Central Railway, Bhusawal.
3. The Assistant Mechanical
Engineer (ROH),
Central Railway, Bhusawal.
4. The Divisional Personnel
Officer, Central Railway,
Bhusawal.
5. Shri P.P. Tiwari,
Assistant Mechanical
Engineer, Central Railway,
Bhusawal.
6. The Divisional Railway
Manager, Central Railway,
Bhusawal.

...Respondents.

By Advocate Shri R.R.Shetty.

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O R D E R

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking the relief of quashing and setting aside the orders at Annexures A1, A2, A3, A4, A5, A6 and A7 is illegal, reinstate the applicant with backwages, continuity of service and all consequential benefits alongwith costs.

2. The applicant was appointed as Helper Khalasi against 3% handicapped quota on 15.10.1983. A charge sheet dated 25.4.1996 was served on the applicant and she was punished by way of stoppage of increment on 10.5.1996. She filed DA 477/96 before CAT Bombay Bench for quashing the aforesaid punishment. The DA was admitted and is pending for disposal. Interim relief in terms of para 9(a) of the said DA is granted in favour of the applicant on 17.5.1996. The said order is not complied with and the respondents violated the order. Hence the C.P. is filed on 14.8.1996. The applicant performed her duty on 4.5.1996 though sick. She was granted sick certificate from 6.5.1996. On production of said sick certificate the Railway authorities pressurised the Railway Doctors and respondent No.5 declared the applicant medically fit though she was not medically fit, but was so declared on 3.6.1996. She took medical advise from private doctor Dr Ashutosh Kelkar who issued a certificate dated 4.6.1996 advising one month's rest. It was informed to the Railway Administration by registered post A/D. She was granted fit certificate on 4.7.1996, on 5.7.1996 attended the Railway Doctor and fit certificate was granted on 12.7.1996 hence she resumed

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duty on 13.7.1996. She was asked to under go medical examination by Shri Tiwari with a view to make her unfit in medical category B-1 so as to snatch away the job of the applicant on medical ground. The medical authorities accordingly declared that the applicant is unfit for job of Khalasi, medical category B-1 but fit for sedentary job. The applicant denied the job of the nature described in the certificate although she was capable. Such job was available viz that of typist/receptionist/despatch clerk and as per existing order of the Divisional Railway Manager December 1995 with salary of Khalasi. The applicant approached the respondents for the job of typist / clerk / receptionist or peon. The respondents have insisted upon the applicant to work as Safaiwala which is a continuous moving job and not sedentary job. The applicant was thus asked to work against the medical certificate, she was denied job and hence no salary, several jobs were available but none was offered.

3. The applicant filed OA 403/97. An ad-interim order was passed directing the respondents to offer appropriate job to her and restrained the respondents from terminating her services as a result of disciplinary action. OA 403/97 was rejected at the admission stage with a direction to the Disciplinary Authority and Appellate Authority to consider all the points raised in the OA and in compliance of the interim relief, the respondents provided her the job after 73 days.

4. The applicant filed Writ Petition No.307/98 and the same was rejected at the admission stage on 29.1.1998. OA 370/98 was filed on 24.4.1998 and rejected as premature on 30.4.1998.

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5. The applicant was served with chargesheet dated 28.10.1996. She attended enquiry on 12.2.1997, 19.2.1997, 6.3.1997 submitted representations informing about her sickness. The Enquiry Officer was absent. The Enquiry Officer conducted the enquiry on 10.3.1997, While the applicant was sick and recorded "witnesses were to be cross examined on the date to be fixed".

6. Copy of the enquiry report is supplied to the applicant on 6.6.1997. She has submitted representations against the enquiry report on 20.7.1997.

7. She further represented the matter and was dismissed from service as per order dated 28.7.1997 which was never served on her during the pendency of the OA 403/97 till 7.1.1998. An appeal against the same was filed on 18.2.1998 which was rejected on 20.7.1998. An allotment order in respect of Railway quarter was also cancelled vide order dated 14.5.1998/ 16.7.1988.

8. The grievance of the applicant is that chargesheet dated 28.10.1996 was served on her and on the same day the Enquiry Officer was appointed. She requested for Assistance of advocate and her request was turn down on the ground that the advocate has not given consent. Thus she was deprived of the defence which was her right. She requested for change of Enquiry Officer on 17.1.1997 which was rejected on 12.2.1997. She remained ill on 17.2.1997 and informed the Enquiry Officer about her illness on 19.2.1997. She was not paid salary for the period from 20.7.1996 to 20.1.1997. Shri Arun Nagorao Gategaonkar and Shri B.S.Bagade were examined on 10.3.1997. It was noted that cross examination was to take place on the next day. Shri Maha, Inspector of Works gave evidence on 9.12.1986, 10.12.1986 and 11.12.1986 and enquiry

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was completed without informing the applicant for the further date. The Enquiry Officer's report dated 25.5.1997 was served on the applicant but without proper notice. The applicant replied on 28.9.1997, but her representation was not considered. The Disiplinary Authority and the Appellate Authority decided the matter without application of mind.

9. The respondents have denied the allegations and resisted the claim and alleged that a detailed enquiry was conducted whereby principles of natural justice had been adhered to. The applicant choose to remain absent on 12.2.1997, 13.2.1997 and 10.3.1997 and the department was forced to conduct ex-parte enquiry. On the last day the applicant was afforded an opportunity to cross examine all the witnesses and she had duly cross examined the witnesses. She remained absent deleberately on medical ground.

10. The applicant was charge sheeted on 7 grounds. (1) She did not observe the prescribed rules for medical attendance while under sick list, being medically fit did not join the duty and failed to observe medical attendance rules and violated Railway Board's letter. (2) She failed to observe absolute Integrity, devotion to duty and acted in a manner unbecoming of Railway servant which is in controvention to Rule 3(i) (ii) (iii) of Railway Conduct Rules. (3) The applicant sought recourse to legal action against Railway employees without prior permission and without advising the Railway administration which is in

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controvention of Rule 19(i) and (ii). (4) She blackmailed wife of Shri B.S.Bagade and tried to extort Rs. 5000/- from her. (5) She gave false statement. (6) She filed complaint of a defamatory nature against one Railway Officer and on the basis of the same report FIR No.103/96 was registered in the Police Station, which was found to be false after due investigation.

(7) She sought a recourse to Court without permission of the Railway authorities. The above cited charges were of serious nature.

11. She was never suspended and no amount was payable to her as she did not performed the duty. Hence the respondents prayed for dismissal of the OA alongwith costs.

12. The applicant filed rejoinder to the written statement denying the allegations raised in the written statement and re-iterated the allegations levelled in the OA.

13. On perusal of Rule 9 of the Railway Servants (Discipline & Appeal) Rules 1968 we found that in view of Rule 9(7) the charge sheet is to be served in view of Rule 9(8). the Railway servant may for the purpose of the defence, submit with the written statement of his defence a list of witnesses to be examined on his behalf and after receipt of the same in view of Rule 9(9) the Disciplinary Authority shall consider the same and decide whether the enquiry should be proceed under this rule. This is not only a formality or the sequence but a right of the employee that before an enquiry is ordered to be proceeded with, his defence be considered and if necessary an enquiry can be dropped or ordered to be proceeded with, as the case may be, serving the copy of

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the charge sheet and appointment of the enquiry officer without awaiting the defence statement, without considering the same deprives the Railway servant an opportunity by the Disciplinary Authority to consider his defence at the Preliminary stage.

14. The learned counsel for the respondents relied on 1999 SCC (L&S) 847 Cipla Ltd and others V/s R which lays down the proposition that an advocate's assistant cannot be provided on the ground that questions involved were complicated which could not be tackled by him since he was a layman to the enquiry procedure. After review of the case law on the subject, considering the case of N. Kalindi V/s Tata Locomotive and Engg. Co. Ltd V/s reported in AIR 1960 SC 914, Dunlop Rubber Co. Ltd. V/s Workan reported in AIR 1965 SC 1392, Crescent Dyes and Chemicals Ltd V/s Ramnaresh Tripathi reported in (1993) 2 SCC115, Bharat Petroleum Corporation Ltd V/s Maharashtra Kamgar it is held that a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate is not provided for. Thus it is a matter of right provided by rules in respect of assistance by a co-workman or legal Assistance. On perusal of Rule 9(13) we are of the considered opinion that the Railway servant has no right to engage an advocate for his defence. The result is the denial of assistance of an advocate, even on an unreasonable ground is of no consequence.

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15. On perusal of the statements recording during the Disciplinary proceedings we found that B.S.Bagdse and Arun Nagorao were examined from time to time and lastly on 10.3.1997. The statement of both the witnesses bear a note to the following effect respectively:-

"Smt Mumtaz Illiyas Khan was not present for cross examining the witness. Therefore corss-examination is postponed till next hearing".

"Since Smt. Mumtaz Iliyas Khan issnot present the cross-examination is postponed for the next sitting".

16. On perusal of the record of disciplinary proceedings, we found that there is an application of the applicant dated 6.3.1997 seeking an adjournment on the ground of illness for 10.3.1997. On perusal of the enquiry officers report at page 5 we found that 10.3.1997 was the last and final sitting of the enquiry.

17. The enquiry ^{officer} ~~on that~~ was not decisive on 10.3.1997, in respect of the fact ^{whether} ~~that~~ whether an enquiry is to be adjourned or it is to be proceeded with for the reason that on the one hand he is examining the witnesses and on the other hand he is deferring the corss-examination for the next date which was never fixed. During the course of the enquiry the enquiry officer is expected to decide the prayer for adjournment and come to a finding whether the case is to be adjourned or adjournment to be is refused. In case he comes to a conclusion, that the ground for adjournment i.e. illness is made out, he must adjourn the case, not to record the statement in absence of the charged official,

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fix another date and inform the charged officer of the same. If he rejects the prayer for adjournment then he is entitled to proceed with the enquiry but in the said situation, for corss-examination only the matter cannot be adjourned.

18. The learned counsel for the respondents relied on 1998(67) All India Service Law Journal 7 State of Tamil Nadu and others V.S.M.Nal and another for the proposition that one who does not appear in enquiry despite opportunity being given cannot claim revival of the enquiry at a later ststage. We agree to the said proposition of law. The facts which are clearly mentioned in the order itself at para 3 reveals that it was a case of delebrate absence in enquiry proceedings. The present case differs on facts as the applicant was unable to attend the enquiry due to her illness and the said plea of illness was not rejected by the enquiry officer.

19. The learned counsel for the aplicant relied on 1991(1) LLJ 32 Kuldeepsingh V/s Commissioner of Police and others for the proposition that in case of a domestic enquiry if finding is based on no evidence, it would be perverse and amenable to judicial scruiling and for scope of judicial review 1998 SCC (L&S) 363 Union of India andothers V/s A Nagamalleswar Rao. In view of the fact that the applicant is not afforded reasonable opportunity to defend herself, we do not think it proper to record any opinion on the said subjects. On the same ground, when proceedings are to be remanded it is not proper to record any opinion on the conclusions reached by the disciplinary authority and the Appellate Authority.

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20. Annexure- 'A-4' & 'A-5' are orders in respect of vacation of the accommodation allotted, depending upon the result of the enquiry, Annexure- 'A-6' is the chargesheet, the prayer in respect of the above is merged when the enquiry is commenced.

21. In the result, OA. is partly allowed. The matter is remanded to the enquiry officer to examine Shri B.S. Bagdse and Arun Nagorao on a date to be fixed with an intimation to the applicant and thereafter proceeding accordingly to law. No order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

D.S. Bawejia
(D.S. BAWEJIA)
MEMBER (A)

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