

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.346/2019

This the 23rd day of October, 2019

Smt. Ashlesha,
wife of Shri Mihir Mehta,
Age about 56 years,
Working as TREX in the Office of the respondents
Residing at M 14/159, Vidyanagar Flats,
132 feet Ring Road, B/h Himmatlal Park II,
Ahmedabad : 380 015.....**Applicant**

(By Advocate : Shri M.S.Trivedi)

Versus

1. The Director General,
Office of DG, All India Radio,
Akashwani Bhavan, Parliament Street,
Sansad Marg, New Delhi : 110 001.
2. Sr. Vigilance Officer
O/o. Sr. V.O. All India Radio
Akashwani Bhavan, Parliament Street
Sansad Marg, New Delhi 110 001.
3. The Assistant Director (P)
O/o. AD (P). All India Radio
Bhuj, Kachchh 365 201.
4. Smt. Meenakshi Singhvi
Dy. Director (E)/ Inquiry Officer
Prasar Bharati, IPBS,
All India Radio,
Vadodara 395623. Respondents.

ORDER (ORAL)

Per : Hon'ble Shri M.C.Verma, Judicial Member

1. Matter is at motion hearing stage. Applicant, an TREX (Transmission Executive) in the office of respondents has preferred instant OA. She claiming action /decision to continue with departmental enquiry against her as illegal, arbitrary, unjust and in complete disregard to direction given by the Tribunal in decision dated 09.6.2015 passed in OA No.11/2013 has impugned said action/decision of respondents to continue with departmental enquiry. She also has impugned Memo/ communication/letter dated 13/9/19 (Annexure A/1) whereby her request to change I.O./PO has been rejected Prayer as has been made in the OA is as under:-

“(A) That the Hon'ble Tribunal be pleased to allow this petition.

(B) That the Hon'ble Tribunal further be pleased to hold and declare that the impugned action of the respondents to continue with the inquiry against the applicant, in pursuant to memo dated 22.10.2012 despite Learned Tribunal's decision/ directions dated 09.6.2015 in OA No.11/2013, more particularly in absence of any permission from the Learned Tribunal by way of extension of time by the respondents to continue with the inquiry against the applicant in pursuant to memo dated 22.10.2012, is illegal, arbitrary, not permissible and nonest in the eyes of law.

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(C) That the Hon'ble Tribunal further be pleased to quash and set aside the action of the respondent No.4 to hold/ conduct and continue with the inquiry against the applicant in pursuant to memo dated 22.10.2012 after expiry of time limit given/ prescribed by the Learned Tribunal by its final order/decision dated 09.6.2015 in OA No.11/2013.

(D) That, the Hon'ble Tribunal further be pleased to quash and set aside the impugned reply/ communication dated 13.9.2019 of the respondents regarding not considering the request of the applicant dated 05.8.2019.

(E) Or alternatively the respondents may be directed to keep the decision in abeyance to continue with inquiry against the applicant in pursuant to memo dated 22.10.2012, till the criminal /special case No. 31/2009 is decided by the Special CBI Court, Ahmedabad.

(F) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted."

2. Learned counsel Shri M.S.Trivedi Advocate, appearing for applicant pressing the OA urged that previously applicant impugning office memorandum bearing No.6/8/2009-Vig/762 dated 22.10.2012 for holding an inquiry under Rule 14 of CCS (CCA) Rules, 1965 against the applicant did prefer OA No.11/2013 and while passing decision, dated 09.6.2015 in said OA this Tribunal directed the respondent /Disciplinary Authority to take a decision afresh, taking into account the written statement of defence and directed further that if in the process decision to hold an inquiry is taken against the

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applicant, inquiry be completed within a period of six months. He referred para 16 of the decision passed in OA No.11/2013, copy of which is at Annexure A-2 of the OA. Learned counsel submitting that departmental enquiry has not yet concluded and is continuing contended that continuance of departmental enquiry, after expiry of six months is illegal and impugned action of the respondent to continue with the inquiry thus is not sustainable in the eyes of law. He invited the attention of undersigned to grounds, averted to in Para 5 of the OA particularly grounds (E) to ground (H). He also invited the attention of undersigned to Annexure A-3 { the representation dated 05.08.2019 of the applicant wherein she requested the DG, ALL India Radio to change the IO (Inquiry Officer) and PO (Presenting Officer) as well to Para 2 & 3 of Annexure A-1, the impugned Order dated 13.08.2019 whereby representation dated 05.08.2019 of the applicant was rejected and learned counsel urged that the representation dated 05.08.2019 of the applicant was not considered properly. He pointed out that the order at Annexure A-1 cannot be said to be rational, inquiry officer is the person under

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whom the applicant had worked in past and who had been interrogated in preliminary inquiry in past. Referring Annexure A/3 learned counsel pointed out the grievances of the applicant raised therein and he contended that these genuine grievance were not addressed to properly in impugned order dated 13.08.2019 (Annexure A-1) and order passed is unjust and is not legally sustainable. He emphasizing and reiterating that action of the respondents to continue with the inquiry, more particularly in absence of any permission from the Tribunal after expiry of six months is illegal, arbitrary and not permissible in law.

3. Considered the submissions made at Bar and perused the record. Some facts having bearing on fate of instant OA which emerged from pleading and available record and which cannot be said to be disputed are that the applicant previously, in OA No.11/2013 had challenged the legality and sustainability of issuance of Office memorandum No. 6/8/2009-Vig/762 dated 22.10.2012. That Office Memorandum No.6/8/2009-Vig/762 dated 22.10.2012 is for holding an inquiry under Rule 14 of CCS (CCA) Rules, 1965

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against the applicant, for charges, namely, the applicant has exhibited lack of integrity, lack of devotion to duty, has acted in a manner unbecoming of a public servant, has engaged herself in a private trade and employment and thereby has contravened Rule 3(1)(i), (ii) & (iii) and also Rule 15 of the CCS (Conduct) Rules, 1964. In said OA applicant also did challenge Order No.6/8/2009-Vig/762 directing to conduct an inquiry against the applicant and made prayer to quash and set aside the said memorandum and Order dated 22.10.2012. Respondents pleaded in that OA that the impugned memorandum & Order does not suffer from any legal infirmity and OA, No.11/2013 finally was disposed of by the Tribunal, vide Order dated 09.6.2015, with directions and said directions which in Para 16 of the decision. Needless to say that after decision in OA No.11/2013, applicant filed her submission of defence in respect of Articles of charges and the respondents thereafter took a decision to hold the inquiry. Inquiry is still under process and applicant has preferred instant OA having ibid quoted prayer.

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4. Para 16 of the decision passed in OA, No.11/2013, for sake of brevity, is being reproduced herein below :

“16. In view of the fact that in compliance of the order of the Tribunal dated 17-2-2014 the applicant was in receipt of all the documents which are particularized in Annexure-III to the memorandum of charges dated 22-10-2012 in the facts and circumstances, we feel that it would be just and proper to permit the applicant to make her statement of defence in respect of the articles of charges contained in the impugned memorandum of articles of charges dated 22-10-2012 vide Annexure A/1, if she so desires, within 15 days from the date of receipt of a copy of this order and the same should be duly considered by the Disciplinary Authority and the Disciplinary Authority shall take a decision afresh taking into account the written statement of defence with regard to the articles of charges contained in the said memorandum within a period of one month from the date of receipt of the statement of defence from the applicant. In the process, if the Disciplinary Authority were to take a decision to hold an inquiry against the applicant, then it is directed that the applicant shall co-operate in all respects for conclusion of the inquiry at the earliest and the Disciplinary Authority is directed to make all endeavours to complete the inquiry within a period of six months from the date of receipt of a copy of this order.”

5. Applicant in instant OA has pleaded that on the basis of complaint of Smt. Sadhna Bhatt, the then S.D at All India Radio Ahmadabad, inquiry was held by CBI and charge sheet was preferred on the file of CBI Court which yielded into Special Case No. 31/2009. That department also issued memo to her, under Rule 14 of CCS Rule and she challenged the same before the Tribunal in OA,

No.11/2013 and the Tribunal, in its decision dated 09.06.2015, rendered in her OA advised/directed her to submit reply to said memo, within time limit and observing that in case Disciplinary Authority takes decision to hold an inquiry against the applicant the same be completed within the time limit given by the Tribunal. That the Disciplinary Authority issuing speaking order, on 21.07.2015 took decision to hold an inquiry against the applicant and appointed the inquiry officer. In Para 4.7 of OA she has pleaded that she earlier had worked under the inquiry officer and the inquiry officer was biased against her and she requested to change the inquiry officer. That she vide representation dated 05.08.2019, Annexure A-3 made request to respondent, to reconsider their decision till the criminal case which is at the final stage before Special Judge, CBI court is finally decided but her just and proper request came to be rejected by respondent vide communication dated 13.09.2019 (Annexure A-1).

6. Primarily submissions of learned counsel centred on the contention that in view of direction passed by the Tribunal in OA No.11/2013 inquiry proceeding cannot be kept continued beyond six

months. It is obvious from Para 16 of the decision passed in OA No.11/2013 by the Tribunal that the Tribunal permitted the applicant to make her statement of defence in respect of the articles of charges contained in memorandum of Articles of charges within 15 days from the date of receipt of the copy of the decision passed by the tribunal, and the direction to Disciplinary Authority was that in case if she make her statement Disciplinary Authority would duly consider statement of defence in respect of the Articles of charges and would take a decision afresh within a period of one month from the date of receipt of the statement of defence from the applicant. The further direction given was that in the process, if the Disciplinary Authority took a decision to hold an inquiry against the applicant then the applicant shall co-operate in all respects for conclusion of the inquiry at the earliest and the Disciplinary Authority would make all endeavours to complete the inquiry within a period of six months.

7. It cannot be said that there was dead line of six months. The stipulated time frame was providing 15 days time from date of receipt of the copy of decision to the applicant, to make her statement

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of defence, one month time to the Disciplinary Authority to consider statement of defence and to take a decision afresh after receipt of the statement of defence. If the outcome of the decision the Disciplinary Authority is to hold inquiry then enquiry has to commence, applicant has to co-operate in all respects for conclusion of the inquiry at the earliest and the Disciplinary Authority would have to make all endeavours to conclude inquiry within six month.

8. Decision to hold inquiry was taken on 21.07.2015. Record, to be more particular Annexure A-3 addressed by applicant to respondent No.1, reflects that applicant was dissatisfied with the manner of conduct of inquiry by first I.O, namely Hamendra Soni and at her instance Hamendra Soni had to be replaced in year 2017 by present I.O., namely Smt Meenakshi Singhvi, respondent No. 4 in the OA. The matter does not end herein and at present applicant is having grievances against I.O Smt Meenakshi Singhvi. According to her representation, Annexure A-3 Smt Meenakshi Singhvi is either unaware about the procedure for conducting an inquiry or is lacking experience as an I.O and since first day Smt Meenakshi Singhvi is

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acting contrarily to the instructions for conducting an inquiry. Applicant alleging that Smt Meenakshi Singhvi is not impartial and experienced levelled six allegations against her, which are in sub-para (A) to (F) of Para 5 of said representation dated 05.08.2019 (Annexure A-3) wherein she made prayer for change of I.O. and Presenting Officer. Allegations levelled by applicant, against Smt. Meenakshi Singhvi in Annexure A-3 are reproduced hereunder:-

(A) Copy of the daily order sheets were not provided to me regularly. (Though demanded for the same) The same is supplied to me only recently.

(b) From perusal of copies of daily order sheets supplied to me recently, it become evident that she being I.O. asks/put direct questions to the witnesses, as if she puts words in the mouth of witnesses. As per settled legal position I.O. is not permitted to ask direct questions to the witnesses.

(c) Apart from this, as per procedure, documents which are produced and taken on record during the course of an inquiry, the same are to be taken on record and requires to be exhibited. From perusal of the contents of daily order sheets, it is evident that no such documents are either taken on record or exhibited.

(D) Moreover, Smt. Meenaxi Singhvi I.O., in past was working in AIR, Ahmedabad. I had an occasion to work under her being H.O.O. during the year 2005 to 2007 and 2011. Similarly, Sh. Yatin Dave was also working in AIR Ahmedabad in 2011.

(E) Moreover, during the inquiry conducted by CBI in the present case she was interrogated by CBI and Mrs. Vijaya Laxmi Chhabra D.D.G (WR).

(F) She being I.O. in my case, fixes dates of hearing in department case which clashes to the dates of CBI.”

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9. As noted above, as per direction of the Tribunal applicant has to co-operate in all respects for conclusion of the inquiry at the earliest but in facts and circumstances, as mentioned above whether it can be said that applicant is rendering co-operation for early conclusion of the inquiry. She was supposed not to create obstacles but to render cooperation. Applicant raised objection for conduct of enquiry by first I.O. Anyhow that Inquiry Officer was changed at her behest and was replaced by present Inquiry Officer Smt. Meenakshi Singhvi. Applicant made request for change of PO (Presenting Officer) and present Inquiry Officer Smt. Meenakshi Singhvi also. The issue raised by her for change of I.O. & PO were found devoid of merit by Director General and request for change of Inquiry Officer and Presenting Officer, made by the applicant was rejected. Order dated 13.09.2019, whereby request for change of Inquiry Officer and Presenting Officer was rejected also reflects that applicant was might not attending the inquiry proceeding and she was directed to attend the hearing and to cooperate with the Inquiring Authority for conclusion of Inquiry proceedings adding that dates for

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hearing may be reasonably decided in consultation with Inquiring Authority. Para 2 of said Order dated 13.9.2019 (Annexure A-1) reads :- *“2. In this regard, having considered the representation of Smt. Ashlesha Mehta, the Disciplinary Authority is of the opinion that there is no merit in the issues raised by the charged officer and that most of them would have been resolved in discussion with the Inquiry Authority had the charged officer attended the inquiry proceedings.”*

10. The direction to Disciplinary Authority was to make all endeavours to conclude inquiry within six month. Significance of using word **“endeavour”** in direction in its decision by the Tribunal cannot be lost sight of. English root of word endeavour means *“put oneself in”* or *“do ones’ utmost”*. It connotes to exert one self to do or affect something, or to make an effort, strive or to try very hard. Literarily endeavour means an effort or attempt to do something and to try hard to do or achieve that something. One if endeavour to do something, he has to do it with earnestness and with a fair amount of effort. It is thus to be seen whether respondent can

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be blamed not to endeavours to conclude inquiry within six month but it is unfortunate for the applicant that there is not an iota of material available on record to indicate that they are not constantly endeavouring to conclude the enquiry .

11. Taking note of entirety, I do not find any ground warranting interference by the Tribunal, at least at this stage, the OA being devoid of merit deserve dismissal and having hoped that good sense will prevail & the inquiry proceeding, in issue would shortly reach to its logical end, instant OA stand dismissed.

(M.C.Verma)
Member (J)

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