

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/408/2014

Hyderabad, this the 2nd day of December, 2019

***Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***



S. Ramesh, S/o. K. Sivaramakrishnan,
Aged about 53 years, Occ: Telecom Office Assistant
(Under the orders of removal)
O/o. General Manager (South),
Hyderabad Telecom District, Hyderabad,
R/o. H. No. 3-1-6/41/1/121, Green Hills Colony,
Mallapur, Hyderabad.

... Applicant

(By Advocate Dr. A. Raghu Kumar)

vs.

1. Union of India, Rep. by its Secretary,
Department of Telecommunications,
20 Ashoka Road, New Delhi – 1.
2. The Deputy Director General (Estt),
Department of Telecommunications,
Ministry of Communications and IT,
Sanchar Bhavan, 20 Ashoka Road, New Delhi.
3. The Director (Staff),
Department of Telecommunications,
Sanchar Bhavan, 20 Ashoka Road, New Delhi.
4. The Chief General Manager,
A.P. Telecom, BSNL,
Door Sanchar Bhavan, Abids, Hyderabad -1.
5. The Principal General Manager,
Telecom District Hyderabad,
BSNL Bhavan, Adarshnagar, Hyderabad.
6. The General Manager (South),
Hyderabad Telecom District, Hyderabad.
7. The Divisional Engineer (OP & A),
O/o. General Manager (South),
Hyderabad Telecom District, Hyderabad.

... Respondents

(By Mrs. K. Rajitha, Sr. CGSC and Mrs. B. Geeta, SC for BSNL)

ORDER (ORAL)
{As per Hon'ble Mr. Justice L Narasimha Reddy, Chairman}



The applicant was working as Telecom Office Assistant (for short “TOA”) in the Department of Telecommunications. A charge memo was issued to him on 27.11.2000, as corrected on 9.11.2001, alleging that he remained unauthorizedly absent from 01.12.1994 till 27.11.2000 and thereby, exhibited lack of devotion to duty. On receipt of the charge memo, applicant submitted his explanation. Not satisfied with that, the disciplinary authority appointed Inquiry Officer. Through his report dated 15.10.2004, the Inquiry Officer held that the absence of the applicant from 01.12.1994 till 10.11.1995 was unauthorized, and absence thereafter was covered by the period of suspension. The disciplinary authority accepted the report of the Inquiry Officer and furnished a copy thereof to the applicant. On considering the explanation submitted by the applicant, disciplinary authority passed orders dated 22.08.2007 imposing the penalty of ‘removal from service’. The appeal preferred by the applicant against the order of penalty was rejected on 07.02.2008. This OA is filed challenging the order of penalty of removal passed by the disciplinary authority, as affirmed by the appellate authority.

2. The applicant contends that he had to remain absent almost for a period of one year on account of prolonged illness and thereafter, the absence was on account of his having been arrested and the consequential suspension. It is stated that though he made an attempt to resume duties on revocation of suspension, the same was withdrawn and thereafter, charge sheet was issued and that, he was not permitted to join duties. It is

also pleaded that the punishment imposed upon him is highly disproportionate.



3. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant remained unauthorisedly absent from 01.12.1994 and later on, it emerged that he was arrested on 11.11.1995 on account of his having been involved in a STD racket. It is stated that the soon after the department came to know about the arrest of the applicant, an order was passed on 24.09.1996, placing the applicant under suspension w.e.f. 11.11.1995 and that the order of suspension was revoked on 03.04.1997, on realizing that the suspension ordered when the applicant was on unauthorised absence.

4. Sri A. Raghu Kumar, learned counsel for the applicant submits that the applicant is a physically handicapped person and he remained absent from 01.12.1994 for about one year, due to liver problem and he underwent treatment from a doctor at Hyderabad. He submits that the applicant would have joined the duty, but for the unfortunate arrest and the consequential suspension and though the Inquiry Officer analysed these facts in his report, the Disciplinary Authority failed to take them into account. He further submits that the penalty of removal from service for a physically handicapped employee is highly disproportionate and would render him without income for rest of his life.

5. Sri Satyasadhan, Learned proxy counsel representing learned Standing Counsel for the respondents submits that the applicant was unauthorisedly absent at least for a period of one year till he came to be arrested and, after his release from the jail, or the revocation of suspension, the applicant did not make any efforts to join duties and left with no alternative, the charge memo was issued. He further submits that the Inquiry Officer gave a clear finding of absence covering the period of about one year and the applicant is not able to explain the same. Learned counsel further submits that there are no extenuating circumstances in favour of the applicant.

6. The applicant was appointed as TOA in the year 1984. He remained absent from 01.12.1994 onwards. In the charge memo dt. 27.11.2000, it was mentioned that the applicant remained absent till that date. By the time charge memo was issued, though the applicant was arrested on 11.11.1995, he was released on 08.01.1996. It appears that the factum of the arrest of the applicant came to the knowledge of the appointing authority a bit late. Obviously, for that reason, the order of suspension was passed on 24.09.1996, keeping the applicant under suspension w.e.f. 11.11.1995 onwards, but it was revoked on 03.04.1997. Respondents felt that once the applicant was suspended at a time when he was unauthorisedly absent, the revocation of suspension should not enable him to be reinstated.

7. The charge memo was issued on 27.11.2000 with the following imputations:



“That the said Shri S. Ramesh St. No. 6548 while functioning as TOA, O/o. CO (WL) South, HTD is absconding himself from duty unauthorisedly w.e.f. 01.12.1994, till date i.e. 27.11.2000 and thereby exhibited lack of devotion to duty in contravention to Rule 3.1(ii) of CCS (Conduct) Rules, 1964.”



The allegation was that the applicant remained absent from 01.12.1994 till 27.11.2000. The applicant denied the charge levelled against him, by submitting explanation. A detailed inquiry was held and in his report dt. 15.10.2004, the Inquiry Officer recorded the finding as under:

“Thus, the charge that the CO abstained from 1.12.94 to 10.11.95 and his where about were not known is established/ proved. This in a way is agreed by CO in cross examination of PW-2 while putting question No.5 to PW-2 on 4.3.2004. Regarding the period from 11.11.95 when the CO is put under suspension, as per the deposition of PW-2 Sri B. Surendranath, the suspension orders were revoked on 3.4.1997 (D-4) and the CO has come to the office on A/N of 27.10.1997 to report for duty. The revocation of suspension orders were withdrawn and the CO was not allowed to join duty and the suspension was revoked on 31.10.2001 and official reported for duty on 31.10.2001. Here is to say that the charge of unauthorized absence cannot run parallel to suspension and hence to this extant (for the period from 11.11.95 to 27.1.2000) the charge is not proved/ established.”

8. From the above, it becomes clear that the Inquiry Officer recorded finding to the effect that the applicant remained unauthorisedly absent from 01.12.1994 to 10.11.1995. As regards the subsequent period, he proceeded on the premise that the applicant was under suspension from 11.11.1995 and thereafter, the period cannot be treated as unauthorized absence. The Disciplinary Authority accepted the inquiry report as it is and made a copy of the same available to the applicant. On consideration of the representation made by the applicant against the same, the punishment of removal from service was imposed on him.

9. The applicant did not challenge the finding recorded by the Inquiry Officer. Even the Disciplinary Authority accepted the same as it is. It emerges that though the period of unauthorised absence was mentioned in the charge memorandum as the one between 01.12.1994 and 27.1.2000, it was proved at least for the period of about one year from 01.12.1994 to 10.11.1995. That finding is not challenged at all. The grievance is mainly, as to the quantum of punishment.



10. If one takes into account, the fact that the applicant is a physically handicapped person and the period of absence is only about one year, a lenient view can certainly be taken. However, the circumstances, under which the applicant remained absent, even for that one year, are required to be taken into account. Firstly, he did not submit any application for leave. Secondly, he did not intimate anything, whatsoever, to the Department about his arrest. It is not a case, where the applicant made an attempt to avail the medical facilities and not being satisfied with that, he had to take treatment at a different place. Except stating that due to family problems and ill-health he did not report to duty during that period, the applicant did not mention as to why he did not submit the leave application of any category. By that time, he had experience of 10 years in the department.

11. Assuming that the applicant was prevented from reporting to duty in November 1995 on account of his having been arrested in the criminal case, he failed to mention as to what attempts he made to join the duty, at least when he was released on bail on 08.1.1996. The order of suspension was

passed 8 months thereafter, with retrospective effect. He wanted to take shelter under that without explaining as to why he did not join duty during those 8 months.



12. In the context of choosing the punishment for a proven charge, not only the extenuating circumstances, but also the aggravating circumstances come into play. In the case of the applicant, there did not exist any extenuating circumstances. On the other hand, the issue was aggravated on account of his failure to make any attempts to join and his having been involved in a criminal case pertaining to STD racket, and his failure to report to duty at least when he was released on bail. The jurisdiction of the Tribunal to interfere with the quantum of punishment is relatively narrow and only when the circumstances exist clearly in favour of the employee and are borne out by record, the possibility to reduce the quantum of punishment may exist. The indiscriminate reduction of penalty would amount to substituting the opinion of the Tribunal for that of the Disciplinary Authority.

13. We do not find any merit in the OA and is accordingly dismissed.

14. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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