

Central Administrative Tribunal
Principal Bench, New Delhi.

D.A. 721/1994

New Delhi, This the 19th Day of April 1994

Hon'ble Shri J. P. Sharma, Member(J)

Hon'ble Shri S R Adige, Member(A)

Smt Binu Bala
w/o Shri I P Dargan
r/o 1931, Street No.10,
Chuna Mandi, Pahar Ganj
New Delhi.

...Applicant

By Advocate Shri Vinay Sabharwal

Versus

1. Union of India Through
Secretary Ministry of Telecommunications,
Sanchar Bhawan, Ashok Road
New Delhi.
2. The Asst General Manager(Vig)
Government of India
Department of Telecommunications
Office of the Chief General Manager(NTR)
Kidwai Bhawan,
New Delhi.
3. Asst Engineer Phones(TMX)
Manager Telephones Ltd,
Kidwai Bhawan,
New Delhi.

..Respondents

By Advocate

O R D E R(Oral)

Hon'ble Shri J.P.Sharma, Member(J)

1. This DA is filed against the order of removal of service. The applicant also filed an application for condonation of delay. While scrutinising the application we find that the applicant was initially employed by Union of India as Telephone Operator on temporary basis and was subsequently absorbed as Telephone Operator. Subsequently, she has been on deemed deputation with MTNL. It is alleged by the applicant that she is continued to be employed by Union of India and has not been absorbed in MTNL, a Corporation owned by Union of India but for which notification has been issued under section 14(2) of the AT Act 1985. When deciding the issue whether

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the applicant is on deemed deputation or has been primarily absorbed in MTNL we find that the original application is not maintainable on the ground that the applicant did not exhaust the statutory remedies available to her. under the relevant service rules. The applicant has not filed any appeal against the order of removal from service, challenged before us. Section 20 of the AT Act 1985 restricts the admission of the application filed without exhausting departmental remedies.

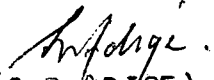
2. In view of this we are not considering the miscellaneous petition for condonation of delay.

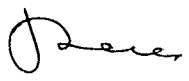
3. The learned counsel for the applicant argued on the point that an order has been issued by the Asst. Engineer (Phones) on 27.11.92 directing the applicant to join the service as she has been on unauthorised absence from 11 Sep 92 to 8.10.92. It is argued by the learned counsel for the applicant that she has orally approached the respondents and thereby she could not file the appeal within a statutory period and by the time the period of filing an appeal has expired. It is argued by the learned counsel for the applicant that though she has not filed the appeal in time, the right available to her has not extinguished. We are unable to accept this contention. It may be another fact that the appeal may be dismissed as barred by time and in that case the right can be defeated by limitation. But the right will never extinguish.

4. We have to follow the Judgement delivered by the Hon'ble Supreme Court in SS Rathore Vs reported in AIR 1990 SC page 10.

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The applicant has to exhaust the departmental remedies. Similar matter came up before a full bench of CAT Hyderabad in which section 20 of the AT Act 1985 has been interpreted with reference to the word "ordinarily". In CAT Hyderabad Full Bench case Shri Padmanabha Sharma Vs Dept of Telecommunication & others decided on 12.4.90 it has been held that Tribunal should not ordinarily entertain an application before the expiry of 6 months period for disposal or etc against an order in respect of service matters where statutory provisions exist for remedy and hence no application can be entertained before that date. Therefore, this OA is not maintainable. However, the applicant will get the liberty to file an appeal if so advised by the respondents. The OA is dismissed as not maintainable. No costs.


(S.R. ADIGE)
Member(A)


(J.P. SHARMA)
Member(J)

LCP