

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No.  
T.A. No.

38/

1985

DATE OF DECISION 5th May, 1986.

Smt. Urmil Mahay

Petitioner

Mrs. Avinish Ahlawat

Advocate for the Petitioner(s)

Versus

Union of India & another

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to all Benches. Yes

(K. Madhava Reddy)  
Chairman. 5.5.86.

(Kaushal Kumar)  
Member. 5.5.86.

CENTRAL ADMINISTRATIVE TRIBUNAL  
DELHI.

Req. No. 38/85.

5th May, 1986.

Smt. Urmil Mahey

.....

Petitioner.

VERSUS

Union of India &  
another

.....

Respondents.

CORAM:

Shri Justice K. Madhava Reddy, Chairman.  
Shri Kaushal Kumar, Member.

For petitioner

...

Mrs. Avinish Ahlawat,  
Advocate.

For respondents

...

Shri M.L. Verma,  
Advocate.

(Judgment of the Bench delivered by  
Shri Justice K. Madhava Reddy, Chairman.)

In this petition under Section 19 of the Administrative Tribunals Act, 1985, the petitioner calls in question the order of Removal from service dated 31st October, 1983 passed against her by way of disciplinary action for alleged unauthorised absence from duty. The charge levelled against her is that she was guilty of unauthorised absence with effect from 1.5.1982 without submitting any application and of contravening the provisions of Rule 62 and 162 of P&T Manual Vol. III. As it was contended by Shri M.L. Verma, learned counsel for the respondents that the charge was in respect of unauthorised absence of the petitioner from 5.1.82 to 30.4.82, we deem it advisable to extract the Article of Charge, which was served on the petitioner and in respect of which the inquiry was made. The charge reads as follows:

"Smt. Urmil Mohay, T.O., S.No. 1007 T.O. No. 5054 while working in that capacity in the C.T.X. of Delhi Telephones, New Delhi has committed an act of gross misconduct during the year 1981-82 in as much as she failed to resume her duties on expiry of leave sanctioned to her w.e.f. 6.11.81 to 4.1.82 & attempted to cover her absence merely by submitting leave documents and failed to get the leave pre-sanctioned. She is on unauthorised absence w.e.f. 1.5.82 without submitting any

application. Thus she had contravened the provisions in rules 62 and 162 of P&T Manual Vol. III. As above, she has exhibited lack of devotion to duty and has acted in a manner unbecoming of a Govt. servant.

She is, therefore, charged for violation of Rule 3(i) (ii) & (iii) of CCS (Conduct) Rules, 1964."

Even the Inquiry Report shows that the charge levelled against the petitioner was in the above terms. In the assessment made by the Inquiry Officer, he has categorically concluded that "on expiry of the sanctioned leave, Smt. Urmil Mohay applied for extension of leave, which was regretted by her controlling authority and due intimation was sent to her vide letter No. TK/Disc/UK/1007/4, dated 30.4.1982. Smt. Urmil Mohay did not report for duty and has been absenting herself since 30.4.82. I, therefore, conclude that the charges levelled against Smt. Urmil Mohay stand proved." From the wording of the charge, it is clear that she was called upon to answer the charge of unauthorised absence from 1.5.82 and not her absence from 4.1.82 to 30.4.82. From the Inquiry Report, it is further clear that the period from 5.1.82 to 30.4.82 was treated as dies-non and that fact was intimated to her. A perusal of the record thus shows that the charge is wholly baseless and has no legs to stand. The assertion of the petitioner that she joined duty on 1.5.1982 and continued to be on duty upto 28.7.1982 is not denied. Thereafter she applied for grant of Maternity Leave and was granted Maternity Leave from 29.7.1982 to 26.10.1982. She was in fact paid the salary due to her for the period she worked and for the period she was granted leave. None of these averments have been denied either in the reply filed on behalf of the respondents or at the bar. They must, therefore, be taken as admitted. When she had joined duty on 1.5.1982 and worked for nearly three months and was paid for that period and was granted leave for the next three months, the charge that she was unauthorisedly absent from 1.5.1982 would be wholly baseless. In the rejoinder, the

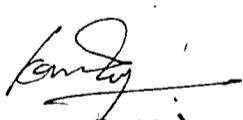
  
...../3.

petitioner further stated that at the end of the Maternity Leave, she sent an application for further leave from 27.10.82 to 25.12.82 and that was sanctioned. It may also be noted that the petitioner, in her rejoinder, has further averred that on the leave application which she had sent for the period commencing on 20.1.84 and ending with 19.3.84, it was recorded by the A.E. on 27.1.84 as follows:

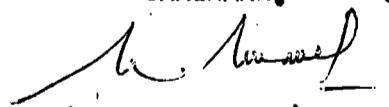
"She may be informed, for her leave has been regretted and be advised to resume duty immediately."

On her further application for leave from 20.3.84 to 18.5.84, the A.E. recorded on 2.4.84 that "this is a long leave case and disciplinary action may be initiated for unauthorised absence for such a long period." If disciplinary action had already been initiated for unauthorised absence, how could fresh action be initiated once again on the same charge. The whole thing seems to be a comedy of errors but costing dearly to the petitioner.

In view of above, it is unnecessary to go into the question whether there was any irregularity in the conduct of the disciplinary proceedings. The charge, the Inquiry Report and the disciplinary proceedings and the impugned order imposing the penalty of Removal from Service are quashed. This petition is accordingly allowed. The petitioner shall be reinstated in service and paid her salary and other allowances due to her as if she had not been removed from service. There will be no order as to costs.

  
(K. Madhava Reddy)

CHAIRMAN. 5.5.86.

  
(Kaushal Kumar)

MEMBER. 5.5.86.