

Removal (sust)

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CAT/1/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
~~XXXXXXXXXXXX~~

O.A. No. 265 of 1988  
~~TA No.~~

DATE OF DECISION 24.4.1991

Smt. P.A. Shah Petitioner

Shri. J.J. Yagnik Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri. P.M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi .... Vice Chairman

The Hon'ble Mr. R.C. Bhatt .... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Smt. P.A. Shah,  
Accounts Assistant 'A'  
Space Application Centre,  
Jodhpur Tekra,  
AHMEDABAD.

..... Applicant

Versus

1. Union of India, through  
Secretary,  
Department of Space,  
NEW DELHI.
2. The Director  
Indian Space Research Organisation,  
Space Application Centre,  
AHMEDABAD.
3. Shri. AMP David,  
or his successor in office,  
Controller, ISRO,  
Space Application Centre,  
AHMEDABAD.

..... Respondents.

J U D G E M E N T

Dated : 24.4.1991.

Per : Hon'ble Mr. P.H. Trivedi

..... Vice Chairman

In this case the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, challenging the order dated 20.11.1987 passed by the Controller, SAC, Ahmedabad, removing the applicant from service and against the order of the Director, SAC, A'bad, an appeal dated January 25th, 1988. The applicant has taken various grounds to contest the orders, The charge against applicant was of continuous absence from duty unauthorisedly w.e.f. 9.4.1986. The applicant had proceeded on maternity leave and thereafter was absent on the account of illness of her baby for which she had applied for leave from time to time, and for which leave was allowed and extended. The respondents have disputed the conditions of the applicant regarding due application for leave. The

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applicant has also been aggrieved by the disproportionate extreme and harsh punishment of removal from service. The learned advocate has referred to judgement of the courts about the punishment which must be proportionate to the guilt, We have further at the outset come across a plea that the enquiry report of the proceedings against the applicant was furnished to her only with the punishment order of dismissal. The respondent in reply to this contention have merely stated that no second show cause notice is required to be given in view of the 42nd Amendment in the Constitution.

2. We are aware that various Benches of this Tribunal have held that an enquiry report does not require to be furnished prior to the order of punishment in view of the 42nd Amendment of the Constitution. However, the Three Member Bench of the Supreme Court has held in Mohd. Ramzan Khan's case that this does not confirm with the paramount requirement of observance of natural justice and in so far as the enquiry report is a part of the material considered by the disciplinary authority, which is not shown to the delinquent officer and who is thus deprived of the opportunity to make a representation regarding it, before the order of punishment by the disciplinary authority is passed, Rules of Natural Justice are not observed and, order of punishment has been therefore held to be illegal. This is now the law which holds the field. While it may be true that the respondents stand might be that they might have acted on a different interpretation of law, there can now be no dispute about



the correct position as declared by the Supreme Court in Mohd. Ramzan Khan's case. We are therefore bound to hold that the impugned order of removal from service and the <sup>Appellate</sup> ~~applicant's~~ order are vitiated and have to be declared as illegal. The applicant be reinstated in service and her back wages be calculated and paid to her within four months of the date of this order and for any further delay she is declared to be entitled to interest @ 12% per annum. The respondents however, are at liberty to proceed against the applicant from the stage of furnishing the enquiry report to her and pass such orders in her case as are legal, valid and proper in the circumstances. There shall be no order as to cost.

R.C.Bhatt

(R.C. BHATT)  
Judicial Member

Puri

( P.H. TRIVEDI )  
Vice Chairman