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CAT/J

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 416 OF 1989.

~~TAX NOX~~

DATE OF DECISION 21-4-1995.

Smt. Usha N. Patel, Petitioner

Mr. Girish Patel, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent (s)

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The Hon'ble Mr. N.B. Patel, Vice Chairman.

The Hon'ble Mr. K. Ramamoorthy, Admn. Member.

JUDGMENT

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

JVD

Smt. Usha N. Patel,
20, Samarth Society,
Memnagar, Ahmedabad.

..... Applicant.

(Advocate: Mr. Girish Patel)

Versus.

1. Union of India,
(Notice through the
Secretary, Ministry of
Communications,
Department of Telecommunications,
New Delhi.
2. General Manager,
Ahmedabad Telephones,
Khanpur, Ahmedabad.
3. Divisional Engineer (Trunk)
Central Telephone
Exchange (MTX) (CTX)
Bhadra, Ahmedabad.

(Advocate: Mr. Akil Kureshi)

ORAL JUDGMENT

O.A.No. 416 OF 1989

Date: 21-4-1995.

Per: Hon'ble Mr. N.B. Patel, Vice Chairman.

The applicant challenges the legality of the order of punishment of removal from service (Ann.A/1) dated 31st August, 1987 passed by the respondent No.3, on several grounds.

2. The brief facts of the case are that the applicant was appointed as a Telephone Operator in the respondents department with effect from 22.1.74 and she was confirmed with effect from 26.12.77. Somewhere in 1984, the applicant obtained No Objection Certificate for getting a passport. However, she did not travel abroad at that time. It appears that the applicant left for

U.S.A on 28.12.1986 with her husband. While the applicant was in ^{the} U.S.A, memorandum of charges, Annexure A/4 dated 4th March, 1987 was issued levelling the following two charges against her.

" Article I

The said Smt. U.N. Patel, T.O. Staff No. 2799 had taken frequent leave in different spells from 4.5.86 to 30.8.86. She took leave from 4.5.86 to 18.5.86 for which her application did not receive in time, so the leave was not granted and treated as 'Dies-Non'. However, the said official extended her leave from 19.5.86 to 31.5.86, 1.6.86 to 30.6.86 and 1.7.86 to 31.8.86 without observing formalities.

Article II

27) The said Smt. U N Patel, T.O. TMX St. No.2799 remained continuously absent from duties from 1.9.86 to 9.12.86. The period of her absence from 1.9.86 to 9.12.86 was treated as 'Dies-non' and was intimated to her by post. She was also intimated telegraphically on 11.9.86, 24.10.86 and 18.11.86 to resume her duty immediately, instead she had sent a letter dated 21.11.86 that she would resume her duties on 2.12.86. However, she did not resume her duties and sent a leave application for the period from 1.12.86 to 9.12.86, which was not granted and the period was also treated as 'Dies-non'. This was intimated to her by post. She resumed her duties on 19.12.86 and again remained absent from duties without any intimation or prior sanction of leave from 12.12.86 to till date. She was intimated telegraphically on 22.12.86 to resume her duties immediately. Also urgent Telegram was given on 10.1.87 but she did not bother to intimate the office the reason of her absence or to send any application".

Since the applicant was abroad when the chare-sheet was issued, she could not participate in the enquiry. It appears that substituted service was effected on the applicant. Ultimately, the applicant returned from ^{the} U.S.A. with her husband on 19-8-1988, but, before that, the enquiry against her was concluded by the impugned removal order dated 3-8-1987. After her return to India, the applicant filed an appeal by way of mercy petition dated 28-10-1988 and also sent a reminder dated 26-4-1989, but, as there was no response to it till 3-10-1989, she filed the present O.A. on 3-10-1989. We were informed at the bar that, during the pendency of O.A, her mercy petitions dated 28-10-1988 and 26-4-1989 are rejected and the removal order is confirmed. It is, therefore, the removal order confirmed in appeal which is in challenge before us.

3. As already stated above, at the outset, the impugned order is challenged by the applicant on several grounds but, after some hearing, the applicant's learned counsel Shri Girish Patel pressed the O.A. only on the ground of quantum of punishment. It was vehemently contended that, even though the applicant ^{had} submitted an explanation for her alleged absence after the removal order was passed, her explanation should have been duly considered as she could not have submitted her explanation before her return from U.S.A. We find that there is ample force in the contention that the extreme punishment of removal from service awarded to the applicant, in the circumstances of this case, ^{is} as harsh considering the fact that the applicant had put in spotless service of 12 to 13 years before the removal order came to be passed and further considering the fact that, in her mercy petitions and in the present O.A., the applicant has

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stated that in so far as certain spells of alleged absence prior to her leaving the country are concerned, leave was granted to her and further that, at that time, she was suffering from some hearing problem. It is also stated by her in her explanation that she wanted to return to India earlier, but was prevented from doing so, as her husband met with an accident and he sustained some injury which disabled him from travelling till September 1988. We strongly feel that if the explanation tendered by the applicant for her alleged absence is considered in proper perspective and if it is borne in mind that the delinquency on the part of the applicant did not involve any act of moral turpitude, the competent authority could not have awarded such harsh punishment as removal from service. We, therefore, find that this is a fit case for reconsideration by the Chief General Manager as regards the quantum of punishment to be awarded to the applicant.

4. In the result, we set aside the order dated 21-3-1990 so far as it pertains to punishment and direct the Appellate Authority, i.e., Chief General Manager, Telecom, Ahmedabad to reconsider the question of punishment to be awarded to the applicant in the light of her petition/appeal dated 28-10-1988, the reminder dated 26-4-89 and the memo of the present O.A. and to pass appropriate orders of punishment. This may be done within six weeks from the date of the receipt of a copy of this judgment and the decision may be communicated to the applicant within one week after it is taken. If

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the applicant feels aggrieved by the punishment order that may be passed by the Chief General Manager, it will be open to her to file a fresh O.A. No order as to costs.

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(K.Ramamoorthy)
Member(A)

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(N.B. Patel)
Vice Chairman

vtc.