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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application No. 149/2003**

Date of decision: 29.09.2004.

**Hon'ble Mr. Kuldip Singh, Vice Chairman.**

**Hon'ble Mr. M K Misra, Administrative Member.**

Amar Chand Saini, S/o Shri Hanuta Ram Ji, T.O.A., Ratangarh, r/o Padiharon-ka-mohalla, Ward No. 1, Ratangarh, Distt. Churu.

**: Applicant.**

Rep. By Mr. Girish Sankhla, Counsel for the applicant.

**VERSUS**

1. The Union of India, through the Secretary, Deptt. of Communication, Sanchar Bhawan, New Delhi.
2. GM TD, Department of Telecommunication, Sriganganagar, Rajasthan.
3. District Manager, Department of Telecommunications Churu, Rajasthan.

**: Respondents.**

Rep. By Mr. B L Biosnoi, Counsel for the respondents.

**ORDER.**

**Per Mr. Kuldip Singh, Vice Chairman.**

The applicant through this O.A has assailed the order dated 23.07.2002, vide which his appeal against the order of removal from service has been rejected. However, in para 8 of the O.A the applicant has also prayed for quashing and setting aside of the order dated 31.08.2000 by which he had been removed from service and also the order dated 23.07.2002 by which the appeal filed by him had been rejected.

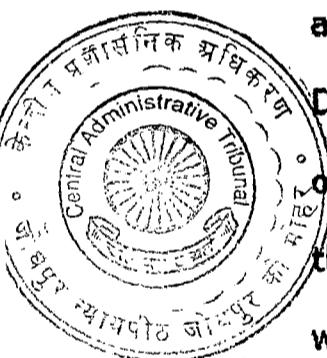
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2. The facts in brief are that the applicant was proceeded against on the allegation that the applicant was granted only 30 days earned leave from 22.09.1990 to 21.10.90 and he remained absent from duty with effect from 22.10.90 without any prior permission and he has no devotion to duty and acted in a manner unbecoming of Govt. servant thereby violating provisions of Rule 3 (1) (ii) and (iii) of CCS(Conduct)Rules, 1964.

3. A detailed inquiry was held. But the applicant remained absent and he did not participate in the inquiry. Ultimately, the inquiry officer found him guilty of charges framed against him and submitted his report to the Disciplinary Authority. The Disciplinary Authority vide order dated 31.08.2000 passed the order of removal from service against the applicant. A copy of the order was also addressed to the applicant by register post with acknowledgment due. Thereafter, the applicant remained silent and did not file appeal within the time limit prescribed. But he placed on record a photocopy of appeal dated 19.09.2000 along with postal certificate, which shows that the appeal was sent to the Appellate Authority vide UPC. Thereafter, a legal notice was also issued calling upon the respondents to decide the appeal. After the receipt of legal notice, the respondents wrote a letter to the applicant wherein they specifically alleged that no appeal dated 19.09.2000, as alleged by him had been received in the office. It was also alleged by the respondents that the applicant had sent photocopy along with legal notice only to get



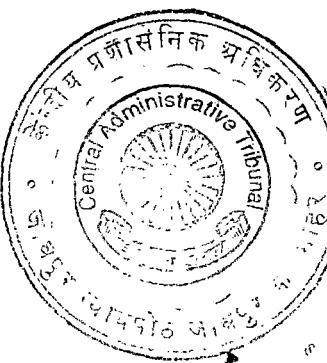
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the benefit of limitation on fictitious basis that he made an appeal in time. It was also stated in the letter that as the applicant had not filed appeal in accordance with rule, his appeal was not entertained. In order to challenge the same, the applicant had submitted that he had gone to Bombay on LTC after his leave has been sanctioned, but due to unavoidable circumstances, he could not join duties and he had submitted an application for extension of leave but the respondents without going into the real facts of the case rejected his appeal. Thus the action of the respondents in not granting leave is bad in law. The applicant denied that he had violated any service rules. He simply stated that his application for extension of leave has been rejected in an arbitrary manner. The applicant also raised number of pleas in the appeal but his appeal has not been considered and ultimately he had to file this O.A.

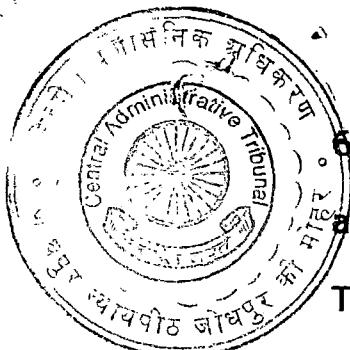
4. The respondents, who were contesting the case submitted that the challenge to the order dated 31.08.2000 passed by the Disciplinary Authority, was not within time since the applicant had not preferred any appeal within the time limit prescribed under the rules and hence the O.A should be rejected on this ground alone. It is further stated that the letter dated 23.07.2002 has been written to the applicant, by the Divisional Engineer, Bharat Sanchar Nigam Limited (BSNL for short) in response to legal notice issued by the applicant and the same cannot be challenged before this Tribunal as this Tribunal has no jurisdiction over BSNL. The respondents have also pleaded that



after the expiry of earned leave, the applicant requested for sanction of more leave on medical grounds, but no medical certificate has been produced by the applicant. He was asked to produce medical certificate. Thereafter the applicant produced one medical certificate from a private doctor. It was also not the prescribed proforma and also did not contain the signature of the applicant. The applicant was pointed out the shortcomings in the medical certificate. After sometime the applicant produced another medical certificate from the same private doctor. Again the applicant was informed that the medical certificates were not acceptable and in the absence of obtaining medical certificate from District Level medical officer, it would be deemed that he is reluctant to go to Government doctor. It was also informed that if the applicant failed to carry out the instructions given to him he would be treated as absent from duty, which would constitute a break in service. But despite this the applicant has not submitted any medical certificate issued by the Government Doctor nor he presented himself before the medical officer as advised by the department. Ultimately, a charge sheet was issued and inquiry was held but the applicant never attended the disciplinary inquiry at any point of time despite reminders. After the inquiry officer submitted his report to the Disciplinary Authority, a copy of the same was sent to the applicant along with notice and was asked to furnish his explanation. But the applicant neither submitted his explanation nor appeared before the Disciplinary Authority. Ultimately, the order of removal from service was passed on the applicant.

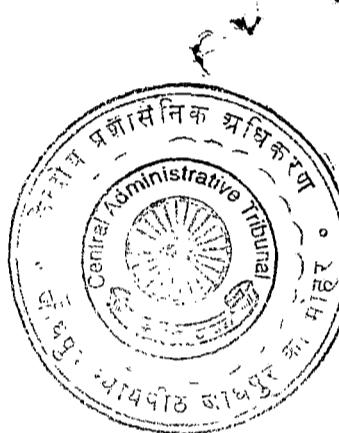


5. We have heard the learned counsel for the parties and have also perused the inquiry file. On going through the inquiry file, we find that various letters were written to the applicant and even reminders were sent. But the applicant failed to appear before the inquiry officer and did not attend the inquiry at all and thus he was proceeded ex parte. Hence the applicant cannot now claim that he had not been heard nor sufficient opportunities have not been given to him.



6. As regards the filing of appeal is concerned, the documents as on record show that the applicant had not filed appeal in time. The applicant had merely procured some UPC to support the contention that he preferred an appeal and had posted the same under UPC. The learned counsel for the respondents also pointed out that the respondents had entered into correspondences with the applicant always through registered post and the rules governing the filing of appeal also require that the appeal should have been delivered to the Appellate Authority. However, in the instant case, there is no proof that the so called appeal has ever been delivered to the Appellate Authority. As the same was not sent by registered nor there is any proof of acknowledgement from the Appellate Authority that the same had been delivered to him the applicant cannot contend that he submitted appeal. Thus in fact the applicant has filed no appeal in time. It is only in the legal notice a new ground has been taken by the applicant to show that as if he had filed an appeal which has not been disposed of. Admittedly, no

appeal was received in time. Hence the same is rejected. On facts, we find that the applicant remained absent despite the fact that he had been advised to procure proper medical certificate from Govt. Doctor. The applicant also remained absent during inquiry. Hence the inquiry officer had rightly concluded that the applicant remained unauthorisedly absent. Thus we find no ground for our interference with the impugned order passed by the Disciplinary Authority.



7. Besides this, in our considered view, since the applicant has challenged the letter issued by the BSNL and BSNL is a corporation which has not been notified under Sec. 14 (1) of the Administrative Tribunals Act, 1985 and hence this Tribunal has no jurisdiction over the employees of BSNL and the applicant cannot file O.A before this Tribunal. It will not be out of place to mention here that the order dated 31.08.2000, passed by the Disciplinary Authority inflicting the punishment of removal from service was issued by the Department of Telecommunications, a wing of Union of India. But the subsequent letter dated 23.07.2002 which is under challenge, has been issued by BSNL. This has been so done by BSNL, because by that time the employees like the applicant had been absorbed in BSNL. Thus the appellate power for the applicant had also been vested with BSNL and the Appellate Authority is also under the control of BSNL, over which this Court has no jurisdiction, as BSNL has not been notified under Sec. 14/(1) of the Administrative Tribunals Act, 1985.

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8. In view of the above discussion, this Court has no jurisdiction over the subject matter under issue. Hence the O.A is dismissed on merits as well as for want of jurisdiction. The applicant may approach the appropriate forum in accordance with law if so advised.



  
(M K Misra)  
Administrative Member.

  
(Kuldip Singh)  
Vice Chairman.

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