

(Sd)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 218/91.

Dt. of Decision : 23.6.94.

Smt. P. Bharathamma

.. Applicant.

Vs

1. The Asst. Engineer, Trunks & Phones,
Warangal - 506 012.
2. The Telecom District Engineer,
Warangal - 506 050.
3. The Chief General Manager,
Telecom, Andhra Pradesh,
Hyderabad - 500 001.
4. The Director-General,
Telecom, (representing Union of
India), New Delhi - 110 001. .. Respondents.

Counsel for the Applicant : Mr. C. Suryanarayana

Counsel for the Respondents : Mr. N.R. Devanand, Sr. C.G.S.C.

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY : MEMBER (JUDL.)

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[As per Hon'ble Shri A.B.Gorthi, Member (Admn.)]

The applicant was serving as a Cleaner in Non-Test Category in the Telephone Exchange, Warangal since 1982. Aggrieved by the penalty of removal imposed upon her she has filed this OA praying that that order of removal as also ~~the order of removal~~ passed by ~~the disciplinary authority as also the~~ appellate authority's order confirming the penalty be set aside and that she be reinstated in service with all consequential benefits.

2. The applicant was not keeping good health and was therefore compelled to seek sick leave on several occasions. On 6.2.89 she was directed to appear before the Superintendent of MGM Hospital, Warangal for ascertaining her fitness for resumption of duties. Subsequently on 22.4.89 she was served with a charge memo. Article 1 alleged that she did not appear before the Superintendent of MGM Hospital for second medical opinion and Article 2 averred that the applicant was absent without leave w.e.f. 19.2.89. Within a few days thereafter on 27.4.89 the disciplinary authority cancelled the said charge memo. On the very next day the applicant was informed that if she did not join duty immediately disciplinary action ^{would be} ~~will be~~ taken against her. The second charge sheet dated 10.7.89

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was then served upon her, the charges there being the same ones which were contained in the earlier charge memo dated 22.4.89.

3. During the departmental disciplinary enquiry, a preliminary hearing was held wherein the applicant was asked whether she would accept the charges. She replied in the affirmative and based on the same the disciplinary authority passed the impugned order removing her from service. She submitted an appeal to the Telecom District Engineer on 25.1.90, ^{but} that the same was rejected vide order dated 26.2.90.

4. Mr. C. Suryanarayana, learned counsel for the applicant assailed the validity of the penalty on several grounds. Firstly, commenting on the merits of the case, he contended that the disciplinary authority (Assistant Engineer) had no power or justification to direct her to report to the Superintendent MGM Hospital for a second medical opinion. It was also contended that the duty charts would indicate that the applicant was not absent but was present on duty at the relevant time.

5. Memo dated 6.2.89 by which the applicant was "advised" to report to the Superintendent of MGM Hospital was for the purpose of obtaining a second medical opinion because the applicant in support of her sickness produced a private medical certificate. We, therefore, ^{in the absence of} find no irregularity whatsoever that memo dated 6.2.89

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wherein the applicant was directed to go to the Superintendent M.G.M. Hospital for a medical checkup. As regards the duty charts, the respondents clarified that these weekly charts ^{were} prepared in advance. Even so the remark against the applicant would show that on 18.2.89, ^{he} reported for duty at 0900 hrs. instead of 0600 hrs. The second duty chart was prepared on 2.2.89. Both these would be irrelevant to the issue before us because in the charge memo it was ~~asserted~~ offered that the applicant was absent from duty w.e.f.

19.2.89. In any case we must observe that the applicant ^{pleaded} ~~had~~ ^{charges} ~~charge~~ had unequivocally ~~feared~~ ^{been} guilty to both the ~~charts~~ and as such it is not open at this stage to discuss the evidence in this case.

6. The applicant's counsel strongly urged before us that the first charge memo having been cancelled, the respondents were not legally justified in issuing a second charge memo containing the same charges. In this context he ^{has} drawn our attention to a decision of the Jabalpur Bench ~~judgement~~ in Guruprasad Tandon Vs. Union of India 1990 (14) ATC 386. In that case the applicant was due to cross the efficiency bar on 3.7.68 but was not permitted to do so because the charge sheet issued to him on 25.10.67 was pending. No further progress was made after the issuance of the charge memo till 1972 when it was withdrawn and the applicant was allowed to cross the EB from the due date and was allowed to retire from serv. w.e.f. 31.8.82. Consequently it was held that under the circumstances the conduct of the respondents would amount ^{exonerating} to ~~exclude~~ the applicant. In that case no second charge memo was served ~~now~~ after cancelling the first charge memo and hence the judgement in the case of Guruprasad has no direct bearing on the issues before us in the present OA.

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operative as master:-

8. In the case of Dineen v. Ginnella ¹⁹⁵⁵⁻¹ it was held that a written agreement to pay a sum of £2,500 to the plaintiff for services rendered was not enforceable as it was a gift.

3. In Dinesh Chandra Sarkar Vs. State of W.B. 1989 LAB I.C. 329 the Calcutta High Court had occasion to observe as under:-

"In the view taken above, I need not have dealt with the other issue as submitted by Mr. Gupta, but by reason of strenuous submissions being made judicial decorum prompts me to record the same and deal with it as well. It appears that as early as 14th Feb., 1969 a charge-sheet was issued against the petitioner which was eventually withdrawn in April, 1976, wherein it has been categorically recorded after withdrawal of the charge-sheet that the petitioner would be entitled to full pay and allowances and the period of suspension shall be treated as the period spent on duty. Incidentally it is to be noted that both the disciplinary proceeding and the order of transfer was challenged by the petitioner in this Court under Art. 226 in C.O.No.837 (W) of 1973 and this Court by an order dt. 1st June, 1983 directed that the order of transfer be kept in abeyance till the completion of the departmental enquiry was not proceeded with and eventually in April, 1976 was withdrawn. No leave was obtained neither any reservation was recorded therein. The 2nd chargesheet dt. 28th May, 1976 was issued without any reference to the earlier one, but on identical allegations would it be fair to the petitioner to be saddled with a further charge sheet on the identical set of facts which was earlier been withdrawn unconditionally and the petitioner was directed to be paid all his salaries and the period under suspension was treated as periods spent on duty? I am in agreement with Mr. Gupta's submissions that the same cannot be termed to be the most accepted methodology in Governmental action. Governmental Authority ought not to be allowed to carry on with an investigation on the self-same allegation which was earlier dropped and petitioner was given an unconditional benefit of the same."

8. In the case of Dinesh Chandra Sarkar he was served with a charge memo on 14.2.69 and was also suspended from that date. Vide order dated 24.6.76 the suspension was revoked and a direction was given for the payment of full salary after deducting the subsistence allowance. The

charge memo also was withdrawn. The employee became due for retirement on ~~Superannuation~~ ^{Superannuation} on 31.7.76 and the respondents choose to serve him with a second charge memo on 28.5.76 on the same charges for which the first charge memo was served in 1969. In the afore-stated circumstances of the case the Calcutta High Court came to the conclusion that "Governmental authority ought not to be allowed to carry on with an investigation on the self-same allegation which was earlier dropped and petitioner was given unconditional benefit of the same".

9. In the instant case certain dates are of considerable importance. The first charge memo was served on the applicant on 22.4.89, and it was cancelled within a few days on 27.4.89. On the very next day the applicant was served with a notice giving her an opportunity to re-join duty failing which disciplinary action would be taken against her. As the respondents did not receive response from the applicant, the second charge memo was served on her on 1.7.89. These facts would clearly indicate that the respondents, had no point of time either entertained any ^{idea} ~~doubt~~ of dropping the charges against the applicant or conveyed such an impression to the applicant. What the respondents did was, instead of proceeding against her straightaway on the first charge memo, gave her an opportunity by means of notice dated 28.4.89 to mend her ways and join duty. Even then the applicant did not respond positively thus leaving no option to the respondents but to issue the second charge memo which is the same as the first one. In these circumstances we find that the action

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of the respondents suffered from no such illegality or irregularity as would warrant our interference.

10. Mr.C.Suryanarayana drew our attention to D.G. P&T letter No.114/324/78-Disc II dated 5.7.79. It is to the effect that once the proceedings initiated under Rule 14 or Rule 16 of the CCS (CCA) Rules 1965 are dropped, the disciplinary authority would be debared from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge sheet or from dropping & the proceedings are appropriately mentioned and duly stated in the order dropping the proceedings. The letter further states that where it intended to initiate fresh proceedings it should have been categorically stated that the original proceedings were dropped "without prejudice to further action which may be considered in the circumstances of the case". There can be no doubt that the aim of the office memo is to ensure that a delinquent employee is not given a false impression that the disciplinary case pending against him/her ^{is} ~~are~~ finally dropped, where such ^{was} not the intention of the respondents. As already noted in the instant case the proceedings were at ^{no} ~~most~~ stage dropped or abandoned. The cancellation of the first memo was followed with a notice to the applicant within a short period. Accordingly even if the respondents had not mentioned in the letter cancelling the first charge memo that it was being done without prejudice to further action being initiated, it would not in our own ^{option make} ~~making~~ any difference to the merits of this case. The D.G. P&T's letter dated 5.7.79 is in the nature of guidelines given to the authorities concerned and cannot be said to have laid down anything as mandatory.

Copy to:-

1. The Asst. Engineer,
Trunks and Phonés,
Warangal - 506 012.
2. The Telecom District Engineer,
Warangal - 506 050.
3. The Chief General Manager,
Telecom, Andhra Pradesh,
Hyderabad - 500 001.
4. The Director General,
Telecom, Union of India,
New Delhi - 110 001.
5. One copy to Mr.C.Suryanarayana, Advocate, CAT, Hyderabad.
6. One copy to Mr.N.R.Devraj, Sr.CGEC,CAT, Hyderabad.
7. One copy to Library,CAT, Hyderabad.
8. One spare copy.

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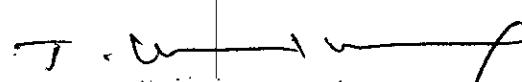
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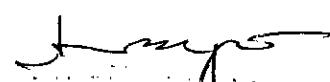
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11. Finally learned counsel for the applicant urged before us that the penalty of removal imposed upon a hapless woman employee for the offence of absence without leave is rather harsh. It is brought to our notice that in that case, 2 other employees, namely Mohd. Afzal and Smt. P. Susheela Raju, both Group 'D' employees, who were found guilty of absence without leave, the respondents let them off with less severe penalties. Mohd. Afzal was awarded a censure whereas Smt. P. Susheela Raju was awarded a penalty of reduction of pay by one stage for a period of six months. Learned counsel for the respondents stated that the applicant found to be a habitual offender and was remaining absent on the ~~pretext~~ ^{way} of sickness for several spells. Even the present charge sheet was for remaining ~~absent~~ without leave from 19.2.89. She did not join duty despite having been served a notice by the respondents that disciplinary proceedings would be initiated against her if she did not report duty immediately. Such conduct of the applicant would sufficiently established that she was not interested in performing her duty diligently. The disciplinary authority as also the appellate authority obviously came to the conclusion that further retention of the applicant in service would not be desirable. In these circumstances, we find that the penalty of removal is not unwarranted as would justify our intervention.

12. In the result we find no merit in the OA and the same is dismissed without any order as to costs.


(T. CHANDRASEKHARA REDDY)
Member (Jud1.)


(A.B. GORITHI)
Member (Admn.)

Dated: 23rd June, 1994

(Dictated in Open Court)

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Deputy Registrar (J)

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