

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1010/1996

Dated, the 5th Feb.'99

BETWEEN :

KV Ramanamma.

.... Applicant

A N D

1. Telecom District Engineer,
O/e TDM, Warangal 506 050.
2. The Telecom District Manager,
West Godavari Telecom Dist.
Eluru - 534 050.
3. The Director General, Telecom,
reptg. Union of India,
New Delhi - 110 001.

.. Respondents

COUNSELS :

For the Applicants : Mr. C.Suryanarayana

For the Respondents : Mr. V. Vinod Kumar

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDL)

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O R D E R

(PER : HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. C. Suryanarayana, Learned Counsel for the applicant and Mr. V. Vinod Kumar, Learned Standing Counsel for the Respondents.
2. The applicant herein is an ex. TOA in Warangal. She has challenged the order of her removal from service for her unauthorised absence between the period from 27.4.88 to 29.11.89 - 49 days and for slackness in her working.
3. The applicant was originally appointed as Office Assistant, TDE, Karimnagar in the scale of Rs.260-480 w.e.f. 24.1.83. While she was working as such at Warangal, the Divisional Officer (Engg), Telecom, Warangal by his proceedings dt. 30.12.89 issued a charge memo as per Annexure-A1. The charge of misconduct reads as follows :

"That the said Smt. K.V. Ramanamma, Telecom Office Assistant, attached to Establishment Section/Office of the Divisional Officer, Engg., Telecom., Warangal, was in the habit of absconding from duty unauthorisedly and inconveniencing the normal office work and failed to give prescribed out-turn thereby contravening the Rules 3(1)(ii)&(iii) of CCS(Conduct) Rules, 1964."
4. The details of the period during which the applicant was absent for a period of 49 days are mentioned in the Annexure-A2 to the charge memo.
5. The applicant submitted her explanation to the charge memo on 13.2.90. A copy of the explanation is at Annexure-A2.
6. The SDO, Telecom, Warangal conducted the inquiry. In fact, the applicant admitted her misconduct before the Inquiry Officer. The report of the Inquiry Officer is dt.10.9.91. A copy of the report of the Inquiry Officer was furnished to the applicant. The applicant had not submitted any explanation against the findings of the Inquiry Officer. The Respondent No.1 by his proceedings No.TDE/Disc/EVR/1989/90/22 dt. 4th July, 1991 imposed penalty of removal of the

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applicant from service with immediate effect. Against the said punishment, the applicant preferred an appeal dt. 13.8.91 to the TDM, Eluru i.e. Respondent No.2. The respondent No.2 by his proceedings dt. TAE/ST/Disc/01/2-55/2 dt.1.2.93 considered the appeal, confirmed the punishment and rejected the appeal.

7. The applicant has filed this O.A. challenging the order dt. 4.7.91 passed by the Respondent No.1 and order dt. 1.12.93 passed by the appellate authority as arbitrary, illegal and for consequential direction to reinstate the applicant into service with all consequential benefits and back wages.

8. The applicant has challenged the impugned orders contending that the respondent authorities have exhibited vindictive attitude towards her by imposing an extreme penalty of removal from service for her absence for a period of 49 days in a span of about 2 years. The said punishment was not justified. The respondent authorities failed to consider her representation dt. 13.2.90; that the TDE Warangal was prejudiced towards her; that the orders passed by the Respondent No.1 treating her absence as *des non*, were passed without giving her an opportunity; that the Inquiry Officer failed to appreciate her stand in her explanation and misinterpreted her explanation as admission of misconduct. The report of the Inquiry Officer is perverse. The punishment is not based on any evidence adduced during the inquiry. The Respondent No.1 kept a watch over the performance of the applicant without giving her an opportunity. The appellate authority has not considered the grounds urged in her appeal.

9. The respondents have filed a reply contending that the applicant was initially/as ^{appointed} Office Assistant by the TDE,

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Karimnagar; that the applicant sought transfer on request to Warangal and reported for duties at Warangal on 11.4.87; that her name was deleted from the Karimnagar Division; that TDE Warangal was the competent authority to impose punishment of removal on the applicant; that the applicant admitted the charge levelled against her; that the appellate authority has rejected her appeal; and that there are no grounds to interfere with the impugned orders.

10. After considering the contentions raised by the applicant and also the reply filed by the respondents, the following points arise for our consideration :

- a) Whether the TDE/^{Warangal} was the competent authority to impose the punishment on the applicant.
- b) Whether the punishment of removal imposed on the applicant is harsh or excessive.
- c) To what order.

11. The contention of the applicant is that she was initially appointed at Karimnagar and was working as TOA in Warangal on deputation basis. It is on this score she challenged the competency of the TDE, Warangal to impose punishment on her.

12. The respondents have produced the personal file, and the Service Register of the applicant.

On perusal of these documents, it is clear that the applicant had sought ^{on request} transfer/ from Karimnagar to Warangal. It was a transfer on her request as contemplated under para 38 of the P&T Manual and in fact such an endorsement has been made by the Assistant Accounts Officer in the Service Register. It is dt. 29.4.87.

13. The learned counsel for the applicant challenged the said entry and the declaration furnished by the applicant. The original declaration furnished by the applicant is not available in the Service Register. Since the applicant challenged her transfer to Warangal and asserted that she was working on

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deputation basis, we directed the Officer, who made the endorsement dt. 29.4.87 in the Service Register of the applicant to be present before us. On 21.1.99, the said Officer B.Satyanarayana Singh was present. After going through the endorsement in the Service Register of the applicant he submitted that he has signed below the endorsement putting the official seal of JAO. He has given an explanation that on that particular day, the JAO was on leave and he signed the endorsement and affixed the seal of JAO. He further stated that one Tirupataiah was the JAO and that he was on leave on 29.4.87. We find no reasons to disbelieve the statement given by the ^{Asstt.Accounts} officer. Hence we are of the opinion that the applicant sought request transfer from Karim Nagar to Warangal and was working as TOA in Warangal. When the departmental proceedings were conducted and when the punishment was imposed by the Respondent No.1. The respondents also produced a ^{copy} copy of the declaration given by the applicant.

14. Taking all these factors into consideration we are of the opinion that the TBE Warangal is the competent authority to impose punishment of removal of the applicant from service.

15. The learned counsel for the applicant contends that the respondent authorities failed to consider her explanation dt. 13.2.90 wherein she brought out certain circumstances which compelled her to remain absent and that therefore, the punishment of removal from service is too harsh and excessive.

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16. The learned Counsel for the applicant contended that the inquiring authority as well as the respondent authorities failed to consider her representation dated 13.2.1990 in proper perspective. The applicant in her representation dt. 13.2.90 admitted her absence on the dates indicated in the charge memo and came with an explanation. It is only after the Disciplinary Authority considering her explanation ^{not satisfactory} initiated the Disciplinary Proceedings. This indicates that the Disciplinary Authority was not satisfied with the explanation offered by the applicant on 13.2.90.

17. When the inquiry was conducted, it is for the applicant to substantiate the grounds stated in her application dt. 13.2.90. From the inquiry report it is clear that the applicant categorically admitted her absence and also admitted the misconduct alleged in the charge memo. Nothing prevented the applicant to ask the Inquiry Officer to examine any person on her behalf to corroborate her version contended in her explanation dated 13.2.90. In fact, the applicant admitted her absence on the dates indicated in the charge memo. She has remained absent for 49 days during the period from 27.4.88 to 29.11.89. The burden of proving her innocence of the charges rests on the applicant. It was for her to substantiate the averments made in the explanation dt. 13.2.90. When that is so, when the applicant categorically admitted her absence before the Inquiry Officer, we feel that the Inquiry

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Officer was left with no other alternative but to accept the admission of the applicant.

18. Further, the Disciplinary Authority, after receipt of the inquiry report from the Inquiry Officer gave an opportunity to the applicant. The applicant could have submitted a representation against the findings of the Inquiry Report. The applicant attempts to state that no useful purpose could have been served by submitting an explanation against the findings of the Inquiry Report, which cannot be accepted as correct. If the applicant felt that she was really absent for the reasons stated in her explanation dated 13th February, 1990, then the applicant should have specifically asked the Disciplinary Authority to provide an opportunity to substantiate those averments made in her explanation. She has not done so. Hence the respondent authorities considered her explanation dated 13.2.90 amounting to admission of misconduct and proceeded to pass the impugned orders. In that view of the matter we do not find any irregularity in the conduct of the inquiry.

19. In support of his contentions, the learned Counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of Union of India and Others Vs.

Girraj^{iv} Sharma (reported in A.I.R. 1994 SC 215). In that case,

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the Hon'ble Supreme Court observed that overstayal of leave by 12 days by the respondent therein was not intentional, that the respondent had no intention to disobey or flout the orders and hence the punishment imposed to the respondent was excessive.

20. In the case of Union of India Vs. Paramananda, the Hon'ble Supreme Court has categorically ruled that the Court or Tribunal cannot interfere with the punishment.

21. In the case of T.R.Vijayan Vs. Sub-Divisional Inspector & Others (reported in 1994 (28) ATC 680) the Ernakulam Bench of this Tribunal found that the said official had handed over a Postal Money Order of Rs.135/- to a different person of a similar name instead of paying to the payee mentioned in the M.O. In those circumstances, the Ernakulam Bench of this Tribunal felt that the punishment imposed therein was excessive.

22. In the present case, the work of the applicant was not satisfactory. Further the Disciplinary Authority even before imposing the punishment had watched the performance of the applicant and found her work to be unsatisfactory. We feel that the superior officer can always watch the performance of his subordinate without giving any precautions. In such circumstances giving an opportunity may defeat the very object of watch or supervision.

23. Further, the service records of the applicant disclosed that many of the earlier periods of absence of the applicant were treated as dies non. These are the factors that were weighted with the Disciplinary Authority to impose the punishment of removal.

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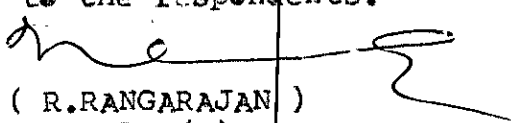
24. In that view of the matter, we do not find any justifiable or convincing reasons to interfere with the impugned orders.

25. Hence, we find no merits in the O.A. and the O.A. is liable to be dismissed.

26. The O.A. is accordingly dismissed leaving the parties to bear their own costs.

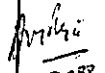
27. The personal file and Service Register produced by the respondents were perused and returned to the respondents.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)


(R.RANGARAJAN)
MEMBER (A)

Dated, the 5th Feb. '99.

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Copy to:

1. HON'J

2. HHRP M(A)

3. HGSJP M(D) ✓

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15/2/99.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD.

THE HON'BLE MR. JUSTICE D.H.NASIR:
~~VICE CHAIRMAN~~

THE HON'BLE H. RAJENDRA PRASAD :
~~MEMBER (A)~~

THE HON'BLE R. RANGARAJAN :
MEMBER (A) ✓

THE HON'BLE MR. B.S. JAI PARAMESHWAR: ✓
MEMBER (D)

DATED: 5-2-99.

ORDER/JUDGMENT

M.A./R.A/C.P.NO.

IN

D.A.NO : 1010/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दफ्तर / DESPATCH

11 FEB 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH