

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

**OA/21/1119/2012, OA/21/1157/2012, OA/21/1165/2012,
OA/21/1229/2012 & OA/21/1230/2012**

Dated : 18/09/2018

BETWEEN

Ch. Veera Sena Reddy,
S/o. Late Ch. Malla Reddy,
Aged 59 years, CSS,
O/o SDE Groups, Warangal,
R/o. No.3-54/1/1, Saptagiri Colony,
Wadeepally, Hanumakonda,
Warangal District.

.... Applicant in 1119/2012

P. Rama Rao,
S/o. Venkateswarlu,
Aged 54 years, SSS (O),
O/o. Divisional Engineer (CFA NWO),
Parkal, R/o. No.11-27-164,
Kothawada, Warangal.

.... Applicant in 1157/2012

P. Narayana,
S/o. Yellaiah,
Aged 55 years, SSS (O),
O/o. Sub-Divisional Office (Phones),
Opp. Govt. High School,
Mahabubabad,
R/o. No.11-23-1736,
Desaipet Road, Warangal.

.... Applicant in 1165/2012

G.D. Sajjana Rao,
S/o. Veeraia,
aged 57 years, SSS(O),
O/o Sub-Divisional Engineer (GR),
Mulugu, Warangal,
R/o. H.No.11-232324/1, 2nd floor,
Srinivasa Colony,
Deshaipet Road, Warangal.

.... Applicant in 1229/2012

K. Narasimha Murthy,
S/o. Late Sree Rama Murthy,
Aged 51 years, SSS (O),
O/o. Sub-Divisional Engineer (GRS),
Wardhanna Pet, Warangal,
R/o. H.No.12-4-205,
Mathey Wada,
Warangal.

.... Applicant in 1230/2012

AND

1. The Union of India rep. by its
Chief General Manager,
A.P. Telecom,
Door Sanchar Bhavan,
Nampally Station Road,
Abids, Hyderabad.
2. The General Manager,
Bharat Sanchar Nigam Limited,
Telecom District,
Warangal.
3. The Divisional Engineer,
Network Operation, BSNL,
Mahaboobabad,
Warangal District.

..... Respondents in all the cases

Counsel for the Applicant	...	Mr. P. Venkata Rama Sarma
Counsel for the Respondents	...	Mr. M.C. Jacob, SC for BSNL

CORAM :

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl.)
Hon'ble Mrs. Naini Jayaseelan, Member (Admn.)

ORAL ORDER
(Per Hon'ble Mr. Justice R. Kantha Rao, Judicial Member)

Heard Shri P. Venkata Rama Sarma, learned counsel appearing for the applicants and Shri M.C. Jacob, learned Standing Counsel appearing for the Respondents.

2. Since common questions of law and fact would arise for consideration in all the five O.As, they are disposed of by a common order.

3. The applicants in all the five O.As are employees of BSNL, Warangal. They were transferred to different places in Warangal District by a common order dated 30.05.2009. The applicant in O.A. No.1119/2012 challenged the

transfer order on the ground that he was transferred to a lower post. The other applicants also challenged the transfer order on different grounds by filing O.A. No.619/2009 and the same was disposed of on 27.11.2009 directing to consider the representations of the applicants. The applicants joined their respective posts of transfer.

4. The applicant in O.A. No.1119/2012, aggrieved by the fact that he was posted to a lower grade post, submitted a representation to the Respondents to post him in equivalent post from which he was transferred. But the same was not considered by the Respondents. Therefore, he filed O.A. No.545/2010. The same was allowed by order dated 10.11.2010 with a direction to the respondents to accommodate the applicant against one of the sanctioned posts of Chief Section Supervisor, wherever available in Warangal District.

5. However, in the meanwhile, the 3rd Respondent issued charge sheet to the applicants in all the five cases, levelling the charge of unauthorised absence. The dates of unauthorised absence of the applicants are at variance. As per the charge sheet, the applicants absented for about 65 days. Against the charge, all the applicants submitted representations on 17.12.2009 to drop the charge as there was no wilful disobedience on their part. But the charge was not dropped and straightaway minor penalty of withholding of one increment for a period of one year without cumulative effect treating the period of absence as Dies-non was imposed vide order dated 15.1.2010. Being aggrieved, the applicants preferred an appeal on 03.02.2010 and the appellate authority by order dated 03.10.2011 modified the punishment imposed by the disciplinary authority to that of 'Censure'. The period of 'Dies-non' is treated as leave admissible to each of the applicants.

6. However, the reviewing authority *suo moto* reviewed the order stating that he has decided to review the punishment and restored the penalty order passed by the disciplinary authority and called for the explanation of the applicants. The applicants sought time for submitting their explanation to the above notice and also sought time to furnish certain documents. The reviewing authority, without acceding to the said request of the applicants, passed the order dated 15.02.2012 restoring the penalty order passed by the disciplinary authority.

7. Subsequently, the other reviewing authority, who succeeded the earlier reviewing authority, passed a revised order in respect of the applicant in O.A. No.1119/2012 restricting the period of withholding of one increment for a period of 9 months instead of one year keeping in view that the applicant was due for retirement on 31.8.2013.

Against the aforementioned orders, the present O.As are filed.

8. After filing of the O.As, the Tribunal stayed the order passed by the reviewing authority and subsequently the same was made absolute.

9. The short question that falls for consideration in these O.A.s is as to whether the order passed by the first reviewing authority in respect of all the applicants and the order passed by the second reviewing authority in respect of the applicant in O.A. No.1119/2012 can be set aside or modified.

10. The foremost among the submissions made by the learned counsel appearing for the applicants is that the reviewing authority Sh. K. Narender directed the disciplinary authority to issue charge sheet to the applicants in respect of unauthorised absence and on that the disciplinary authority prepared

the charge sheet. According to the learned counsel for the applicants, the disciplinary authority was acting to the dictates of the reviewing authority and, therefore, the charge sheet issued against the applicants is vitiated. However, unless prejudice is said to have been caused to the applicants, the said ground that Sh. K. Narender, the reviewing authority directed the disciplinary authority to issue charge sheet to the applicants for their unauthorised absence will not vitiate the entire proceedings.

11. In the instant case, obviously during the periods mentioned in their respective charge sheets, the applicants became absent from their duties without joining in the posts to which they were transferred. Even though they subsequently challenged their transfers, it is their duty to join the respective posts by obeying the transfer orders. Further, during the period of absence, the O.As were not filed and thus there was no *stay* by the Tribunal or any other Court. However, the way in which the reviewing authority acted while reviewing the penalty warrants interference with the order passed by him. He issued notices to the applicants by proposing the penalty which he is going to impose. Thereafter, even without waiting for explanation, he straightaway restored the order passed by the disciplinary authority. The appellate authority, considering the subsequent decision of the department which kept the transfer orders in abeyance, imposed the punishment of 'Censure' by modifying the punishment imposed by the disciplinary authority. Now it is submitted by the learned counsel appearing for the applicants that all the applicants excepting the applicant in O.A. No.1230/2012, retired from service.

12. Having regard to the aforementioned facts and circumstances, we are of the considered view that the penalties imposed by the reviewing authority are severe and deserve to be reduced. Therefore, in these O.As, the orders

passed by the reviewing authority dated 30.07.2012 are set aside and in case of all the five applicants, the order of punishment of 'Censure and treating the period of absence as leave admissible to them is restored.

13. With the above modification in the punishment, the O.As are partly allowed. The retiral/ service benefits of the applicants shall be fixed basing on the order passed by the appellate authority which is restored in these O.A.s, within a period of three months from the date of receipt of a copy of the order. No order as to costs.

(NAINI JAYASEELAN)
ADMN. MEMBER

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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