

**(2022) 04 TEL CK 0021**  
**In the Telangana High Court**  
**Case No : Writ Petition No. 20519 Of 2013**

Bharat Sanchar Nigam Limited

APPELLANT

Vs

G Chandrasekar Rao

RESPONDENT

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**Date of Decision :** 08-04-2022

**Acts Referred:**

**Citation :** (2022) 04 TEL CK 0021

**Hon'ble Judges :** P.Naveen Rao, J;Dr. G.Radha Rani, J

**Bench :** Division Bench

**Advocate :** K Udaya Sri

**Final Decision :** Allowed

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## Judgement

1. This writ petition is filed by Bharat Sanchar Nigam Limited (for short, 'BSNL') challenging the order of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, dated 17.4.2013 in O.A.No.525 of 2011. The Tribunal allowed the O.A., setting aside the order of dismissal from service of applicant/first respondent herein.

2. Heard Smt C.Vani Reddy, learned counsel for petitioners/BSNL and Sri G.Vidya Sagar, learned senior counsel appearing for first respondent.

3. The first respondent herein joined the Department of Telecommunications as Junior Engineer (Civil) on 26.6.1980. Later the Telecommunication services hitherto undertaken by the Department were entrusted to the BSNL and the respondent was absorbed in BSNL w.e.f. 01.10.2000. He was promoted as Assistant Engineer (Civil) on 28.2.2001. On 7.8.2004 first respondent was transferred to Civil Zone, Hyderabad and joined the post on 13.8.2004. While so, vide orders dated 20.8.2004, he was transferred and posted as Sub Divisional Engineer (Civil), BSNL Civil Sub Division, Guntur. The first respondent has not joined the transferred post and absented from duty from 21.8.2004 to 15.9.2005. Vide letter dated 11.4.2005, BSNL has informed the first respondent that the period of absence would be treated as unauthorized absence, loss of pay

and in terms of proviso to FR-17 it would results in break in service.

4. On 5.10.2005 charge memo was issued alleging unauthorized absence from duty from 21.8.2004 to 15.9.2005. The first respondent submitted his explanation on 23.11.2005 citing ill health and family problems. Not satisfied with the explanation offered by the first respondent for the alleged unauthorized absence from duty from 21.8.2004 to 15.9.2005, enquiry was ordered. The enquiry officer submitted his report dated 17.8.2007 holding the charge as proved. The report of the Enquiry Officer was supplied to the first respondent on 26.9.2007. Against the report of the Enquiry Officer, first respondent submitted a representation on 8.11.2007. It appears on coming to know that vide modified orders dated 3.12.2005 he was posted to Vijayawada, the first applicant reported for duty on 6.11.2007. Not satisfied with the explanation, vide orders dated 28.4.2008 punishment of removal from service was imposed. First respondent preferred appeal on 27.5.2008. The same was rejected vide orders dated 15.3.2010. Challenging the order of removal from service dated 28.4.2008 and the consequential order dismissing the appeal dated 15.3.2010, first respondent filed O.A. before the Central Administrative Tribunal, Hyderabad Bench.

5. The Tribunal on consideration of the matter holding that the disciplinary authority has not given specific reasons for imposing the extreme punishment of removal from service and that the punishment of removal from service is shockingly disproportionate, set aside the impugned order of removal from service and remanded the matter back to the disciplinary authority for imposing any other punishment except removal/compulsory retirement. The Tribunal further held that in case no order is passed within a period of three months, it is deemed that the applicant is taken back to duty at the end of the month and that he would not be entitled to any wages for the period he was out of employment after removal.

6. Challenging the said orders, BSNL preferred this writ petition. This Court while admitting the writ petition by order dated 15.07.2013 granted interim suspension. First respondent filed counter-affidavit along with vacate stay petition reiterating the grounds urged before the Tribunal.

7. According to learned counsel for petitioners, the first respondent unauthorisedly absented from duty on flimsy grounds and in spite of giving sufficient opportunity and reminders, he did not report to duty. The long unauthorized absence was willful and deliberate. Therefore, the Tribunal erred in setting aside the order of removal from service. Learned counsel placed reliance on decisions of Supreme Court in *The State of Karnataka and another Vs N Gangaraj* Civil Appeal No. 8071 of 2014 dt14.2.2020 and *Maan Singh Vs Union of India and others* (2003) 3 SCC 464.

8. Learned senior counsel contended that due to some domestic problems and health reasons, respondent absented from duty. It was not deliberate and willful. The punishment of removal on the allegation of unauthorized absence was too

high and disproportionate. He supports the decision of Hon'ble Tribunal. Learned senior counsel placed reliance on decisions of Hon'ble Supreme Court in Harjit Singh and another Vs State of Punjab and another (2007) 9 SCC 582, Central Industrial Security Force and others Vs Abrar Ali (2017) 4 SCC 507, Chairman-cum- Managing Director, Coal India Limited and another Vs Mukul Kumar Choudhuri and others (2009) 15 SCC 620 and decision of this Court in Md Pasha Vs APSRTC (2016) 2 ALT 2= 2015 SCC OnLine Hyd 851.

9. We have carefully considered the respective submissions and the precedent decisions cited at the bar.

10. The Tribunal holds that the disciplinary authority did not assign specific reasons for imposing extreme punishment of removal from service; that punishment is shockingly disproportionate and sets aside the punishment remanding the matter to the disciplinary authority for imposing any punishment other than removal/compulsory retirement. It is unfortunate that while Tribunal holds that no reasons were assigned by the disciplinary authority to set aside the order of the disciplinary authority, it commits the same error of not assigning reasons for setting aside the punishment order and for directing to impose lesser punishment. The Tribunal also does not assign reasons why the punishment is shockingly disproportionate on the allegation of unauthorized absence for a period of more than one year.

11. The Tribunal grossly erred in holding that the disciplinary authority has not assigned reasons. On the findings recorded by the Enquiry Officer, notice was issued directing the petitioner to submit his explanation, to which he responded. He submitted his explanation dated 8.11.2007. The disciplinary authority noted the explanation offered by the respondent, went into the record of disciplinary proceedings and then noted that respondent did not report to the duty at Guntur and remained unauthorisedly absent from 21.8.2004 to 15.9.2005, though acknowledged letters addressed to him asking him to report for duty or else disciplinary proceedings would be initiated, but he failed to respond. The disciplinary authority also noted that in his letter he mentioned that he did not report to duty because of some personal problems. Taking note of long unauthorized absence, admission of the fact of not reporting to duty and having regard to the findings recorded by the Enquiry Officer, the disciplinary authority imposed punishment of removal from service. Thus, it cannot be said that the disciplinary authority has not applied its mind and that it is not a reasoned order.

12. An employee has to work on all working days. He may be called upon to work even on a holiday in the exigency of service. An employee is expected to be available at the disposal of the employer for 24 hours. He can absent from duty only after obtaining permission of the competent authority. There are few exceptions to absents without prior intimation. In emergency, an employee can apply for leave, but such emergency can be for a day or two. Thus, availing leave is not a matter of course and without sanction of leave, no employee can absent from duty. Depending on the nature of service rendered by an employee, his past

conduct and his dedication to work, the immediate superior authority may condone an unexpected absence from duty but when absence from duty becomes longer, the burden is on the employee to explain reasons for his absence. In the case on hand, the employee was absent from duty for more than one year. From the letter written by him on 23.11.2005, it is clear that he accepts his absence from duty and states that he could not report to duty at Guntur "because of some family problems". Said statement is vague, employee cannot absent from duty on unspecified family problems. Therefore, his absence was deliberate and willful.

13. In support of his contention that on the ground of unauthorized absence for one year an employee cannot be removed from service and punishment of removal is excessive and shockingly disproportionate, learned senior counsel for respondent placed reliance on several decisions. There is no quarrel with the proposition of law that an unauthorized absence per se cannot be viewed as a major misconduct and should not ordinarily result in punishment of dismissal, but it is the bounden duty of the employee to explain the reasons for absence and show justification for his absence and the efforts made by him to inform the immediate superior authority of his absence. As noticed above, no reason was assigned why he could not inform the competent authority about his absence and apply for leave. A mere family problem could not have restrained him from submitting an application for leave.

14. In the decisions relied upon by learned senior counsel for respondent, not cases of long absence and it was found that the disciplinary authority has not followed the procedure required/has not taken note of short period of absence to impose grave punishment and the Supreme Court exercised its discretion to substitute the punishment with a less severe penalty.

15. In *Mukul Kumar Choudhuri and others (supra)*, the Supreme Court exercised its discretion to modify the punishment having regard to the fact that though the employee was absent for six months, the employee fairly admitted his guilt and explained reasons for his absence. Therefore, the Supreme Court held that the punishment of removal from service was not justified, harsh and grossly excessive. The Hon'ble Supreme Court noticed that while admitting the guilt of absence the employee stated that the reason of absence was purely personal which could not be proved by any evidence and is beyond his control. This clear and fair statement was found favor with the Hon'ble Supreme Court to substitute the punishment.

16. *Maan Singh (supra)* is also a case of imposing severe punishment of dismissal from service on the allegation of unauthorized absence. The employee remained unauthorisedly absent for more than two years continuously without any intimation or submission of any medical papers in support of his illness. The Central Administrative Tribunal upheld the order of dismissal and same was affirmed by the Hon'ble High Court. Following the decision in *State of M.P. Vs Harihar Gopal 1969 SLR 274 (SC)* the Hon'ble Supreme Court upheld the decision

of the High Court affirming the punishment of dismissal.

17. From the precedent decisions, it is apparent that period of absence is not crucial. What is relevant is whether absence from duty was actuated by some serious concern that prevented employee even notifying his absence and was not deliberate and willful. The compelling circumstances must over weigh the desire of employee to work. Thus, each case has to be seen on the given facts of the case. In the case on hand post facto employee sought to explain his absence on unspecified personal problems. He did not respond to notices warning him to report to duty failing which disciplinary action would be initiated. No concern was shown to report to duty and persuade the authority the bona fide reasons for absence. We are therefore of the opinion that this is not a case to show leniency.

18. The order of the Hon'ble Tribunal is not sustainable. It is accordingly set aside and the Writ Petition is allowed. Pending miscellaneous applications if any shall stand closed.