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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4927/2021**

SANGEETA SAXENA Petitioner
Through **Mr. Harsh Panwar, Advocate**

versus

BHARAT SANCHAR NIGAM LTD
THROUGH ITS CHAIRMAN AND
MANAGING DIRECTOR & ORS. Respondents
Through **Mr. R.V. Sinha with Mr. A.S. Singh,**
Mr. Amit Sinha and Ms. Sharanya
Sinha, Advocates

% **Date of Decision: 24th May, 2021**

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

The petition has been heard by way of video conferencing.

CM APPL. 15132/2021

Allowed, subject to just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) 4927/2021

1. Present writ petition has been filed challenging the order dated 12th February, 2021 passed by the Central Administrative Tribunal (Principal

Bench) [for short 'Tribunal'] dismissing OA No. 3060/2019 as well as challenging the order dated 31st December, 2008 passed by the Disciplinary Authority removing the Petitioner from service. Petitioner also seeks direction to the respondents to reinstate her to the original post.

2. Learned counsel for the Petitioner submits that the Tribunal erred in holding that the second OA filed by the Petitioner was hit by the principle of *res judicata* as the earlier OA was withdrawn with the liberty to approach the department for sympathetic consideration of her case vide order dated 12th October 2017.

3. He further submits that the Tribunal erred in holding that since the Petitioner had been appointed on compassionate grounds and not by means of open competition, the Petitioner was supposed to be grateful to the administration. He states that irrespective of the mode of recruitment all employees have the right to be treated equally in matters of employment and not doing so would run counter to Article 16 of the Constitution of India.

4. Learned counsel for the Petitioner states that the Petitioner was not given a fair opportunity to present her case. He emphasises that a criminal case was filed against the petitioner by her immediate family members and therefore she could not attend the office. He also states that the Respondents should have converted the punishment of removal from service to a minor punishment since unauthorised absence was unintentional and due to an unavoidable situation.

5. Briefly stated the facts of the present case are that the Petitioner was appointed as a Telephonic Operator Assistant (TOA) on 14th October, 2003 on compassionate grounds. She remained absent from 21st March, 2005 till 05th January, 2006 without any sanction or permission. Disciplinary

Authority passed an order dated 31st December, 2008 imposing the punishment of removal from service upon the petitioner holding that the petitioner had been absent for nearly three and a half years without any leave or permission and all the three charges had been accepted by her during the preliminary enquiry. The appeal preferred against the order of removal was rejected on 25th May, 2010 and the review was rejected on 16th March, 2012.

6. The Petitioner thereafter filed OA No. 3634/2013 challenging the order of removal but withdrew the same stating that she intends to pursue her remedies with the department. The representation made to the department was rejected vide order dated 28th July, 2018 stating that the appeal and review preferred by the Petitioner were already disposed of and there was no provision under the rules for further review against an order passed by the Revisionary Authority.

7. A perusal of the impugned order reveals that the petitioner was absent from duty for almost 3 ½ years except for a short period between 06th January, 2006 and 11th January, 2006. She had neither applied for any leave nor taken any prior permission from the respondents. All the three charges had been accepted by her during the preliminary enquiry.

8. In the event there was a medical emergency or there was a threat to her life, she should have informed the department and/or sought police protection. On the contrary, during the course of hearing learned counsel for the Petitioner had relied upon an FIR filed against the Petitioner by her relatives in support of his contention that the Petitioner had a valid reason for her long absence. In the opinion of this Court, the FIR in which the petitioner had been named as an aggressor cannot be a reason for her prolonged absence and that too without any intimation or leave application.

9. Consequently, the present writ petition being bereft of merits is dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

MAY 24, 2021

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