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Central Administrative Tribunal, Allahabad.

Registration O.A.No.714 of 1986.

Madhav Prasad Chaudhry ... Applicant

Vs.

Union of India and others ... Respondents.

Hon.P.S.Habeeb Mohammad, AM  
Hon.J.P.Sharma, JM

(By Hon.J.P.Sharma, JM)

The Applicant employed as Telephone Operator under S.D.O.Phones Kanpur at the relevant time moved an Application u/s.19 of the Administrative Tribunals Act XIII of 1985 assailing the order dated 26.4.1985 passed by SDO Phones Unnao imposing the penalty of withholding of one increment for a period of one year under R.16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and treating the period of suspension as leave due as a result of disciplinary proceedings against the Applicant. The appeal preferred by the Applicant was also rejected by Divisional Engineer (Phones) Kanpur vide order dated 10.7.1985. The Accounts Officer, Telephones and Asstt. Manager Telephone issued order dated 3.12.85 granting leave to the Applicant for the period of suspension partly on full pay, partly on half pay and partly without pay. The Applicant also assails the order of wrong fixation of seniority by order dated 3.12.1981 showing the name of the Applicant at sl.no. 283 instead of 221. The seniority list is of Kanpur Telephones while the name of the Applicant is omitted from the seniority list by order dated 20.2.1985 passed by Asstt. General Manager (Admn.)Kanpur. The Applicant claimed the following reliefs :-

(a) to quash the punishment order dated 26.4.1985 and the order rejecting the appeal dated 10.7.85 by the appellate authority,

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(b) revised leave due dated 3.12.1985 treating the period of suspension from 5.12.1981 to 15.8.83 partly as leave with full pay, partly as leave with half pay and partly as leave without pay be held to be illegal, mala fide, wrongful and void,

(c) to grant annual increment to the Applicant from 1.12.77

(d) to restore the name of the Applicant in the gradation list of Telephone Operators Kanpur and deletion of his name from the gradation list of Telephone Operators Kanpur be held to be illegal, mala fide, wrongful and null and void and

(e) to place the name of the Applicant at sl.no. 221 from 283 in the gradation list.

2. The Application has been admitted. As regards correction of the ranking of the Applicant in the seniority list from 283 to 221, this matter arisen sometimes in Oct.1981 and obviously three years before coming into force of the Tribunal on 1.11.1985. The Applicant has not filed any document or canvassed through his counsel orally at any stage of argument how this relief is within time nor there is any application for condoning the delay. S.21 of the Administrative Tribunals Act XIII of 1985 is an injunction on the Tribunal not to entertain matters cause of action of which arisen 3 years before the date of enforcement of the Act XIII of 1985. In view of this fact, the Application regarding relief no.(e) which is noted down at the bottom of para 7(iv) is barred by time and the Applicant cannot get this grievance redressed on account of his own laches on merits and so this relief is disallowed as barred by ~~xxxx~~ time.

3. For the remaining reliefs, the facts are that the Applicant was earlier in service of the Indian Army and was employed as Telephone Operator as ex-serviceman in that quota and was working in the Telephone Department Kanpur. Sri M.N. Shukla A.E.Phones (Trunks) Kanpur was also posted in the

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Trunk Exchange, Kanpur under whom the Applicant was working. During the course of argument, learned counsel for the Applicant also informed that the Applicant is an office bearer of the Union. On 5.12.1981 Sri M.N.Shukla AE Phones was in his chamber in the Trunk Exchange Kanpur and at that time it is alleged that the Applicant Madhav Prasad Chaudhary came to the Trunk Exchange at 5.50 p.m. and abused Sri M.N.Shukla and in his own wordings :-

"Sale Tumne Arvind Kumari TO Ko 4.30 Baje Duty Nahi Di. Neeche Utro Tumhe Jaan Se Maar Dalta Hoon. Tum Apne Ko Kya Samajhete Ho ."

Miss. Arvind Kumari was also working at that time as Telephone Operator. Sri M.N.Shukla made a complaint to Divisional Engineer Phones, Kanpur and the true copy of the complaint is annexure CA-2 to the Counter Affidavit. The Applicant was also suspended from 5.12.1981 on the ground that disciplinary proceedings against the Applicant was contemplated. However, due to misplacement of the order of suspension in the Accounts Section the Applicant was paid full salary and allowances ad the deductions appears to have been made sometimes when the mistake was detected. The SDO Phones served a memo, annexure 1 with the articles of charges on the Applicant. The articles of charges are reproduced below :-

" Article 1- that the said Sri MP Chaudhary while functioning as Telephone Operator attached the Trunk PCO Railway Station Kanpur under SDO Phones (Max) Kanpur was not on duty on 5.12.1981 due to lockup of trunk PCO of Central Railway Station Kanpur neither he was performing his duty anywhere under SDO P (East) TRS Kanpur and SDOP (West) Kanpur nor he was on leave as per office records.

Article II- That during aforesaid period and while he was not functioning in the aforesaid office the said Sri M.P.Chaudhary T.O. deserted himself from duty and committed gross misconduct which is against departmental rules and regulations.

Article III- That during aforesaid period and while he was not functioning in the aforesaid office the said Sri M.P.Chaudhary TO entered trunk exchange Kanpur unauthorisedly at about 17.50 hours on 5.12.81 and abused to Sri M.N.Shukla AE Trunk Kanpur in a very unparliamentary language "Sale tumne Arvind Kumari TO Ko 16.30 duty per nahi dee. Neeche Utro Tumhen Jan se mar dalte hai. Tum apne ko kya samajhete ho".

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Art.IV :- that during the aforesaid period and while he was not functioning in the aforesaid office the said MP Chaudhary TO misbehaved with the senior gazetted officer and violated the rules and regulations of the department."

4. Sri K.P.Singh, SDO(P) Kanpur and Unnao passed the following order on the inquiry against the Applicant as disciplinary authority :-

" I K.P.Singh SDO (P) in exercise of power conferred upon me under CCS (CCA) Rules,1965 order for withholding of one increment for a period of one year of Sri M.P.Chaudhary under rule 16 of CCS (CCA) Rules,1965. Period of suspension may be treated as leave due."

On each article of charges, the disciplinary authority discussed the matter and on preponderence of probabilities, held the charges as proved. The appellate authority passed order dated 10.7.1985 (annexure 14) as under :-

"....The undersigned has gone through all the documents and appeal of the case. After carefully examining all the facts, undersigned upholds the findings of disciplinary authority and confirm the punishment order by SDO P (KDN & UNO)."

5. It appears from the record that Km. Arbind Kumari was also suspended and charge sheeted but was not proceeded with and was also reinstated. It is on the assumption that the whole matter came up in the present form as Arbind Kumari was not granted a short french leave.

6. Learned counsel for the Applicant assailed the punishment order on the following grounds:-

- (a) that no preliminary inquiry was held and it was not at all necessary in the present case where the inquiry proceeded for minor penalty;
- (b) that Arbind Kumari has not been examined and there were several other persons present at the time of incident but none has deposed against the Applicant and the punishment order is passed only on the basis of surmises and conjectures.

There may be some substance on the face of this argument but the disciplinary authority has observed that a gazetted officer has made a complaint who was a senior officer under whom the Applicant was working and such an officer cannot make a false allegation concerning such facts which may malign the complain-

ant. Further it has been observed that Arbind Kumari being an woman rightly hesitated to come forward and depose against the Applicant and avoided confrontation otherwise she would have earned enmity from the side of the Applicant. The version of the Applicant himself before the inquiry officer was that he used to come to Trunk Exchange and got trunks of railway and PCO expedited. So the entry of the Applicant in the Trunk Exchange on that very day cannot be denied. Thus from the above observations made in annexure 8, it cannot be said that this was a case of no evidence. Discipline is one of the essential ingredients in the Government service and a misconduct in private life also may result in disciplinary action against the delinquent person. There is no enmity or bias for Applicant and attempts to manufacture afterthought are not rare to seek.

7. As regards passing of the order of the suspension period to be treated as leave, the order is quite in variation to the O.M (annexure R.A.1) dated 3.12.1985 from Department of Personnel and Training on the subject wherein period of suspension is treated as duty if minor penalty is imposed after conclusion of the disciplinary proceedings and after discussing the same, it was directed that ".... with the imposition of minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension, vis-a-vis, a suitable orders under FR 54-B."

8. Thus, the disciplinary order as well as appellate order needs modification to the extent that the Applicant is entitled to whole of the emoluments for the period he was under suspension from 5.12.1981 to 15.8.1983 and the period cannot be converted into leave due. The Applicant is entitled to the full salary and other benefits for this period and if the same has already not been paid, they have to be paid to the Applicant forthwith.

9. As regards the relief of seniority, the same has already been held to be barred by time in the opening paragraph of this judgment and cannot be considered at all being beyond the period of limitation.

10. As regards the relief of grant of increment, the matter has to be looked into afresh. Normally it is a right of an employee to get increments yearly and the efficiency bar is allowed to be crossed as and when due. But the case of the Applicant appears to be somewhat abnormal. It was the second charge sheet which was served on the Applicant. The Applicant was due to cross efficiency bar on 1st Dec. 1977 but in the same year from 8th July 1977 to 12th Sept. 1977 he was under suspension in a disciplinary case which ended in Nov. 1981 and soon thereafter, on 5th Dec. 1981, the Applicant was again suspended in the present case. However, in para 30, the Respondents have admitted that the Applicant was not punished in the inquiry of 1977. So the Applicant was entitled for crossing of the efficiency bar immediately thereafter. It appears that only due to that account, the confirmation of the Applicant has been withheld. In any case, the Respondents shall consider the matter of the Applicant and allow him to cross efficiency bar from the due date with all consequential benefits and he shall be allowed increments in normal course except the increment which has been withheld by punishment order dated 26.4.1985.

11. Having given our careful consideration we are of the view that withholding of the emoluments of the suspension period in a case of minor penalty will not be in accordance with the principles of natural justice and O.M. aforesaid issued by the Ministry of Personnel. Similarly, when the Applicant is serving and is still in service, he is entitled for yearly increments and crossing of the efficiency bar. The efficiency bar cannot be withheld for years. It is said that it was due in December but in view of the inquiry against the Applicant, it was not granted. This is no answer in the

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eye of law. The Applicant was exonerated of the charges framed against him and, therefore, his case should have been considered or a sealed cover method should have been adopted. There is no justification in withholding yearly increments or in not allowing to cross the efficiency bar. We are of opinion that the Applicant is entitled to get emoluments for the period of suspension and all other benefits accruing to him as if he was in active service and the manner in which period of suspension has been treated as leave is arbitrary. The Applicant is also entitled for crossing of the efficiency bar from the due date and yearly increments.

12. The petition is partly allowed. The Respondents are directed to pay to the Applicant his emoluments for the period of suspension and other benefits accruing thereof treating as if he was in active service and the manner in which the period of suspension has been treated as leave, being arbitrary, is quashed. It is also directed to the Respondents that they shall grant yearly increments, as and when due, to the Applicant and cross the efficiency bar from the due date, as nothing remains against the Applicant. However, the punishment imposed in the inquiry is maintained and relief to that extent is disallowed. There will be no order as to costs.

*Jonnace*  
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MEMBER (J)

Dated: 18.5.1990  
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MEMBER (A)