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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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Registration O.A.No.3 of 1987

S.D.Gupta

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Appli

Vs.

Union of India & Others

Respondents

Hon'ble Mr.Justice U.C.Srivastava, V.C.

Hon'ble Mr.K. Obayya, Member (A)

(By Hon.Mr.Justice U.C.Srivastava, V.C.)

After retirement from service the applicant was imposed penalty for ~~forfeiture of gratuity amount of~~ Rs. 16,860/- and permanent withholding of one-third of pension. The applicant has approached this Tribunal praying relief for the same. The applicant was appointed as Civilian Storemen in the Ordnance Corps of the Indian Army in the year 1945 and was promoted as Senior Store Keeper in the year 1953 in this post he worked till his retirement on 31.12.84. The first information report was lodged against the applicant on 15.6.76 under Sections 409 and 420 I.P.C. The allegation against him was that he took out unauthorisedly 101 unserviceable Batteries from the Central Ordnance Depot, Chheoki, Allahabad. A criminal case was registered against the applicant in the Court of Judicial Magistrate and the applicant was suspended on 22.7.76. But the suspension order was revoked on 21st November, 1978. While the case was going on another FIR was lodged against the applicant on 13th April, 1979 by the Civilian Assistant Security Officer, Central Ordnance Depot, Cheoki which was registered as crime No.120 of 1979. While in the first case the police submitted the final report on 18.1.81 and the same was also accepted by the Chief Judicial Magistrate on 14.9.81. In the second case the final report

23

was also given against the applicant. Thereafter the departmental enquiry against the applicant was proceeded and the charge sheet was served upon him on 17.8.81, and the Enquiry Officer conducted the enquiry. It appears that the applicant did not fully participated in the enquiry, but the Enquiry Officer submitted his report in favour of the applicant and on the basis of the report submitted by the Enquiry Officer, the Disciplinary Authority exonerated him vide order dated 21.10.83 and order was passed by the Disciplinary Authority that the periods of suspension will be treated as on duty, and the period of suspension will be treated as qualifying service for earned leave, and full pay and allowances to which he would have been entitled had not been suspended less subsistence allowance already paid to him will be admissible during the period of suspension, and the period of suspension will be treated/ counted as qualifying service and interruptions in service on account of the suspension will not entail forfeiture of his past service. As a result of the order passed by the Disciplinary Authority the applicant was given all the dues to which he was entitled to with regularisation, promotion and arrears of pay and allowances that were due to him.

2. It appears that in the meantime the matter was taken by the Ordnance Service Directorate, Ministry of Defence on the basis of some letter which was sent on 8th October, 1983 that is much after the expiry of 6 months of the previous order. The Director Ordnance Services exercised the powers or revision conferred upon him under Rule 29(v) read with Rule 31 of the CCS(CC & A) Rules, 1965. Thereafter on the eve of retirement, the applicant was served another chargesheet and on the basis of said chargesheet the applicant was held guilty and the punishment referred to above was awarded to him. On behalf of the applicant the entire proceedings have been challenged on variety of grounds including that the entire proceedings

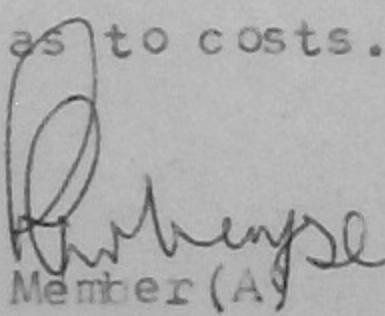
without jurisdiction. The learned counsel for the applicant contended that even Rule 9 of the pension rules enjoins the duty upon the authority concerned to seek and obtained the sanction of the President and without obtaining sanction, no enquiry could take place and no punishment order could be awarded. There is no denial of the fact that no sanction for the same was taken. Learned counsel contended that even if it could be said that power under rules 29 of the CCS (CC & A) in which the rules deals with the power of revision the maximum period before which action could have been taken or initiated is within a period of 6 months, and in this case the proceedings initiated much after 6 months, and in this case the proceedings initiated much after 6 months and as a matter of fact the letter which was sent to the Director Ordinance Depo itself was sent after 6 months on which a decision was taken. As such they have no right or jurisdiction to initiate any proceedings against the applicant. Rule 31 has been taken by the respondents to initiate proceedings against the applicant. Rule 31 of the CCS rules reads as follows:

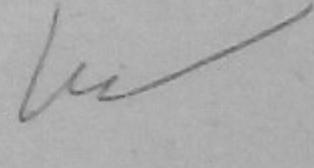
"power to relax time-limit and to condone delay. It otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in the rules for anything required to be done under these rules or condone any delay.

The rules makes it clear that it is not a privilege in all circumstances when the statutory rules itself fixed to maximum limit in exercising the power of relaxing the time for condonation of delay, the period of limitation cannot be extended. It is only if there is some delay the delay could be condoned. But the period of limitation cannot be extended. The powers under rules 31 thus were wrongly exercised and the authority concerned

had no jurisdiction to invoke rule 31 in order to extend the period of limitation.

3. The contention raised on behalf of the applicant comes out to be a double jeopardy is also not without force. The applicant rightly or wrongly even if he did not participate in the previous enquiry was fully exonerated by the disciplinary authority. No fresh proceedings on the said charges could have been taken place unless the earlier order was no set aside by the Appellate or Review Authority in accordance with law, and an order would not have been passed as provided. But incidently the same has not been done and in the letter issued by the departmental officer in the year 1983 the order referred to that letter were set aside and fresh proceedings we re initiated. It is not necessary to enter into the question as to whether rule 29(v) will apply or the same has wrongly been imported in the present case. In view of the facts that the entire proceedings are without jurisdiction and are against the rules bothe the pension rules and CCA rules be sustained. Accordingly this application is allowed and the punishment orders dated 12.10.84 nd 3.12.86 are quashed and set aside. However, the applicant will be entitled to all the consequential benefits as no punishment order was ever passed. The respondents are directed to give the monetary benefits to the applicant to which he is entitled to i.e. withheld gratuity and arrears of the pension within a period of 3 months from the date of communication of this order. No order as to costs.


Member (A)


Vice-Chairman.

31st October, 1991, Alld.

(sph)