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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 5th day of July 1996.

Original Application No. 496 of 1988.

Hon'ble Mr. S. Das Gupta, AM
Hon'ble Mr. T.L. Verma, JM

Nisar Ahmad, S/o Anwar Ali, employed
as fitter T.No. 1415, under C.F. Down
Departure Yard, Moghalsarai.

..... Applicant.

C/A Sri S.K. Dev

Versus

1. Union of India through the General Manager, E. Railway, 17 Neetaji Subhash Road, Calcutta - 1.
2. The Divisional Railway Manager, E. Rly, Moghalsarai.
3. The Divisional Mechanical Engineer (C & W), E. Rly. Moghalsarai.
4. The A.M.E. (C & W) E. Rly. Moghalsarai.

..... Respondents.

C/R Sri A.V. Srivastava
Sri A.K. Gaur.

O R D E R

Hon'ble Mr. T.L. Verma, JM

HL
In this application under Section 19 of the Administrative Tribunals Act, order dated 1.4.83/4.4.83 passed by disciplinary authority withholding the increment for the period of three years with cumulative effect, order dated 18.3.87 passed by the appellate authority

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and order dated 4.12.87 passed by reviewing authority upholding the penalty imposed by the disciplinary authority, ~~we~~ under challenged.

2. The applicant, while working as a Fitter grade II under Divivional Mechanical Engineer (C & W) E. Railway, Maghalsarai, was served with minor penalty chargesheet dated 16.3.83. The allegation against the applicant was that on 8.3.83 while he was on duty he was caught by G.R.P. ^{in the act of} ~~while~~ ^{out} he was playing cards and was taken in custody along with Hardwar, Chandra Bhushan Singh, Lalji and Udainath, all Khalasi. The applicant submitted his reply to the aforesaid ~~charge~~. The disciplinary authority did not find the explanation satisfactory and imposed penalty of stoppage of increment for three years with ^{out} cumulative effect. Appeal filed against the punishment was dismissed by the appellate authority on the ground that the same was barred by limitation. The reviewing authority also dismissed the revision petition. Hence this application for quashing the punishment imposed by the disciplinary authority and upheld by the appellate and reviewing authority, and for issuing a direction to the respondents to refund the amount of increments withheld along with the benefit of upgradation under the restructuring scheme.

3. Further case of the applicant is that a criminal case was also instituted against the applicant along with others under Section 13 of the Gambling Act. They were tried by the Railway Magistrate, Varanasi

in criminal case No. 334/93. The trial Court found the applicant and others co-accused not guilty and ~~had~~ ^{them} acquitted of the charges levelled against them. Since the allegations in the criminal case and the allegations for which the disciplinary proceeding was initiated against the applicant arising out of the same fact, acquittal in the criminal case should have been taken into account for setting aside the punishment imposed, in terms of instructions issued by A.D.R.M. Mughalsarai ⁱⁿ Annexure-I. It has ^{also} been ~~also~~ contended that Hardwar and Chandra Bhushan, who were also punished in the disciplinary proceeding by withholding increment on the same charge, ~~had~~ on appeal were exonerated of the charges, and the punishment imposed was quashed by respondent No. 2 vide order dated 11.10.85 (Annexure-2). The grievance of the applicant is that he has not been given the same benefit by the respondents and as such their action in rejecting his appeal is arbitrary and violative of principles of natural justice and provisions of Articles 14 and 16 of the Constitution.

4. The respondents have resisted the claim of the applicant. In the written statement filed on behalf of the respondent No. 2, it has been stated that the appeal was ^{filed} much beyond the time limit prescribed under the rules and as such has been rightly rejected as time barred. The order passed by the reviewing authority has been defended on the same ground. The further case of the respondents is that the appeal of the applicant after the acquittal in the criminal case was placed before the competent authority ^{but as} ~~as the~~ report

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of the office with regard to his performance was not satisfactory, the punishment imposed was not modified and the appeal & revision filed by the applicant were barred by time.

5. We have heard the learned counsel for the parties and perused the record.

6. The charge as mentioned in Annexure-1 against the applicant was that on 8.3.1983 he was arrested by the G.R.P. while playing cards in the Fitters Tool Room while on duty. He was taken in custody and thereafter released on bail. From the copy of the judgment of the Railway Ministry Annexure-5, it would appear that the applicant alongwith Lalji Singh, Chandra Bhushan Singh, Mahadeo Singh, Uda Narain, Nisar Ahmad and Haridwar were challaned under Section 13 of the Gambling Act on the allegation that they were ~~not~~ caught while gambling in public place. The applicant and other ^{except} co-accused Lalji who confessed his guilt were acquitted by judgement and order dated 29.5.1986. The learned Magistrate while passing the order of acquittal has observed that the prosecution has failed to prove that the place from where the accused were arrested allegedly while gambling does not come within the meaning of public place. The acquittal of the applicant, it would thus appear is not on the ground that he was ^{not} arrested while gambling but on the ground that the place from where he was arrested, is not a public place.

7. Charge framed against the applicant in the impugned disciplinary proceeding was that he was arrested by the G.R.P. in the act of playing cards in Fitters Tool Room/D.R.T. while on duty. The allegation of playing cards while on duty, if accepted, will

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obviously amount to misconduct and the Govt. servant ~~indicted~~ ^{alleged} with such misconduct can be punished in a disciplinary proceeding irrespective of his acquittal in the criminal case on the ground that the place where cards were being played is not a public place. The learned counsel for the applicant has drawn our attention to the instructions issued by D.R.M. vide letter dated 7.10.1986 on the subject of review of D.R.Cases. In para 5 of the instructions it has been mentioned that ~~whether the~~ ^{Where} ~~the~~ case is pending in the court of law, the D.R.proceeding against the particular employee can be finalised and the punishment imposed without ~~appealing~~ ^{waiting} for the final order from the Court. Subsequently depending upon the judgement of the Court, the action taken under the D.A.Rules can ^{be} suitably modified provided the charges against the delinquent staff are the same. We have already mentioned above, that the charges levelled against the applicant in the criminal case and the disciplinary proceeding are not the same inasmuch as the disciplinary proceeding was initiated for playing cards while on duty, whereas the charge ^{in and} ~~in~~ the criminal case was that the applicant alongwith ^{was} others ~~were~~ gambling in a public place. The instructions issued by the A.D.R.M. referred to above, therefore did not put any obligation on the respondents to review the punishment imposed in disciplinary proceeding after the applicant was acquitted in the criminal case.

8. The appeal filed by the applicant has been dismissed as being barred by time by appellate order. The applicant was punished in the disciplinary proceeding by order dated 1.4.1983. Appeal against the aforesaid order therefore, should have been filed within 45 days from the date of communication of the order.

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Annexure-7 would disclose that appeal was filed on 18.3.1987 i.e. ~~the~~ ¹¹ about 4 years after the punishment was imposed. The appeal obviously was barred by limitation. In addition to the above it appears ~~from~~ the averments made in para 6.6 of the O.A. that the appeal against the punishment imposed by the disciplinary authority was filed by the applicant on 21.4.1983. It has been stated that the respondents have not disposed of the appeal. He ~~was~~, however, assumed that the same will be considered after his acquittal in the criminal case. The applicant filed another appeal after his acquittal in a criminal case on 17.7.1986. The respondents have, in para 5 of their counter-affidavit specifically mentioned that the appeal filed by the applicant in 1983 was considered and the result of the same was communicated to the applicant. This averment of the respondents has not been specifically denied by the applicant in his rejoinder affidavit. There is no provision for filing Second Appeal in the D.A. R. Rules therefore, the Second Appeal which has been rejected by the respondents as being barred by limitation was not at all maintainable.

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9. Learned counsel for the applicant next argued that two of the accused namely Haridwar Singh and Sri Chandra Bhushan Singh who ~~are~~ were also arrested by the police alongwith the applicant have been exonerated of the charges levelled against them but, the respondents have denied to the applicant ~~the~~ similar benefit on the ground that his office report was not satisfactory. The applicant, therefore, contends that he has been arbitrarily discriminated by the respondents. From the order dated 11.10.1985, Annexure-A-10 it appears that the appeal

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filed by Sri Chandra Bhushan Singh against notice dated 16.8.1983 whereby his increment was stopped for 1½ years was allowed and the punishment imposed was quashed.

The appeal against the punishment was preferred about two years after the punishment was imposed. That appeal also was barred by time. The respondents have, in para 10 of the counter-affidavit, admitted that cases of Sri Chandra Bhushan Singh, Khalsi, Haridwar Singh (Fitter) were considered by the competent authority and their working having been found satisfactory during the period their case was considered by the competent authority and the punishment imposed was set aside.

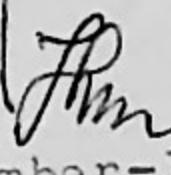
The respondents have, as is apparent from the averments made in the counter-affidavit, ~~that~~ they considered the appeal of Sri Chandra Bhushan Singh and Haridwar Singh Fitter even after the expiry of period of limitation, but, the applicants appeal and revision were dismissed as barred by limitation. They also took into account, in accepting the appeals of Sri Chandra Bhushan Singh and Haridwar Singh and rejecting the appeal of the applicant, extraneous material that

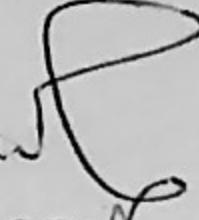
is to say the office report. The decision of the Appellate Authority has been influenced by extraneous material which is not permitted under law.

10. It is thus apparent that the respondents have adopted double standard in dealing with the appeals filed by the applicant and Sri Chandra Bhushan Singh & Haridwar Singh. Not only that, their decision in the case of the applicant was influenced by extraneous material that is to say the office report. This also was against the rules and principles of natural justice. The impugned orders passed by the appellate authority as well as the reviewing authority therefore, cannot be sustained.

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11. In the facts and circumstances discussed above, this application is partly allowed. The order dated 18.3.1987 passed by the appellate authority and order dated 4.12.1987 passed by the reviewing authority are quashed. The case is remitted to the appellate authority for fresh consideration according to law on merits. The appellate authority will not take into account the office report while deciding the appeal of the applicant. This direction shall be complied with within a period of three months from the date of communication of this order. There will be no orders as to cost.


Member-J


Member-A

(pandey)