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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD  
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O.A.562/97.

Dt. of Decision : 16-10-87.

B. Hardev Singh

.. Applicant.

Vs

1. The Central Provident Fund Commissioner,  
Central Office, HUDEO Vishala,  
14 Balaji Came Place,  
New Delhi-66.
2. The Regional Provident Fund  
Commissioner, Andhra Pradesh,  
Barkatpura, Hyderabad.

.. Respondents.

Counsel for the applicant : Mr.N.Rama Mohana Rao

Counsel for the respondents : Mr.R.N.Reddy, SC for PF

CORAM:-

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

Heard Mr.N.Rama Mohana Rao, learned counsel for the applicant and Mr.P.N.Reddy, learned counsel for the respondents.

2. The applicant in this OA was appointed as LDC under R-2 in the year 1964. The applicant was further promoted as Head Clerk w.e.f., 1982. Thereafter he was promoted as Enforcement Officer in 1994. While holding that post the applicant was issued with a charge memo No. AP/Adm/Vig/D.363/96/727 dated 9-2-96 (Annexure-4) under Rule 10 of the Employees Provident Fund Staff (Classification, Control and appeal) Rules, 1971 for indulging in Gambling with cards in violation of A.P.Gaming Act for which he was apprehended by the Police and subsequently fined by the Court. He was also taken up for not informing the fact of his conviction to the competent authority under the Conduct Rules.

<sup>or charges</sup> The Articles framed against him reads as follows:-

"ARTICLE-I.

That the said Sri.B.Hardev Singh while functioning as Head Clerk (now redesignated as Section Supervisor) in the Regional Office, Hyderabad during the period 1991-92 was found to have indulged in Gambling with cards in violation of A.P.Gaming Act and was apprehended by the Police in his staff quarters at Begumpet and subsequently fined by the Court.

By the aforesaid wilful act Sri. Hardev Singh has done an act which has made him unbecoming of a Government servant and thus contravened Rule 3(1) (iii) of CCS Conduct Rules, 1964 which are made applicable to the employees of the E.P.F.Organisation in terms of Regulation 27 of EPF (Staff and Conditions of Service) Regulations, 1962.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office the said Sri.Hardev Singh was apprehended by the Police authorities for alleged gaming by playing cards in violation of AP Gaming Act and was fined by the Honourable 31st Metropolitan Magistrate, Secunderabad on 8/10/91. Sri.B.Hardev Singh has however not informed the fact of his conviction to the Competent authority as required under the Conduct Rules.

By the aforesaid omission Sri.Hardev Singh is allaeged to have failed to maintain absolute integrity and has also acted in a manner unbecoming of a Government servant and thus violated Rule 3(1)(i) of CCS (Conduct) Rules which are made applicable to the employees of the Central Board as per the Provisions contained in Regulation 27 of EPF (Staff and Conditions of Service) Regulations, 1962."

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3. The applicant submitted his reply dt. 16-12-96 admitting both the charges <sup>as</sup> stated in the aforesaid statement of Article with certain conditions. However that reply was not accepted by the competent authorities and he was therefore directed to inform whether he admits guilt without any condition or not immediately to enable the office to take further action in that matter. Thereafter the applicant filed his reply admitting the guilt without any condition by his letter dated 20-1-97 (Annexure-7). Earlier to the issue of the chargesheet the applicant was kept under suspension by order No. AP/Adm/Vig/D-363/96/646 dt. 1-10-96 (Annexure-2) which was revoked by the proceedings dated 3-2-97.

4. The disciplinary authority disposed of the chargesheet by awarding a minor penalty of "withholding of increment for a period of 4 months without cumulative effect" by his proceedings No. AP/Adm/Vig/D-363/97, dt. -1-97 (Annexure-8).

5. However the appellate authority viz., R-1 herein in exercise of powers vested under Rule 25 of the EPFS (CCA) Rules, 1971 had examined the case and provisionally came to the conclusion that the applicant herein by violating the state laws and concealling the fact of his conviction from his superior authority had committed a serious misconduct; but the penalty imposed by the disciplinary authority <sup>was</sup> not commensurate with the gravity of charges found proved against him and accordingly proposed to impose on him the penalty of compulsory retirement. Hence a show cause memorandum was issued to him by memorandum No. VIG.X(24)/95 dt. 11-4-97 (Annexure-9).

6. The applicant challenges the impugned memo No. VIG.X(24)/95 dt. 11-4-97 in this OA of R-1 on various grounds and prays for setting aside the same by holding it as arbitrary, illegal, unsustainable and violative of Articles 14 and 16 of the Constitution of India.

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7. An interim order was passed in this OA dt.5-5-97 whereby the impugned memo No.VIG.X(24)/95 dt.11-4-97 (Annexure-9) was suspended until further order.

8. The main contention of the applicant in this OA is that he did not play the card game with money. It is only to pass time he played the cards game with his friends and relatives. Such an act is not a prohibited one. Though the police force took him to the police station for interrogation he was relieved with the instruction to ~~b~~ present before the 31st Metropolitan Magistrate, Sec'bad on 8-10-97. On his appearance before the said authority the Magistrate simply imposed a fine of Rs.160/- per each person and the applicant has paid that fine and no judgement was recorded and he was not even given a chargesheet. As the amount being less than Rs.300/- and was imposed as a compounding offence under Section 9 of A.P.Gaming Act it was a petty case, and the applicant paid the same fine as a plea bargain to get rid of the case. He could not appeal against that also in view of the meagre fine imposed on him. Under section 9 of the A.P.Gaming Act, 1971 he was fined, which is not an offence ~~The Indian Penal Code~~ under ~~criminal procedure Act~~. The section 9 of the A.P.Gaming Act provides penalty for gaming or setting birds or animals to fight in a public street or place. In the present case the section 9 does not come into play as he played the game inside the house with friends and relatives with no motive for earning. The penalty paid by him is not an act leading to a conviction which could shock the moral conscience of society in general, not a base one and such an action should not be considered to be a depraved character of a person who was to be looked upon by the society. Hence the question of Moral turpitude is not involved here. It is a petty case similar to the offences listed under ~~the~~ traffic regulations, Municipal Laws, Railway Laws i.e., ticketless travel etc., and hence this conviction cannot be

clubbed with a criminal conviction involving moral turpitude. As the element of moral turpitude is not involved, it will not have any repercussion on the discharge of his official duties.

9. The applicant further relies on the observations of the Apex Court reported in 1996 (4) SCC 17 (Pawan Kumar Vs. State of Haryana) to state that the punishment of fine upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service.

10. The applicant further takes the plea that he has not informed the department since it was a petty case and he was not under <sup>police</sup> custody at any time even for a single occasion. Even in this case no chargesheet was filed; but was imposed with fine of Rs.160/- under section 9 of the A.P.Gaming Act under that section. The applicant has admitted the guilt before the Metropolitan Magistrate more as a plea bargain to get rid of the petty case. Hence the action of the respondents in proposing to impose the punishment of compulsory retirement without applying their minds when the offence committed by the applicant does not constitute any Moral Turpitude is arbitrary, illegal and unsustainable.

11. A reply has been filed in this OA. The learned counsel for the respondents at the out set submitted that only a show cause notice has been issued and the applicant is at liberty to file a reply suitably defending his case. Hence the question of going into merits at this juncture does not arise. As the applicant has got the necessary opening to defend his case the OA may not be entertained.

12. The respondents submit in their reply that they sent a letter No.VIG(SZ)/10/58/C/95/HYD/ dt.17-7-96 to othe Inspector of Police, Begumpet Police Station, Hyderabad enquiring about the offences committed by the applicant giving the details of this

case known to them. As can be seen from the details an amount of Rs.6,654/- was seized from his quarter and 6 others were detained along with the applicant. The respondents have also asked the Police Inspector in regard to the fact whether Sri.Hardev Singh was actually arrested or not or simply taken to the Police Station and interrogated. If arrested the date and time of arrest and the date and time of release may have to be furnished. The Inspector of Police, Begumpet has endorsed in that letter itself as follows:-

"Petty case No.680/91 u/s 9 of AP Gaming Act.

The respondent Sri. Hardev Singh was booked u/s 9 of the A.P.Gaming Act at PS Begumpet on 5/6-10-91 at about 00-30 hours and released on personnel bond with instructions to be attend the Court on the next day. On 8-10-91 the above person was attended at the Court and produced him before the Hon'ble XXXI st M.Magistrate, Sec'bad and fined Rs.160/- vide STC No.722/91 dated 8-10-91."

From the endorsement of the Police Inspector it is seen that the applicant was taken to the Begumpet Police Station on 5/6-10-91 at about 00-30 hours and released on personnel bond with instructions to attend the Court on the next date on 8-10-91 and he was fined Rs.160/- by the XXXI st Metropolitan Magistrate, Sec'bad. The reply is ~~not~~ clear in regard to the fact ~~whether~~ <sup>that</sup> the applicant was arrested. ~~But~~ It is stated that the applicant was released on personnel bond.

13. The applicant should have intimated the fact of his arrest and conviction in this connection to the office in terms of the Govt. of India and Min. of Home affairs O.M.No.25/70/49-Estt.dt. 20-12-49 (Annexure R-2). As he failed to inform, the disciplinary proceedings was started in accordance with the Rule 10 of EPF Staff (CCA) Rules, 1971 vide order No.AP/Adm/Vig/D-363/97/227 dt.6-2-97 (Annexure-R-4) by imposing a penalty stated therein. The appellate authority has powers under Rule 25 of the EPF Staff (CCA) Rules, 1971 to revise the order of the lower

authority within 6 months of the date of order if it involves enhancement of the punishment. Accordingly the present impugned proceedings by R-1 was issued for enhancing the penalty to that of the compulsory retirement. The revising authority had observed that the applicant had violated ~~of~~ state laws and concealed the fact of his conviction from his superior authority and thereby had committed a serious misconduct. Hence the penalty imposed on him by the disciplinary authority is inadequate and decided to enhance the same. Hence he issued the show cause notice which is in accordance with the law and cannot be challenged at this juncture. It is also stated that the applicant was punished for a criminal conviction and hence the <sup>over</sup> Tribunal has no power to sit in appeal ~~on~~ the conviction awarded to him. In that view the show cause notice cannot be examined at this juncture. The respondents also submit that the charges involved are of moral turpitude. Exercise of the powers under Rule 25 is a matter exclusively within the competence and jurisdiction of the competent authority namely R-1 and that power will be judiciously exercised by the competent authority after he receives the reply to the show cause notice following the extent rule.

14. The impugned notice was issued for indulging in conduct unbecoming of an employee of the EPF Organisation and for concealment of material information and facts in violation of the CCS (Conduct) Rules as applicable to the EPF employee. The criminal case and violation of the laws under Section 9 of the A.P.Gaming Act for which the applicant was convicted can be brought under Rule 15 of the EPF Staff (CCA) Rules, 1971 and hence the issue of the impugned memo is in order. The respondents submit that the applicant has not exhausted the remedies provided in the statutory rules as firstly the applicant has not given the reply to the show cause notice dated 11-4-97

and the applicant has further remedies to challenge if any punishment imposed on him on the basis of the impugned notice dt. 11-4-97 by appealing to the next appellate authority against the said punishment. They prayed for dismissal of the application on that score.

15. The applicant was issued with the chargesheet dt. 9-12-96 by the disciplinary authority under Rule 10 of the EPF Staff (CCA) Rules, 1971. The Rule 7 indicates the penalties. The Major penalties are listed under sub-para (v) to (ix) of the said rule. Compulsory retirement is one of the major penalties. The procedure for imposing major penalties has been indicated in para 10-Part-VI "procedure for imposing penalties". Sub Rule 5 (a) of Rule 10 provides that the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid-down in rule 11 if all the articles of charge have been admitted by the employee in his written statement of defence. This para reads as below:-

"(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint under sub-rule (2) an inquiring authority for the purpose, and where all the articles of charge have been admitted by the employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid-down in rule 11."

Sub-Rule 9 and 10 of the Rule 10 also provides for the inquiring authority to return a finding of guilt in respect of those articles of charge to which the employee pleads guilty. Thus the rule is very clear that in case a delinquent employee accepts the guilt, charges framed can be treated as proved and thereafter suitable order issued in regard to the punishment.

16. In the present case the applicant on receipt of the memorandum dated 9-12-96 issued by R-2 though initially submitted a reply accepting the guilt with certain condition, later by his letter dated 20-1-97 admitted the guilt without any condition and without any reservation. Hence though the chargesheet was issued under Rule 10 of the EPF Staff (CCA) Rules, 1971, no enquiry was considered necessary as the applicant had accepted the guilt and hence he was punished by the disciplinary authority vide order No. AP/Adm./Vig/D-363, dt. -1-97 (Annexure-8). The disciplinary authority for certain reasons imposed on him only a minor penalty.

17. The appellate authority under the revisional powers vested with him under Rule 25 (PART VIII-REVIEW) issued impugned memorandum for enhancing the penalty to that of compulsory retirement for reasons stated in that memorandum and given an opportunity to the applicant for making representation on the proposed penalty. The learned counsel for the applicant admits that the said authority has powers to issue the memorandum under Rule 25 of the EPF Staff (CCA) Rules, 1971. But contests that the penalty proposed is not warrented in view of the reasons stated above in various paragraphs and also due to the fact that the principle of natural justice is not complied with.

18. From the above narration it is evident that the ~~enquiry~~ <sup>proceedings</sup> ~~was~~ initiated in accordance with the rule and the show cause notice was also given for higher penalty by the competent authority in accordance with the rule. Hence questioning the validity of that impugned notice dt.11-4-97 at this juncture appear to be premature. The applicant has got a remedy by submitting his representation for that impugned memorandum. The respondents are bound to follow the extant rules to adhere to the principle of natural justice while disposing of that memorandum on the basis of the reply and following the extant rules.

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19. Rule-15 of the EPF Staff (CCA) Rules, 1971 provides for Special Procedure in certain cases, notwithstanding any thing contained in Rule-10 to Rule-14. It is stated in the rule that "where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge" the special procedure can be invoked. However it is for consideration by the authorities to examine on the basis of the reply given by the applicant to the impugned memorandum whether the special procedure under Rule-15 is necessary to be invoked or not. The rule also provides for holding enquiry in case of imposition of major penalties enumerated above.

20. In the reported case I (1988) ATLT (HC) 406 (Annamalai & Ors Vs. Regional Manager, Region IV, SBI) it was held that the holding of enquiry is necessary even in case of admission of misconduct if such a misconduct merits dismissal. Though it is stated in the context of punishment of dismissal the present punishment which is one of major penalties holding of enquiry may be essential.

21. It was observed in the reported case 1986 (2) SLR 424 (The State Bank of Bikaner and Jaipur Vs. Jagdish Chandra Khadgawat) that the order of punishment on the basis of conviction without enquiry is not appropriate. Hence the above citations have to be kept in view before disposal of the impugned memorandum.

22. We have no doubt in mind that the authorities will examine whether an enquiry is necessary in this case and take a final decision. We do not preclude the possibility of holding an enquiry before imposing the punishment by R-1. In that view it is not necessary to give any further directions in regard to the method to be adopted before disposal of the impugned memorandum after receipt of the reply from the applicant.

23. The applicant relying on the judgement of the Supreme Court reported in 1996 (4) SCC 17. (Pawan Kumar Vs. State of Haryana & Another) states that the present case for which the applicant was fined is not one of Moral Turpitude and fine upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service.

24. Before examining the observation in the above quoted reported case it is to be stated that the two cases can be distinguished on facts. In the reported case the case of the applicant for regularisation ~~in that case~~ was rejected as he was convicted under Section 294 of IPC and was fined an amount of Rs.20/-. The views of the legal experts was obtained and it was decided on the collection of such material to terminate the service of the appellant by the order dated 30-09-84 as no longer required. The applicant in that case was a temporary employee and his regularisation was denied for reasons stated above. However in the present case the applicant is a permanent employee and the impugned show cause notice was issued to retire him compulsorily for violation of A.P.Gaming Act which is yet to materialise. Though the facts of this case may be different, certain observations made by the Apex Court in the reported case needs to be kept in view while disposing of the present case by R-1.

25. The Apex Court had held that "Moral Turpitude is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity". Whether the present case can be brought under the above definition needs to be examined. Further the observations of the Apex Court in that



case in regard to treatment of a case as a conviction if fined meagrely is also to be borne in mind. The Apex Court has only observed for consideration of the respondent authorities in that case for making certain laws in regard to meagre fine imposed and has not observed that the above observation is binding. But we feel that the above observations are very valid to be kept in view before the disposal of this case also. The observations made reads as below:-

"Before concluding this judgement we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say up to Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

26. Before we dispose of this case it is necessary for us to bring to the notice of the respondent authorities in regard to various observations made in regard to adherence of the principle of natural justice to dispose of the impugned memorandum. Administrative Law written by H.W.R.WADE, in Chapter-13 'Natural justice and Legal justice' the author states that "traditionally the natural justice has been defined to two rules now to be discussed; that a man may not be a judge in his own cause; and that a man's defence must always be fairly heard." In that

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context it is to be observed that the contention of the applicant in this OA as well as various observations made as above needs consideration to adhere to the principle of natural justice while disposing of this case.

27. In the reported case 1996 SCC (L&S) 1464 (State Bank of Bikaner & Jaipur Vs. Srinath Gupta & Another) it was held that "it is now well settled that strict rules of evidence are not applicable and are not required to be followed in domestic inquiry. What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself." Thus if the applicant needs any assistance to defend his case he should be given all assistance to fulfill the law of the principles of natural justice.

28. In the reported case 1996 SCC (L&S) 717 (State Bank of Patiala & Others Vs. S.K.Sharma) it was emphasised that the Administrative Law principle of natural justice - Audi alteram partem - Object of the rule of, is to ensure that there would not be failure of justice - where State or public interest requires curtailing of the rule, court should balance that interest with the requirement of natural justice.

29. In view of the above well laid principles we do not intend to interfere at the present juncture. We have no doubt in mind that the respondent authorities will do justice in this case adequately. We also hope that if an enquiry is found essential on the basis of the reply to be given by the applicant and also calling for the records pertaining to the case which resulted in the conviction of the applicant in the year 1991 the respondents will take suitable action in accordance with law.

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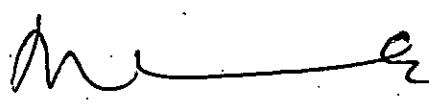
30. The judicial interference in main stream is justified only if bias, palpable irregular and internal delay is evident. (1988 (6) ATC 425 Shri B.K.Misra Vs. UOI & Another). In that view we do not propose to give any direction in this connection presently and leave it to the respondent authorities to act in accordance with law while disposing of the impugned memorandum keeping our observations in mind.

31. In the result the OA is dismissed. The applicant is at liberty to submit a detailed reply to the impugned show cause notice taking all the available contentions including the contentions raised in this OA. We strongly believe that the respondents will dispose of this case in accordance with law after considering all the contentions raised by the applicant at full length and also taking due note of the observations made by us as above. *by a Major order.*

32. No costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)

16.10.97

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

Dated : The 16<sup>th</sup> October, 1997.  
(Dictated in the Open Court)

spr

  
D.R.

OA.562/97

1. The Central Provident Fund Commissioner, Central Office,  
HUDEO Vishala, 14 Balaji Came Place, New Delhi-66.
2. The Regional Provident Fund Commissioner, Andhra Pradesh,  
Barkatpura, Hyderabad.
3. One copy to Mr. N.Rama Mohana Rao, Advocate, CAT., Hyd.
4. One copy to Mr. M.R.N.Reddy, SC for PF, CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One copy to duplicate.

srr

10/97  
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TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :  
M (J)

Dated: 16-10-97

ORDER/JUDGMENT

M.A./R.A./G.A. NO.

D.A. NO. 562/97

Admitted and Interim Directions  
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

