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Central Administrative Tribunal  
Principal Bench: New Delhi

O.A. No.2533/2002

This the 5th day of February, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)  
Hon'ble Shri V.K. Majotra, Member (A)

S.C. Rawat,  
Upper Division Clerk,  
Tariff Commission,  
Ministry of Commerce & Industry,  
Lok Nayak Bhawan,  
New Delhi.

-Applicant

(By Advocate: Shri L.R. Luthra with  
Shri Rajinder Nischal)

Versus

1. Union of India,  
through Secretary,  
Deptt. of Industrial Police &  
Promotion, Ministry of Commerce &  
Industry, Udyog Bhawan,  
New Delhi.

2. Deptt. of Food Processing Industries,  
Ministry of Agriculture,  
Panchsheel Bhavan,  
August Kranti Marg,  
New Delhi-110049.

-Respondents

(By Advocate: Shri B.K. Berera)

ORDER (Oral)

Hon'ble Shri V.K. Majotra, Member (A)

At the outset, learned counsel of the applicant Shri L.R.Luthra stated that the relief claimed by the applicant be confined to quashing and setting aside of order dated 20.8.2002 (Annexure A-2).

2. Applicant Shri S.C. Rawat is a member of Central Secretariat Clerical Service (CSCS). Vide order dated 9.2.2000, he was placed under suspension as disciplinary proceedings were contemplated against him. Vide another order dated 24.2.2000 passed by the Department of Food Processing Industries where he was

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working on transfer, a minor penalty of withholding one increment for a period of one year from the date of increment accruing to him w.e.f. 1.6.2000, without cumulative effect was imposed on applicant and the period of suspension from 9.2.2000 to 23.2.2000 was not treated as duty. In view of the fact that the power to impose any penalties are vested with the cadre controlling authority, i.e., the Department of Industrial Policy & Promotion in the case of the applicant, the Secretary, Department of Industrial Policy & Promotion set aside the penalty order as also the order relating to the period of absence and ordered initiation of de novo proceedings under Rule 16 of CCS (CCA) Rules, 1965. Thereafter under Rule-29(1)(v) of the CCS(CCA) Rules, the Appellate Authority passed order dated 20.8.2002 (Annexure A-2) substituting initiation of major penalty proceedings under Rule 14 in place of minor penalty proceedings ordered on 14.5.2002. Admittedly, Annexure A-1 dated 14.5.2002 was passed by the Appellate Authority on an appeal filed by the applicant against the order of penalty passed by the incompetent authority.

3. Learned counsel of the applicant has raised a legal issue in the present matter that the aforesaid Appellate Authority, i.e., Secretary, Department of Industrial Policy & Promotion does not have powers of revision in terms of Rule-29 (1)(v) against an order passed by him in terms of Rule-27 as the Appellate Authority.

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4. On the other hand, learned counsel of the respondents specifically drew our attention to <sup>the</sup> text of Rule-29(1)(v) stating that the Appellate Authority within a period of six months of the date of the order can revise or modify the order passed by him as the Appellate Authority.

5. We have carefully gone through the provisions of Rules 27 and 29 *ibid.* For the sake of convenience, the relevant portions of these rules are re-produced below:-

"27. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass order-

(i) confirming, enhancing, reducing, or setting aside the penalty;

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- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases:

provided that-

- (i) the commission shall be consulted in all cases where such consultation is necessary;
- (ii) if such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and
- (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty".

"29. Revision

(1) Notwithstanding anything contained in these rules-

- (i) the President; or
- (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

- (iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Boards and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or
- (iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariate or the Posts and Telegraphs Board), under the control of such Head of a Department; or
- (v) the appellate authority, within six months of the date of the order proposed to be revised; or
- (vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

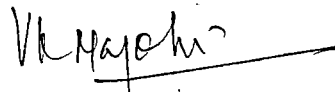
may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-


- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order too or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:"

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6.. From perusal of the provisions relating to revision, in our considered view, they relate to orders passed after conclusion of the enquiry and ~~for~~ imposition of penalty in the disciplinary proceedings. Such orders/penalty can be confirmed, modified, set aside or even the case can be remitted to the concerned authority for further enquiry by the Revisional Authority. In the present case, the enquiry had been completed but as the orders had not been passed by the Cadre Controlling Authority, the Appellate Authority, i.e., Secretary, Department of Industrial Policy & Promotion, passed Annexure A-1 dated 14.5.2001 in terms of Rule-27 as an Appellate Authority. The disciplinary proceedings and orders dated 9.2.2000 and 24.2.2000 were set aside and orders were made to initiate de novo proceedings under Rule-16 of the CCS (CCA) Rules, 1965. Provisions of Rule-29 do not envisage revision of such an order as no final order in the disciplinary enquiry had been passed nor any penalty imposed on the applicant. Revision of the orders of Appellate Authority initiating a de novo enquiry in terms of Rule-27 by the same Appellate Authority in terms of Rule-29 is not envisaged in provisions of Rule-29.

7.. As a result, in the facts and circumstances of the case, OA is allowed. Impugned order Annexure A-2 dated 20.8.2002 is quashed and set aside. No order as to costs.

  
(V.K. Majotra)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Vice-Chairman (J)

cc.