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# CENTRAL ADMINISTRATIVE TRIBUNAL
# MUMBAI BENCH, MUMBAI

**ORIGINAL APPLICATION No.10/2015**

**Date of decision: 04.12.2019**

**CORAM:- Dr. BHAGWAN SAHAI, MEMBER (A).**
**R.N. SINGH, MEMBER (J).**

Pashupati Digambar Swamy
Group 'C' Ex. G D S Branch
Post Master Nandusa B.O.
(Malegaon S.O.), Nanded Dn.
Residing at House No.51,
Nandusa B.O. Tq. Nanded,
Dist. Nanded - 431 750.

**... Applicant.**

**(By Advocate Shri Vicky Nagrani)**

*VERSUS.*

1. Union of India, through
The Postmaster General,
Aurangabad Region,
Aurangabad - 431 002.

2. The Director of Postal Services,
O/o. The Postmaster General,
Aurangabad Region,
Aurangabad - 431 002.

3. The Superintendent of Post Offices
Nanded Dn,
Nanded 431 602.

**.... Respondents.**

**(By Advocate Shri V. B. Joshi)**

**O R D E R (O R A L)**
**Per: R.N.SINGH, MEMBER (J)**

**1.** When the case is called out, Shri Vicky Nagrani, learned counsel appeared for the

applicant.

**2.** Shri V. B. Joshi, learned counsel appeared for the respondents.

**3.** The applicant has filed the present OA challenging the order dated 20.10.2014 (Annexure A-1) by which his appeal against the Reviewing Authority's order has been rejected by a show cause notice dated 10.08/25.09.2014 (Annexure A-2) vide which the applicant was given 10 days time from the receipt of such memo to explain as to why the punishment should not be enhanced from 'censure' to 'removal from service' with immediate effect, and the order dated 02.04.2013 (Annexure A-3) vide which the Reviewing Authority has reviewed suo-moto the Disciplinary Order of punishment of 'censure' passed by the Disciplinary Authority vide order dated 29.02.2012 (Annexure A-12) to 'removal from service' with immediate effect.

**4.** In response to the notice issued from this Tribunal, the respondents have filed reply. The applicant has filed rejoinder.

**5.** The brief facts leading to the present OA

and not in dispute are as under:

(I) The applicant was appointed as EDBPM w.e.f. 15.05.1989. On 09.08.2010 when some irregularity at the end of the applicant in the forms of non-crediting of 3800/- was noticed by the concerned Mail overseer, the same was immediately deposited by the applicant with a penal amount of Rs. 250/- on 09.08.2010 to make the deficiency good and irregularity cured.

(II) w.e.f.16.08.2010 to 31.08.2010, the applicant was put off from duties and after his past work was got verified and nothing was found adverse except the single incident of Rs.3800/- against him and his past service was found satisfactory, the applicant was reinstated in service. However, a charge-sheet dated 19.05.2011 (Annexure A-4) was issued to the applicant and the article of charge against the applicant reads as under:

> "Shri Pashupati Digamber Swamy while functioning as GDS BPM Nandusa BO in account with Malegaon SO under Nanded HO has accepted Rs.8150-00 (Rs. Eight Thousand One Hundred Fifty Only) on 12.04.2010 from 33 MSEB customers of Nandusa village for crediting into their MSEB bills with 33 MSEB bills by issuing two DCCE Np.5496 and 5497. He had prepared both DCCR of receipt no.5496 containing 19 MSEB bills and 5497 containing 14 MSEB bills for said 33 MSEB bills worth

> Rs.850/- with his signature. But while taking into days account dated 12.04.2010 he has taken the amount of receipt No.5497 in to account which was for Rs.8150/- and receipt No.5496 of 19 MSEB bills worth Rs.3800/- did not taken into to Govt. account violating the provisions of Rule No.124 and 133 (2) of RULES FOR BRANCHE OFFICES seventh Edition (Re-print) corrected up to 31-03-1986 thereby failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of Gramin Dak Sevak (conduct and Employment) Rules 2001."

**6.** Inquiry was initiated against the applicant in pursuance of the aforesaid charge-memorandum and the applicant has accepted and admitted the charge as evident from the report dated 09.02.2012 (Annexure A-9) with request to the respondents to consider his case sympathetically.

**7.** Keeping in view the aforesaid facts and circumstances, the Disciplinary Authority passed the order dated 29.02.2012 (Annexure A-12) awarding the punishment of 'censure' with further order therein that put off duty period from 16.08.2010 (Afternoon) to 31.08.2010 was to be treated as such and he will not earn any pay and allowances (TRCA) during this period and this period will count for calculation of ex-gratia gratuity and severance allowance amount.

8. The punishment ordered vide order dated 29.02.2012 was not challenged or appealed against by the applicant. However, the Appellate Authority suo-moto issued show cause notice dated 10.08/25.09.2012 (Annexure A-2) to enhance the punishment to removal from service and after the same was reported, passed the impugned order dated 02.04.2013 (Annexure A-3) removing the applicant from service. The appellate authority has rejected the appeal vide impugned order dated 20.10.2014 (Annexure A-1).

9. In the aforesaid circumstances, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:

> "8.1 This Hon'ble Tribunal may kindly be pleased to call for the records and files of the whole matter maintained in the offices of the respondent No.1 to appreciate propriety passing the impugned order of the rejecting the petition summarily by order No.AR/staff-II/Pet-02/PDS/NND/13 dated 20.10.2014 (Annexure A-1) issued by the PMG Aurangabad. The same may be pleased quashed and set aside.
> 8.2 This Hon'ble Tribunal may kindly be pleased to call for the records and files of the whole matter maintained in the offices of the respondent No.1 & 2 to appreciate propriety passing the impugned order of the show cause notice under No.AR/ Staff-II/copy of PR/PDS/NDD/02/12 dated 10.08/25.09.2012 (Annexure A-2) and enhancing the punishment of

removal order dated 02.04.2013 (Annexure A-3). The same may be pleased quashed and set aside.

8.3 This Hon'ble Tribunal may kindly be pleased to call for the records and files of the whole matter maintained in the offices of the respondent No.2 to appreciate propriety passing the impugned punishment order of removal dated 02.04.2013 (Annexure A-3) issued by the DPS Aurangabad. This Hon'ble Tribunal may kindly be pleased to quash and set aside the impugned orders dated 10.08/25.09.2012, being issued after 6 months (Annexure A-1) and dated 02.04.2013 (Annexure A-2). And direct the respondents to reinstate the applicant in service with continuity of service and all consequential benefits.

8.3 Any other and such further relief as may deemed fit and proper by this Hon'ble Tribunal may be passed.

8.4 Cost of this OA be awarded and paid to the applicant."

**10.** The learned counsel for the applicant has taken twin grounds to substantiate the claims to the applicant. The first is that once the Disciplinary Authority keeping in view all the facts and circumstances has awarded the punishment of 'censure', there was no justification or reason available to the Reviewing Authority to suo-motu review the punishment order and award the harshest punishment of removal from service. He submits that while granting punishment the Disciplinary Authority has taken into consideration his past and unblemished career as well as his action in

depositing the deficient amount expeditiously and also in the inquiry proceedings, his admission at the outset whereas while passing the harshest punishment the Reviewing Authority has not taken these relevant facts into consideration except mechanically writing that the case relates to the integrity of GDS.

**11.** The second ground taken by the learned counsel for the applicant is that though the rule provides jurisdiction to the Appellate Authority to review the order of punishment passed by the Disciplinary Authority suo-motu. However, the relevant rule provides the same to be done only within six months. The learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Andhra Pradesh High Court in case of **Shoukata Khan Vs. Director of Postal Services, Andhra Circle, Hyderabad, reported in 1972 SLR, 875** and para 5 thereof reads as under:

> "5.Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, to the extent necessary for our purpose, is to the following effect:
>
> "29.(1) Notwithstanding anything contained in these rules,-

(I) X X X X X X
(ii) X X X X X X
(iii)X X X X X X
(iv) XX X X X X
(v) the appellate authority, within sic months of the date of the order proposed to be reviewed,
(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 review any order made under these rules or under the rules repealed by rule 34 from which and 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 or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
(d) pass such other orders as it may deem fit."

A careful reading of the rule extracted above would clearly show that it provides for review by more than one authority. Clause (v) of sub-rule (1) empowers the appellate authority to review while Clause (vi) confers similar powers on such other authorities which may be specified in that behalf by the President by a general or special order. In cases where the appellate authority seeks to review the order of the disciplinary authority, the period fixed for the purpose is six months as can be seen from Clause (v) of Sub-rule (1) while the period prescribed for review by the other authorities contemplated by Clause (vi) is that which may be prescribed by such general or special order. It is common ground that the respondent in this case is the

> appellate authority under the rule and so, he had to initiate proceedings for review within six months from 31st December, 1968, the date on which the disciplinary authority passed the order reducing the salary of the appellant. Learned counsel for the respondent, however, contends that the words "may at any time, wither on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules"; following clause (vi) of sub-rule (1) of rule 29, would make it clear that it is open to authority seeking to review the order of the disciplinary authority to initiate proceedings at any time he likes and not necessarily within six months from the date of that order. This contention is, however, difficult to countenance in view of the unambiguous provisions contained in Clause (v) and (vi) of sub-rule (1). Clause (v), as already stated, provides for review by the appellate authority while Clause (vi) is of a residuary character empowering others specified in that behalf by the President to act in the matter. It is only in cases covered by Clause (vi) that no period of limitation is prescribed by the rule but if the authority, which seeks to make a review, happens to be the appellate authority, it has to necessarily commence the proceedings within six months from the date of the order of disciplinary authority. Sub-rule (2) of rule 29, no doubt lays down that no proceeding for review shall be commenced until after the expiry of the period of limitation for an appeal; but even if the period is to be reckoned on that basis, it can still not be said that the notice dated 17th September, 1969 is in time as the period prescribed for preferring an appeal is only 45 days and that period had expired by about the middle of February, 1969."

**12.** From the aforesaid provisions of Rule 29 it is evident that the Appellate Authority can review the order of punishment, passed by the Disciplinary Authority within six months of the date of the order.

**13.** The applicant's counsel submits that the Disciplinary order was passed on 29.02.2012 and the Reviewing Authority order was passed on 02.04.2013, that is apparently well past six months and therefore the same is contrary to the provisions of the Rule 29(V) and also against the law settled by the Hon'ble Andra Pradesh High Court (DB) in **Shoukata Khan Vs. Director of Postal Services (A.P.) Andhra Circle, Hyderabad, reported in 1972 SLR 875 decided on 01.09.1971.**

**14.** In reply, the learned counsel for the respondents Shri V. B. Joshi submits that on perusal of the impugned order dated 20.10.2014, it is evident that the Appellate Authority has found that the Reviewing Authority has passed the order dated 02.04.2013 in as much as only after issuing a show cause notice dated 10.08/25.09.2012 to review the order of punishment within six months.

**15.** We have perused the pleadings on record and have also considered the submissions made by the learned counsels for all the parties. Para-6 of the judgment of the Hon'ble High Court in

**Shoukata Khan (supra)** reads as under:

> "6. It was next contended by the learned Counsel for the respondents that even assuming that no review could be made after the expiration of six months the date of the order passed by the disciplinary authority, it could still not be said, in the instant case that the proceedings initiated by the respondent are barred by limitation as he called for the records within this period of six months, through the notice calling upon the appellant to show cause why the penalty should not be enhanced was issued only after the expiry of the six months' period. We are unable to accept its contention either. As already pointed out, the authorities mentioned in clauses (v) and (vi) of sub-rule (1) of rule 29, "may at any time either on his or its own motion or otherwise call for the records of any inquiry and review and order made under this rules." The words "call for the records of any inquiry and review any order made under these rules" would clearly show that the object of calling for the records would clearly show that the object of calling for the records is only to examine afresh the whole case wherever it is considered or felt necessary. If after calling for records the authority concerned should come to the conclusion that there is no need to review the order and drops the matter, it can certainly not be said that that step alone of his would constitute commencement or initiation of proceedings for review as there would be no question of reviewing the order of the disciplinary authority in such cases. So, the mere act of calling for records without anything more can certainly not be equated with initiation of a proceedings for review. It is only when the authority competent to review decided upon proceeding further and issues a notice to the delinquent officer calling upon him to show case why the punishment meted out to him should not be enhanced proceedings for review can reasonably be said to have been commenced. No doubts, the authority concerned can take a reasonable time for completion of the process of review and it is not necessary to conclude the inquiry within six months; but it is imperative that the proceedings for review by the appellate authority should be commenced before the expiry of six months from the date of the order sought

> to be reviewed. We are, therefore, in entire agreement with the learned Counsel that the respondent was not entitled to call upon the appellant by his notice, dated 17th September, 1969 to show cause why the penalty imposed upon him by the disciplinary authority should not be enhanced, as the time limited for initiating proceedings for review had expired long before then."

**16.** From the aforesaid judgment of the Hon'ble High Court in **Shoukata Khan (supra)** it is evident that the Hon'ble High Court has clearly ruled that the authority mentioned under Rule 29 (v) and (vi) may at any time either on his own notion or otherwise may call for records of any inquiry and review order made under these rules. The Hon'ble High Court has ruled that the authorities concerned can give a reasonable time for completion of process review and it is not necessary to conclude the inquiry within six months but it is imperative that the proceedings by the Appellate Authority should be commenced before the expiry of six months from the date of order sought to be reviewed. The Hon'ble High Court has clearly ruled therein the aforesaid judgment that once the time limit for initiating proceedings for the review had expired, the order so passed by the Reviewing Authority will be bad

in the eyes of law.

**17.** We find that the Disciplinary Authority had passed the order on 29.02.2012 the show cause notice had been issued only on 25.09.2012 by the Appellate Authority and therefore, the Appellate Authority has initiated the review proceedings well past six months i.e. against the provisions as provided under Rule 29 (1) (v) and therefore the same is contrary to the provisions of the rules as well as law laid down by the Hon'ble High court in **Shoukata Khan (supra)**. We may further note that the judgment of the Hon'ble High Court in **Shoukata Khan (supra)** has been followed by the Hyderabad Bench of this Tribunal in **P. Rajaram Vs. Director, Postal services, Hyderabad and Anr. T.A.No.118 of 1987 reported in 1989(1) SLJ CAT 289 decided on 11.08.1988** Annexure A-19. The relevant portion of the same reads as under:

> "The question is whether the appellate authority could revise the order after six months. The rule no doubt is not happily worded. Rule 29 (1) (v) would appeal to read that "the appellate authority within six months of the date of the order proposed to be revised, or 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."

Thus while prescribing the limit of six months to the appellate authority, the use of word "may at any time" would appear to give further time for revision. This would give rise to an inconsistency and would result in a contradictory interpretation as to the time limit for the appellate authority to exercise power of revision. Hence, Rule 29(1) must be read to mean that "authorities other than the appellate authority viz., the authorities in sub Clause (i), (ii), (iii) and (iv) of Sub Rule (1) of Rule 29, may at any time revise any order made under these rules whereas the time limit prescribed for the appellate authority is six months and in the case of any other authority specified by the President viz., as defined in Sub Clause (vi) of Rule 29(1), "within such time as prescribed by the President". If such an interpretation is given, a harmonious construction can be given to time limits prescribed in the rule for exercise of the powers of revision vested in different authorities. If such a harmonious reading of the rule is given effect to, it would follow that under Rule 29(1)(v), the appellate authority can revise any order made under these rules only within a period of six months from the date of the order proposed to be revised. In the instant case, admittedly, the order of revisionary authority who is also the appellate authority is passed on 23.03.1982 whereas the order sought to be revised is passed on 13.9.1981 i.e., the order of the appellate authority has been passed after six months from the date of the order sought to be revised. No doubt, on 9.3.1982, the appellate authority passed an order informing the applicant that he proposes to review the punishment order dated 13.9.1981 issued by the primary authority. The question is whether that would save limitation prescribed under Rule 29(1) in so far as the appellate authority is concerned. Both sides seek to place reliance upon the decision of the Andhra Pradesh High Court reported in Shoukata Khan vs. Director of Postal Services, Andhra Circle, Hyderabad (supra). That was the case wherein the appellate authority had not even issued a show cause notice as in the instant case but has merely called for the records. The Division Bench of the Andbra Pradesh High Court held as follows :

"The mere act of calling for records without

anything more can certainly not be quated with initiation of a proceeding for review. It is only when the authority competent to review decides upon proceeding further and issues a notice to the delinquent officer calling upon him to show cause why the punishment meted out to him should not be enhanced that proceedings for review can reasonably be said to have been commended. No doubt, the authority concerned can take a reasonable time for completion of the process of review and it is not necessary to conclude the inquiry within six months; but it is Imperative that the proceedings for review by the appellate authority should be commenced before the expiry of six months from the date of the order sought to be reviewed."

Consequent upon this decision, the Director General P & T issued a circular containing instructions as to how to reckon the period of six months.
In the circular letter No. 6/1/72-Disc. 1 dated 27.7.1979 the following instructions were issued.

"(6) How to reckon the period of revision of six months;

According to Rule 29(1)(v) an appellate authority may within a period of six months of the date of the order proposed to be revised call for the records of any enquiry at any time either on his own motion or otherwise and revise any order made under these rules. In D.G., P.&T. letter No. 15/10/67 Disc., dated 22nd May, 1968 (Not printed) it was stated that the appellate authority, calling for the relevant records of the case with a view to revising an order already passed within six months of the date of the order to be revised would be acting well within this time limit. It has now become necessary, however, to revise this order in view of a recent judgment of a High Court. Accordingly, it is hereby clarified that it will be incumbent upon the appellate authority to make a
Specified mention of the fact that it proposes to revise

> the order already passed, when calling for the papers. In other words, the appellate authority should clearly indicate in the order calling for the records of the case that it proposes to revise the order and it is in this connection the paper are being called of. At the same time the Government servant should also be informed that the appellate authority proposes to revise the case. It is necessary to ensure that the intention of the appellate authority to revise the orders in this way is conveyed to all concerned within the stipulated period of six months from the date of the order proposed to be revised.'

The question is whether by calling for the records and merely intimating the applicant that the appellate authority proposes to exercise the power of revision limitation can be saved. It is to be noted that the statutory provision specifically prescribes a limitation of six months before the order of revision is passed. Can any authority by merely giving notice that he proposes to exercise the power of revision, seek to extend or get over statutory limitation prescribed? Even according to the Division Bench of the A.P. High Court, it is only where, "notice to show cause why the punishment meted out should not be enhanced" that the proceedings for review can reasonably said to have been commenced. It is clear that the rule making authority has specifically prescribed a limitation of six months. If the appellate authority merely expresses an intention to call for the records and revise an order, can it be held or contended that the statutory requirement has been complied with? If it was intention of the legislature that the appellate authority could pass an order after six months from the date of the order sought to be revised, it could have and would have placed the appellate authority on the same pedestal as the other authorities. If this was express intention of the rule making authority, there was no need whatsoever to prescribe a separate and distinct limitation in so far as the appellate authority is concerned. Hence, a bare reading of the Rule would not permit the interpretation sought to be placed by the Director General, P & T in circular dated 27.7.1972 viz., to extend the

period of limitation prescribed under the statute by the process of merely calling for records and expressing an intention to revise order. It is clear that the expression "either on his own motion or otherwise call for the records of any inquiry and revise any order" would require not only calling for the records but revising of the order also. The
ordinary and simple reading of the rule would imply that unless the entire process of revision is completed within six months, it is not open to the appellate authority to exercise the power of revision. Even if it were to be argued on the basis of the decision of the Division Bench of the A.P. High Court that commencement of the process on review suffices it cannot be reasonably said that the process of review has commenced since no notice was issued within six months, why the punishment meted out should not be enhanced." It is to be noted that the limitation imposed on an appellate authority does not preclude any other competent authority from revising an illegal order in case the appellate authority has not exercised his or its power within the period of limitation prescribed. Sufficient safeguard has been provided by the rule making authority for revision of incorrect orders even if the appellate authority cannot exercise its power within six months is as power of revision vest in various other authorities to whom no limitation is prescribed."

**18.** In view of the aforesaid it is evident that the Reviewing Authority has neither initiated the Review Proceedings within six months nor has passed the impugned order dated 02.04.2013 within statutory period of six months and therefore the show cause notice dated 25.09.2012, Reviewing Order dated 02.04.2013, and Appellate order dated 20.10.2014 are contrary to the relevant rules as well judgment of the

Hon'ble High Court and this Tribunal noted herein above and hence deserve to be set aide. We set aside the same accordingly.

**19.** The applicant will be entitled for all the consequential benefits in accordance with the relevant rules and instruction on the subject.

**20.** The OA is partly allowed in the above terms. No order as to costs.

**(R. N. Singh)**
**Member (J)**

**(Dr. Bhagwan Sahai)**
**Member (A)**

V.

20/01/20