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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 772/96

New Delhi, this the 14th day of November, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Sh. R.K.Yadav (since deceased)

Through

(a) Smt. Rameshwari, Wife
(b) Shri Mahinder Singh, Son
(c) Shri Gajender Singh, Son
All residents of Village : Nainsukhpura
Distt. Rewari, Haryana.
(By Advocate: Sh. R.N.Singh)

VS.

1. Union of India through the
Secretary to the Government of India,
Ministry of Home Affairs,
North Block,
New Delhi.

2. The Director General
Central Reserve Police Force,
C.G.O. Complex,
Lodhi Road,
New Delhi-110003. Respondents
(By Advocate: Sh. K.C.D.Gangwani)

ORDER (ORAL)

Justice V.Rajagopala Reddy,

The applicant, R.K.Yadav, since died after filing the OA his
legal heirs are brought on record.

2. The applicant was working as Head Clerk in the CRPF,
Pinjore. In 1995 certain allegations have been levelled
against him which are as under:-

"Article I

That the said No. 621502019 Head Clerk
R.K.Yadav while functioning as a Govt. servant,
CRPF, Govt. of India during the period from
27.7.92 till date committed an act of misconduct
as Govt. servant in CRPF under rule 3(24)
Part-2(1) of CCS (Conduct) Rules, 1964 read with
Govt. of India's instruction No.5 below Rule-11
of CCS(CCA) Rules-1965 (corrected upto August,
89) in that he has disobeyed the lawful orders
of his superiors by not joining duty on posting
to 74 Bn/GC, CRPF, Pinjore.

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Article II

That during the aforesaid period and while functioning in the aforesaid office, the said No. 621502019 Head Clerk R.K.Yadav has not maintained devotion to duty as Govt. servant in CRPF under Rule 3(1)(ii) of CCS (Conduct) Rules, 1964 in that he failed to join duty on posting from 121 Bn to 74 Bn/GC, CRPF, Pinjore."

3. As the applicant pleaded not guilty, an enquiry was ordered. The enquiry officer after the enquiry had submitted its report to the disciplinary authority holding that the charges were not proved. The disciplinary authority considering the findings of the enquiry officer concerned with its findings and closed the D.E. by order dated 15-6-94 and directed that the period of absence from 27.7.92 be regularised as leave applied for and due as admissible in accordance with the CCS (Leave) Rules, 1972. However, the suo moto revision was taken up under Rule 29 of the CCS (CCA) Rules, 1965 by Director General, CRPF, Resp. No.2 in ~~the~~ capacity as Head of the Department who examined the order passed by the disciplinary authority and found that the enquiry conducted by the enquiry officer was vitiated on account of number of irregularities and accordingly "set aside the D.E. proceedings from the state of framing the charges itself, as the charges also are vague and do not contain all the relevant details. The disciplinary authority (DIGP, CRPF, Chandigarh was directed to initiate a de-novo departmental enquiry against the accused for his dis-obedience of orders and unauthorised absence from duty", by order dated 1.3.95. This order is impugned in this OA.

4. It is stated by the learned counsel for the applicant that in spite of an order of the Tribunal restraining further proceedings to be taken in pursuance of the impugned order, an enquiry has been held and fresh charges have been framed and holding an ex parte enquiry, the applicant has been remanded

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from service by order dated 11.4.96. The applicant, therefore, filed MA No.160/98 for amending the OA so as to impugned this order also. The respondents filed the reply to the said MA opposing the same on the ground that it was a fresh cause of action which has to be questioned by filing a fresh OA. As we find that the order of removal was passed in consequence of the impugned order, we allow the MA.

5. Learned counsel for the applicant Sh. R.N.Singh contends that the impugned order dated 1.3.95 is wholly illegal as the revisionary authority under Rule 29 of the CCS (CCA) Rules has no power to order de novo departmental enquiry after quashing the charges. He has the power only for ordering further enquiry on the basis of the charges originally framed. It is also contended that under Rule 29 (1)(iv) & (v) the order is hit by limitation as revision could be ordered only within a period of 6 months from the date of the order. It is also contended that the action of the respondents would amount to double jeopardy and is impermissible under law. Learned counsel for respondents, however, contends that though the language used in para 4 of the impugned order is defective what it intended to convey was only to hold a further enquiry in accordance with Rule 29 and not a fresh enquiry.

5. We have given careful consideration to the contentions raised in this case. By order dated 15.6.94 the disciplinary proceedings against the applicant have been dropped by disciplinary authority. The revisional authority however invoking his suo moto jurisdiction under Rule 29 revised order dated 15.6.94 whereby he has set aside the earlier charges and directed to hold the de novo departmental enquiry by framing a fresh charge on the same allegations. This order is liable to be quashed on more than one ground. This order

holding a de novo enquiry on the same allegations after the charge was quashed amounts to double jeopardy. A person cannot be enquired into twice on the same allegations. It is now stated by the learned counsel for respondents that fresh chargesheet has been issued and it is not disputed that the allegations are the same. Infact as contended by the learned counsel for the applicant the same charge has been replaced in the so called fresh chargesheet. The order is wholly without jurisdiction and is liable to be set aside.

6. Under Rule 29(1)(vi)(c) the revisional authority is empowered to remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper. What is contemplated under this provision is a further enquiry on the basis of the same chargesheet by the same enquiry officer or by any other authority. In the instant case the charges have been set aside and the fresh chargesheet was directed to be issued and a de novo enquiry was held which is not contemplated under the above provision of law. Revisionary authority has no jurisdiction to pass the impugned order.

7. This order is also liable to be set aside on the ground of limitation. Under Rule 29 (1)(iv) & (v), the Head of the Department, either on his own motion or otherwise may call for the records of any enquiry within six months from the date of the order and pass such orders as are contemplated under Rule 29. In the instant case, the earlier order was passed on 15.6.94 and the revisional order was passed on 1.3.95 which is after more than 6 months period. The impugned order is, therefore, hit by limitation.

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8. The application succeeds. The impugned order is, therefore, quashed. All the further proceedings taken in pursuance of the impugned order are also liable to be quashed and are accordingly quashed. The order of removal of the applicant dated 11.4.96 issued in pursuance of the directions of the impugned order is, therefore, set aside. Since the applicant expired after filing of the OA the question of reinstatement of the applicant would not arise. His legal representatives who are on record are entitled for all the benefits and the arrears of pay that the applicant was entitled to in view of the quashing of the impugned orders and the pensionary benefits including gratuity, family pension. The payment shall be made within 3 months from the date of receipt of a copy of this order. OA is, therefore, allowed with costs of Rs.5000/-.

(GOVINDAN S. TAMPI)
Member (A)

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(V.RAJAGOPALA REDDY)
Vice Chairman (J)