

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2686/92
T.A. No.

198

(2)

DATE OF DECISION 5-12-97

Shri Umang Mehta Applicant (s)

Shri T K Das Advocate for the Applicant (s)

Union of India ^{Versus} Respondent (s)

Noor Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. Dr. Jose P. Verghese, VC(J)

The Hon'ble Mr. N. Salia, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

(Dr. Jose P. Verghese)
(VC(J))

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2686/1997

New Delhi, this the 5th day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri N. Sahu, Member (A)

Shri Umang Mohan,
R/o C-77, Anand Niketan,
New Delhi-110 021. Petitioner

(By Advocate : Shri J.K. Dass)

-Versus-

1. Union of India, Secretary, Department of Defence, South Block, New Delhi.
2. Shri V.K. Singh, IAS, Director (Estt.), Ministry of Defence, C-II Hutmants, Defence Headquarters, New Delhi.
3. Shri O.P. Rawat, IAS, Inquiry Officer and Joint Secretary (Ordnance Factories), Department of Defence Production, South Block, New Delhi. Respondents

(By Advocate : None)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J).

The petitioner who is under suspension was being proceeded against by a disciplinary proceedings by an order dated 9.1.1997. It is stated that the enquiry is still going on and the same is at the stage of evidence. In the meantime the petitioner has moved a representation on 1.9.1997 raising various issues and the same was disposed of by an order of the respondents dated 29.9.1997. The petitioner is challenging this order and seeking a direction that the said representation be disposed of in accordance with the provisions of Rule 29 and Rule 29A of the CCS (CCA) Rules, 1976.

(A)

2. Since this petition is moved at a stage when the enquiry is still going on, the submission of the petitioner was confined to the maintainability of this petition. At this stage, no final order on inquiry has been passed yet.

3. The contention of the counsel for the petitioner was that the impugned order dated 29.9.1997 is not a correct order, in terms of Rule 29 and 29A in as much as the respondents have introduced certain new evidence during the course ~~of~~ of hearings. The petitioner is said to have submitted a representation on 1.9.1997 in this regard but on perusing the said representation we find that no such ground has been taken in the said representation except a reference to part VIII of the CCS (CCA) Rules 1965 and no relief pertaining to the introduction of additional evidence during enquiry has been mentioned any where in the said representation. Yet we proceeded to consider this aspect and heard the counsel.

4. It was stated that in accordance with the Rule 29 the President has power to call for the records of the enquiry and revise any order made under the rules and confirm the same, modify or set aside the same. Rule 29 is reproduced herebelow:

Rule 29. (Revision)

- (1) Notwithstanding anything contained in these
 - (i) the President; or

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(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 in or under the Postal Services Board 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 Secretariat 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

(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 to 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:

(Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary):

(b)

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications) or the Head of Department, as the case may be, unless--

- (i) the authority which made the order in appeal, or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

2. No proceeding for (revision) shall be commenced until

- (i) the expiry of the period of limitation for an appeal, or
- (ii) the disposal of the appeal, where any such appeal has been preferred.

3. An application for (revision) shall be dealt with in the same manner as if it were an appeal under these rules.

5. It was stated that the impugned order dated 29.9.1997 wherein the respondents have stated that no order could be passed upon the representation of the petitioner until a final decision in the disciplinary case is made, after the submission of the inquiry report by the inquiring authority in accordance with rules. The petitioner's submission is that the said order is contrary to Rule 29 cited above. We are not able to find any illegality in the impugned order vis a vis Rule 29, nor was there any request to that effect from the petitioner to the respondents.

6. The petitioner again submitted that in accordance with the Rule 29A, the President may at any time, either on his own or by motion, review any order passed under the rules without any new material or evidence which could be produced or was not available at the time of passing the order of review. Rule 29A is reproduced herebelow:

(X)

Rule 29-A Review

The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice;

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if any enquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 14, subject to the provisions of Rule 19 and except after consultation with the Commission where such consultation is necessary.

7. It was submitted that the respondents have introduced new facts and new evidence during the inquiry after the prosecution witnesses have been examined. We are unable to appreciate the grievance of the petitioner, for the reason that Rule 29A only states that the power of review by the President would be exercised, *inter alia*, under the circumstances when the review applicants satisfies the President that the some new material or new evidence which could not be produced at the time of enquiry or was not available at the relevant time, subsequently happened to be available to the petitioner and in the interest of justice the same would be required to be reconsidered by the inquiry authority and under these circumstances the President is required to exercise the power given to review the final order or any other order passed during the enquiry to enable the petitioner to produce such additional evidence and proceed with the

inquiry. On the other hand, the said rule will not be available in cases as is the present one, wherein some additional evidence has been produced during the enquiry and before the conclusion of the evidence. It was also submitted by the counsel for the petitioner that the said rule has been interpreted to show that the respondents shall not be permitted to fill the gaps of the evidence taken during the inquiry. The counsel on the other hand also submitted that the inquiry proceedings are going on and the evidence is not yet closed. We are of the view in such circumstances, that there are no gaps to be filled in and as such the rule cited for the said purpose will not be applicable and available to support the case of the applicant. In the circumstances we consider the impugned order of the respondents dated 29.9.1997 is in accordance with the law and these submissions now made in this petition would be considered by the respondents after the final decision in the disciplinary case based on the inquiry report is made in due course.

8. In view of this the OA is dismissed at the admission stage and no order as to costs.



(N. Sahu)
Member (A)

Mittal



(Dr. Jose P. Verghese)
Vice Chairman (J)