

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1403/2000

New Delhi this the 16th day of January, 2001

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HON'BLE MR. V.K. MAJOTRA, MEMBER(A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri Bhim Singh III
S/o Shri Mange Ram
Resident of Gurgaon, address for service of notices
C/O Shri Sant Lal Advocate, C-21 (B)
New Multan Nagar Delhi-110056.

-Applicant

(By Advocate: Shri Sant Lal)

Versus

1. The Union of India, through the Secretary, Ministry of Communications, Dept. of Posts, Dak Bhawan, New Delhi-110001.
2. The Member (Personnel) Postal Services Board, Dak Bhawan, New Delhi-110001.
3. The Director Postal Services (R), Delhi Circle, Meghdoott Bhawan, New Delhi-110001.

-Respondents

(By Advocate: Shri R.N. Singh)

ORDER (Oral)

Mr. V.K. Majotra, Member (A)

The applicant has challenged order dated 24.6.99 issued by the Member (Personnel) Postal Services Board, New Delhi (Annexure A-4) whereby the appellate order dated 25.7.96 exonerating the applicant was quashed and set aside and penalty of reduction in pay by one stage for a period of six months without cumulative effect with immediate effect was inflicted upon the applicant. The applicant is seeking a direction to the respondents to declare his result in respect of JAOs Part-II examination held on 18.11.92. The applicant had been issued a charge sheet under Rule-14 of the CCS (CCA) Rules, 1965 dated 2/7.7.93 alleging that the applicant had used unfair means by supplying his supplementary answer sheet to his

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neighbouring candidate while appearing ⁱⁿ the JAO Part-II examination for paper VI. The applicant had denied the charge. The Enquiry Officer vide his report dated 30.3.94 (Annexure A-2) held the charge as 'not proved'. The Disciplinary Authority agreed with the findings of the Enquiry Officer yet imposed the penalty of 'Censure' vide order dated 29.12.95 (Annexure A-1). The Appellate Authority vide his order dated 25.7.96 (Annexure A-3) set aside Annexure A-1 and exonerated the applicant of the charge levelled against him. Thereafter the applicant submitted applications to various authorities on 1.8.96, 5.8.97, 23.10.97 and 3.3.98, the last to Director General Post seeking declaration of his result in respect of JAO Part-II examination held on 18.11.92. Instead of declaring his result, he was served with a show cause notice dated 25.3.98 under Rule-29 of the CCS(CCA) Rules, 1965 contemplating review of the orders of the Appellate Authority on its own motion proposing the penalty of compulsory retirement on the applicant(Annexure A-5). The applicant submitted his representation dated 16.4.98 against the show cause review notice refuting the charge levelled against him but the Revisional Authority rejecting the submissions made by the applicant imposed the penalty in question as per Annexure A-4. The applicant has challenged the impugned order as arbitrary, illegal, malafide and discriminatory. It is contended that the respondents have not met the standard of proof viz, preponderance of probabilities required to be established in a departmental enquiry. The applicant has also taken a plea that ^{though} ^{1b} no limitation period is prescribed for undertaking the review, ^{1b} the Revisional

Authority had undertaken suo-moto review under Rule-29 (ibid) after a lapse of over one year 8 months of the appellate order. The respondents had spent much beyond a reasonable period for undertaking suo moto review/revision which makes the order of Revising Authority bad in law.

2. The applicant has also alleged impugned action and order of the Revising Authority as discriminatory and violative of Articles-14 & 16 of the Constitution and principles of natural justice contending that Shri Jagdish Chander, Accountant who appeared in the said examination with Roll No. D1-52 and had come into possession of the answer sheet of the applicant in the examination was also proceeded under Rule-14 of the CCS(CCA) Rules, 1965 by the same Disciplinary Authority on the charge of using unfair means by copying the answers from the supplementary answer sheet of the applicant. He too was held not guilty by the Enquiry Officer. The Disciplinary Authority though did not disagree with the findings of the Enquiry Officer imposed the penalty of Censure against him as in ^{the case of} the applicant. Shri Jagdish Chander did not make any appeal against the punishment of Censure and the Revisional Authority did not undertake any review/revision of the said penalty.

3. In their counter, the respondents have stated that the Member (P) took notice of applicant's representation, called for the entire disciplinary case for consideration, issued a show cause notice proposing compulsory retirement from service of the applicant and after carefully considering the entire facts and circumstances of the case

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as well as the reply of the applicant to the said show cause notice imposed the impugned penalty dated 24.6.99. According to the respondents, the penalty had been imposed by the competent revisional authority after due application of mind and after compliance of rule and laws on the subject. According to the respondents, the grounds taken in the OA by the applicant are misconceived and not tenable. The applicant has filed a rejoinder as well.

4. We have heard the learned counsel of both sides and perused the material on record.

5. Reiterating the grounds explored in the OA, the learned counsel of the applicant has mainly pleaded the following grounds - Though no limitation has been prescribed for undertaking revision under Rule-29 (ibid), the period during which the revision must be undertaken by the Revisional Authority has to be reasonable and not inordinately long. In the present case whereas the appellate order was passed on 25.7.96, the revisional order was passed on 25.3.98 i.e. after a period of more than a year and 8 months. The learned counsel relied upon Mr.H.R.Mahadeviah & Others Vs. State of Karnataka 1993(2)SLJ (CAT) 453. The relevant portion on the point of limitation reads as follows:-

"The learned counsel for the applicants relied upon some decisions to support his contention that the review was bad as there was delay in taking up suo moto review. On such decision of the Supreme Court relied upon by him is in Mansaram Vs. S.P. Pathak and others, (AIR 1983 SC 1239); wherein, it was held that when the power was conferred, it had to be exercised in a reasonable manner, within a reasonable time. It was ordered therein that the eviction of the tenant could not be ordered after twenty-two years. In that decision, reference has been

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made to a decision in State of Gujarat vs. Patel Raghav Natha (1970 1 SCR 335). Therein, the Commissioner exercised suo moto revisional jurisdiction under Section 221 of the Bombay Land Revenue Code, wherein no limitation for exercise of revisional jurisdiction had been prescribed. The Commissioner exercised his revisional jurisdiction one year after the Collector made the order seeking to review that order. The High Court set aside the order of the Commissioner and, in the appeal filed by the State, the Supreme Court declined to interfere on the ground that the revisional power, in the absence of prescribed period of limitation, had to be exercised within a reasonable time and the period of one year was held to be too late".

It was held in the aforesaid case that the revisional authority, in the absence of prescribed period of limitation, must exercise the revisional power within a reasonable time i.e. at the most within a period of one year. In the present case, whereas the applicant through his representation dated 3.3.98 had sought declaration of his result in the JAO Part-II examination held on 18.11.92, he was inflicted the impugned punishment after a gap of one year and 8 months of the appellate order by which he had been exonerated of the charge and by which the minor penalty of Censure imposed by the Disciplinary Authority had been set aside. In the light of the aforesaid ratio in the case of Mr. H.R. Mahadeviah (Supra), we find that in the present case too the respondents had taken an unreasonable long time for undertaking revision of the impugned appellate order.

6. Secondly, the learned counsel of the applicant has taken a plea of discrimination stating that whereas Shri Jagdish Chander, Accountant who had made use of the supplementary answer sheet of the applicant in the examination and had also been imposed penalty of Censure like the applicant was not penalised by the Revisional

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Authority at all. The respondents have not come up with any submission on this plea. Thus, we find force in this plea of the applicant as well.

7. Last but not least the learned counsel of the applicant has advanced the plea of plausibility contending that the examination in which the applicant appeared along with others is a competitive examination where candidates compete with one another. According to him, it is probable that the supplementary answer sheet of the applicant might have fallen on the ground, it was picked up by the neighbour Shri Jagdish Chander and made use of. Thus, following the theory of preponderance of probabilities, the applicant did not use any unfair means in the examination if at all, they were used by Shri Jagdish Chander - the other candidate who had picked up the supplementary answer sheet of the applicant and who was let off without any punishment by the Revisional Authority. The learned counsel of the respondents referred to his counter in which it has been stated that Shri Jagdish Chander had accepted in writing that he had taken the supplementary answer sheet of the applicant for copying in his own answer book. However, the same statement has been denied by Shri Jagdish Chander in the statement before the Enquiry Officer. Even if it is believed that Shri Jagdish Chander made use of the supplementary answer sheet of the applicant in the examination does not necessarily mean that the plea taken by the applicant is improbable.

8. Having regard to the above reasons and discussion, the OA is allowed. The order dated 24.6.99 (Annexure A-4) passed by the Revisional Authority is quashed and set

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aside. The respondents are directed to restore the pay of the applicant and refund the amount recovered on account of the impugned punishment order. The respondents are further directed to declare the result of the applicant in respect of JAO examination Part-II held in November 1992. The above directions be complied with within a period of three months from the date of communication of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

cc.