

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 981/89
T.A. No.

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DATE OF DECISION 31.10.1989

Shri R.K. Gupta Applicant (s)

Mr. E.X. Joseph Advocate for the Applicant (s)

Versus
Union of India Respondent (s)

Shri P.P. Khurana Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha)

This application, which was filed on 5th May, 1989, came up for admission on 26.10.1989 when we perused the records and heard the learned counsel for both the parties. We felt that the application could be disposed of at the admission stage itself as the relief sought would depend upon the correct interpretation of Rule 29 of the C.C.S. (CCA) Rules, 1965, which is a legal issue.

2. The respondents served on the applicant two memoranda dated 21.1.1988 under Rule 16 of the C.C.S. (CCA) Rules, 1965 which deals with the procedure for imposing minor penalty. In respect one memorandum, the disciplinary authority, vide its order dated 24th February, 1988, imposed the penalty of

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censure on the applicant, while in respect of the other memorandum, the disciplinary authority directed that a warning be issued to him. The applicant represented to the disciplinary authority on 25.4.1988 against the order imposing on him the minor penalty of censure and requested that the same be modified to unrecordable warning "to be careful in future". On 6.5.1988, the revising authority, in exercise of the powers conferred by Rule 29 of the C.C.S. (CCA) Rules, 1965, set aside both the orders passed by the disciplinary authority on 24.2.1988 and also the memorandum dated 21.1.1988 issued under Rule 16 of the C.C.S. (CCA) Rules, 1965 with enclosed statement of imputation of misconduct or misbehaviour and restored the matter to him at the stage at which he had to decide again whether the disciplinary proceedings under Rule 14 or Rule 16 of the C.C.S. (CCA) Rules, 1965 are called for in this case. He, accordingly, directed to restart the proceedings. He further directed the disciplinary authority to take into consideration all the facts and material borne out on record and to make such further inquiry as he may consider proper in the circumstances of the case. Thereafter, he was directed to pass the necessary orders for penalty as may be justified under the provisions of C.C.S. (CCA) Rules, 1965. The revising authority has also mentioned in his order dated 6.5.1988 certain defaults committed by the applicant which were available on the record placed before him.

3. In the instant case, the applicant did not file an appeal against the orders passed by the disciplinary authority. The period of limitation for filing such an appeal had already expired.

4. The applicant has called in question the legality and propriety of the order dated 6.5.1988 passed by the revising authority. He has also sought for quashing the memorandum dated 14.3.1988 issued by the disciplinary authority under Rule 14 of the C.C.S. (CCA) Rules, 1965 pursuant to the directions of the revising authority and the order dated 12th April, 1989 whereby an Inquiry Officer to inquire into the charges framed against the applicant has been appointed.

5. The case of the applicant is that the revising authority has no power to direct the disciplinary authority to alter the rules under which the disciplinary proceedings are held. He cannot be directed to reconsider the rule under which disciplinary proceedings were initiated and concluded against the applicant. According to him, in no circumstances should an authority higher than the punishing authority issue any direction in regard to the penalty to be imposed. The revising authority cannot give any direction to the disciplinary authority regarding his conclusions/findings in respect of the allegations made against the applicant. While the revising authority is empowered by Rule 29 to enhance any penalty after giving the charged official reasonable opportunity and after conducting an inquiry in the manner laid down in Rule 14, it has been alleged that he has no power to direct the disciplinary authority to change his decision in regard to the rule under which the proceedings were conducted/are to be conducted.

6. The case of the respondents is that there is no legal infirmity in the impugned orders dated 6.5.88, 14.3.1989 and 12.4.1989. According to them, the

revising authority is empowered to call for the records of the case suo motu and pass any orders as it thinks fit.

7. The learned counsel for the applicant relied upon some rulings of this Tribunal in support of his contention mentioned above.*

8. To our mind, the decisions cited by the learned counsel for the applicant are clearly distinguishable and would not be applicable to the instant case.

9. The language of Rule 29 clearly indicates that the revising authority has very wide powers. He may, on his own motion, call for the records of any inquiry and pass any of the following orders:-

- (a) Confirm, modify, or set aside the order made under the rules; 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 orders as it may deem fit.

10. The power envisaged in (d) above, is very wide. He may, in an appropriate case, set aside the order passed by the disciplinary authority in a proceeding initiated by him for minor penalty under Rule 16 of the

* Cases cited by the learned counsel for the applicant

Ram Millan Paroha Vs. Union of India, A.T.R. 1989(1) C.A.T. 299; Mangi Lal Vs. Union of India, 1987 (2) A.T.C. 1978; and Jayanti Lal & Others Vs. Union of India, 1988(1) SLJ, C.A.T. 125.

C.C.S. (CCA) Rules, 1965 and direct that authority to initiate fresh inquiry for minor penalty under Rule 16 or major penalty under Rule 14 of the C.C.S. (CCA) Rules, 1965 in the light of the facts and circumstances of the case. In such a case, it is for the disciplinary authority to apply his mind and consider whether the proceedings for a minor penalty under Rule 16, or for a major penalty under Rule 14 should be initiated. There is no direction in the impugned order dated 6.5.1988 that the disciplinary authority should hold an inquiry under any particular rule. This is a matter to be decided by the disciplinary authority by applying his mind and this is clear from the wording of the order dated 6.5.1988 passed by the revising authority. In the event of initiation of a fresh proceeding for major penalty under Rule 14 pursuant to the direction of the revising authority, Rule 29 stipulates that reasonable opportunity of making a representation against the penalty proposed should be given to the charged officer concerned. This provision is intended to ensure that no prejudice is caused to the charged officer if the revising authority passes an order directing the disciplinary authority to hold a fresh inquiry which may even be for imposing a major penalty.

11. In the light of the foregoing, we see no merit ^{or} and dismiss the same in limine. We do not, however, express any view on the merits of the proceedings initiated by the respondents by memorandum dated 14.3.1989. We hope that the respondents would expeditiously conclude the inquiry after giving a reasonable opportunity to the

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applicant and that the applicant will fully cooperate in the conduct of such inquiry. In case the applicant is aggrieved by the final order passed by the respondents, he will be at liberty to file a fresh application in the Tribunal after exhausting the remedies available to him under the C.C.S. (CCA) Rules, 1965 by way of appeal. The application is dismissed with the above observations. The parties will bear their own costs.

I.K. Rasgotra
(I.K. Rasgotra)
Administrative Member
31/10/89

P.K. Kartha
31/10/89
(P.K. Kartha)
Vice-Chairman (Judl.)