In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.708/87 Date of decision:18.09.1992.

Shri B.S. Dhaliwal ...Petitioner

Versus

Union of India & Another ...Respondents

Coram:-

The Hon'ble Mr.Justice V.S. Malimath, Chairman

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

For the Petitioner Shri G.K. Aggarwal, Counsel.

For the Respondets Shri M.L. Verma, Counsel

Judgement (Oral)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The learned counsel for the petitioner submitted in the first instance that the penalty having been imposed on the petitioner on 29.09.1983,withholding one increment without cumulative effect for one year,the said punishment having been fully sufferred, there was no justification for the respondents to invoke the power of review. It was contended by Shri G.K. Aggarwal, learned counsel for the petitioner that the impugned notice dated 30.07.1985 says that they propose to review the penalty imposed on the petitioner. Our attention was drawn to the provisions of Rule 29 A of the CCS (CCA) Rules, 1965 which confers power of review and which can be exercised only under limited circumstances specified therein.such as discovery of new and important material which

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could not have been discovered when the original order was passed. It was submitted that this is a case in which the penalty was imposed on the basis of the admission made by the petitioner himself and that this is not a case of discovery of any new material justifying review. Shri Aggarwal is right in pointing out that there are no grounds made out to invoke the power of review under Rule 29 A. But it appears to us that the use of the expression 'review' in this context was wrong. We say so because a specific reference has been made to Rule 29 of the CCS (CCA) Rules, 1965 which confers power of revision. In the context, we must understand the expression used in the impugned notice as conveying what is sought to be exercised is really power of revision conferred by Rule 29 of the CCS (CCA) Rules, 1965. It is well settled now that when the authority has the power, mere invoking the wrong provision or making a wrong statement in regard to the statutory provision will not vitiate the decision as long as the authority had the power to render such a decision. Hence, it is not possible to accede to the contention of Shri Aggarwal, learned counsel for the petitioner that we should interfere with the impugned notice on the ground that there are no good grounds for review. We, therefore, proceed on the basis that the said notice should be understood as invoking the power of revision under Rule 29 of CCS (CCA) Rules, 1965.

2. It was next contended by Shri Aggarwal, learned counsel for the petitioner that it would be manifestly unreasonable and unjust at this stage to impose any serious penalty on the petitioner. The petitioner's counsel submitted

that a fair admission was made by the petitioner before the authorities at the earliest point of time and he pleaded leniency in the matter of imposition of the penalty. This request of the petitioner was acceded to,having regard to his conduct and a minor penalty of withholding of one increment for one year without cumulative effect was imposed on 29.09.1983. The petitioner accepted the said order and quitely suffered without challenging the same before the higher authorities. He submitted that nearly two years after the order was made and nearly one year after the petitioner suffered the order this is not a fit case for the authorities to invoke power of revision. The situation appears pathetic from the point of view of the petitioner for the reason that he has also since earned further promotion in 1984.. These circumstances may undoubtedly have relevance in the matter of taking an ultimate decision. But it cannot be said that the authorities do not have the power of revision. In the circumstances we consider it just and proper to dispose of this petition with the observation that having regard to the facts and circumstances which we have discussed above this is a case in which the revisional authority should view the matter with utmost sympathy and consideration. With this observation this petition is disposed of. The interim order automatically stands vacated. No costs.

(I.K. RASGOTRA)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

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