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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No. 1514/2004 (OA-1514/04)

New Delhi this the 15<sup>th</sup> day of July, 2005.

**Hon'ble Mr. Shanker Raju, Member (Judl)**  
**Hon'ble Mr. S.K. Malhotra, Member (Admnv)**

Rakesh Chaturvedi,  
S/o Shri S.C. Chaturvedi,  
R/o B-51/F-2, Dilshad Garden,  
Delhi-110095.

-Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. UOI through  
Dy. Secretary, Ministry of Finance,  
Department of Revenue,  
Shastri Bhawan,  
New Delhi-110001.

2. Commissioner,  
Customs and Central Excise,  
Meerut Commissionerate II,  
Bhaisali Grounds,  
Meerut U.P.

-Respondents

(By Advocate Shri R.N. Singh)

**ORDER**

**Mr. Shanker Raju, Hon'ble Member (J):**

Applicant impugns respondents' order dated 13.1.2004 passed by the President while exercising power of revision under Rule 29 of the CCS (CCA) Rules, 1965, remanding the case back to the disciplinary authority (DA, for short) for setting right the procedural infirmities in the orders passed on 3.1.1996.

2. Applicant while working as Inspector, Central Excise, was proceeded against in a major penalty vide memorandum dated 29.1.1989 on the allegation that by his acts applicant had caused pecuniary loss to the Government.

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3. Inquiry was proceeded and the Inquiry Officer (IO) vide his report exonerated applicant from the charges.

4. DA by an order passed on 3.1.1996 dropped the inquiry and exonerated applicant from the charge. No appeal has been preferred against this order.

5. Meanwhile, on 3.6.1998 applicant was promoted as Superintendent of Customs and Central Excise.

6. By an order dated 13.1.2004 on the ground that on examination of case the President has decided to revise the orders passed by the DA on the ground that the DA has not taken into consideration the facts in proper perspective and report of IO was not forwarded to Central Vigilance Commission (CVC, for short) for second advice. The following order has been passed:

"The Revisionary Authority has observed that primary responsibility for creating false documents lied on the CO ie. Shri Rakesh Chaturvedi, based on which the case was remanded by the AC and the IO's report has not taken these facts into account in the proper perspective and that the disciplinary authority who had dropped the charges against the CO on the basis of IO's report was not forwarded to central vigilance commission for its 2<sup>nd</sup> stage advice. The proceedings therefore suffer from procedural deficiency and needs revision in terms of Rule 29 of CCS (CCA) Rules, 1965. Accordingly, the case in question has been examined in terms of Rule ibid and the Revisionary Authority has decided to set aside the order-in-original dated 3.1.96 passed by the DC (P&V), Central Excise, Meerut i.e. Disciplinary Authority and remanded the case to Disciplinary Authority for rectification/setting right the procedural infirmities.

6. Accordingly, the President of India being the Competent Authority orders to set aside the order in original dated 03.01.1996 passed by the disciplinary authority and to remand the case back to the

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Disciplinary Authority for setting right the procedural infirmities in the said order-in-original."

7. The above has been assailed by the learned counsel for applicant on the ground that the President without jurisdiction beyond the ambit of Rule 29 with a view to fill up the gaps in the earlier order instead of sending the case back to the DA for further enquiry rather has asked for setting right the procedural infirmities which cannot be sustained in law.

8. Learned counsel relied upon paragraph 5.4 of Vigilance Manual Volume I, which provides as under:

"5.4 While the jurisdiction of the Central Vigilance Commission extends to all matters to which the executive power of the Union extends and to all employees of Government and Central Public Undertakings, for practical considerations, it has been decided that the Commission will for the present advise on cases pertaining to gazetted Government officers and those officers of Public Enterprises, including Nationalised Banks, who are drawing pay in scales of pay whose minimum is not less than Rs.1800 p.m. Cases of all gazetted Government officers on deputation to Public Enterprises will, however, be referred to the Commission."

9. The learned counsel contended that second stage advice would be sought only in case of a gazetted officer. As, applicant was neither a gazetted officer nor his pay scale was beyond Rs.1800/-, there is no valid legal requirement of sending the case for second stage advice to CVC. As such, the ground of revision is not sustainable in law.

10. On the other hand, learned counsel for respondents vehemently opposed the contentions and stated that although the tenor of the order passed by the President is to set right the procedural infirmities, in the light of an admission of applicant

during the course of inquiry and the fact that the inquiry report and the material brought in the disciplinary proceedings were not considered in proper perspective. The action of the President under Rule 29 of the Rules *ibid* is in accordance with rules and law.

11. On careful consideration of the rival contentions of the parties it is relevant to reproduce Rule 29 of the CCS (CCA) Rules, 1965, which, notwithstanding anything contained in the rules empowers the President to exercise his power as under:

"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 may\_\_

- (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 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:"

12. If one has regard to the above, though applicant at the time of decision of the President was holding the post on which prior consultation of Union Public Service Commission (UPSC) is mandatory, which has, admittedly, not been sought, yet without going into this ground we find that while exercising power of review suo moto President has power to remand back the case

to the authority which made the order only to make further inquiry.

13. From the perusal of the order we do not find any direction to hold further inquiry. The only ground on which the matter has been remanded is to set right the procedural infirmity of non-forwarding of IO's report to the CVC for second stage advice.

14. It is trite law that if a power with the quasi judicial authority or an executive authority is to be exercised in a particular manner it cannot be exercised in any other *manner*.

15. The only scope of remanding the matter is to hold a further inquiry. What has been done by the revisional authority is to get the procedural infirmity cured by the DA which is neither fair nor bona fide and is with a purpose to fill up the gaps in the inquiry, which is not permissible under Rule 29 of the Rules *ibid*.


16. As regards power to pass such orders as it may deem fit under Rule 29 (1)(vi)(d) is concerned, orders which may deem fit cannot go beyond the scope of sub clause (a),(b) and (c) and as such without any direction to hold further inquiry exercise of power under Rule 29 is without jurisdiction and outside the scope and ambit of the rules. The aforesaid illegality makes the impugned orders void, ab initio and also null and void.

17. We also find that though the power to exercise revision is stipulated, can be exercised at any time, yet there should be a

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reasonable period within which this power can be exercised. Exercising this power after 8 years in the present case without any justification and reasoning certainly held a sword of Damocles hanging over the head of applicant and the fact that he had been promoted had, to some extent, condoned the charge and mitigated the circumstances.

18. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. No costs.

  
**(S.K. Malhotra)**  
**Member (A)**

  
**(Shanker Raju)**  
**Member(J)**

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