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CENTRAL ADMINISTRATIVE TRIBUNAL, ALIHAHAD BENCH.

....
Registration O.A. No. 1237 of 1987

Mathura Prasad Vimal Applicant.

Versus

Director General Post and Telegraph
and others Respondents.

Hon. Mr. D.K. Agrawal, Member (J)
Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. D.K. Agrawal, Member (J))

This application under Section 19 of the Administrative Tribunals Act, 1985 is directed against the order of the Reviewing Authority i.e. the Director Postal Services, Dehradun dated 28.11.1985 as contained in Annexure-A 7, directing denovo enquiry just on the eve of the retirement of the applicant. By way of amendment, one more relief has been added i.e. ^{✓ to quash ✓} the order of the competent authority dated 16.3.1988 rejecting his L.T.C. Bill relating to the year 1984 and directing the recovery of Rs.2992.80 paise. The applicant prays that the order of the Reviewing Authority be quashed and pensionary benefits be granted to the applicants who has already retired on 30.11.1985.

2. The facts ^{are} that the applicant while posted as 'Sub-Post Master' Narendra Nagar retired on 30.11.1985. He was served with a charge-sheet for minor penalty under Rule-16 of C.C.S.(C.C.A.) Rules, on 19.5.1984. After enquiry, punishment order dated 21.12.1984 for recovery of Rs. 1200/- was imposed on him. The applicant submitted to the punishment order and no appeal was preferred against the same. The Director Postal Services, Dehradun purporting to exercise the power vested in the Reviewing Authority under Rule-29 of the C.C.S.(C.C.A.) Rules, served a notice dated 19.2.1985 on the applicant expressing his intention to review the order of punishment dated 21.12.1984. It is pertinent to note here

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that no opportunity was afforded to the applicant to represent against the proposed action of the Reviewing Authority. It was as late as on 29.11.1985 that a fresh charge-sheet under Rule-14 of the C.C.S. (C.C.A.) Rules for major penalty was served on the applicant in pursuance of the order of the Reviewing Authority dated 28.11.1985 as contained in Annexure-A 7. The order passed by the Reviewing Authority as contained in Annexure- A 7 is to the effect;

" The lapses of Shri M.P. Vimal are very serious. I set aside the order of punishment issued to the official and remit the case of the Disciplinary Authority for denovo proceedings by issuing a charge-sheet under Rule 14 of CCS(C.C.A.) Rules."

3. The applicant has challenged the ^eviris of the order of the Reviewing Authority. The question, therefore, is as to when and under what circumstances a denovo enquiry can be held. In the case of Anand Narain Shukla Vs. State of Madhya Pradesh, A.I.R. 1979, SC page 1923, it was held that when the earlier order of punishment was quashed on technical ground, there was no bar to second enquiry being held. There are number of cases where denovo enquiry held after the order of punishment was set aside on technical ground. However, rule-29 of the C.C.S.(C.C.A.) Rules, 1965 does not authorise the competent authority to hold a successive enquiry. No power is vested in the reviewing authority under Rule-29 to convert ^{the} action taken under rule-16 for minor penalty to one under Rule-14 for major penalty in exercise of the powers of review, and that rule-29 ^{only} permits ~~the~~ remittance to the authority to make further enquiry. The Order under rule-29 (i) (v) initiating the proceedings denovo under rule-14 for major penalty is not sustainable under the provisions of rule 29 C.C.S.(C.C.A.) Rules. In the case of Ram Milan Paroha Vs. Union of India, A.T.R. 1989 (1) P.C.A.T. 299, a Bench of the Tribunal at Jabalpur, in

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similar circumstances has held that Rule-29, C.C.S. (C.C.A.) Rules, 1965 does not authorise the authorities to hold a successive enquiry. Although, it permits him to remand for further enquiry. Even the disciplinary authority does not possess the power to direct the denovo enquiry, the disciplinary authority can also remand the case to the enquiry officer for further enquiry. Therefore, the impugned order dated 28.11.1985 as contained in Annexure -A 7 is ultra-virⁱs of Rule-29 of the C.C.S. (C.C.A.) Rules. Consequently, the charge-sheet dated 28.11.1985 in pursuance of the above order also becomes bad in law.

4. As regards the L.T.C. Bill relating to the year 1984, the grievance as expressed by the learned counsel for the applicant was that the applicant was not afforded an opportunity to show cause before the rejection of the claim. Therefore, it is just and proper that the competent authority may record a finding rejecting or admitting the claim after giving due opportunity to the applicant.

5. In the result, we hereby quash the impugned order dated 28.11.1985 contained in Annexure-A 7 passed by the Reviewing Authority directing the denovo enquiry by serving a charge-sheet for major penalty under rule-14 of C.C. S. (C.C.A.) Rules, 1965. The applicant is entitled to be paid pensionary benefits in accordance with the rules ^{along} with interest within a period of 3 months from the date of the service of this order. The respondents will only be entitled to withhold the disputed amount of the L.T.C. ^{due} i.e. Rs. 2992.80 paise and further a sum of Rs. 1200/- which has been refunded to the applicant in January, 1986 from the Death-Cum-Retirement Gratuity due to the applicant unless the dispute in respect

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of these amounts are settled. The application is disposed
of ~~with~~ⁱⁿ the above terms. Parties to bear their own
costs.

[Signature]

Member (A)

Dated: 5th. 02. 1992

(n.u.)

[Signature]
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Member (J)