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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1357 of 1988

S.K. Gupta

....

Applicant.

Versus

Union of India & others

....

Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

The applicant in this case, who was working as Assistant Superintendent (AS) in the Railway Mail Service (RMS) at Allahabad, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. By this application he has challenged the order dated 29.9.1988 conveyed to him by the Assistant Director General (Vigilance) (ADG(V)) whereby the President has reviewed the order of punishment issued to him on 30.9.1985 and directed the Senior Superintendent (SS), RMS, the disciplinary authority, to initiate de novo proceedings against him.

2. According to the applicant, when he was working as AS, RMS, he was taken up under Rule 16 of CCS (CC&A) Rules for misconduct-cum-misbehaviour and was imposed a penalty of withholding of increment for six months without cumulative effect. The applicant had not preferred any appeal against this order and had succumbed to the same. This order was reviewed by the impugned order ^{3/} whereby a de novo proceeding under Rule 14 has been ordered to be taken against him. The applicant while referring to Rule 29-A of CCS (CC&A) Rules, 1965, has said that the President can review any order only on two conditions which are -

- (a) when any new material or evidence which could not be produced or was not available at the time of passing the order under review, and

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- (b) which has the effect of changing the nature of the case, has come, or has been brought, to his notice.

According to the applicant none of these two conditions which are ~~exist~~ precedent for reviewing an order passed under these rules *and are satisfied* are specified and the order has been passed on the sole ground that the charges brought against him were not properly drafted. The applicant contends that the power for suo moto review cannot be invoked on this ground, so the impugned order is illegal and uncalled for. Consequent to the passing of this order the applicant has been issued a charge-sheet under Rule 14. According to him, even these proceedings are illegal and arbitrary and they are without jurisdiction. He has, therefore, by this application, prayed for quashing of the impugned order dated 29.9.1988 and for issue of a direction in the nature of mandamus commanding the respondents not to proceed against him under the provisions of Rule 14 of CCS (CC&A) Rules.

3. In their reply the respondents have said that on being represented the case was reviewed by the President of India under Rule 29-A as it was found that the charges brought against the petitioner were not properly drafted and the punishment was not commensurate with the lapses on the part of the petitioner. Consequently, the order dated 29.9.1988 was issued. According to them the impugned order was passed in accordance with the rules and procedure given in CCS (CC&A) Rules, 1965 as there was material available on the file on the basis of which the President reviewed the case. According to the respondents, the President's power cannot be challenged by the petitioner as there was nothing illegal in the impugned orders. Therefore, the order is not without jurisdiction.

4. We have heard the learned counsel for the parties and *have* also gone through the rejoinder affidavit filed by the applicant and other relevant documents filed along with the application. We have also perused the reply filed by the respondents. The emphasis placed

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in the contentions raised before us by the learned counsel for the applicant was that the impugned order is without jurisdiction as it is not covered by Rule 29-A of CCS (CC&A) Rules. The learned counsel refuted the averments made in the reply that any new material has been found against the applicant and said that this is not based on facts. On behalf of the respondents the learned counsel's submission was that the applicant has been correctly issued a fresh charge-sheet and the powers has been exercised by the President in accordance with the rules. Nothing else was pressed before us.

5. Annexure '6' to the paper book is the impugned order.

In paras 2 & 3 of the order it has been said so :

".....The penalty imposed on Sri Gupta is not commensurate with the charges proved against him under the circumstances of the case.

In view of the foregoing the President has carefully considered the proceedings in this case and reviewed the case suo moto. The President feels that the charges brought against the officer were also not properly drafted keeping in view the various aspects of the case. The President, therefore, hereby remits the case back to the disciplinary authority for de novo proceedings against S.K. Gupta, Assistant Superintendent, RMS, Varanasi to be conducted under Rule 14 of the CCS (CCA) Rules, 1965 right from the stage of issue of charge-sheet."

6. The applicant had not appealed against the earlier punishment which was imposed by the disciplinary authority and it was imposed on him on 30.9.1985. According to the powers available for revision and review under CCS (CC&A) Rules, Rule 29 deals with the revision and Rule 29-A deals with review. Under Rule 29, which pertains to revision, the President may at any time, either on his or its own motion or otherwise call for the records of any enquiry and revise any order made under these rules 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 confirm,

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modify or set aside the order, or confirm, reduce, enhance or set aside the penalty, or impose any penalty where no penalty has been imposed, or remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case, or pass such other orders as it may deem fit.

7. As far as review is concerned, Rule 29-A lays down that the President may, at any time, either on his own motion or otherwise, review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice. Rule 29-A appears to have been introduced after the judgment of the Delhi High Court in Civil Writ Petitions No. 196 of 1978 and 322 of 1979 by which the Delhi High Court had indicated that the President cannot exercise his revisionary power in a case in which the power has already been exercised after full consideration of facts and circumstances of the case. By Rule 29-A the President can review an order, passed by him earlier, ~~in revision~~, if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Thus Rule 29-A comes into play only when the President reviews his own order. In the instant case the impugned order is an order passed under the powers of revision because the President is revising an order passed by a disciplinary authority and not by himself. Thus, rightly the order should have been under Rule 29 and should not have mentioned 'reviewed the case suo moto' but the wordings should have been 'revised the case suo moto' because it is only under Rule 29 that the President has the power to revise any order made under CCS (CC&A) Rules. In our opinion therefore, the impugned order has not been correctly worded though the purport of the final order is that the case has been remitted back to the disciplinary authority.

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8. On 14.5.1968 the Ministry of Home Affairs vide their OM No.39/2/68-Ests. clarified that in case when orders of punishment passed by subordinate authorities are reviewed and a provisional conclusion arrived at that the penalty already imposed was not adequate, it will not be appropriate to set aside/ cancel the penalty already imposed, more so when the revision authority is the President. This was in the background that the cancellation of penalty, if done in the name of the President, amounts to modification by the President of the earlier order for which prior consultation with U.P.S.C. is necessary. The Ministry of Home Affairs therefore, directed that the correct procedure in such cases will be to take action in accordance with the first proviso of Rule 29(1) of CCS (CC&A)Rules without cancelling/setting aside the order of the subordinate authority and this rule lays down that the case could be remitted to the authority which made the order or to any other authority directing such authority to make such further enquiry, as it may considered proper in the circumstances of the case. There are other courses of action also open by which the President could confirm, modify or set aside the order or reduce or enhance the penalty.

9. The crucial point for decision before us, therefore, is whether the impugned order was passed by the President under rule 29 or 29-A of the CCS (CCA) Rules. We have already observed above that the impugned order should have been under rule 29 and instead of "reviewed" the case ^{3/}~~3/~~ ^{4/}~~4/~~ the case ^{3/}~~3/~~ ^{4/}~~4/~~ suo motu" the phrase "revised" the case suo motu" should have been used. However, treating this order as an order for review only on the basis of the use of the word "reviewed" will be too technical and unjustified as in the first proviso to sub-rule (1) of Rule 29 ^{4/}~~3/~~ the word "review" has been used though at other places the words "revise" "revising" and "revision" were substituted for the words "review", "reviewing" and "review" by way of amendment when the new rule 29-A for dealing with the cases of review was inserted by notification dated 6.8.1981. The word "reviewed" in the impugned order, in our opinion, was thus loosely and inadvertently used and merely by use of this word the character of the impugned order could not be chang-

ed. Under the circumstances of this case, only the power of revision could be exercised under rule 29 and not of review and the President or any other authority exercising the powers of President in this case is supposed to have taken the decision under the proper rule and merely for using the words "reviewed" *suo motu* the impugned order cannot be said to have passed under rule 29-A of the CCS (CC&A) Rules. In the de novo enquiry the applicant will have enough opportunity to defend himself and, in our opinion, it does not appear to be a fit case for any interference by this Tribunal.

10. The application is accordingly dismissed. We make no order as to costs.

S. Narayana
MEMBER (J)

S. Narayana
MEMBER (A)

Dated: April 20, 1989
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