

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 7th day of July, 2000.

CORAM : Hon'ble Mr. Justice R.R.K. Trivedi, Vice Chairman

Hon'ble Mr. M.P. Singh, Member (A)

ORIGINAL APPLICATION NO. 1313 of 1993

Virendra Kumar, aged about 30 years,
S/o Late Raghunath Singh,
R/o C/o Shri Madan Lal Meena,
Havildar, Customs and Central Excise Office,
Sanjay Palace, Agra.

...Applicant.

Counsel for the applicant: Shri Rakesh Verma, Adv.

Versus

1. Union of India through Secretary
Central Board of Excise & Customs,
New Delhi.
2. Collector, Central Excise,
Kanpur.

...Respondents.

Counsel for the respondents: Km. Sadhna Srivastava, Adv.

O R D E R

(By Hon'ble Mr. Justice R.R.K. Trivedi, Vice Chairman)

Heard Shri Rakesh Verma, learned counsel for the applicant and Km. Sadhna Srivastava, learned counsel for the opposite parties.

2. This application has been filed challenging the order dated ^{13th} 30.09.1991 by which applicant Virendra Kumar has been dismissed from service.



3. Facts ^{given} ~~give~~ rise to this application are that applicant was serving in Central Excise Department as Sipahi. He was charge sheeted for the charge that during the period of leave, he along with one Pyare Lal, Excise Inspector without any authority searched the shop of Mahesh Chandra Verma and applicant helped Pyare Lal indulging in illegal, unauthorised and improper conduct, which was beyond his authority. The search was conducted with a malafide intention. The disciplinary authority awarded punishment of withholding one increment with cumulative effect. However, the Collector, who is an appellate authority in exercise of power under Rule 29 (1) of CCS (CCA) Rules revised the order of punishment and imposed penalty of dismissal from service. Against the said order the revision was filed by applicant which has been dismissed by order dated 30.09.1994 (Annexure A-1 A). Both the aforesaid orders have been challenged before us.

4. The learned counsel for the applicant has questioned the legality of the order on the ground that Collector could not revise the order of punishment under Rule 29 (1) of CCS (CCA) Rules as he was Head of the Department as well as Appellate Authority and in such a situation the punishment could be revised by an authority superior to him. Reliance has been placed in second proviso to Rule 29 (1) which reads as under :-

"provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Service Board, Adviser (Human Resources Department), Department of Tele-Communication or the Head of Department, as the case may be, unless

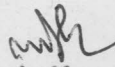
- (i) the authority which made the order in appeal, or
- (ii) the authority to which an appeal would lie, where

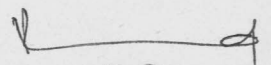


no appeal has been preferred, is subordinate to him."

5. Learned counsel for the applicant has also placed reliance in a judgement of Hyderabad Bench of Central Administrative Tribunal in case of Mohd. Rizvan Vs. The Divisional Commercial Superintendent, S.C. Railway, Vijayawada and others reported in III (1991) CSJ (CAT) 88.

6. We have carefully considered the submission of the learned counsel for the applicant. However, we do not find any substance. The language used in second proviso is very clear that it creates a prohibition against the exercise of power under Rule 29 (1) in case the Appellate Authority who decided the appeal or the Appellate Authority to whom appeal would lie, in case any appeal has not been preferred should be subordinate to the Head of the Department. In other words the power of revision under Rule 29 (1) of the Rules could not be exercised by Head of the Department, in case the authority, who decided the appeal or the appellate authority was not subordinate to him. In the present case Collector is Appellate Authority, who could exercise power under Rule 29 (1). Collector, Central Excise Department cannot be said to be Head of the department, as he works under the control of Central Board of Excise and Customs which can be termed as the head of the department. The case relied on by the learned counsel for the applicant is distinguishable on facts and does not help applicant in the present case. No other question has been pressed before us. In the Circumstances, we do not find any merit in this application and is accordingly dismissed.


A.M.


V.C.

/S.P./