10

10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.302 OF 1995
Cuttack this the 29th day of October, 1998

Mahendra Nath Applicant(s)

-Versus-

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO.

(SOMNATH SOM)
VICE-CHAIRMAN
29.10.98

29.10.98
(G.NARASIMHAM)
MEMBER(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.302 OF 1995
Cuttack this the 29th day of October, 1998

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRIG.NARASIMHAM, MEMBER(JUDICIAL)

...

Shri Mahendra Nath, aged about
41 years, Son of Late Bairagi Nath,
at present working as Upper Division
Clerk, Eastern Rivers Division,
Central Water Commission,
Government of India,
Plot No.A-13/14, Near Sahidnagar Police
Station, Bhubaneswar:751004
District:Khurda

... Applicant

By the Advocates:Mr.Trilochan Rath

-Versus-

1. Union of India represented
through the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg
New Delhi-110001

2. TheChairman, Central Water Commission
Government of India, Sewa Bhawan
R.K.Puram, New Delhi-110066

... Respondents

By the Advocates:Mr.Akhaya Mishra
Addl.Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM,MEMBER(J): Applicant, an Upper Division Clerk of the Eastern River Division of Central Water Commission was served with charges in a departmental proceeding on 31.12.1984 under two counts, i.e., he claimed reimbursement through false medical bills and misbehaved with the Executive Engineer, under whom he was working. This proceeding has had many ups and downs. The appellate authority had at one stage quashed the proceeding and set aside the penalty imposed by the disciplinary authority with a direction for de novo inquiry (Annexure-A/7). Thereafter the applicant pursued the matter with higher authorities including the President of India, but without any success. Be that as it may, fact remains, a fresh proceeding in Memo dated 26.2.1993 under Rule-16 of the CCS(CCA) Rules, 1965(in short Rules) was initiated for the same cause of action and an inquiry was held under Rule-14 of the Rules by the Executive Engineer, Bramhani-Subarnarekha Division, Bhubaneswar. These facts are clear from Annexure-A/13, i.e. order dated 17.8.1993 passed by the disciplinary authority, i.e. Superintending Engineer, Eastern River Circle, Central Water Commission, Bhubaneswar. The disciplinary authority, after considering the inquiry report held that the imputation regarding submission of false medical bills has not been established. Though he agreed that the applicant misbehaved with the Executive Engineer, he did not impose penalty on this count, because the Executive Engineer in his letter dated 30.5.1993 cautioned the

applicant. In otherwords the disciplinary authority exonerated the applicant from the two imputations.

Secretary-cum-Vigilance Officer, Central Water Commission in letter dated 16.2.1994(Annexure-A/14) adressed to the disciplinary authority with copy to applicant intimated that the competent authority has decided to review the entire case in terms of Rule-29 of the Rules and requsted the disciplinaryauthority to send immediately all the records pertaining to that proceeding by Speed Post so as to reach him by 24.2.1994.Thereafter Chairman, Central Water Commission-cum-appellate athority in Memorandum dated 16.3.1995 issued notice to the applicant to show cause within 15 days after proposing a penalty of reduction of one stage in the time-cale of pay for a period of one year during which the applicant would not earn increment in pay and that the reduction would have the effect of postponing the future increment in his pay. The applicant then submitted show cause in his representation dated 23.3.1995 (Annexure-A/16). After considering his show cause the appellate authority passed the impugned order dated 22.5.1995(Annexure-A/1) imposing the penalty proposed by him in his notice dated 16.3.1995.

These facts are not in controversy. The applicant seeks to quash this penalty imposed on him by the appellate authority under Rule.29 of the Rules.

2. The main grounds urged by the applicant are as follows:

(a) Under Rule-29, the appellate authority has to dispose of the proceeding within a period of six months of the passing of the order by the disciplinary authority and this having been not done, the impugned order is void under law.

(b) Even assuming the period of six months is strictly not adhered, still the appellate authority should have disposed of the matter within a reasonable time without keeping the applicant in a state of uncertainty and at any rate there has been inexplicable delay of more than one year in issuing the show cause notice dated 16.3.1995(Annexure-A/15).

(c) Even in the show cause issued on 16.3.199(Annexure-A/15), no specific reason has been assigned as to why the appellate authority thought fit to exercise power under Rule-29.

(d) The penalty imposed being a major could not have been imposed when the departmental proceeding has been initiated under Rule-16 of the Rules.

(e) Even the impugned order is not a speaking order; in the sense, that it is conspicuously silent as to the ground/grounds in which the order of the disciplinary authorty shall not be tenable.

3. Facts being not in dispute the respondents in counter have mainly taken legal stand in defending the impugned order.

4. We have heard the rival contentions mostly based under law advanced by thelearned counsels of both sides.

5. Rule-29 deals with revisional authorities. Six types of revisional authorities find mentioned therein. In this application we are only concerned with the appellate authority under Clause-(v). Though for five other revisional authorities no time-limit as such finds mentioned, in respect of appellate authority, there is a time-limit of six months. We may quote the relevant rule 29(1) in respect of powers of the appellate authorities as hereunder:

> " Not withstanding anything contained in these rules, the appellate authority, within six months of the date of the order proposed to be revised, 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 whch 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 penaltyimposed by the order, or impose any penalty where no penaltyhas 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 :

(Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunty of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses(v) to (ix) ofRule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case no such penaltyshall be imposed except after an inquiry in the manner laid down inRule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary):

A reading of the aforesaid provision would make it clear that the appellate authority has at first to take a decision to revise the order of the disciplinary authority and thereafter within six months from the date of passing of the order of the disciplinary authority, has to call for the relevant records of the proceeding. In case he proposes to impose or enhance the penalty, the delinquent official shall be given a reasonable

opportunity of making representation against the proposed penalty. Sub rule(2) further speaks that this power of revision can be commenced only after the expiry of power of limitation for an appeal or the disposal of the appeal where any such appeal has been preferred.

In regard tothe time-limit of six months as to to the interpretation of the expression "within six months of the date of the order proposed to be revised", the Full Bench of Central Administrative Tribunal, Ernakulam Bench in K.G.Mohanand vs.G.M., Telecommunications reported in Full Bench Judgement of C.A.T.(1989-91) Vol-11 page 368 held that the appellate authority under Rule-29 must call for the record of the inquiry and initiate proceeding within six months of the date of the order proposed to be revised. They have not accepted the contentions that the entire process of revising the order including the imposition of revised penalty must be completed within six months. We are completely in agreement with the reasoning given by the Full Bench. We, therefore, do not agree with the contention of the learned counsel for the applicant that the impugned order ought to have been passed within six months of the order passed by the disciplinary authority.

Shri T.Rath, learned counsel for the applicant then contended that even the six months period after calling for the records of the proceeding was over by the 16.2.1994 when under Annexure-A/14 record of the proceeding was called for. According to learned counsel for the applicant six months would mean 180 days and that

188 days lapsed between 17.8.1993 (order of the disciplinary authority) and 16.2.1994. We are not prepared to accept this type of contention. Six months referred to under Rule-29 are not in terms of days, but in terms of months. If the intention of the Legislature was to provide time-limit in terms of days, they could have as well provided time-limit mentioning 180 days as in Rule-14 (11), 25 and so on, where limitation in terms of specific days finds mentioned. It cannot also be said that a month will have to be interpretated as equivalent to 30 days always, because, there are months having 31 days and even the month of February usually 28 days to its credit. The order of the disciplinary authority was passed on 17.8.1993 and Annexure-A/14 is dated 16.2.1994 and as such it is within the six months period prescribed under Rule-29.

The Full Bench, however, observed that there is no specific time-limit for disposal of a revision under Rule-29; still the appellate authority will have to dispose of the revision within a reasonable time. Question then arises as to what will be a reasonable time in a case of this nature. We do not think the appellate authority while exercising powers of revision under Rule-29 can sleepover the matter indefinitely without making any effort to dispose of the revision as early as possible. The Constitution Bench consisting of five Judges of Hon'ble Supreme Court in S.R.Rathore's case reported in AIR 1990 SC 10(Para-17) strongly deprecated in the following words:

" Redressal of grievance in the hands of the departmental authorities takes an undulylong time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. This approach has to be depricated and authorites on whom power is vested to dispose of appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation".

8. Hence as per this observation of the Constitution Bench, reasonable time for disposal of revision under Rule-29 in normal course should be six months from the date of calling for the records. In otherwords in normal course this revision should have been disposed of by 16th October, 1994. It is, however, strange to note that the appellate authority has been silent till 16.3.1995 on which day he issued show cause proposing penalty under Annexure-A/14. In fact as earlier stated there has been inexplicable delay even calling for the show cause. The applicant had taken the specific stand mentioning the ground in his show cause dated 23.3.1995(Annexure-A/16). The appellate authority, however, in the impuged order though dealt mentioning about this ground, gotover the same merely mentioning "not tenable". In otherwords, according to the appellate authority, applicant is nobody to question him as to this inordinate delay. This sort of attitude of the appellate authority cannot but be deprecated in view of the guidelines of six months fixed by the Hon'ble Supreme Court in S.S.Rathore's

case (Supra). Thus it comes to this, the respondents have no ground to explain as to why even for issuing show cause a delay of more than one year occurred. This unexplained and inordinate delay cannot but cause prejudice to the applicant who has been kept in a state uncertainty for a considerable time.

6. We also find some considerable force in the contention of the learned counsel for the applicant that show cause (Annexure-A/15) should have contained the specific reason necessitating the decision to revise the order of the discplinary authority. The show cause notice(Annexure-A/15) at the relevant para-5 only does mention that there exists sufficient reasons without indicating at least in brief what those reasons are. In this connection the learned counsel for the applicant placed reliance on the decision of a Division Bench of the Central Administrative Tribunal, Calcutta Bench, reported in A.T.R. 1986(2) C.A.T. 13 (S.K.Chatterjee vs. Union of India). In that case, show cause notice was issued by the appellate authority under Rule-27(2)(iv) proposing enhancement of penalty without mentioning any reason as to why he differed from the disciplinary authority. The Bench held that the impugned show cause notice issued bythe reviewing authority did not give any reason why he differed from the disciplinary authority in issuing that notice and where a reading of the purported show cause does not show any statement/observation or any reason in justification of issuing the said purported show cause notice, the notice is vitiated by lack of application of mind and it also shows a close mind

impaired by a sort of biase. By observing so, the Bench quashed the show cause notice. This relevant rule in 27 is parallel to proviso in Rule-29(1) for issue of show cause against the proposed penalty. Thus the show cause issued under Annexure-A/15 without mention of any reason is ~~being~~ not according to law and consequently the impugned order passed on the basis of this show cause cannot also stand in the scrutiny of law.

7. As the facts would reveal that the proceeding was initiated under Rule-16 prescribing procedure for imposing minor penalties and inquiry under Rule-14 has been conducted in this particular case, thus inquiry under Rule-14 ~~agreeing~~ acting in Rule-16 obviously is not meant for imposing major penalties, but only for imposition of minor penalties.The penalty imposed through the impugned order as already quoted above comes under the category of major penalty under Rule-11(v). ~~Hence~~ In a proceeding under Rule-16, the disciplinary authority cannot impose a major penalty. Consequently an appellate authority revising the order of the disciplinary authority passed under Rule-15 after following the due procedure under Rule-16 would not have passed a penalty which the disciplinary authority, even if desired, could not have passed. Viewed from this angle the penalty imposed by the appellate authority in the impugned order cannot legally stand being without jurisdiction.

8. There is also force in the contention advanced by thelearned counsel for the applicant that the impugned order is not a speaking order. When the disciplinary authority exonerated the applicant fully, the appellate

authority even in exercise of powers of revision has to pass a speaking order explaining as to how the order of the disciplinary authority was defective. We have carefully perused the impugned order which though contains the grounds mentioned in the show cause of the applicant, is completely silent as to how the order of the disciplinary was defective needing interference in exercise of power for revision. When Calcutta Bench of the Tribunal could quash the show cause notice not containing the reasons as to how the order of the disciplinary authority is wrong, we have no hesitation to quash this impuged order without containing the reasons as to how the order of the disciplinary authority is defective needing interference in exercising powers of revision.

9. For the reasons discussed above, we quash the impugned order dated 22.5.1995 (Annexure-A/1) passed by the appellate authority. The application is allowed, but under the circumstances no order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO