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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A. No.532 of 1995

(Decided on 28th June, 2007)

.....

Dayanidhi Sahoo ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not ? yes.

2) Whether it be sent to the Principal Bench of the Central Administrative Tribunal or not ? yes.

(B.B.MISHRA)
ADMINISTRATIVE MEMBER

(N.D.RAGHAVAN)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.532/95
Cuttack this the 28th day of 2007

CORAM:
HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND
HON'BLE SHRI B.B.MISHRA, ADMINISTRATIVE MEMBER

...

Dayanidhi Sahoo, Sub-Inspector, Telephones, Office of the Assistant Engineer, Cable-I, Cuttack-753 001 .....Applicant

By the Advocate – Mr.D.P.Dhalasamant

Versus

1. Union of India, represented through the Chief General Manager, Telecommunication, Orissa Circle, Bhubaneswar-753001
2. Divisional Engineer, Telecom, Office of the Telecom District Manager, Cuttack-753 001
3. Telecom District Manager, Cuttack-753001

.....Respondents

By the Advocate-Mr.U.B.Mohapatra, SSC

ORDER

MR.N.D.RAGHAVAN, VICE-CHAIRMAN:

The instant case was disposed of by this Tribunal vide order dated 6.9.2002. The Tribunal, while quashing the impugned orders of the disciplinary authority dated 2.2.1993 and of the appellate authority dated 29.12.1993, ultimately allowed the Original Application in favour of the applicant.

2. The Respondent-Department being aggrieved with the aforesaid order of this Tribunal carried the matter in the W.P.© No.744 of

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2003 before the Hon'ble High Court of Orissa. The Hon'ble High Court vide order dated 08.03.2007, while setting aside the order of this Tribunal, remitted it to the Tribunal with the following observations:

> "Learned Tribunal while exercising its power of the judicial review in its order came to the conclusion that the Appellate Authority has no power for enhancement of penalty. In support of such conclusion it relied on Rule 12 of CCS(CCA) Rules 1965 and the judgment of the Supreme Court in the case of Makeshwar Nath Srivastava v. the State of Bihar and other reported in AIR 1971 SC 1106. We find that under Rule 27 of CCS(CCA) Rules, 1965 the appellate authority has power for enhancing penalty. Therefore, the finding of the Tribunal was rendered per incuriam. In other words those findings were given in ignoring the statutes. Apart from that we find the judgment of the Supreme Court referred to above also does not apply to the present situation. In the said judgment the Hon'ble Judges of the Supreme Court found that the State Government in absence of any statute conferring the power on it to enhance the order penalty cannot enhance the same. But in the instant case there is a specific power under Rule 27.
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> In our opinion, a vital part of the judgment is clearly erroneous and on that ground the entire judgment is set aside".

3. Thus being the background, this matter was posted before the Tribunal only for the purpose of deciding that part of the error that has crept in our order dated 6.9.2002, as pointed out by the Hon'ble High Court, referred to above. Before coming to decide the point in issue, it is worthwhile to throw some light on the genesis of this Original Application, which is as under.

The applicant having been charge sheeted on two counts, firstly, for an attempt to take away Government stores, with a dishonest motive

of misappropriating the same and secondly, having misappropriated certain items of Government stores, which were in his charge, by falsification of records, had committed grave misconduct violating Rule 3(1)(i) and (iii) of the CCS (Conduct) Rules, 1964. He having denied the charges, regular enquiry was held wherein the Inquiry Officer held the charge No.1 proved and the charge No.2 not proved. Based on this report, the disciplinary authority on 5.6.1992 imposed the punishment of withholding of increment for one year without cumulative effect. On the appeal preferred, the appellate authority remitted the case to the disciplinary authority to take up the matter afresh after making available a copy of the inquiry report to the applicant. Accordingly, the applicant was served with a copy of the inquiry report and submitted his representation thereof on 19.12.1992, whereupon the disciplinary authority on 2.2.1993 again reiterated the same punishment as was imposed on the applicant prior to supply of the copy of the inquiry report i.e., withholding of increment for one year without cumulative effect. On the appeal preferred against this punishment order, the appellate authority issued a notice to the applicant for enhancement of the punishment by reduction of pay in five stages with cumulative effect and further proposed that the delinquent would not earn increments of pay during the period of reduction and that on the expiry of that period the reduction would have the effect of postponing his future increments of pay, on the grounds that

the disciplinary authority had not taken a judicious decision and that the penalty imposed was too inadequate and not commensurate with the gravity of offence committed. In consideration of the representation preferred by the applicant to the proposed enhancement of punishment, the appellate authority vide order dated 29.12.1993 imposed the punishment of reduction of pay of the applicant by five stages from Rs.1150/- to Rs.1050/- and further ordered that the applicant would not earn increments during the period of reduction and after expiry of the period, the reduction would have the effect of postponing his future increments. It may be noted that the applicant was stated to have received this punishment order on 19.7.1995 and being aggrieved, he had moved this Tribunal with prayer for quashing the charge sheet, the order of the disciplinary authority and the order of the appellate authority enhancing the punishment and for consequential relief and the Tribunal having quashed the impugned orders issued by the disciplinary authority as well as the appellate authority, this matter has been remitted to the Tribunal by the Hon'ble High Court for the reasons aforesaid.

3. The matter being posted, the learned counsel for both the sides had entered appearance and filed written noted of submissions.

4. In the written note of submissions, the respondents have taken the same stand as in their counter to O.A. filed earlier, besides raising the point of limitation.

5. We have heard the learned counsel of both sides and gone through the pleadings filed afresh and heard the learned counsel for the parties.

6. The first contention of the applicant is that the documents sought for by him were not supplied to him to effectively defend his case. However, the fact remains that the applicant has not stated anywhere as to how non-supply of those documents caused prejudice to him. He has only harped on the point that in respect of charge under Article-II, notwithstanding the fact that the I.O. considering the importance of documents sought for by the applicant, had allowed supply of those documents and that those documents having not been made available to him, the inquiry stood vitiated.

7. In this regard, we have gone through the order dated 29.12.1993 passed by the Appellate Authority enhancing the punishment. In that order, the appellate authority has elaborately and exhaustively dealt with the ins and outs of the disciplinary proceedings. While holding that the charge under Article-II has been proved beyond all reasonable doubt, apparently he has given a delicate hint on the documents, ~~for~~ non-supply of which is complained by the applicant to have caused prejudice to him. Be that as it may, the applicant's grievance with regard to prejudice that has caused to him for non-supply of those documents ought to have been considered by the appellate authority.

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8. The contention of the applicant is that the appellate authority while proposing enhancement of punishment should have communicated the reasons of his disagreement so as to enable the applicant to put forth his grounds as to why the punishment should not have been enhanced. In support of this, learned counsel for the applicant placed reliance on the decisions in the cases of *Punjab National Bank v. K.B.Mishra,* J.T. 1998(5) and of *Yoginath D.Bagde vs. State of Maharashtra and another*, AIR 1999 SC 3734, wherein Their Lordships of the Hon'ble Supreme Court held that the disciplinary authority has to indicate the detailed reasons for disagreement with the findings of the Inquiry Officer so as to enable the delinquent to challenge the same demonstrating that such reasons are not genuine and findings of the Inquiring Officer are not liable to be interfered with. In our considered view, there is considerable force in the contention of the learned counsel for the applicant in this respect. The appellate authority, while enhancing the order of punishment, although complied with the principles of natural justice calling upon the applicant to represent against such enhancement of punishment, should have unequivocally stated as to what weighed with him as reasons and causes based on which the punishment was proposed to be enhanced thereby enabling the applicant to have opportunity to effectively make a representation in that behalf. Therefore, it cannot be

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said that compliance with the principles of natural justice had been observed by the appellate authority.

9. As regards the directives issued by the Hon'ble High Court while remitting the matter to this Tribunal to examine and decide on the sole point as to whether Rule 27 of CCS(CCA) Rules, 1965 confers jurisdiction on the Appellate Authority to enhance punishment already imposed by the Disciplinary Authority, for the sake of clarity, Rule 27 of CCS (CCA) Rules which is germane to the issue maybe extracted as under:

> "27. Consideration of appeal
> (1) x x x
> (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider –
>
> (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
>
> (b) whether the findings of the Disciplinary Authority are warranted by the evidence on record; and
>
> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;
>
> and pass orders-
>
> (i) confirming, enhancing, reducing, or setting aside the penalty; or
>
> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other with such direction as it may deem fit in the circumstances of these cases:"

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10. From the above provisions of CCS(CCA) Rules as quoted above, we are convinced that the Appellate Authority has the powers to enhance the punishment already imposed by the Disciplinary Authority provided that such enhanced punishment as specified in Clauses (v) to (ix) of Rule 11 could be imposed on the delinquent where an enquiry under Rule 14 had been held and after giving reasonable opportunity of making a representation against the proposed enhancement of penalty. We are convinced that these requirements of the Rules have been scrupulously followed by the Appellate Authority while exercising his appellate jurisdiction. What the applicant has submitted in his date chart/written note of submission filed on 25.5.2007 is that the penalty of reduction to the lower stage in the time scale cannot be ordered as a permanent measure – as per FR 29 and Rule 105 of the P & T Manual Vol.III. This point has been clarified by the Respondent-Department at Page-9 of their counter towards the bottom portion in reply to Paragraph-5.11 of the O.A. They have stated that by Memorandum dated 27.4.1994, the punishment order issued by Memorandum dated 29.12.1993 was clarified and/or corrected to the extent that the applicant was imposed punishment of reduction of pay by five stages from Rs.1150/- to Rs.1050/- for a period of five years. The Respondents had filed this counter on 30.11.1995 after serving copy thereof on the applicant's counsel. The matter was thereafter listed before the Bench for hearing and

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got adjourned from time to time on 8.12.1995, 13.12.1995, 18.3.1996, 3.4.1996, 1.5.1996, and 27.6.1996. The applicant filed a rejoinder on 13.8.2002. In his rejoinder, the applicant has not denied the fact that the punishment order dated 29.12.1993 stood clarified and/or corrected by the Appellate Authority in a subsequent Memorandum issued on 27.4.1994 to the effect that the applicant's pay was reduced by five stages from Rs.1150/ to Rs.1050/- for a period of five years. In view of this, the plea of the applicant that the punishment order passed by the Appellate Authority reducing his pay in five stages permanently, is not a true revelation of fact and therefore, the same is rejected.

11. In consideration of all the above, we hold that it was incumbent on the appellate authority to have assigned reasons on the proposed enhancement of punishment while issuing notice to the applicant with a view to give opportunity to have his say as to how the reasons for such enhancement of punishment were not germane to the findings of the I.O. or, for that matter, the order of the D.A. The appellate authority having not done so, there has been violation of the principles of natural justice. This apart, it was the appellate authority who should at least consider the grievance of the applicant with regard to non-supply of documents which in effect is stated to have caused prejudice to him.

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12. For the reasons discussed above, while quashing the order dated 29.12.1993 (Annexure-11) passed by the Appellate Authority, we direct as under:

The Appellate Authority is directed to communicate to the applicant as to what weighed with him in disagreeing with the findings of the I.O. and that of the Disciplinary Authority along with the notice for enhancement of punishment together with the reasons as to how non-supply of those documents did not cause any prejudice to him, within a period of thirty (30) days of the receipt of this order whereupon the applicant shall make his representation within a period of thirty(30) days from the date of receipt of such communication. The Appellate Authority shall thereafter pass appropriate orders in accordance with law. In the event of the applicant failing to file his written representation within the period stipulated above, the punishment order dated 29.12.1993 under Annexure-11 shall stand restored. It is also made clear that no application for extension of time by either of the parties shall be entertained by the Tribunal under any circumstance.

13. In the result, the O.A. is allowed pro tanto. No costs.

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(B.B.MISHRA)
ADMINISTRATIVE MEMBER

(N.D.RAGHAVAN)
VICE-CHAIRMAN

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