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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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ORIGINAL APPLICATION NO.762 OF 1996
Cuttack this the 16th day of March/2001

Ashok Biswal

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 9 M.
2. Whether it be circulated to all the Benches of the N.A. - Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16-3-2001

16-3-2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.762 OF 1996
Cuttack this the 16th day of March/2001

CORAM:

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

Sri Ashok Biswal, aged about 40 years,
S/o. Late Dandapani Biswal, working as
Extra Departmental Branch Post Master,
Haridapadar Branch Office, Via:Khambeswaripatna
Dist - Ganjam

By the Advocates

...

Applicant

M/s.Ganeswar Rath
S.N.Mishra
A.K.Panda
S.R.Mohanty
R.K.Panda

-VERSUS-

1. Union of India represented by its Secretary,
Department of Posts, Dak Bhawan,
New Delhi
2. Chief Post Master General, Crissa Circle,
Bhubaneswar, Dist - Khurda
3. Director of Postal Services, Berhampur Region,
Berhampur, Dist - Ganjam

By the Advocates

...

Respondents

Mr.U.B.Mohapatra
Addl.Standing Counsel
(Central)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application filed on
15.10.1996, applicant, an Extra Departmental Branch Post Master,
prays for the following reliefs:

- 1) To declare the disciplinary proceeding as
void ab initio;
- 2) to set aside proceeding as per Annexure-4
- 3) to set aside proceeding of the review as per
Rule-16; and
- 4) To set aside order dated 23.9.1996 issued by
Director, Postal Services, Berhampur, Ganjam
as per Annexure-4

In Memo dated 30.11.1995 (Annexure-1), applicant was
served with charges under two heads. Charge No.1 is that though

he duly received Calcutta G.P.O. insured letter dated 6.4.1994 for Rs.2800/-, duly invoiced in the Branch Office slip dated 8.12.1994, he had shown the insured letter as delivered to the real addressee though it was not so delivered. The 2nd charge is that in Branch Office slip dated 22.2.1995, he remarked the entry of Bombay - 93 R.L. No.104085 dated 14.2.1995 as 'not received' without making any remark in the error book as required under the rules. The Inquiring Officer in his report under Annexure-2 mentioned that the applicant admitted both the charges during inquiry and also the documents listed under Exhibit 5 to 13 (Annexure-3) are sufficient evidence in respect of the charges. On the basis of this report the disciplinary authority by order dated 15.4.1996(Annexure-3) though held the applicant guilty took a lenient view and let him off with a censure and treated the put off duty period as such. Thereafter by order dated 30.9.1996, the Director of Postal Services, Berhampur Region (Ganjam) Respondent No.3, suo motu examined the case file and by opining that the punishment was inadequate, issued notice on the applicant in exercise of power conferred under Rule-16 of E.D.Agents(Conduct & Service) Rules, 1964(in short Rules) to show cause as to why the order passed by the disciplinary authority would not be modified and what he should not be removed from service. In the show cause notice it was mentioned that the applicant should submit show cause within 10 days from the date of receipt of notice (Annexure-4).

2. The case of the applicant is that he had received the notice on 7.10.1996 and since he was allowed 10 days time from the date of receipt of the notice to show cause, the time for submitting show cause expired on 16.10.1996. By 16.10.1996,

six months already expired from 15.4.1996, i.e. the date of passing of the final order by the disciplinary authority. This being so, the D.P.S.(Res.3), who issued the show cause notice under Annexure-4 under the Rules, cannot further revise or modify the order of the disciplinary authority.

The applicant also challenges the very initiation of the proceedings and order of the disciplinary authority on the grounds that rules of natural justice have been grossly violated in not supplying him a copy of the inquiring report before the order was passed by the disciplinary authority. Further, even if the charges are admitted, the inquiring authority was legally bound to examine the witness and record their evidence.

3.- In the counter the stand of the Department is that without filing show cause, as directed by Respondent No.3, the applicant could not have approached the Tribunal praying for quashing the show cause notice. Moreover, under Rule-16 of the Rules, Respondent No.3 was even empowered to revise and/or modify the order of the disciplinary authority even after the expiry of six months from the date on which the disciplinary authority had passed the order. Since the applicant did not prefer departmental appeal against the order of the disciplinary authority within three months time, as prescribed under the rules, he could not in this Original Application challenge that order under Section 20 of the Administrative Tribunals Act, 1985. As the applicant, during inquiry pleaded guilty of the charges, there was no necessity for supplying a copy of the inquiry report to enable him to have his say before the disciplinary authority could pass the final order. With these averments, respondents have prayed for dismissal of this

Original Application.

3. On 15.10.1996, this O.A. was admitted and operation of the order dated 30.9.1996 (Annexure-4) was stayed. As the matter dragged on for long, the respondents pressed for vacation of the stay order. Through an elaborate order dated 31.01.2001, this Bench vacated that stay order.

4. We have heard Shri Ganeswar Rath, the learned counsel for the applicant and Shri U.B. Mohapatra, the learned Addl. Standing Counsel for the Respondents. Also perused the records.

6. There is no dispute that even after receipt of show cause notice under Annexure-4, the applicant did not submit any show cause before Respondent No.3, the issuing authority. The contention of Shri Rath, the learned counsel for the applicant is that notice was received by the applicant on 7.10.1996, which has not been denied or disputed in the counter and since he had been allowed 10 days time to file show cause, which would mean that he had time to file show cause even on 16.10.1996 and by 16.10.1996 period of six months had elapsed from the date of passing of the order of punishment by the disciplinary authority. After expiry of six months from the date of passing of the order by the disciplinary authority, Rule-16 of the Rules does not empower Respondent No.3 to revise and/or modify that order. Shri Mohapatra, on the other hand contended that this interpretation of Rule-16 by Shri Rath is not correct and according to him, Respondent No.3 has the power to revise or modify the order of the disciplinary authority, even after expiry of six months period.

7. In order to appreciate this submission it is profitable to quote Rule-16 of the Rules, as amended on 15.12.1995, i.e.,

long prior to the date of passing of the impugned ~~by~~ order
by the disciplinary authority, as under :

"16. Revision

Notwithstanding anything contained in these rules:

- i) the Central Government; or
- ii) the Head of the Circle, or Postmaster-General (Region), as the case may be; or
- iii) any authority immediately superior to the authority passing the orders;
- iv) any other authority specified in this behalf by the Central Government by general or special order and within such time as may be prescribed in such general or special orders;

may, at any time, either on its own motion or otherwise call for records of any enquiry or disciplinary case and revise an order made under these Rules, reopen the case and after making such enquiry as it considers necessary, may

- a) confirm, modify or set aside the order

or

- n) pass such orders as it deems fit;

Provided that no such case shall be reopened under this rule after the expiry of 6 months from the date of the order to be revised except by the Central Government or by the Head of the Circle or by the Postmaster-General (Region) and also before the expiry of the time-limit of three months prescribed for preferring an appeal.

Provided further that no order imposing or enhancing any penalty shall be made by ~~any~~ any Revisionary Authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalty specified in Clauses (V) and (VI) of Rule 7 or to enhance the penalty imposed by the order sought to be revised, to any of the penalties specified in those clauses, no such penalty shall be imposed except after the enquiry in the manner laid down in Rule 8, in case no such enquiry has already been held".

A reading of this aforesaid rule would make it clear that an authority, immediately superior to the authority passing the impugned order can ^{not} /reopen the case after the expiry of six months from the date of the order, sought to be revised and also before the expiry of limit of three months prescribed for

preferring appeal. But there is an exception. Such order can be revised and/or reopened even after the expiry of six months by the Central Government or by the Head of the Circle or by the Post Master General. Respondent No.3 being the authority immediately superior to the disciplinary authority, in fact on 30.9.1996 issued show cause notice under Annexure-4 and this was well within the period of six months of the order dated 15.4.1996 of the disciplinary authority. The expression 'reopen', under this rule would mean calling for the record and if necessary, issuing a show cause notice indicating tentative decision to enhance the penalty.

Confirmation/modification or setting aside the order of the disciplinary authority and/or passing such orders as deemed fit in exercise of powers of revision would not ^{include} ~~preclude~~ the power for calling for record to mean reopening. It is only after reopening by calling for record and taking a tentative and prima facie decision and after hearing the version of the concerned employee on whom notice has to be issued, the stage for confirmation/modification or setting aside the order of the disciplinary authority and/or passing such orders as deemed fit would arise. Hence, once an appellate authority in exercise of powers of revision to be made under Rule-16 reassessed the case by calling for the records within a period of six months of the date of passing of the order by the disciplinary authority and issued show cause notice, if necessary, there is no embargo under this Rule-16 in the matter of time limit for passing such further orders in the revision.

Shri Rath, the learned counsel for the applicant, in support of his contention that even within six months final order has to be made by the revisional authority, placed reliance on

reliance on the decision in the case of Muthu Swamy vs. P.M.G., Karnataka Circle, decided by a Division Bench of C.A.T., Bangalore, reported in 1989(10) A.T.C. 555. That was a case under Rule-29 of CCS(CCA) Rules, 1965, where the disciplinary authority imposed the penalty in order dated 13.7.1987. The Revisional Authority, i.e., Respondent in that case in Memo dated 11.1.1988 informed the appellant ^{he} (applicant) that/had proposed to revise the order of the Disciplinary Authority. No notice to show cause proposing enhancement of the punishment was issued on that date. However, on 21.1.1988, after the expiry of the period of six months from the date of the order of the disciplinary authority, the Respondent intimated the applicant that he had provisionally come to the conclusion that he proposed to enhance the punishment and gave an opportunity to submit his representation, if any, within a period of 15 days. Thus, it is a case where after the expiry of the period of six months, the P.M.G., who was the immediate higher authority to the disciplinary authority had taken a tentative decision that the punishment should be enhanced and thereafter issued show cause notice. In other words, technically he reopened the matter by taking a tentative decision to enhance the punishment after the expiry of the period of six months. Under such circumstances, the Original Application was allowed. Hence this decision is clearly distinguishable and will not be of any help to the applicant.

8. We, therefore, do not see any legal infirmity in order dated 30.9.1996 issued by the revisional authority, i.e., Respondent No.3, to the applicant for showing cause. Moreover, as rightly contended by the learned Addl. Standing Counsel Shri Mohapatra, without filing the show cause, as directed by

the revisional authority, the applicant could not have straightaway approached the Tribunal. After filing the show cause he was not satisfied with the ultimate order that would have been passed by the revisional authority, he would have as well under Section 19 of the A.T. Act, 1985, moved this Tribunal challenging the vires of issuing notice to show cause. Since we held that Annexure-4, order dated 30.9.1996 issued by the revisional authority does not suffer from any legal infirmity, question of quashing that order would not arise.

9. Since we held that Annexure-4 could not be quashed/ set aside, we are not inclined to enter into the controversy as to whether without exhausting the remedy of filing the departmental appeal, as provided under Rule-10, the applicant in this O.A. can ask for setting aside the disciplinary proceedings, because the matter is well within the jurisdiction and discretion of the revisional authority, i.e. Respondent No.3.

10. In the result, we do not see any merit in this application, which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16.3.2002

B.K.SAHOO//

16.3.2002
(G.NARASIMHAM)
MEMBER (JUDICIAL)