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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.112 OF 2002
Cuttack this the 8th day of July 2004

Uma Shankar Sethi ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No

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

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO. 112 OF 2002
Cuttack this the 8th day of July 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

...

Uma Shankar Sethi, aged about 37 years,
S/o. Late Harihar Sethi, R/o. Putabagada
PO-Bhabandha, Via-Bhatakumuda, Dist-Ganjam

... Applicant

By the Advocates M/s.N.C. Pati
A.K.Mohapatra
S.Mishra,
N.Singh
S.K.Nanda

- VERSUS -

1. Union of India represented through the Secretary Department of Posts, Dak Bhawan, New Delhi
2. The Chief Post Master General, At/PO: P.M.G.Square PO/PS-Bhubaneswar, Dist-Khurda
3. The Director of Postal Services, Office of the P.M.G. Berhampur Zone, At/PO-Berhampur, Dist-Ganjam
4. Senior Superintendent of Post Offices, Berhampur Division, At/PO-Berhampur, Dist-Ganjam

... Respondents

By the Advocates Mr.J.K.Nayak,A.S.C.

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: In this Original Application under Section 19 of the Administrative Tribunals Act,1985, applicant (Shri Uma Shankar Sethi) a Postal Assistant in the Berhampur Postal Division has assailed the order passed by the appellate authority in exercise of his review jurisdiction and enhancing the quantum of punishment imposed on him by the disciplinary authority under Annexure-4 dated 18.12.2000 on the ground that the said action is violative of the provisions of the Rule-29(i)(v) of CCS(CCA) Rules,

1965.

2. The facts of the case are that the applicant, for certain acts of misconduct, as communicated to him through the charge memo dated 23.2.1996, was proceeded against under Rule-14 of CCS(CCA) Rules, 1965. The charges having been established against him, the punishment of reduction in pay scale by three stages from Rs.4300-4000/- in the time scale of pay of Rs.4000-100-6000/- was imposed on him by the disciplinary authority for a period of three years, during which period, it was ordered that, he would not earn increment in pay. Being aggrieved by this order, the applicant filed an appeal before the appellate authority. The appellate authority, however, in exercise of his power conferred under Rule-29(i)(v) of CCS(CCA) Rules, issued a notice to the applicant vide his memo dated 23.2.2000 (Annexure-2) to show cause as to why the quantum of punishment should not be enhanced to "removal from service" and 'to recover the amount of loss incurred to the Government from undusbursed salaries and allowance of Shri U.S.Sethi', applicant herein. After considering the reply to show cause, the appellate authority enhanced the penalty imposed and passed the order of compulsory retirement of the applicant from Government service vide his order dated 18.12.2000 (Annexure-4) with immediate effect.

The main contention of the applicant is that the appellate authority has acted beyond his jurisdiction as prescribed under the rules. Firstly, that he did not act within six months of the passing of the order by the disciplinary authority and thereby rendered himself

without jurisdiction to act as appellate authority under Rule-29(i)(v) of CCS(CCA) Rules,1965. Secondly, that as per notice under Annexure-2, he was allowed only 10 days time to represent/explain to the authority. It is his case that as he received the show cause notice very late, he had at that time prayed for allowing him further time of 20 days to submit his representation/explanation against the proposed punishment (vide his letter dated 13.4.2000(Annexure-R/7), but the said authority did not grant him time and without considering his representation, arbitrarily and with a malicious intent passed order enhancing the punishment on the ground that the punishment formerly imposed was not commensurate with the gravity of offence committed by the applicant.

3. The Respondents, by filing a detailed counter, have opposed the prayer of the applicant, to which applicant has also filed a rejoinder.

4. We have heard the learned counsel of both the sides and perused the materials available on record. In support of his contention, the learned counsel for the applicant also relied on the decision rendered by the Hon'ble Supreme Court in the case of B.C.Chaturvedi v. Union of India & Ors. reported in 1996 SCC(L&S) 80 and we have also taken note of the same.

5. Without going into the nuts and bolts of the case, it would suffice for the purpose of this application if we adjudicate the central issue raised by the applicant in this O.A., i.e., whether the appellate authority, while passing order dated 18.12.2000(Annexure-4) enhancing the quantum of punishment had in fact acted within the frame-work of Rule-29(i) (v). To answer this issue, it would be

profitable to quote the provisions of Rule-29(1)(v), which reads as under :

> "... 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 which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, ..."

Under the rules, therefore, the appellate authority has been given six months time from the date the order proposed to be revised by calling for the records of any inquiry and revise any order made under these rules. In the circumstances, we are to examine whether the appellate authority, in the instant case, had acted within six months of the order of punishment passed by the disciplinary authority. It is not in dispute that the appellate authority called for the file and issued show cause notice to the applicant vide his memo dated 23.3.2000 and thereafter passed his appellate order on 18.12.2000. It is also not in dispute that the disciplinary authority imposed punishment vide his order dated 20.10.1999. From the above it is clear that the decision to revise the order of the disciplinary authority was taken by the appellate authority well within six months, i.e., 23.3.2000 of the order passed by the disciplinary authority on 20.10.1999. However, the final order was passed by the appellate authority on 18.12.2000, which was beyond the period of six months. It is the submission of the learned counsel for the applicant that the appellate authority should have passed his final order within the perio

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of six months and having not done so, the appellate order dated 18.12.2000 has become void. The learned counsel for the Respondents has drawn our attention to the letter bearing No.6/1/72-Disc.I dated 27.7.1972 issued by D.G.(P&T) clarifying that the appellate authority under Rule-29(i)(v) should call for the relevant records of the case with a view to revising an order already passed within six months of the date of the order to be revised and if at the same time also informs the Govt. servant that he proposes to revise the order, then, it would be presumed that he has acted well within the time limit as prescribed. Relying on this order of the DG(P&T), he submitted that the appellate authority having completed all the formalities, i.e., calling for the records of the case with a view to revising the order passed by the disciplinary authority and issuing notice to show cause to the applicant on 18.3.2000, it cannot be said that the appellate authority had transgressed the time-limit as prescribed under the rules. We see lot of force in the argument of the learned counsel for the Respondents that the appellate authority had acted within his jurisdiction under the provisions as laid down under Rule-29(i)(v) of CCS(CCA)Rules and the objection of the learned counsel for the applicant that the appellate authority had acted beyond the time limit is not tenable.

The other point urged by the learned counsel for the applicant is that the punishment imposed by the appellate authority is shockingly disproportionate to the gravity of the charge/allegation levelled anderstablished

against the applicant. To butress his argument, he also relied upon the judgment in the case of B.C.Chaturvedi (Supra) and submitted that as per law laid down by their Lordships of the Hon'ble Supreme Court that where the punishment in the opinion of the Court/Tribunal is held to be disproportionate and/or shocks the judicial consceicne, it can appropriately mould the punishment. We have gone through the judgment and found that their Lordships, while dealing with the question of the scope of judicial review in disciplinary matters, observed that the power of judicial review is meant to ensure that the individual receives fair treatement and not to ensure that the conclusion which the authority reaches is necessarily correct in the opinion of the Court. Their Lordships observed that "when an inquiry is conducted on the charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. They had also observed that the disciplinary authority and the appellate authority being the fact finding authority have exclusive power to consider the evidence with a view to maintain discipline. They are vested with the discretion to impose proper punishment keeping in view the magnitude or gravity of misconduct. In the instant case, on perusal of the order passed by the disciplinary authority, we had found serious incoherence in that order. To amplify, we quote what the disciplinary authority had concluded that "the misconduct so proved is grave and serious and thus warrants extreme punishment".

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Therefore, taking a lenient view, I Shri Harihar Mishra, Sr.Supdt. of Post Offices, Berhampur (GM) Division, Berhampur order that the pay of Shri Sethi be reduced by three stages from Rs.4300 to Rs.4000/- in the time scale of pay Rs.4000-100-6000/-". It is strange that the disciplinary authority after holding the view that the lapses on the part of the applicant were 'grave and serious', he could take lenient view. Such a conclusion is not only illogical but perverse also. It is, therefore, not unnatural that the appellate authority in exercise of power conferred on him under Rule-29(i)(v) reviewed the matter for the following reasonings:-

> "...I am not inclined to accept the plea of Shri U.S.Sethi that he has been exempted by the I.O. from the major charges i.e., Article-I and Article-III for the reason that under major penalty proceedings all the charges are considered to be major. Moreover, the I.O. has no where disproved Article-I and Article-II. Rather he has proved the non-credit both in Article-I and Article-II. What the I.O. could not prove is "the mala fide intention to commit fraud". Whatever the intention behind the non-credits of Government cash into Post Office account may be, the non-credit itself is a grave offence. Being a responsible government official, the plea of Shri U.S.Sethi that he could not take detailed charge of the office for want of adequate time is not acceptable".

The appellate authority, however, taking into consideration the pleadings of the charged official, the economic condition of the family decided to order compulsory retirement of the applicant from service. As it has been observed by their Lordships in B.C.Chaturvedy case(supra) it is the disciplinary authority and on appeal, the appellate authority, being the fact finding authority have exclusive power to consider the evidence with a view to

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maintain discipline and that they were invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. No material has been placed before us to question the sagacity of the appellate authority. We also find the punishment of compulsory retirement from service, in the face of the gravity of offence can hardly be called disproportionate or that it is a case to shock the judicial conscience of the Court/ Tribunal, because, by awarding that punishment the bread and butter of the applicant has not been taken away.

For the foregoing, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for in this O.A., which is accordingly dismissed. No costs.

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

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