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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1

11.12.2017

O.A./260/660/2016

M.A./260/436/2017

FOR FURTHER ORDER.

ITEM NO:33

FOR APPLICANTS(S) Adv. :

FOR RESPONDENTS(S) Adv.:

B K BARIK

-V/S-

M/O LABOUR & EMPLOYMENT

Mr. R.N.Acharya

Mr. P.K.Mohanty

Notes of The Registry	Order of The Tribunal
	<p>The Applicant (Shri Bijay Kumar Barik) has filed this Original Application, inter alia, praying for quashing of the show cause Memorandum dated 28/01/2016 wherein the competent authority i.e. the President proposes to revise the punishment of withdrawal of two increments permanently imposed vide Office Order dated 22/07/2011 to that of "dismissal from service".</p> <p>2. Initially vide order dated 22/07/2011 (Annexure-2), the Disciplinary Authority, imposed the punishment of withholding of two increments permanently on the applicant with further order that the next increment shall be allowed to him w.e.f. 01/07/2014. The Presiding Officer, CGIT cum Labour Court, Bhubaneswar observed that his predecessor, Shri J.Srivastava vide order dated 22/07/2011 had altered and modified the proposed punishment in violation of Rule 17 (1) and 17(2) of CCS (CCA) Rules, 1965 and, accordingly, revoked the said order and dismissed the applicant from service forthwith vide order dated 26/06/2014 (Annexure-3). The Applicant, being aggrieved by the said order dated 26/06/2014, preferred memorandum of appeal under Rule 22 of the CCS (CCA) Rules, 1965 to the Appellate Authority i.e. Secretary to Government of India, Ministry of Labour & Employment, New Delhi. The Secretary to Government of India, Ministry of Labour & Employment, New Delhi in exercise of the power of the Appellate Authority conferred under Rule 27 of the CCS Rules, 1965 vide order dated 03/08/2015 (Annexure-5) set aside the order of dismissal dated 26/06/2014 and restored the earlier order dated 22/07/2011 wherein the penalty of withholding of two increments permanently were imposed on the Applicant.</p> <p>3. After this development, the President in exercise of power conferred under Rule 29 of the CCS (CCA) Rules, 1965 reviewed the matter <i>suo motto</i> and before enhancing the punishment imposed by the Appellate Authority vide order dated 03/08/2015(Annexure-5), has issued the notice vide Memorandum dated 28/01/2016 (Annexure-1) calling upon</p>

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the applicant, in compliance of natural justice to show cause as to why the order of dismissal from service shall not be imposed on him. Being aggrieved by this Memorandum dated 28/01/2016 (Annexure-1), the Applicant has filed the instant O.A.

4. As an interim measure, this Tribunal vide order dated 22/09/2016 while granting time to the Respondents to file counter, by way of interim order, directed the Respondent No.1 not to take any coercive action in pursuance of the Memorandum dated 28/01/2016 against the Applicant in the meantime.

5. Respondents have filed their counter pleading therein that under Rule 29, the President has inherent power to exercise the power of review at any time suo moto. The other ground advanced by the Respondents is that the applicant cannot approach the Tribunal in the midway and has to subject himself to the departmental forum for redressal of any of his grievances.

6. Before delving into the merit of this case, at the outset, it may be clarified that in terms of Rule 29 of the CCS (CCA) Rules, 1965, the President, **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 from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed and confirm, modify, confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed and pass such other orders as it may deem fit, which includes confirmation, modification and enhancement of penalty so also setting aside of the penalty imposed by the order or pass such other orders as it may deem fit. The only proviso to Rule 29 of CCS (CCA) Rules, 1965 is 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 opportunity of making a representation against the penalty proposed. In view of such categorical rider, the Under Secretary of the Government of India communicated the order of the President under Rule 29 of the CCS Rules, 1965 vide Memorandum dated 28/01/2016 (Annexure-1) proposing revision of the punishment imposed vide order dated 22/07/2011 (Annexure-2) to that of 'dismissal from service'.

7. Learned Counsel for the applicant has argued that since revisional power was exercised at a belated stage, the Memorandum dated 28/01/2016 (Annexure-1) is liable to be quashed. But going through the records, it is seen that the Appellate Authority vide order dated 03/08/2015 set aside the order of dismissal of the applicant from service, imposed vide order dated 26/06/2014 (Annexure-3), and restored the

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order dated 22/07/2011 (Annexure-2) in which penalty of withholding of two increments permanently was imposed on the applicant, and, thus, there is no legal infirmity in issuance of the Memorandum dated 28/01/2016 within the period of six months from the date of order dated 03/08/2015, even though, as per the rules, no time limit applies to revision by the President.

8. Be that as it may, it is not the case of the Applicant that the Memorandum dated 28/01/2016 has been issued by an authority which is not competent to do so. Through this Memorandum the applicant has been allowed an opportunity, in compliance with natural justice, to submit his show cause which in any manner, does not adversely affect rights of the applicant. Law does not permit quashing of show cause in a routine manner. In case the delinquent employee has any grievance in respect of the said show cause, he must raise the issue by filing a representation and wait for the decision of the authority as ruled by the Hon'ble Apex Court in the case of **Secretary, Ministry of Defence and others v Prabhash Chandra Mirdha** (2013) 1 SCC (L&S) 121. Thus, applying the law laid down by the Hon'ble Apex Court, it is too premature to deal with the issue raised in this OA. Since the matter is within the administrative domain of the Respondents no interference at this stage is called for as no final order has been passed. Hence ordered.

9. The OA is dismissed. Resultantly, the interim order dated 22/09/2016 which has been continuing till date stands vacated. No costs.

(DR. MRUTYUNJAY SARANGI)
MEMBER (A)

(SUSHANTA KUMAR PATTHNAIK)
MEMBER (J)

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