

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 441 OF 2007

Dated the 17th October, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

N.R.Kanakam,
W/o.M.B.Radhakrishnan,
Postal Assistant, Kakkanad
Residing at Madappallil House,
Kureekkad P.O., Thiruvankulam,
Ernakulam District.

...Applicant

[By Advocate: Mr TCG Swamy]

-Versus-

1. Union of India, represented by
the Secretary to the Government of India,
Ministry of Communications,
(Department of Posts), New Delhi.
2. The Senior Superintendent of Post Offices,
Ernakulam Division, Cochin-682011.
3. The Director of Postal Services,
Central Region (Kerala Circle),
Cochin - 682 018.

... Respondents

(By Advocate Mr. C.M.Nazar ACGSC)


This application having been heard on 19th September, 2008 the Tribunal delivered the following -

ORDER

(Hon'ble Dr.K.S. Sugathan,AM)

The applicant in this OA is working as a Postal Assistant. She was charge sheeted under Rule 14 of CCS (CCA) Rules for withdrawing certain amounts on various dates from the savings bank


accounts of different depositors but not depositing them in their RD Accounts on the respective dates under the provisions of Automatic Transfer Scheme. There were three articles of charge. In the subsequent enquiry all the three articles were held as proved. However the Disciplinary Authority did not agree with the findings of the Enquiry Officer. The Disciplinary Authority by his order dated 31.3.2006 held that all the three charges are not proved, but he imposed the minor penalty of reduction of one stage of pay for six months on the ground that there is some lapse on the part of the applicant which is quite different from the articles of charge framed. The applicant did not appeal against the imposition of the minor penalty. However, the Appellate Authority suo motto issued a notice under Rule 29(1)(v) of CCS (CCA) Rules to the applicant on 21.9.2006 stating that she proposes to remit the matter for further enquiry to the SSP, Ernakulam for further enquiry from the stage of issue of fresh charge sheet. The applicant was given an opportunity to make her representation, if any to the said proposal. In response to the said notice, the applicant represented vide letter dated 3.10.2006 stating that no reasons are given in the show cause for the proposed action and that under the rules revising authority cannot entirely wipe out the enquiry proceedings already held, but can only direct further enquiry. Subsequently, the Appellate Authority issued a detailed speaking order on 30.5.2007 remitting the matter for further enquiry from the stage of issue of fresh charge sheet. Aggrieved by the action taken by the Appellate Authority, the applicant has filed this OA seeking the following relief:



- "i) Call for the records leading to the issue of Annexures A1 and A2 and quash the same and direct the respondents to grant the applicant all consequential benefits as if Annexures A1 and A2 were not in existence.
- ii) Award costs of and incidental to this application.
- iii) Pass such other orders or directions as may be found just and proper by this Hon'ble Tribunal."

2] The applicant has cited three grounds in support of the relief. The first ground is that "further" enquiry contemplated under Rule 29 can only be an additional enquiry, and not a new proceeding starting from the issue of fresh charge sheet. The second ground is that the order under Rule 29 should have been passed within six months from date of the penalty order. To be within the time limit specified, the appellate authority's order should have been passed before 30.9.2006, but it was passed on 30.5.2007. The third ground is that no reasons were given in the notice dated 21.9.2006 for the proposed action and therefore the applicant could not make an effective representation.

3] The respondents have filed a reply statement. It is stated in the reply that the Disciplinary Authority has admitted in the penalty order that the punishment was being imposed for some other lapses that were not brought out in the charge sheet. That would show that he had not drawn up the charge sheet properly. As per the guidelines issued by the D.G. Post and Telegraph dated 27.7.1972 the time limit of six months is to be counted with reference to the date of the show cause notice. The show cause notice was issued within the time limit of six months. No reasons are required to be given in the show cause notice. Only the intention to revise the order of the Disciplinary Authority is required to be given as per the guidelines at R/2. Only if the penalty was proposed



to be imposed or enhanced, a reasonable opportunity was required to be given. The show cause notice was only for the purpose of remitting the case to the Disciplinary Authority.

4] We have heard the learned counsel for the applicant Shri TCG Swamy and the learned counsel for the respondent Shri Shaji for CM Nazar ACGSC. We have also perused the documents carefully.

5] There are three issues for consideration in this OA namely whether (a) the appellate authority under Rule 29 of CCS (CCA) Rules is empowered to remit the disciplinary proceedings for fresh enquiry starting from the stage of issue of a fresh charge sheet; (b) whether the final order by the Appellate Authority under Rule 29 (1)(v) has to be issued within the time limit of six months from the date of the original penalty order; and (c) whether any reasons are required to be given in the show cause notice proposing to remit the matter to the Disciplinary Authority. For examining the above issues, it is necessary to look at Rule 29 (1) of CCS (CCA) Rules which is extracted below:

"29. (Revision)

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board {Adviser (Human Resources Development), Department of Telecommunications} in the case of a Government servant serving in or under the Telecommunications Board; or

(iv) the Head of a Department directly under the Central Government, In the case of a Government servant serving in a department or office (not being the Secretariat or the Telegraphs Board), under the control of such Head of a Department.

(v) the Appellate Authority, within six months of the date of the order proposed to be {revised} ; or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

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, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has 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 opportunity 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) of Rule 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 penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary]:

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless -


(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him."

6] A plain reading of the aforesaid rule shows that the Appellate Authority can on her own motion call for the records of any enquiry and revise any order and may (a) confirm, modify or set aside the order or (b) confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no

penalty has been imposed or (c) remit the case to the authority which made the order 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. Thus four alternative course of action have been provided. We are concerned here with alternative (c), namely to remit the case to the authority to make such further enquiry. The disputed part of this course of action is what constitutes "further" enquiry. According to the applicant further enquiry cannot include issue of new charge sheet. The respondents have justified their action to direct issue of fresh charge sheet on the ground that the original charge sheet was defective. We are unable to accept the contention of the respondents in this regard. Withdrawal of a charge sheet and subsequent issue of a revised charge sheet comes within the competence of the Disciplinary Authority. Rule 29 (1) extracted above clearly states that the Appellate Authority may call for the records of any enquiry and may remit the case for further enquiry. Here further enquiry cannot be construed to mean an altogether new proceeding. The Appellate Authority may certainly direct the Disciplinary Authority to resume the enquiry from any stage after the issue of charge sheet, which could include a new enquiry by another enquiry officer. But it cannot be stretched to mean issue of new charge sheet.

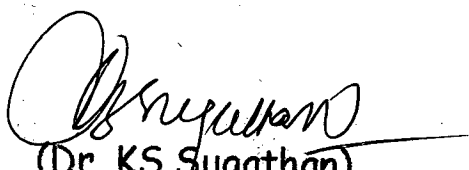
7] On the issue of time limit, the rule stipulates that the prescribed authorities may at time call for the records of any enquiry and revise any order and may confirm, modify, etc. In the case of the Appellate Authority specified at Rule 29(1) (v) there is

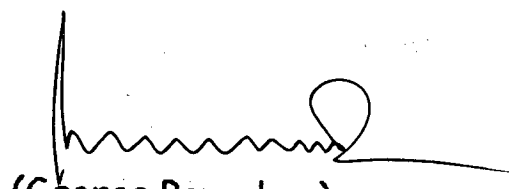


a further restriction that this exercise has to be done within six months from the date of the order proposed to be revised. The six month time limit is therefore with reference to the action of calling for the records of an enquiry, and not with reference to the final order passed. This is correctly interpreted in the guidelines issued by DG P&T dated 27.7.1972, according to which all that is required is to indicate to the Government servant within six months that it is proposed to revise the order.

8] On the issue whether reasons are required to be given while intimating the government servant that it is proposed to revise the order, the rule 29(1) provides for reasonable opportunity only when it is proposed to impose or enhance any penalty. In the present case the proposal was only to remit the matter and therefore we do not accept the contention of the applicant that reasons should have been given in the show cause notice.

9] For the reasons stated above, OA is partly allowed to the extent that the A/2 order dated 30.5.2007 is quashed and set aside, but the respondent No.3 is given liberty to issue a fresh order remitting the matter to the Disciplinary Authority to resume the proceedings from any stage after the issue of the charge sheet, as deemed necessary. Under the circumstances there shall be no order as to costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Paracken)
Member (Judicial)