IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 591/89 ~~189~~

DATE OF DECISION 10.7.1990

VR Damodaran — Applicant (s)

Mr.OV Radhakrishnan — Advocate for the Applicant (s)

Versus

Assistant Supdt. of Post Offices, Pathanamthitta Sub Divn., Pathanamthitta & 4 others — Respondent (s)

Mr.TPM Ibrahim Khan — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The short question that arises for consideration in this application is whether the issue of a notice stating that it is proposed to review an order under Rule 16 of the Post and Telegraphs Extra Departmental Agents (Conduct and Service) Rules within a period of six months from the date of the order sought to be reviewed will save the limitation, and can an authority not being the Central Government or Head of Circle pass an order consequent on the review at any time thereafter, if such a notice was issued within six months.

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Can it be said that by such notice a case is reopened?

2. While the applicant was working as Extra Departmental Mail Carrier-cum-Extra Departmental Delivery Agent in Vazhamuttom East Post Office in a disciplinary proceedings, the 1st respondent who was the adhoc Disciplinary Authority imposed on him a penalty of removal from service by order dated 21.10.1986. A copy of the enquiry report was furnished to the applicant for the first time along with the punishment order. The second respondent who is the Appellate Authority allowed the appeal filed by the applicant and set aside the punishment order dated 31.12.87 (Ext.A-6). By order dated 7.1.1988 (Ext.A-7) he was reinstated in service. Thereafter, the applicant was served with a notice dated 26.4.1988 (Ext.A-8) from the Director of Postal Services (HQ), Kerala Circle, Trivandrum proposing to review the appellate order under the provisions of Rule 16 of the Extra Departmental Agents (Conduct and Service) Rules. Again the third respondent issued a memo dated 18.8.1988 (Annexure-R1) to the applicant proposing to cancel the appellate order (Ext.A-6) and to uphold the penalty order of removal from service passed by the Disciplinary Authority on 21.10.1986 giving him an opportunity

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to make representation against such proposal . The applicant submitted his representation (Ext.A-9). Thereafter, the third respondent passed the impugned order at Exhibit-A.10 setting aside the appellate order at Ext.A-6 and confirming the order of removal from service imposed by the Disciplinary Authority in Memo No.ASP/AP/INQ/1/84 dated 21.10.1986. Pursuant to this order of the third respondent, the first respondent by order dated 9.11.1988 (Ext.A-11) removed the applicant from service with immediate effect. Challenging the orders at Ext.A-10 and A-11, the applicant has filed this application under Section 19 of the Administrative Tribunals Act. It has been contended in the application that inasmuch as the proceedings for reopening the appellate order for cancelling the same were initiated only by the memo dated 18.8.1988, more than six months after the date of the appellate order dated 31.12.1987 at Ext. A-6, the order at Ext.A-10 is illegal and void. It has also been contended that, since a copy of the Enquiry Authority's report was not supplied to the applicant before the Disciplinary Authority decided that the applicant was guilty, the order of removal cannot be sustained since the proceedings is vitiated on account of denial of reasonable opportunity to the applicant.....4/-

3. In the reply statement filed by the second respondent on behalf of the respondents, it has been contended that as the proceedings for review have been initiated by memo dated 26.4.1988, at Annexure-A8, i.e. well within 6 months from the date of the Annexure-A6 order, the review is well within time as prescribed under Rule 16, and that, therefore, the objection of the applicant that the Annexure-A10 order is unsustainable has to be rejected. Regarding non-supply of the Enquiry Officer's report, prior decision that the applicant is guilty by the Disciplinary Authority, it is contended that as per the existing rules, it was not necessary to give a copy of the Enquiry Officers's report to the delinquent officials before imposition of the penalty.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced.

5. Shri O.V.Radhakrishnan, learned counsel for the applicants argued that the Annexure-A10 order passed on 31.10.1988 reviewing and setting aside the Annexure-A6 order dated 31.12.87 cannot be sustained for the reason that, as per the 1st proviso to Rule 16 of the Post and Telegraph ED Agents (Conduct and Service) Rules 1964 (herein after referred to as rules) no case can be re-opened after the expiry of the 6 months from the date of the order sought to be reviewed.

6. Mr.TPM Ibrahim Khan, ACGSC appearing for the respondents

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argued that, since the proceedings for review have been initiated by Ext.A-8 notice on 26.4.1988, i.e. within six months from 31.12.1987(date of Ext.A.6 order), the review is well within time, and that since a notice has been issued to the applicant within the period of 6 months, proposing to review the Ext.A-6 order, it is permissible for the Reviewing Authority to take more time than 6 months for passing the final order. The learned counsel on either side relied on the decision of the Andhra Pradesh High Court in Shoukata Khan Vs. Director of Postal Services, Andhra Circle, reported in 1972 SLR Vol.7-875. That was a case which arose under Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules and not under Rule 16 of these "Rules". But the counsel on either side submitted that since both these provisions relates to review and since a period has been provided in both rules, the principles to be applied will be the same. The facts of the case under citation are as follows:

> After an enquiry into the alleged misconduct the Disciplinary Authority by order dated 31st December, 1968 imposed on the petitioner a punishment of reduction of his salary from Rs.187/- to 170/- per mensem. This order was implemented with effect from January, 1969. Thereafter on 17th September, 1969 the Director of Postal Services issued a notice to the petitioner calling upon him to show cause why he should not be removed from service as, in his opinion, the punishment awarded by the disciplinary authority was not in keeping with the gravity of the misconduct.

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> The petitioner in his reply inter-alia pointed out that the Director has no jurisdiction to initiate proceedings for review after a lapse of six months from the date of the original punishment order. He also moved to the High Court for quashing the proceedings in review."

A Single judge dismissed the petitioners writ petition. The petitioner filed a Writ Appeal. Allowing the Writ Appeal Shri Venkateswara Rao,J. speaking for the Bench observed:

> "It was next contended by the learned counsel for the respondent that even assuming that no review could be made after the expiration of six months from the date of the order passed by the disciplinary authority, it could still not be said, in the instant case that the proceedings initiated by the respondent are barred by limitation as he called for the records within this period of six months, though the notice calling upon the appellant to show cause why the penalty should not be enhanced was issued only after the expiry of the six months' period. We are unable to accept this contention either. As already pointed out, the authorities mentioned in clauses (v) and (vi) of sub-rule(1) of rule 29, "may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under this rules". The words "Call for the records of any enquiry and review any order made under these rules" would clearly show that the object of calling for the records is only to examine afresh the whole case whereever it is considered or felt necessary. If after calling for records, the authority concerned should come to the conclusion that there is no need to review the order and drops the matter, it can certainly not be said that that step alone of his would be no question of reviewing the order of the disciplinary authority in such cases. So,

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> the mere act of calling for records without anything more can certainly not be equated with initiation of a proceeding for review. It is only when the authority competent to review decides upon proceeding further and issues a notice to the delinquent officer calling upon him to show cause why the punishment meted out to him should not be enhanced that proceedings for review can reasonably be said to have been commenced. No doubt, the authority concerned can take a reasonable time for completion of the process of review and it is not necessary to conclude the inquiry within six months; but it is imperative that the proceedings for review by the appellate authority should be commenced before the expiry of six months from the date of the order sought to be reviewed. We are, therefore, in entire agreement with the learned counsel that the respondent was not entitled to call upon the appellant by his notice, dated 17th September, 1969 to show cause why the penalty imposed upon him by the disciplinary authority should not be enhanced, as the time limited for initiating proceedings for review had expired long before then.

So according to the dictum in the above case, the proceedings for review can be said to have been commenced only when the authority competent to review after deciding to review the order, issued a notice to the delinquent calling upon him to explain why the punishment awarded to him should not be enhanced.

7. The Kerala High Court in Johny Vs. Director of Telegraphs-1976 KLT 172 has taken a different view. P.Subramanian Potti,J. has observed in that case:

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> "Prima facie, it appears, that the period of 6 months is the period within which not only the records are to be called for but the order on review should also be passed But, I am not finally deciding that question as it may not be necessary for the purpose of this case."

Referring to the decision of the Andhra Pradesh High Court in Shoukat Khan Vs. Director of Postal Services his Lordship Justice Subramanian Potti said that he could find no warrant for an approach that the relevant date would be date on which the notice was issued to the petitioner and not the date when the records were called for. His Lordship further said:

> "If the date of review need not be within 6 months I see no reason why it should be held that the relevant date is not the date for calling for records, but some other subsequent date, namely, initiating proceedings for review. In fact the rule does not, either expressly or impliedly, indicate that the date of initiation of the proceedings is relevant in the matter of fixing the time. It is true that the learned Judges have observed in the judgement that when once the proceedings are commenced within the time limited for the purpose by law the authority concerned could take any time that is reasonably necessary for completing the review proceedings. It would appear that this position was conceded by the petitioner's counsel in that case. I have my own reservations on this question, but it is not necessary to express my views on this here."

Therefore, while according to the Andhra Pradesh High Court the proceedings for review should be commenced with issuance

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of a notice to the delinquent calling upon him to the answer why the punishment awarded to him should not be enhanced, in the opinion of Justice Subramanian Potti, the initiation of the proceedings by issuance of notice has no relevance to the time limit, and that the order of review should be passed within a period of 6 months, though his Lordship did not adjudicate on that point finally. But any how according to the decision of the Kerala High Court, if the relevant time for the purpose of limitation is not the date on which the order on review is passed, there is no reason why it should be held that the relevant date is not the date on which the records were called for. The Hyderabad Bench of the Central Administrative Tribunal ~~held~~ in P.Rajaram Vs. Director of Postal Services, Hyderabad and another, reported in 1989-1-SLR-445 had occasion to consider the question whether the Appellate Authority could after six months revise an order of punishment under Rule 29(1)(v) of the CCS(CCA) Rules. In that case a punishment order passed by the Disciplinary Authority on 13.9.87 was sought to be reviewed by the Appellate Authority informing him by a notice dated 9.3.1982 that he proposed to review the reversion order which was followed by the impugned order dated 23.3.1982 directing the applicant to show cause why the penalty of reduction to the cadre of mail-guard for the period of two years should not be modified to that of dismissal from service on the ...10/-

ground that the penalty of reversion was not proportionate to the gravity of offence committed. This order was challenged in the application. The Bench held that the impugned notice dated 23.3.1982 was barred under Rule 29(1)(v) as the power of revision was exercised after 6 months of the date of the order of the Disciplinary Authority. The Bench observed:

> "The question is whether by calling for the records and merely intimating the applicant that the appellate authority proposes to exercise the power of revision limitation can be saved. It is to be noted that the statutory provision specifically prescribes a limitation of six months before the order of revision is passed. Can any authority by merely giving notice that he proposes to exercise the power of revision, seek to extend or get over statutory limitation prescribed? Even according to the Division Bench of the A.P. High Court, it is only where, "notice to show cause why the punishment meted out should not be enhanced" that the proceedings for review can reasonable said to have been commenced. It is clear that the rule making authority has specifically prescribed a limitation of six months. If the appellate authority merely expresses an intention to call for the records and revise an order, can it be held or contended that the statutory requirement has been complied with? If it was the intention of the legislature that the appellate authority could pass an order after six months from the date of the order sought to be revised, it could have and would have placed the appellate authority on the same pedestal as the other authorities. If this was express intention of the rule making authority, there was no need whatsoever to prescribe a separate and distinct limitation insofar as the appellate authority

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is concerned. Hence a bare reading of the Rule would not permit the interpretation sought to be placed by the Director General, P&T in circular dated 27.7.1972 viz., to extend the period of limitation prescribed under the statute by the process of merely calling for records and expressing an intention to revise an order. It is clear that the expression "either on his own motion or otherwise call for the records of any inquiry and revise any order" would require not only calling for the records but revision of the order also. The ordinary and simple reading of the rule would imply that unless the entire process of revision is completed within six months, it is not open to the appellate authority to exercise the power of revision."

Even if it were to be argued on the basis of the Division Bench of the Andhra Pradesh High Court, that commencement of the process of review suffices it cannot be reasonably said that the process of review has commenced since no notice was issued within six months, "why the punishment meted out should not be enhanced". It is to be noted that the limitation imposed on appellate authority does not preclude any other competent authority from revision an illegal order in case the appellate authority has not exercised his or its power within the period of limitation prescribed."

The rulings of the Andhra Pradesh High Court, the Kerala High Court and the Hyderabad Bench of the Central Administrative Tribunal discussed above were all regarding the power of review and revision under Rule 29 of the CCS (CCA) Rules. The provisions relating to review of orders contained in Rule 16 of the EDA service rules are not identical with the provisions of Rule 29 of the CCS(CCA) Rules.

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Rule 16 of the EDA service rules reads as follows:

> "Review of Orders:
> Notwithstanding anything contained in these rules,
>
> (i) the Central Government or
> (ii) the Head of the Circle, or
> (iii) an authority immediately superior to the authority passing the orders,
>
> may at any time, either on its own motion or otherwise, call for records of any enquiry or disciplinary case and review any 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
> (b) pass such orders as it deems fit:
>
> Provided that no case shall be reopened under this rule after the expiry of six months from the date of the order to be reviewed except by the Central Government or by the Head of the Circle and also before the expiry of the time-limit of 3 months prescribed for preferring an appeal:
>
> Provided further that no order imposing or enhancing any penalty shall be made by any reviewing 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 penalties specified in clauses (ii) and(iii) of Rule 7 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an enquiry in the manner laid down in Rule 8 in case no such enquiry has already been held."

The first proviso to Rule 16 restricts the power to reopen a case for a period of six months from the date of the order

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to be reviewed by any authority other than the Central Government or the Head of the Circle. In this case the authority who passed the impugned order, Annexure-A10 being Director of Postal Services, Cochin Region is neither the Central Government nor the Head of the Circle. Therefore, if the validity of the impugned order is to be sustained the case should have been reopened within a period of six months from 31.12.1987, i.e. the date of the Ext.A6 order. It is permissible for the authorities to reopen the case within a period of six months from the date of the order to be reviewed and then after making such enquiry as it considered necessary to confirm, modify or set aside the order or pass such order as it deem fit. So unlike the provisions contained in Rule 29 of the CCS(CCA) Rules, an order consequent on review under rule 16 can be passed even after the expiry of the period of six months provided the case has been reopened within a period of six months. Therefore, the above rulings cited by the counsel on either side do not have a direct bearing to the contraversy involved in this case. "May at any time, either on its own motion or otherwise, call for the records of any enquiry or disciplinary case and review any order made under these rules, reopen the case and after making such enquiry as it considers necessary

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may:

> (a) confirm, modify or set aside the order ....." shows the sequence in which the various stages in the proceedings under this rule are to be completed. No time limit is prescribed in calling for the records of the enquiry and for review. But in the first proviso to this rule it is provided that "no case shall be reopened under this rule after the expiry of six months from the date of the order to be reviewed except by the Central Government or by the Head of the circle.....

It is, therefore, clear that the case can be reopened by the authorities lower than the Central Government or the Head of the circle only within a period of six months from the date of the order to be reviewed. A disciplinary proceeding of case is closed by passing a punishment order, in cases where no appeal is filed and by passing of the order in appeal in cases where an appeal is filed. A closed case can be reopened only after issuing notice to the delinquent, informing him that a decision has been taken to reopen the case and that the authority who reviewed the proceedings proposes to conduct further enquiries in the matter. In this case, within six months from 31.12.1987, Ext.A-8 memo was issued by the Director of Postal Services, Headquarters, Kerala circle to the applicant on 26.4.1988. This memo reads as follows:

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"Shri VR Damodaran, EDDA, Vazhamuttom East BO, Pathanamthitta Division was removed from service as a measure of penalty under orders of Assistant Superintendent of Post Offices, Pathanamthitta Division contained in Memo No. ASP/AD/INQ/1/84 dated 21.10.86. On appeal, the appellate authority viz. the Senior Superintendent of Post Offices, Pathanamthitta Division set aside the penalty and reinstated the ED Agent as per orders in his Memo No.B/AP/SSP/5/86 dated 31.12.87.

2. Shri VR Damodaran, EDDA, Vazhamuttom East BO, is informed that the Director of Postal Services, proposes to review the appellate orders of the Sr.Supdt. of Post Offices, Pathanamthitta under provisions of Rule 16 of the P&T ED Agents (Conduct & Service) Rules, 1964."

If it can be said that, by this memo the case has been re-opened, then the reopening is within six months as provided for in the first proviso to Rule 16. But what is stated in this memo is that "Director of Postal Services proposes to review the appellate orders of the Sr.Supdt. of Post Offices, Pathanamthitta under provisions of Rule 16.....". It is not stated that the Director of Postal Services has reopened or decided to reopen. Going by the wording in the rule 16, the reopening of the case should succeed calling for records of enquiry or disciplinary case and reviewing the order. Only after perusal of the records and review of the orders, the authority competent to reopen the order would decide to reopen the case and while reopening it is

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necessary to give notice to the delinquent informing him of the decision to reopen the case. But in Ext.A-8 what is mentioned is that the Director of Postal Services proposes to review the order. A proposal to review the order need not necessary result in reopening of the case and proceeding further to make such enquiry, etc.. A doubt may arise as to whether the reopening is to be made after review. The learned counsel for the respondents had argued that since the caption of Rule 16 is "Review," there cannot be anything more under this Rule after Review and that, therefore, reopening should precede the "review". According to the learned counsel onceit is informed that a review is proposed, that means the case has already been reopened. But a careful reading of the relevant portion of the Rule "May at any time, either on its own motion or otherwise, Call for records of any enquiry or disciplinary case and review any 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
(b) Pass any such order as it deems fit," makes it clear that chronologically review succeeds calling for records and that the reopening the case if felt necessary is done after reviewing the order. The order consequent on review

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is passed after reopening the case and making such enquiry as the authority considers necessary. According to the first proviso to the Rule no case can be reopened after the expiry of six months from the date of the order to be reviewed except by the Central Government or by the Head of the Circle. We notice that the proviso is clumsily worded. But we have no doubt that the intention is that the case is to be reopened after calling the records and reviewing the order. Therefore, by sending Ext.A-8 letter dated 26.4.88, in which it is informed that a review is proposed cannot in our view amount to a reopening of the case. Annexure-R1 memo was issued by the third respondent on 18.8.1988. It is only in this memo that the reviewing authority has proposed to cancel the appellate order. It can be said that the disciplinary case was reopened by the third respondent only by issuance of the Annexure-R1 memo dated 18.8.1988, which is more than six months after the date on which Ext.A6 order, the one which was sought to be reviewed was passed. Therefore, in our view, since the disciplinary case against the applicant which was closed by issuance of Ext.A6 order dated 31.12.87 was not reopened for a period of six months, thereafter the third respondent could not justifiably reopen the case on 18.8.1988. Consequently we hold that the Ext.A10 order passed on 31.10.1988, reopening the case on 18.8.1988 by ...18/-

Annexure-R1 is illegal and unsustainable. The Ext.A.11 order of termination of service issued in pursuance to the Ext.A.10 order is also unsustainable in law.

8. In this case, it is an admitted case that a copy of enquiry officer's report was not furnished to the applicant before the Disciplinary Authority took a decision that the applicant was guilty basing on the report. As has been held in Premnath K Sharma Vs. Union of India- 1988(6) ATC 904 - nonsupply of a copy of the Enquiry Officer's report before the disciplinary authority took a decision on the question of guilt of the delinquent vitiates the proceedings from that stage. Hence the punishment order of the disciplinary authority is unsustainable. Even if a review was made and the case was reopened within time, the illegal order of termination could not have been validly confirmed.

9. In view of the facts and circumstances discussed above, we allow the application to the extent of setting aside the impugned orders Ext.A.10 and A.11 and directing the respondents to reinstate the applicant as ED Mail carrier-cum ED Agent, Vazhamuttom East Post Office forthwith, with continuity of service and to pay him full backwages from the date of removal

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from service within a period of one month from the date of communication of this order. There is no order as to costs.

10/7/90

(A.V.HARIDASAN)
JUDICIAL MEMBER

10.7.90

(S.P.MUKERJI)
VICE CHAIRMAN

10.7.1990

17.7.91

CCP No.47/91 in OA 591/89

Mr. Radhakrishnan-through proxy counsel.
Mr.Madhu-rep.SCGSC

SPM&AVH

The learned counsel for the respondents seeks some time to file reply to the CCP and undertakes to do so within three weeks with a copy to the learned counsel for the petitioner.

List for further directions on CCP on 12.8.1991.

17.7.91

12.8.91

SPM&AVH

Mr.Radhakrishnan through proxy counsel.
M.Sugunapalan through proxy counsel.

Respondents have filed a reply to the CCP with copy to the learned counsel for the petitioner. List for further directions on 4th September,1991.

12.8.91

4.9.1991

SPM&AVH

Mr.Radhakrishnan through proxy counsel.
Mr.Sugunapalan-SCGSC

At the request of the learned counsel for the respondents, who seeks some time to produce the order issued in implementation of the judgment of the Tribunal reinstating the applicant in O.A.591/89, list for further arguments on CCP on 17.9.1991.

4.9.1991

17-9-91
(9)

SPM & AVH

Mr OV Radhakrishnan for petitioner
Mr PK Madhusoodhanan for SCGSC

ORDER

The learned counsel for the respondents has produced before us a copy of Memo No.DA/BO/36/Part.II dated 3.9.91 issued by the Assistant Superintendent of Post Offices, Pathanamthitta Sub Division by which the applicant was reinstated in service in implementation of the judgement of this Tribunal It has also been stated in the Chief PMG's(Kerala Circle, Trivandrum) communicated dated 11.9.91 addressed to the Senior Central Government Standing Counsel that an amount of Rs.20,522/- was paid to the applicant with back wages for the period he was kept out of service.

Accordingly, we are satisfied that our order dated 10.7.1990 in OA-591/89 has been substantially implemented. Hence we close the CCP and discharge the notice of contempt.

(AV HARIDASAN)
JUDICIAL MEMBER

(SP MUKERJI)
VICE CHAIRMAN

17-9-1991