

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED MONDAY THE TWENTYSSECOND DAY OF MAY
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

&

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

O. A. 256/87

K. V. Ramachandran Nair

Applicant

Vs.

1. The Divisional Engineer,
Telegraphs, Thodupuzha and

2. The Sub Divisional Officer,
Telegraphs, Muvattupuzha

Respondents

M/s. M. R. Rajendran Nair,
P. V. Asha and
K. S. Ajayagosh

Counsel for
the applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for the
respondents

O R D E R

Shri G Sreedharan Nair

Can the Appellate authority acting under the
Rules,
CCS (CC&A), referred to hereafter as "the Rules", in
enhance
exercise of its Revisional jurisdiction exercise the
penalty imposed by the Disciplinary authority, suo motu
in a case where, as Appellate authority, it had the
occasion to consider the appeal preferred by the
Government servant, is the point that arises for
determination in this application.

2. The applicant, a Sub Inspector in the Telephones Department, was proceeded against under the Rules. The Disciplinary authority imposed upon him the penalty of withholding of one increment of pay for a period of three years with cumulative effect. The appeal preferred by the applicant was rejected by the Appellate authority by its order dated 4.3.1987 on the ground that it was preferred after the expiry of the prescribed period. Thereafter, by the memorandum dated 19.3.1987, the Appellate authority has called upon the applicant to make his representation if any against the proposal to enhance the punishment to one of dismissal from service. It is the said memorandum that is mainly under challenge in this application, though incidentally, the applicant had also prayed for quashing the order rejecting the appeal as well.

3. The respondents have filed reply wherein they ~~have~~ contended that the impugned memorandum has been issued in accordance with the provisions of rule 29 of the Rules.

4. A perusal of clause (v) of sub rule (1) of rule 29 of the Rules will make it clear that the jurisdiction of the Appellate authority to revise ^{an} ~~the~~ order made under these rules, from which an appeal is allowed, is only in a case where no such appeal has been preferred. In the instant case, the applicant had preferred an appeal

which fact is clear from the order dated 4.3.1987, passed by the Appellate authority. No doubt, the rejection of the appeal was on the ground that it was "preferred" after the expiry of the prescribed period. Thus, ~~while~~ it is admitted that the appeal was actually preferred, the Appellate authority is not empowered to exercise the revisional jurisdiction under the aforesaid clause. It cannot be contended that since the rejection of the appeal was on the ground of delay, it is to be considered that the appeal has not been preferred. A reading of rule 25 ^{position} of the Rules makes the ~~decision~~ clear beyond doubt. The said rule ~~s~~ refers to the "preferring" of the appeal and the "entertaining" of the same. It enables the Appellate authority ^{to} ~~not~~ to entertain an appeal ~~so~~ preferred beyond the prescribed period, which would mean that though an appeal is actually presented after the prescribed period, it cannot be said that the appeal has not been "preferred".

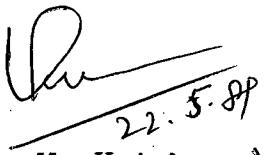
5. The aforesaid interpretation is only in consonance with the spirit of rule 29. When the Government servant prefers an appeal, though belatedly, the Appellate authority gets ^{Seisin} ~~ceasing~~ of the matter so that by exercise of its power~~s~~ of entertaining the appeal by condoning the delay, ^{by} it is open to it, invoking the jurisdiction under rule 27, to enhance the penalty. In such a case, the Appellate authority, after rejecting the appeal, is not enabled under

the rules to take up the matter again in suo motu
revision under Rule 29.

5. It follows that the memorandum dated 19.3.1987
cannot be sustained. It is accordingly quashed.

6. Though there is a prayer in the application for
quashing the order of the Appellate authority, as it
is stated in the application itself that as the
applicant has submitted a representation to the District
Manager against the said order, the counsel for the
applicant did not press the same before us.

7. The application is disposed of as above.


22.5.89
(N. V. Krishnan)
Administrative Member
22.5.1989


22.5.1989
(G. Sreedharan Nair)
Judicial Member
22.5.1989

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