IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 413 ~~199~~

DATE OF DECISION 14-12-1990

K.G. Mohanan — Applicant (s)

M/s MR Rejendran Nair & PV Asha — Advocate for the Applicant (s)

Versus

The General Manager, Telecommunications, Ernakulam and 3 others — Respondent (s)

Mr. A.A. Abul Hassan, ACGSC — Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. N. Dharmadan, 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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT.

N. Dharmadan, Judicial Member

In this application filed under Section 19 of the Administrative Tribunals Act 1985, the applicant has challenged three orders viz. (i) order of penalty of censure dated 31-12-1987, (Anexure-III). (ii) order of the appellate authority exercising power of revision under Rule 29(1)(v) of CCS(CCA) Rules 1965, (Annexure VII) and (iii) order dated 12-5-1989 disposing of appeal against Anexure VII, (Annexure IX.)

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2. Having heard the counsel on both sides and after perusing the records carefully, we pronounced our judgment on 29-6-1990 rejecting all the contentions of the applicant, but we placed the matter before the Hon. Chairman for appropriate orders under Section 26 of the Administrative Tribunals Act 1985 in view of our disagreement with the decision of the Hydrabad Bench in P. Rajaram V. Director of Postal Services, Hydrabad and others, 1989(1) SLR 445, relied on by the learned counsel for the applicant, for according to us the decision required reconsideration as it is not laying down the correct law. Accordingly, on the basis of the order of the Hon. Chairman the matter was again heard by a Full Bench presided over by the Hon. Vice Chairman, Shri P.K. Kartha. The Full Bench accepted our view and laid down the correct legal position as regards the power of the Appellate Authority while exercising the powers of revision under Rule 29(1)(v) of the CCS(CCA) Rules as follows in the judgment dated 19-10-1990.

> "....it is incumbent on the said authority to call for the records of the enquiry and initiate the proceedings by issue of a notice to the government servant concerned within six months of the date of the order proposed to be revised, subject to what is stipulated in Rule 29(2). The said authority

is also expected to dispose of the revision proceedings within a reasonable time. To this extent, the decision of Hyderabad Bench in Rajaram's case reported in 1989(1) SLR 445, does not lay down the correct interpretation of the scope of Rule 29(1)(v) of the CCS(CCA) Rules 1965.

4. In the light of the principles laid down by the Full Bench, our findings in the judgment dated 29-6-90 stand unchanged. There is no substance in this application. It is only to be dismissed. Accordingly we dismiss the application. There will be no order as to costs.

5. Copies of our judgments dated 29-6-90 and that of the Full Bench dated 29-11-90 are appended herewith for reference.

(N. Dharmadan) 14.12.90.
Judicial Member

14/XII/90
(S.P. Mukerji)
Vice Chairman

14-12-1990

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

ORIGINAL APPLICATION No.413/89

Date of Decision: 29.11.1990

K.G. Mohanan .. Applicant

Mr.MR Rajendran Nair .. Counsel for the applicant

Vs.

1. The General Manager,
   Telecommunication, Ernakulam.
2. The Chief General Manager,
   Telecom, Trivandrum.
3. The Superintending Engineer,
   Civil (Telecom), Trivandrum.
4. Union of India, represented by
   Secretary to Government,
   Ministry of Communications,
   New Delhi .. Respondents

Mr. A.A.Abul Hassan, ACGSC .. Counsel for the respondents

C O R A M:

The Hon'ble Mr. P.K. Kartha - Vice Chairman (J)

The Hon'ble Mr. N.V.Krishnan - Member (A)

The Hon'ble Mr. N.Dharmadan - Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordship wish to see the fair copy of the Judgment? No
4. To be circulated to all Benches of the Tribunal? No

JUDGMENT

(Pronounced by Hon'ble Mr.P.K.Kartha, Vice Chairman(J)

A Division Bench consisting of Hon'ble Mr. S.P.Mukerji, Vice Chairman and Hon'ble Mr. N.Dharmadan, Judicial Member has referred to the Full Bench in their Reference Order dated 29.6.90 the question relating to the correct interpretation of Rule 29(1)(v) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS (CCA) Rules) relating to the time limit within

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which the Appellate Authority exercising the power of revision should pass the order. The reference has arisen in view of the fact that the Division Bench has come to the conclusion that there is no time limit prescribed under Rule 29 or any other rule whereas the Hyderabad Bench in P. Rajaram Vs. Director of Postal Services, Hyderabad and others, 1989 (1)SLR 445 has expressed the view that the Appellate Authority is barred under Rule 29(1)(v) from exercising the power of revision after six months of the date of the order of disciplinary authority. The Division Bench has also relied upon the decision of the Division Bench of the Andhra Pradesh High Court in Shaukata Khan Vs. Director of Postal Services, Andhra Circle, Hyderabad, 1972 SLR 875 wherein it has been held that the authority concerned can, after issue of notice initiate revision proceedings within the stipulated period of six months, take a reasonable time for completion of the process of review and that it is not necessary to conclude the enquiry within six months. The decision of the Hyderabad Bench of the Tribunal in Rajaram's case has been followed in a subsequent decision reported in 1989 (7) SLR 82. The learned counsel for the applicant has also relied upon the decision of a Single Judge of the Kerala High Court in Joney Vs. Director of Telegraphs, 1976 KLT 172 wherein it has been observed without expressing a final view that the period of six months is the period within which not only the records are to be called for but the order on review should also be passed.

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3. We may at the outset refer to the facts of the case giving rise to the issue referred to the Full Bench. The applicant while working as Junior Engineer (Buildings) in the Office of the General Manager, Telecommunications, Ernakulam (Respondent 1) was served with a Memorandum on 14.9.87 wherein it was alleged that he deliberately avoided timely issue of notices to landlords for extension of lease period and thereby caused enhancement of rental and that he failed to carry out instructions of the first respondent vide noting dated 10.8.85.

4. The applicant denied the above allegations. The disciplinary authority by his order dated 31.12.87 held that the applicant failed to maintain devotion to duties and behaved in a manner unbecoming of Government servant in violation of Rule 3 (1)(1) of the CCS Conduct Rules, 1964. He also imposed the penalty of censure on him.

5. On 22.2.1988 the records relating to the case were directed to be forwarded to the first respondent immediately on expiry of the appeal period of 45 days. Thereafter the applicant was asked to show cause on 11.4.1988 why the order passed by the disciplinary authority be not revised as withholding of one increment for three years. The applicant submitted his explanation dated 3.5.1988 Thereafter the

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Appellate Authority exercising the power of revision passed the impugned order dated 29.8.1988 whereby the penalty was increased to withholding of one increment for a period of three years from the date on which it fell due next without cumulative effect.

6. It will be noticed that the aforesaid order dated 29.8.88 was passed by the Appellate Authority exercising the power of revision after about 8 months from the date of the original punishment.

7. Thereafter the applicant preferred an appeal which was also rejected by the appellate order dated 12.5.1989.

8. In the present application before us, the applicant has challenged the validity of three orders -- Order dated 31.12.87 whereby the penalty of censure was originally imposed on him, Order dated 29.8.88 whereby the Appellate Authority exercising the power of revision substituted the punishment with withholding of increments for a period of three years and the order dated 12.5.89 whereby the appeal preferred against the order under revision was rejected.

9. The view taken by the Division Bench in its reference order is that on a true interpretation of Rule 29(1)(v), there is no time limit for the Appellate Authority to revise any order made by the disciplinary authority and that the time limit of six months specified therein

is only for calling for the records of any enquiry and not for completing the same and passing a final order.

10. We have carefully gone through the records of the case including the reference order and have heard the learned counsel for both the parties. The C.C.S (CCA) Rules contained provisions wherein period of limitation has been prescribed for taking action in certain cases. For example Rule 14(4) provides inter-alia that the Government servant on whom the charge-sheet has been served may submit a written statement of defence "within such time as may be specified". Rule 14(7) provides inter-alia that the Government servant shall appear in person before the Inquiring authority on such day and at such time "within ten working days from the date of receipt by him of the Articles of charge". Rule 25 which deals with period of limitation of appeals reads as under:

> "No appeal preferred under this Part shall be entertained unless such appeal is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the appellant:
>
> Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time."

11. Rule 29(1)(v) which deals with the power of revision of the Appellate Authority reads inter-alia as follows:-

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> "(1)Notwithstanding anything contained in these rules.....(v)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....."

12. Rule 29(2) stipulates that no proceeding for revision shall be commenced until after..... "(i) the expiry of the period of limitation for an appeal, or (ii) the disposal of the appeal , where any such appeal has been preferred."

13. Rule 31 which deals with the power to relax the time limit and to condone delay, reads as follows:

> "Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay."

14. D.G. P&T have issued two administrative instructions on the matter of submission of revision petitions and their disposal by the revision authority (Vide Govt. of India's Instructions (4) and (6) reproduced in Swamy's Compilation of CCS(CCA) Rules by P.Muthuswamy, 16th Edition, Pages 109 to 111). On 27.7.72 they issued a clarification that it will be incumbent upon the Appellate Authority to make a specific mention of the fact that it proposes to revise the order already passed, when calling for the papers. In other words, the Appellate Authority

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should clearly indicate in the order calling for the records of the case that it proposes to revise the order and it is in this connection the papers are being called for. It has also been stated that it is necessary to ensure that the intention of the Appellate Authority to revise the orders in this way is conveyed to all concerned within the stipulated period of six months from the date of the order proposed to be revised.

15. The instructions issued by the D.G. P&T in 1972 refers to a recent judgment of the High Court which had necessitated issue of the clarifications. Apparently the reference is to the decision of the Andhra Pradesh High Court in Shaukata Khan's case, which was decided on 1.9.71.

16. On 12.1.73, the D.G. P&T have issued further clarifications to the effect that the employee may prefer a revision petition to the revising authority without submitting the appeal. If the revising authority to whom the revision petition has been preferred is the Appellate Authority, the revision petition should be submitted well before six months "of the date of the order sought to be revised so that the Appellate Authority can decide to revise the case within six months under Rule 29(1)(v) of the CCS (CCA) Rules, 1965. (emphasis supplied). The instructions further provided that as a working arrangement

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it would be advisable that revision petitions are preferred within six months and that even where time limits have been laid down the competent authorities, in many cases, have discretion to waive the limits for good and sufficien t reasons.

17. The power of revision dealt with in Rule 29 has been conferred on the President, the Comptroller and Auditor General and other authorities mentioned therein, including the Appellate Authority. It is only in the case of the Appellate Authority that the rule refers to the period of six months for calling for the records of any enquiry and revising the order made by the disciplinary authority. There is a further constraint on the authorities concerned in exercising the power of revision which is dealt with in Rule 29(2). They cannot commence proceeding for revision until after the expiry of the period of limitation for appeal or the disposal of the appeal, where any such appeal has been preferred.

18. The learned counsel of the applicant submitted that the decision of the Andhra Pradesh High Court in Shaukata Khan's case dealt with the power of review under Rule 29(1)(v) of the CCS (CCA) Rules as they then stood and not with revision. Revision was introduced only by Notification No.11012/9/79-Estt(A) dated 19.6.80. Therefore the decision of the Andhra Pradesh High Court is distinguishable. He further submitted that the entire process

of revision including the imposition of revised penalty should be completed within the statutory time limit of six months. The period of limitation prescribed in the case of the Appellate Authority cannot be got over on the ground that no such time limit has been fixed in the case of other parties exercising the power of revision. In this context he relied upon numerous authorities relating to interpretation of statutes. (Vide AIR 1987 SC 1454; AIR 1987 SC 849; AIR 1987 SC 222; AIR 1987 SC 1059; AIR 1989 SC 1024; AIR 1988 SC 1875; AIR 1988 SC 1247 and AIR 1988 SC 132).

19. The learned counsel of the applicant also argued that when the CCS (CCA) Rules are for the purpose of maintaining discipline in the department, simultaneously affording the employees opportunities to withstand victimisation at the hands of superior authorities, the interpretation which is favourable to an employee should be followed, when two views are possible. In this context he relied upon the decision of the Hon'ble Supreme Court in All India Reporter Karmachari Sangh and others Vs. All India Reporter Limited and others, 1988(3) SLR (SC) 643 at 652.

20. As against the above, the learned counsel of the respondents contended that Rule 29(1)(v) of the CCS (CCA) Rules does not lay down any period of limitation for the imposition of the revised penalty by the Appellate Authority and that it will be open to that authority to impose

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the penalty within a reasonable time. According to him the period of limitation six months from the date of the order of the disciplinary authority applies only for calling for the records of the enquiry.

21. We have not come across any authoritative pronouncement of the Hon'ble Supreme Court on the interpretation of Rule 29(1)(v). The learned counsel of the applicant referred to the decision of the seven member Bench of the Hon'ble Supreme Court in S.S.Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10 at 16 wherein the Hon'ble Supreme Court has deprecated the unduly long time taken by the departmental authorities in disposing appeals and revisions under the Service Rules. The Hon'ble Supreme Court has observed in this context that "ordinarily a period of 3 to 6 months should be the outer limit. That would discipline the system and keep the public service away from a protracted period of litigation".

22. The Constitution Bench of the Hon'ble Supreme Court made the aforesaid observations in the context of interpretation of the provisions of Section 20 of the Administrative Tribunals Act, 1985 which provides inter-alia that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant Services Rules as to redressal of his grievance.

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23. The observations of the Hon'ble Supreme Court in Rathore's case highlight the importance of disposal of appeals and revisions without undue delay. The administrative instructions issued by the D.G.P & T in 1972 and 1973 also envisage expeditious disposal of revision petitions. Ordinarily the Appellate Authority is expected not only to call for the records of any enquiry within six months of the date of the order of the disciplinary authority proposed to be revised but also to pass the order in revision within a reasonable time. It may perhaps even invoke the provisions of Rule 31 in appropriate cases for enlarging the time for disposal of the revision proceedings. In the view that we are taking on the issue, we do not propose to consider this aspect.

24. There may be situations in which the Appellate Authority is unable to pass the order in revision within the period of six months. For example Rule 29(i) requires consultation with the Public Service Commission where necessary before passing the final order. No time limit can bind the UPSC. For that reason, the power cannot become infructuous. Another situation is where the Appellate Authority proposes under the first proviso to Rule 29(1) to impose a major penalty by revision, in a case where an inquiry as required under Rule 14 has not already been held. In such a case, such a penalty cannot be imposed until after the enquiry is held.

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It cannot be predicated, that, if all these procedures are not completed within six months, the final order cannot be passed. A third situation may also arise where a revision is initiated at the request of a government servant who files an application under Rule 29(iii). If this is referred to Appellate Authority and the case is not disposed of within six months, if cannot be held that the order cannot be passed at all, thereby defeating the vested right of the government servants in respect of this remedy. The learned counsel of the applicant suggested that in such cases the Appellate Authority can present the records to a higher authority. Apart from the fact that there is no such provision in the rules for this purpose, this solution will not work where under Rule 24 or the schedule to the CCS (CCA) Rules, the President is himself the Appellate Authority.

25. In the light of the foregoing, the correct legal position as regards the power of the Appellate Authority while exercising the power of revision is that it is incumbent on the said authority to call for the records of the enquiry and initiate the proceedings by issue of a notice to the government servant concerned within six months of the date of the order proposed to be revised, subject to what is stipulated in Rule 29(2). The said authority is also expected to dispose of the revision proceedings within a reasonable time. To this extent, the decision of the Hyderabad Bench in Rajaram's case reported in 1989 (1) SLR 445, does not

lay down the correct interpretation of the scope of Rule 29(1)(v) of the CCS (CC&A) Rules 1965.

26. The reference to the Full Bench is answered on the above lines. The matter may be placed before the Division Bench to dispose of O.A. 413/89 in the light of the aforesaid observations.

29.11.90 29.11.90 29/11/90

(N. DHARMADAN) (N.V. KRISHNAN) (P. K. KARTHA)
MEMBER (JUDICIAL) MEMBER (ADMINISTRATIVE) VICE CHAIRMAN (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 413 1989
~~T.A. No.~~

DATE OF DECISION 29.6.90

K. G. Mohanan — Applicant (s)

M/s. M. R. Rajendran Nair — Advocate for the Applicant (s)

Versus

Gnl Manager, Tel. Ekm & others — Respondent (s)

A A Abul Hassan, ACGSC — Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. N. Dharmadan, 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? No

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

Enhancement of penalty imposed by the disciplinary authority invoking power under Rule 29(1)(v) of the CCS (CCA) Rules 1965 is under challenge in this case.

2. The facts are not in dispute. The applicant while working as Junior Engineer (Building) under the first respondent was served with a memorandum containing two charges:

(i) failure to maintain integrity and devotion to duties and

(ii) failure to carry out instructions issued by the TDM vide notings dated 1.8.85 in the file No. Bldg-1/700.

Though the applicant was exonerated of charge No.1, he was found guilty of the second charge by the disciplinary authority who imposed only a minor penalty of censure as per order at Annexure-II dated 31.12.1987.

3. The applicant did not file any appeal but the appellate authority issued Annexure-IV notice dated 22.2.88 under Rule 29(1)(v) of the CCS (CCA) Rules, hereinafter referred to as the Rules, proposing to revise the order imposing the penalty of censure. He also issued further proceedings at Annexure-V dated 11.4.1988, which was answered by the applicant in Annexure-VI dated 3.5.88.

4. After considering the contentions raised by the applicant, the District Manager (Telephones) passed Annexure-VII order enhancing the punishment from censure to withholding of one increment of the applicant for a period of three years without cumulative effect. The applicant filed Annexure-VIII appeal which was also dismissed by order Annexure-IX dated 12.5.89.

5. The applicant challenges Annexure-III, VII and IX mainly on two grounds namely:

(i) that the appellate authority violated Rule 29(1)(v) of the Rules by not completing the revision proceedings within the period of six months of the date of order proposed to be revised and

(ii) that the applicant was not given a personal hearing before passing the order of revision

6. The first ground of attack on the impugned orders is confined to the wording of Rule 29(1)(v); the relevant

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portions of which is extracted for convenient reference:

"29 (Revision)

(1) Notwithstanding anything contained in these rules:

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X X X

(v) the appellate authority, within six months of the date of the order proposed to be revised ..

X X X

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 .....

X X X X

X X X X

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.

1. 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 or 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.

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(2) No proceeding for revision shall be commenced until after

(i) the expiry of theperiod of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules."

7. The argument of the learned counsel for the applicant, Shri M. R. Rajendran Nair, is that the appellate authority should initiate and complete all steps for revising the order of penalty against which no appeal has been filed,within the fixed period of six months of the date of the order proposed to be revised. In the instant case the appellate authority has initiated the proceedings within fifty two days of the order of penalty but it was completed beyond the period of six months. Hence it is void. The learned counsel placed strong reliance on the decision reported in P. Rajaram Vs. Director of Postal Services Hyderabad and another (1989 (1) SLR 445. In that case the Tribunal referred to the decision of the Andhra Pradesh High Court reported in Shoukata Khan V. Director of Postal Services, Andhra Circle, Hyderabad (1972 SLR 875) in which the High Court has taken the view that the authority concerned can take a reasonable time for completion of the process of review and it is not necessary to conclude the enquiry within

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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. But this view did not find favour with the Hyderabad Bench of the Tribunal.

8. Immediately after the Andhra Pradesh High Court's decision, the DG P&T's circular No. 6/1/71-Disc.I dated 27.7.1972 was issued clarifying that it would be incumbent upon the appellate authority to make a specific mention of the fact that it proposes to revise the order already passed within the stipulated period of six months from the date of the order.

9. The learned counsel also relied on another decision of the Himachal Pradesh Administrative Tribunal reported in Nandakumar Vs. Himachal Pradesh State Civil Supplies Corporation 1989(7) SLR 82. taking the same view following the Hyderabad Central Administrative Tribunal's decision in Rajaram's case. The reasoning is that 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 and/that the intention of the Legislature was that the appellate authority should pass the order within six months from the date of the order sought to be

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revised. If the intention of the Legislative was not to restrict the power it could have placed the appellate authority in the same pedestal as the other authorities. Sufficient safe-guard has been provided by the Legislature for revision of incorrect order even if the appellate authority cannot exercise its powers within six months as power of revision vests in various other authorities to whom no limitation is prescribed under this Rule.

10. The above reasons mentioned by the Hyderabad Bench of the Tribunal as followed by the Himachal Pradesh State Administrative Tribunal may not appear to be sound enough to be followed because of the practical difficulties in fixing limitation for the exercise of the revisional power of the appellate authority. Steps for revision can be either taken by appellate authority only when there is no appeal from the order proposed to be revised or after the expiry of the time allowed for filing appeal against such order. Normally an aggrieved party's right to file appeal commences from the date of service of the copy of the order on him. If a limitation for the exercise of suo moto revision is fixed as six months from the date of the order of the disciplinary authority without reference to the service of such order on the delinquent employee, who has a right to file an appeal from the order, it would become difficult, if not impossible, to reconcile the periods especially in cases when there is long delay in serving an order of punishment on the employee.

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What is after all a revision? The essence of revisional jurisdiction lies in the duty of the superior authority entrusted with such jurisdiction to see that the subordinate officials keep themselves within the bounds of law and they do their duties in a legal manner. This jurisdiction cannot be "cribbed and cabined or confined by conditions and qualifications", In the exercise of the discretion of the authorities under this jurisdiction / following fixed procedures / various vicissitudes and variety of situations may crop up which may consume time and when a limitation fixed as six months for the exercise of the powers of the authorities under this jurisdiction it would become impossible for implementation. It is also against the basic principle of exercise of quasi judicial xxxxxxxxxx powers of a discretionary authority to curtail or to circumscribe such power with time factor or periods of limitations.

11. The literal interpretation to the Rule may at times lead to a result which were not really intended by the Legislature. It was not the intention of the Legislature to curtail the discretionary power of the appellate authority while exercising its revisional jurisdiction with reference to specified time. The rules of interpretation according to Supreme Court in Keshavji Ravji & Co. V. CIT (1990 (2)SCC 231) are not rules of law; they are mere aids to construction and constitute some broad pointers..... It is the task of the Court to decide which one, in the light of all relevant circumstances, ought to prevail."

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Lord Reid in Maunsell xxxxxxxxxxx Vs. Olins (1975 (1) All ER 16 said as follows:

> " Then rules of construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at all relevantcircumstances and decide as a matter of judgment what weight to attach to any particular 'rule'."

These words were referred to with approval by the Supreme Court in Utkal Contractors & Joinery (P) Ltd. Vs. State of Orissa (1987 (3) SCC 279).

12. The other reason given in the aforesaid decisions that if the Legislature intended to give the appellate authority also the power of revision without any limitation it could have specified in the Rule itself is not an argument which can be given much weight without any other additional factor which can be supported by valid reason. The further fact that some other revisional authorities like President, Comptroller & Auditor General, Member (Personnel), Heads of the Departments, etc. are available under this rule for exercising the revisional power without any limitation and no prejudice is caused to the Government or the delinquent employee even if the appellate authority's power of revision is restricted by the time factor as indicated in the Rule is also not a ground for holding that the appellate authority should exercise the same power within the period of six months.

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13. It is reasonable to presume that the appellate authority unlike the other residuary revisional authorities as indicated in Sub Rule (1) of Rule 29, has been conferred with revisional jurisdiction also with a rider that such authority while exercising the supervisory jurisdiction of revision should initiate the first step of revision within a minimum period of six months from the date of the order sought to be revised especially when there is provision for appeal to be filed against the order of punishment. Otherwise, there is possibility of the two powers entrusted with the same authority to create some administrative problem. However, it was not the intention of the Legislature that such steps initiated for revising the order of punishment should be concluded within six months from the date of the order sought to be revised. This is clear from the facts that the powers under clauses (v) and (vi) of Sub Rule (1) of Rule 29 eventhough exercised by different revisional authorities, are to be exercised in the same manner. The authorities "may at any time, either on his own motion or its own motion or otherwise call for therecords of any enquiry and review any order made under this rule."

In fact the Andhra Pradesh High Court in Shoukata Khan V. Director of Postal Services has laid down the correct position which was immediately acted upon by issuance of a clarification the DG P & T by indicating that the appellate authority should make specific mention of the fact while

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taking steps for revision of the order of punishment that it intends to revise the order within a period of six months. The view taken by the A.P. High Court is a reasonable view to be followed.

14. On a careful examination of the aforesaid provision, we are of the view that the appellate authority for invoking its revision power under Rule 29 should invoke the same within a period of six months. The time factor in Rule 29(1)(v) viz. xxx " six months" period referred to therein pertains only to the initiation of such proceedings and not completion/as of such proceedings held by the Hyderabad Bench of the Tribunal as followed in the other case.

15. The next contention is that the appellate authority disposed the matter without giving an opportunity of being heard to the applicant and hence the order is violative of principles of natural justice. In support of that contention the learned counsel for the applicant cited a ruling of the Bombay Bench of the Tribunal reported in Krishnaji Hari Joshi Vs. UOI and others, 1988 6 ATC 554. This case arose under Rule 29(1) proviso and (3) of the CCS (CCA) Rules. It is also a case in which the appellate authority initiated proceedings under Rule 29(1)(v) of the CCS (CCA) Rules to enhance the penalty already imposed on the delinquent employee by the disciplinary authority.

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But it is not clear from the facts whether the delinquent employee in the case made a specific request for personal hearing and it was rejected. Nevertheless the Tribunal held that the revisional authority should have given a personal hearing to the applicant following the same procedure as if it is an appeal and disposed of the same. This, according to us is distinguishable.

16. The core principle of natural justice is fair play. See Management of M/s. M. S. Nally Bharat Engineering Co. Ltd. Vs. State of Biar and others, 1990 (2) SCC 49. But it depends upon the facts of each case as to whether the authority disposing of the appeal or revision has fairly dealt with the matter satisfying the requirement of principles of natural justice. The Supreme Court in the Chairman, Board of Mining Examination and Chief Inspector of Mines and another V. Ramjee respondent, AIR 1977 SC 965 observed as follows:

> "Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If faireness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential proceesual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural juscie, without reference to the administrative realities and other factors of a given case, can he exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt- that is the conscience of the matter."

17. In the instant case admittedly the applicant has not made a request for personal hearing. The provisions of Rule 29 of the Rules also do not make a specific

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provision for giving a personal hearing to the delinquent employee. Of course, it is open to the appellate authority to give a personal opportunity of being heard to the applicant in appropriate cases if it so desires. But the circular issued by the Department of Personnel & Training O.M. No. 11012/20/85 Estt (A) dated 28.3.85 clearly states that Rule 27 of the CCS (CCA) Rules does not preclude the grant of personal hearing in suitable cases, but " the principle of right to personal hearing applicable to judicial trial or proceedings, even at the appellate stage is not applicable to departmental enquiries, in which a decision by the appellate authority can generally be taken on the basis of the records before it." However, if the appellate authority is satisfied that the employee is to be heard, or he makes a request for such a personal hearing to the appellate authority xxx it may hear the party personally before disposal of the revision petition. The pleadings do not disclose such a request having been made by the applicant in this case. Presumably the appellate authority was satisfied on the basis of the written explanation and the available materials that such an opportunity is not necessary and thereby he did not care to give an opportunity to the applicant. On going through the facts of the case we are also satisfied that no

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prejudice had been caused to the applicant on account of the denial of a personal opportunity to the applicant. The appellate authority has dealt with the matter very fairly and in accordance with law.

18. Since admittedly there was no request for personal hearing and there was no real prejudice to the applicant due to the refusal of such an opportunity, we have to hold that there is no substance in the argument of the applicant. The Supreme Court in K.I. Shephard and others V. U.O.I. and others, 1987 (4)SCC 431, observed:

> "natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings, be given adequate notice of what is proposed so that they may be in a position (a) to make representation on their own behalf, (b) or to appear at a hearing or enquiry; and (c) effectively to prepare their own case and to answer the case." This pri

This principle cannot be stretched too far beyond a limit. There cannot be an invariable rule or straight jacket formula of natural justice. ~~as indicated above.~~ It has to vary, having regard to the facts and the statutary provision applicable to the same. (See U.O.I. Vs. P.K. Roy, AIR 1968 SC 850 and A. K. Karipak V. U.O.I., AIR 1970 SC 150). On a careful consideration of the matter, it appears to us that this case brings forth a new situation and furnishes the basis for evolving a new principle of natural justice, namely; right to hearing on demand only. The person concerned is at liberty to make a written request or demand to the authority concerned that he may be given a personal hearing. Then it becomes obligatory on the part of the authority to give such an opportunity. If he refuses there is violation of principles of natural justice.

The Punjab and Haryana High Court in The State of Haryana Vs. Baldev Krishan Sharma and others, 1970 SLR 500 following the Supreme Court decisions held as follows:

> "The show-cause notice was given to the respondent after the Governor of Haryana was provisionally satisfied that the punishment of dismissal was to be inflicated on the respondent. He was asked to submit his representation in writing. There is no complaint about the opportunity to submit the representation having been inadequate. He did in fact submit a detailed representation. There is no grievance on the side of respondent No.1 that the representation was not duly considered. His only claim is that the Governor was bound to give him a personal hearing before deciding his case. We are unable to find any law in support of this proposition. Respondent No.1 was afforded adequate opportunity of showing cause against the proposed punishment, and it was after due consideration of the same that the highest State authority passed the impugned order. We are unable to find our way to interfere with the same."

19. The reasoning of the Tribunal in Krishnaji's case relied on by the learned counsel that the appellate authority ought to have dealt with the revision as if it is/an appeal and given a personal hearing to the delinquent employee, also does not appeal to us. It is common knowledge that there is marked distinction between the powers of appeal and revision. The appellate authority has wide powers while dealing with the appeal unless the same is restricted by the relevant statute. It was held in Abinash Chandra Misra Vs. State of West Bengal and others (1972 SLR 669) that the appellate authority "can exercise the same powers as were open

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to the original authority from whose decision the appeal was brought. In the case of revision, however, the principles does not apply and the revisional authority can exercise only those powers which are conferred upon him by the statute expressly." Though Sub Rule 3 of Rule 29 states that the appellate authority can dispose of the revision treating it as an appeal neither Rule 27 nor 29 authorise the appellate authority as an authority in revision to give personal hearing to the delinquent employee before disposing of the same. Hence the reasoning in the above decision is not acceptable and we are not inclined to follow the same.

20. Having considered the matter in detail with reference to the available records, we are of the view that the applicant is not prejudiced by the failure to give personal hearing by the appellate authority before passing the impugned order. The appeal filed by the applicant against the order of punishment has been considered by the appellate authority in detail before passing the impugned order at Annexure-IX and it is a well considered order.

22. Since the decision relied on by the learned counsel for the applicant viz. P. Rajaram Vs. Director of Postal Services, Hyderabad and another (1988) (1) SLR 445)

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cannot be accepted by us as laying down the correct legal position on the subject, we place the matter before the Hon'ble Chairman for appropriate orders.

29.6.90

(N. Dharmadan)
Member (Judicial)

29.6.90

(S. P. Mukerji)
Vice Chairman

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