

Original Application No.212/2004.

Lucknow; this day of 23 December, 2004.

HON'BLE SHRI JUSTICE R.K. BATTA, VICE CHAIRMAN.

HON'BLE SHRI S.P. ARYA, MEMBER (A).

Ahmad Hussain, aged about 60 years, s/o Sri Manna, R/o Nai Basti Lakhimpur Kheri, working as Sub Post Master, Gola Gokaran Nath, Kheri.

.. Applicant.

By Advocate:-Shri A. Moin.

Versus.

Union of India through

1. Secretary, Ministry of Post, Dak Bhawan, New Delhi.

2. Director, Postal Services, Bareilly.

3. Superintendent of Post Offices, Kheri Division, Kheri.

... Respondents.

By Advocate:-Shri P.K. Singh.

O R D E R

(BY HON'BLE SHRI JUSTICE R.K. BATTA, V.C.).

The applicant, while working as Sub Post Master, Gola Gokaran Nath, Kheri, had taken an advance of Rs.15,812/- towards LTC advance for the block year 1994 to 1997 for going from Lakhimpur to Trivendram. According to the applicant, the journey was undertaken from 1.7.1997 to 10.7.1997 and thereafter the applicant submitted the LTC Bill. After a period of more than three years, the applicant received show-cause notice from the respondent no.2 informing him that the Bus on which he is stated to have traveled did not have a valid

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permit for the said period which ment that the applicant and family members have not traveled by the said Bus. The applicant informed respondent no. 2 that he ^{had} duly purchased the tickets and had traveled by the said Bus and if the Bus ^{did not} have ~~not~~ valid permit, then he could not blame for the same. Respondent No.2 vide order dated 10.4.2001 directed the recovery of Rs.15,812/- with penal interest from the applicant and the LTC claim was rejected. According to the applicant, he had traveled through Garhwal Mandal Vikas Nigam Ltd, an approved recognized Travel Agency. The applicant moved an O.A.No.252/2001 before the Tribunal and vide order dated 28.11.2003, the Tribunal directed that the order of recovery be kept in abeyance and proceeding be initiated against the applicant under Rule 14 of CCS(CCA) Rules (hereinafter said as 'said rules'). Accordingly , charge-sheet for major penalty was served on the applicant on 2.11.2001. On completion of enquiry, enquiry report dated 30.4.2003/1.5.2003 was served on the applicant. The Enquiry officer had come to the conclusion that the charges have been proved. The applicant representated against the enquiry report and respondent no.3 Disciplinary authority vide order dated 28.11.2003 exonerated the applicant of all the charges. Subsequently, on 26.3.2004, the applicant was informed that Director Postal Services had passed an order under Rule 29 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 that the reasoning of the disciplinary authority in the order dated 28.11.2003 was not commensurate with the gravity of the charges and de-novo enquiry was ordered from the stage of issue of fresh memo of charges under Rule 14 of CCS (CCA) Rules, 1965. Accordingly a major penalty charge-sheet dated 12.4.2004 was issued. According to the applicant, this charge-sheet contains same charges of

which the applicant had already been exonerated and no reason has been assigned in the order dated 28.11.2003 ordering de-novo enquiry. According to the applicant such power of de-novo enquiry cannot be exercised under Rule-29 of the said rules. The applicant was due to retire on 31.5.2004 and as such he sought the quashing of order dated 26.3.2004 ordering de-novo enquiry as also charge-sheet dated 12.4.2004.

2. The stance taken by the respondents is that the Appellate authority had acted within its power of revision under Rule 29 (v) of the CCS(CCA) Rules.

3. We have heard the Learned Advocate for the parties.

4. Learned counsel for the applicant has urged that once the applicant was exonerated of the charges by the Disciplinary authority, the Appellate authority could not have ordered de-novo enquiry under Rule 29 (v) of the said rules and the Appellate authority had acted beyond its power. In support of his submissions he has placed reliance on the case of Kailash Prasad Sinha Vs. Union of India and another 1985 (1) SLR 24, Ram Millan Paroha Vs. Union of India 1989 (10) ATC 835 and Girja Shanker Singh Vs. Union of India and others 2004 (1) ATJ 301. Learned counsel for respondents, on the other hand, has urged that Appellate authority had acted well within the Rule 29 (v) while ordering de-novo enquiry.

5. In order to appreciate the submissions of the learned counsel for the parties, it is necessary to examine the scheme of Rule 29 which reads as under:-

" 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 Mamber (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and 2(Adviser (Human Resources Development), Department of Telecommunication) 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 Goverenment, in the case of a Government servant serving in a depaprtment or office (not being the Secretariat or the Post and Telegraphs Board), under ~~the~~ control of such Heasd of a Department; or
- (v) the Appellate Authority, within six months of the date of order proposed to be 2(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 3(revise) any order made under these rules or under the rule 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, enbhanse 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 authrity 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:

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4(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 or 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 any 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 1(revision) shall be exercised by the Comptrollet and Auditor -Genneral, 2(Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunication)- 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.

(2) No proceeding for 1(revision) shall be commenced untill 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.

(3) An application for 1(revision) shall be dealt with in the same manner as if it were an appeal under these rules."

6. Initially, ~~the~~ Rule 29 provided remedy of review only and the rules did not make provision~~s~~ for revision. However, subsequently in Rule 29 the expression/ review was substituted ^{by} "Revision" and a new provision of Rule 29 (A) was introduced for the purposes

of review. Rule 29 (1) (i) to (iv) mention that authorities who can exercise the power of revision. Rule 29 (1) (v) empowers the Appellate authority to exercise the power of revision within six months of the date of order proposed to be revised. Insofar as the Authorities empowered to exercise the power of revision Under Rule 29 (1) (i) (ii) (iii) (iv) (v) and (vi) are concerned the power of revision can be exercised at any time which, of course, would mean within reasonable time. The revisional jurisdiction can be exercised by the authority on its own motion or otherwise after calling for the records of enquiry subject to the restrictions contained in Rule 29 (1) (a) to (d). The First Proviso to Rule 29 (1) provides that the Govt. servant has to be given a reasonable opportunity of making a representation against the penalty before exercising the revisional power. The 2nd Proviso of Rule 29 (1) lays down further restrictions on the authorities referred to under Rule 29 (1) (ii) to (iv) and the said Authorities can exercise the power only if the Authority which made the order in appeal or the Authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

7. In the case of Kailash Prasad Sinha (Supra) the Hon'ble High Court has examined Rule 29, which at the relevant time related to review, with particular reference to power of review to be exercised by the Head of Department. It was observed that 2nd Proviso of Rule 29 clearly says that no power of review shall be exercised by the Head of Department unless the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him. Thus, merely being a Head of Department is not sufficient by itself to exercise the power of review. What has further to be seen is whether the Head of Department is not an Appellate Authority. If the Head of Department is also the appellate authority, he cannot be said to be

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subordinate to himself.

8. In the case of Ram Millan Paroha(Supra) wherein a minor penalty charge sheet was issued to the applicant under Rule 16 of the CCS (CC&A) Rules, 1965 and on receipt of his explanation he was let off with a severe warning. The reviewing authority remitted the case for de-novo proceedings from the stage of issue of the charge sheet under Rule 14. It was held that Rule 29 does not empower the competent authority to convert action taken under Rule 16 for minor penalty to one under Rule 14 for major penalty. All that Rule 19 (1) (c) empowers is remittance of the case to the authority which made the order or to any other authority, directing such authority to make such further enquiry as it may consider proper in the circumstances of the case. It was further held that in such circumstances a de-novo enquiry could not be ordered under Rule 29 of the said rule. For coming to this conclusion reliance was placed on the number of judgments of the Hon'ble High Courts.

9. In Girja Shanker Singh Vs. Union of India and Others 2004 (1) ATJ 301, Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 was in question. In that case Disciplinary Authority had imposed punishment of withholding of increments in the grade for a period of four years with cumulative effect. The applicant therein preferred an appeal. The appellate authority instead of exercising his jurisdiction under Rule 18 and 22 of the Rules, rather revoked Rule 25 of revision and issued a show cause notice to applicant for enhancement of punishment for removal. Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 are not exactly paramateria with Rule 29 of CCS(CCA) Rules. The provisons are quite different.

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10. Rule 29 (1) (v) clearly empowers the Appellate authority to exercise the power of revision within six months of the date of order proposed to be revised. As already pointed out the other authority referred to in Rule 29 (1) (i) (ii) (iii) (iv) and (vi) are concerned, the power of revision can be exercised at any time but there are further restrictions on the said power as contained in the 2nd Proviso of Rule 29 (1) of the said rule. Nevertheless, while exercising the power of revision, it is incumbent that the Govt. servant has to be given a reasonable opportunity against the proposed action in terms of First Proviso of Rule 29 (1) of the said rule.

11. In the case under consideration, the order of de-novo enquiry has been passed by Director Postal Services, who admittedly is that appellate authority and is empowered to pass orders under Rule 29 (1) (v) of the said rules. However, if the Director Postal Services is also Head of Department then the 2nd proviso to Rule 29 (1) would come into play and in such a situation Head of Department cannot exercise the power of revision unless the authority which made the order in appeal or the authority to which an appeal would lie, where no appeal is preferred, is subordinate to him. Therefore, if director Postal Services is the Head of Department and also the Appellate authority the power of revision could not be exercised by him. Be that as it may, the First Proviso of Rule 29 (1) clearly enjoins that no order shall be passed while exercising revisional power unless the Govt. servant has been given a reasonable opportunity of making a representation against the action proposed to be taken. In the case

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under consideration no such opportunity has been admittedly given to the applicant before passing the order by Director Postal Services. Besides, this, the order of Director Postal Services has not been placed by the respondents before us alongwith the Counter Affidavit and on record is only a letter of ADPS (1) conveying the order of Director Postal Services. What was the reason which prompted the Director Postal Services to exercise the power under Rule 29 of the said rules is not known nor explained by the learned advocate for the respondents. The mode in which the entire matter has been handled is rather very un-satisfactory. Moreover, exercise of revisional power by revisional authority has to adhere to the provisions of Clause-(a) to (d) of Rule 29 (1) of the said rules. This power inter-alia includes setting aside of the order and to remit the case to the authority which made the order to or any other authority to make such further enquiry as it may consider proper in the circumstances of the case. Clause (d) further provides for passing such other orders as it may deem fit. Clause (d), in the contest, has to be read ejusdem generis and such power can be exercised in analogous manner in view of Rule 29 Clause (a) to (c). Apparently, there is no power to order de-novo enquiry while exercising power of revision under rule 29 of the said rules.


12. In view of the above, the impugned orders of Director Postal Services dated 26.3.2004 and consequently fresh charge sheet dated 12.4.2004 cannot be sustained. The disciplinary authority had given proper and good reasons for coming to the conclusion that the charges against the applicant had not been

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proved in the enquiry in as much as no enquiry is made into the parking ticket, from the passengers, Bus owner, from Garwal Mandal Vikas Nigam Ltd. and the genuineness of the documents i.e. parking ticket, passenger list was never questioned. It was also pointed out that even on a fake permit the bus can ply. It was also stated that it was not established that the applicant had not performed the journey. In the light of the said findings of the Disciplinary authority further enquiry into the matter was not permissible at all and the question of de-novo enquiry would not at any rate arise. Thus, even the order of recovery of LTC advance given to the applicant cannot be sustained and is set-aside.

13. For the reasons mentioned above, the application is allowed, impugned order dated 26.3.2004 and consequent charge-sheet dated 12.4.2004 are set-aside and the order of recovery is also set-aside. The applicant has already retired on 31.5.2004. Therefore, we direct that retiral benefits of the applicant be paid to him in accordance with the Rules and Regulations within a period of three months from the date of receipt of this order.

14. Application is disposed of as above, without any order as to costs.


(S.P. ARYA)
MEMBER (A)


(R.K. BATTA)
VICE CHAIRMAN.

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