

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 212/2006

This the 28th day of April, 2006

HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

Harish Chandra Srivastava aged about 55 years son of Sri Jung Bahadur Lal resident of 554/227 Gha, Shanti Nagar, Alambagh, Lucknow.

...Applicant

By Advocate: Sri Alok Trivedi and Sri Vikas Agarwal

Versus

1. Union of India through Director General Post, Dak Bhawan, New Delhi.
2. Director, Postal Services, Head Quarters Office of the CPMG< UP Circle, Hazratganj, Lucknow.
3. Senior Superintendent, RMS 'O' Division, Lucknow

..Opposite Parties

By Advocate: Shri Deepak Shukla for Sri Prashant Kumar

ORDER (ORAL)

BY HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

The pregnant question involved in this O.A. is whether on the direction of the appellate authority while remanding the case to the disciplinary authority, the disciplinary authority could impose a penalty which is higher than that earlier impose. The appellate authority in this order has directed the disciplinary authority "for denovo proceedings from the stage of issue of fresh punishment order."

2. Briefly the facts of the case are as under:-

(a) The applicant was issued with a charge sheet on 15.7.2004 for certain alleged misconduct. The applicant, (as generally all the others do), denied the allegations. As the charge sheet issued was under minor penalty proceedings, the disciplinary authority, as provided in the Rules, passed an order of punishment by way of reduction of two stages

from Rs. 7400/- to Rs. 7100/- for one year along with recovery of Rs. 5000/- in 20 installments of Rs. 250/- each vide order dated 7.10.2004. The applicant preferred necessary appeal as per rules and raised various grounds. The appellate authority though made a thin reference of several issues for consideration including a technical error that the penalty order does not indicate the period from which the penalty shall become currency, held as under:-

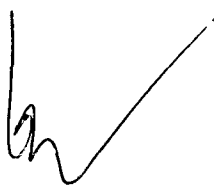
"However, at this stage without going through in the other merits of the appeal, I find that punishment awarded by the disciplinary authority is not in conformity of sub rule (12) of Rule 11 of CCS (CCA) Rules 1965.

Therefore in exercise of powers conferred on me vide Rule 27 of CCS (CCA) Rules 1965, I order to set aside the penalty imposed on appellant vide Memo No. K-4/M-291/03-04/HCSSA dated 07.10.2004 on technical grounds as mentioned in para 4 ibid and remit back the case to disciplinary authority for denovo proceedings from the stage of issue of fresh punishment order."

(b) In pursuance of the above order, the disciplinary authority has passed the impugned order dated 28.2.2006 and said order reads as under:-

"Therefore, I. R.L. Mishra, SSRM 'O' Dn, Lucknow hereby award the punishment of recovery of total loss of 17 insured articles amounting Rs. 34300/- from the pay of Shri H.C. Srivastava, S.A. HRO RMS 'O' Dn. Lucknow in 16 instalments i.e. 15 installments @ 2140/- p.m. and last sixteenth installment of Rs. 2200/- for last month."

(c). The applicant has challenged the aforesaid order before this Tribunal. Of course, the applicant has also challenged the aforesaid order by way of an appeal vide appeal dated 10.4.2006, which is pending.




3. When put of notice, the counsel for respondents appeared and the case was heard. Though no counter was filed, the counsel for respondents argued the matter. Initially a technical question was raised whether the single bench could hear the matter as the case relates to disciplinary proceedings. However, in view of the notification of the Hon'ble Chairman No. 1/32/87-JA (Vol.II) dated 04-04-2000 (Serial 19), minor penalty proceeding being a matter challengeable before the single bench, the case has been heard.
4. The counsel for the applicant after narrating the sequence of events submitted that the impugned order is illegal as the same is beyond the scope provided to the disciplinary authority as per the appellate order. In fact the impugned order being enhanced penalty order, the power to enhance the penalty is not available with the disciplinary authority. Again, the applicant has already suffered one part of the penalty order in full namely reduction for one year of the basic pay from Rs. 7400/- to Rs. 7100/- and major portion of the other part of the penalty namely recovery of Rs. 5000/- had also taken place. As such it has been contended by the counsel for the applicant that when the order is ex facie illegal, the same cannot be stand for judicial scrutiny.
5. The counsel for the respondents on the other hand submitted as under:-
 - a) Impugned order cannot be construed as enhancement of penalty
 - b) The disciplinary authority has considered the case from the stage of issue of fresh punishment order and since the earlier order was passed by one incumbent and later by another, the later has got the liberty to view the case in his wisdom and impose the penalty;
 - c) The appeal has been filed and the applicant did not wait till the disposal of the appeal and as such the O.A. is premature.

d) Counter has not been filed and liberty may be given to file counter or else the O.A. be disposed of with the direction to the appellate authority to decide the pending appeal.

6. The counsel for the applicant at this juncture submitted that he has no objection for the appeal being decided but for the facts that the authority has already started recovery of enhanced amount from the pay of the applicant and as such he will be put to irreparable loss in case the recovery continued. Subject to an order restraining the respondents from making further recovery in pursuance of the impugned order, the O.A. may be disposed of with the direction to the respondents to decide the appeal. At the same time, it is also prayed that the illegality or otherwise in the impugned order also spelt out.

7. Arguments have been heard and documents perused.

8.. The remand of the case to the disciplinary authority is on a narrow ground. Apparently there has been no stipulation as to the date from which the punishment order passed earlier would be operative. Notwithstanding the fact that by the time, the appellate authority has passed the appellate order dated 31.1.2006, the currency of penalty was almost over, the appellate authority did not choose to ascertain it from the records. The appellate authority could have ascertained the position from the records and could have taken a decision on the several issues for consideration as contained in the appeal preferred by the applicant against the original penalty order. This was not done and the case was remitted "for denovo proceedings from the stage of fresh punishment order" This terminology from the stage of issue of fresh punishment



order' when read with paragraph 4 would only mean that the disciplinary authority shall pass the order in conformity with Govt. of India Instruction No. 12 under Rule 11 of the CCS (CCA) Rules. The said instructions inter-alia provide for a format as under:-

"The.....has decided that Shrishould be reduced to a pay of Rs.for a period ofwith effect from....." (Emphasis supplied).

- 9.. Thus the order of the appellate authority is limited to the extent of prescribing the period from which the penalty was to become operative. Nothing less; nothing else. Notwithstanding the fact of non mentioning of the period from which the penalty was to commence, the respondents have already implemented the earlier penalty order, and as such, taking into account the same, the date of commencement of implementation is deemed to have been incorporated in the earlier penalty order. As a matter of fact, the Appellate Authority could have easily deemed the period of currency of penalty and proceeded with the other "several issues" raised in the earlier appeal. Strange enough, even the impugned penalty order does not reflect the period from which the penalty was to be operative. Thus, in so far as the present penalty order is concerned, the same cannot stand judicial scrutiny as it amounts to enhancement of penalty by the disciplinary authority which has not been contemplated in the CCS (CCA) Rules, 1965 and does not go in accordance with the order of the appellate authority. Since the legal lacuna is so severe that it goes into the roots of the matter, there is no need to wait for the appellate authority to decide the issue. As such the impugned order is interfered with to the extent that the earlier penalty imposed shall remain intact and period from which the penalty shall be

commenced is the actual date from which the penalty was made operative in the instant case. The respondents are directed to continue the recovery in accordance @ Rs 250/- per month as initially ordered. Now, what remains is the consideration of the issues raised in the appeal preferred by the applicant in the earlier appeal. The appellate authority is directed to consider "several issues" as raised in the earlier appeal and decide the same." In case as per the decision of the appellate authority, the imposition of penalty is illegal, necessary action for restoring the pay of the applicant of Rs. 7400/- be taken and the amount recovered be refunded. Instead, If the appellate authority upholds the disciplinary authority's order after judicious consideration of the appeal, in that event, a detailed and speaking order be passed. Needless to mention here that in case the applicant is aggrieved by the order of the appellate authority, he may approach this Tribunal with a fresh O.A. No costs.



(K.B.S. RAJAN)
Member (J)

HLS/-