

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 540/2010

Reserved on 16.7.2014

Pronounced on 04/08/2014

Hon'ble Sri Navneet Kumar , Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Hari Shankar Dwivedi aged about 56 years son of late Sri Prayag Narain Dwivedi r/o village and Post Behta Pakai District- Sitapur

Applicant

By Advocate: Sri Amit Vema for Sri A. Moin

Versus

1. Union of India through Secretary, Ministry of Post, Dak Bhawan, New Delhi.
2. Director, Postal Services, Bareilly Region, Bareilly office of the Post master General, Bareilly Region, Bareilly.
3. Superintendent of Post Offices, Kheri Division, Kheri.

Respondents

By Advocate: Sri Vishal Chowdhary

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant under section 19 of the AT Act with the following reliefs:-

- i) to quash the impugned punishment order dated 29.7.2010 passed by respondent No. 2 as contained in Annexure A-1 to the O.A. with all consequential benefits.
- ii) to pay the cost of the application.
- iii) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant while working as Postal Assistant, Kheri, he was also manning the post of Assistant

Post Master and he had sanctioned a premature closure of a fixed

deposit account under his signature without obtaining the remarks of the Ledger Assistant. As such a charge sheet was served upon the applicant on 31.8.2007. The applicant denied the charges and subsequently enquiry officer submitted his report and through its report dated 31.1.2009 the first charge was found proved and the second charge was not found proved. The applicant submitted representation taking into consideration the defence submitted by him. Subsequently, the punishment order dated 13.4.2009 was issued through which 'Censure' was awarded to the applicant. The applicant thereafter, served with the notice under Rule 29 of the CCS (CCA) Rules calling upon the applicant to submit representation against the proposed penalty of withholding an increment of pay for 3 years with cumulative effect. As the penalty of 'censure' imposed upon him does not commensurate with the gravity of charges. Learned counsel for the applicant has also categorically submitted that Rule 29 of CCS (CCA) Rules gives power to the Head of Department or the Appellate authority or any other authority to revise any order made under the Rules to either confirm, modify or set aside the order or to enhance the penalty. Undisputedly, the applicant has not preferred any appeal to the Director, Postal Services. The applicant has also relied upon a decision passed by the Principal Bench of this Tribunal in O.A. No. 2173/2008 (Sri Hariom Sharma Vs. UOI) as well as decision of this Tribunal in O.A. no. 212/2004 (Ahmad Hussain Vs. UOI) which was taken to the Hon'ble High Court in Writ petition No. 368(SB) of 2005 and the said writ petition was also dismissed by the Hon'ble High Court. The learned counsel for the applicant has also relied upon the decision of the Hon'ble High Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 Supreme Court Cases, 1** and argued that ***"Alternative remedy has been consistently held not to operate as a bar in at least three contingencies,***

namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is indicated by the respondents that the applicant while working as APM received pass book in respect of one year TD Account No. 12072 for sanction of pre-mature withdrawal of Rs. 50000/- from the said account and also allowed premature withdrawal of Rs. 50,000/- by putting his signature but he failed to check the remarks of closure of accounts ledger card and index register which was not given to him. As such a charge sheet was served upon the applicant. The charged official submitted his defence representation and thereafter enquiry officer submitted his report dated 30.1.2009 and after considering all the facts as well as the documentary evidence, a punishment of 'censure' vide memo dated 3.4.2009 was awarded to the applicant. Subsequently, a notice was given to modify the punishment by the Director, Postal Services. The applicant also submitted a representation against the said proposed punishment and after considering all the facts, appeal and documentary evidence, the Director, Postal Service passed the reasoned and speaking order by modifying the penalty of 'censure' awarded by SPOs Kheri to withholding of one next increment for further three years with cumulative effect vide memo dated 29.7.2010. Feeling aggrieved by the said order, the applicant preferred the present O.A.

4. Learned counsel for respondents has taken a plea that in terms of Rule 29(1) (v) of CCS (CCA) Rules, there is no bar for the appellate authority for exercising powers conferred upon him and also submitted that Director, Postal Services under his jurisdiction and

power passed the order of punishment , as such no inference is called for by this Tribunal.

5. The applicant filed Rejoinder reply and through rejoinder reply, mostly the averments made in the O.A. are reiterated and denied the contents of the Counter reply.

6. Heard the learned counsel for parties and perused the records.

7. As observed by the Hon'ble High Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 Supreme Court Cases, 1** , *“Alternative remedy has been consistently held not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”*

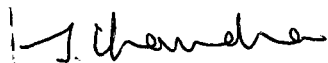
8. Undisputedly, the applicant was working with the respondents organization and served with the charge sheet. Thereafter, the enquiry officer submitted enquiry report and applicant was awarded punishment. The applicant himself admitted this fact that he has not preferred any appeal against the punishment order. But all of sudden , notice dated 17.7.2009 was issued proposing to enhance the punishment by “withholding of next increment of pay for three years with cumulative effect”, against which the applicant submitted the representation but the punishment was enhanced by the respondent No. 2 i.e. the Director , Postal Services. The learned counsel for applicant relied upon Rule 29(1) of CCS (CCA) Rules, 1965 and submitted that as per notification issued on 29.5.2001, if the appellate authority is subordinate to the authority designated as Principal Chief Post Master General or the Chief Post Master General, the revising authority would be the Principal Chief Post Master General or the

Chief Post Master General to exercise the powers of revision under Rule 29(1) of the CCS (CCA) Rules, 1965. The learned counsel for applicant has also argued that the Director, Postal Services i.e. the appellate authority being the subordinate to the above authorities, non-exercise of power of revision by designated authorities renders the order enhancing the penalty as coram non-judis. He also placed reliance of a decision of coordinate bench of this Tribunal passed in the case of **Hariom Sharma Vs. UOI and others (O.A.No. 2173 of 2008 decided on 13th April, 2009)** as well as another decision of this Tribunal in the case of **Ahmad Hussain Vs. UOI and others (O.A.No. 212/2004 decided on 23.12.2004)** and pointed out that the case of Ahmad Hussain was taken up before the Hon'ble High Court and writ petition was also dismissed. Apart from this, it is also argued by the learned counsel for applicant that in the case of **Kailash Prasad Sinha Vs. UOI and others reported in 1985(1) SLR 24**, the Hon'ble High Court has examined the rule 29. It is also to be seen that the second provision 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. Therefore, if Director Postal Services is the Head of Department and is also the appellate authority, the power of revision would not be exercised by him. Be that as it may, the provision of Rule 29(1) clearly enjoys 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.

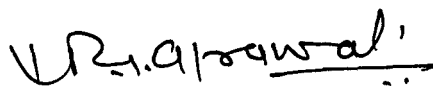
9. After considering the submissions made by the learned counsel for parties, O.A. is allowed to the extent that the show cause notice dated 17.7.2009 and the consequential orders dated 29.7.2010 are liable to be quashed.

10. Accordingly, the aforesaid notice dated 17.7.2009 and order dated 29.7.2010 passed by the Director, Postal Services are quashed.

O.A. is allowed. No order as to costs.



(JAYATI CHANDRA)
MEMBER (A)



(NAVNEET KUMAR)
MEMBER (J)

HLS/-