

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.289/2006

Dated /4 th day of August, 2007

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN
HON'BLE MR.S.N.P.N.SINHA, MEMBER (A)

Lal Bahadur Singh, son of Sri Suraj Singh,
Postal Assistant, 40, Muzaffarpur Postal Division,
Muzaffarpur, resident of Yusufpur, P.O.
Khanjahachak, P.S. Lalganj,
District- Vaishali(Bihar).

.. Applicant

By Advocate : Sri M.P.Dixit

vs.

1. The Union of India through the Chief Post Master General,
Bihar Circle, Patna.
 2. The Post Master General, Northern Region, Muzaffarpur.
 3. The Director Postal Services, Northern Region, Muzaffarpur.
 4. The Sr.Suptd. of Post Offices, Muzaffarpur Division, Muzaffarpur.
 5. Sri S.P.Singh, the Chief Post Master General, Bihar Circle, Patna.
- ... Respondents

By Advocate : Sri A.K.Mishra

ORDER

JUSTICE P.K.SINHA, V.C.:-

A departmental proceeding commenced against the applicant vide memo of charges dated 19.9.2002(Annexure-1) alleging therein that while the applicant was functioning as SB Postal Assistant at Jaintpur Estate during the given period, he had

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received certain amounts from different persons as deposits in the passbooks of the constituents, and the applicant entered the amount in the passbooks giving date-stamp, but after making entry of the deposit in the ledger, returned the pass book to the depositor. The allegation was that the applicant did not place the pass book, pay-in-slip and the ledger before the SPM, J.Estate for checking in any of the four cases, with the result that the amount was not taken into SO account of the date, causing loss to the Department.

2. The charges against the applicant having been found to be proved by the Enquiry Officer, the report was considered by the disciplinary authority, the Senior Superintendent of Post Offices, Muzaffarpur Division who agreed with the view taken by the Enquiry Officer and punished the applicant by reducing his pay to the minimum stage in the pay scale of Rs.4000-100-6000 for a period of one year with cumulative effect. It was clarified in the order that the applicant would not earn increments of pay during the reduction, and that on expiry of the aforesaid period, and that the reduction would have the effect of postponing his future increments of pay.

3. The applicant appealed against the order on various grounds which were considered by the appellate authority, i.e., the Director of Postal Services, Northern Region, Muzaffarpur, who recorded his order thereupon dated 16.2.2005(Annexure-4) who also agreed with the findings of the Enquiry Officer, but held against the severity of the punishment, and reduced the same to the extent of withholding of next one increment for three years, without cumulative effect.

4. The applicant claims that he had accepted the punishment awarded by the appellate authority and by the time the revisional authority suo motu had revised the

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punishment, he had undergone almost entire of the punishment.

5. The Chief Post Master General, Bihar Circle, Bihar suo motu took up the revision of the order of the appellate authority and issued a show-cause notice dated 29.6.2005, to the applicant (Annexure-6) calling upon him to submit his representation as to why the order of the appellate authority be not modified and revised punishment of withholding of next increment for two years with cumulative effect be not imposed upon him.

6. Show-cause reply was submitted by the applicant dated 3.8.2005 vide Annexure-7, whereupon the CPMG, Bihar Circle recorded a speaking order dated 12.4.2006, exercising his powers under Rule 29 of the Central Civil Services (CCA) Rules, 1965 (hereinafter referred to as "the 1965 Rules"), holding the allegations to be quite serious, deserving a deterrent punishment, and also holding that the appellate authority had taken an extremely lenient view. So holding, the CPMG, Bihar Circle revised the order of the appellate authority, set that aside and upheld the punishment awarded by the disciplinary authority. It is against this impugned order at Annexure-8 that the instant Original Application has been filed.

7. In the course of arguments, the learned counsel for the applicant, Shri M.P.Dixit, impressed upon the following points:-

(i) Under Rule 29 of the 1965 Rules, the revision, if any, had to be undertaken within six months of the order of the appellate authority, whereas the revisional order was recorded on 12.4.2006 against the order of the appellate authority recorded on 17.2.2005, about 14 months thereafter.

(ii) When the proceedee already had undergone the punishment modified by the

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appellate authority, order of fresh punishment would amount to awarding a second punishment when the proceedee had already suffered the punishment awarded earlier. This, as argued, would amount to double jeopardy.

(iii) Enquiry was conducted by a retired officer of the Posts and Telegraphs Department which could not have been done under the 1965 Rules.

8. So far the first argument of the learned counsel that revisional order could not have been recorded beyond a period of six months of the passing of the order by the appellate authority, the learned counsel has relied upon a decision of the ^{Kolkata} Bench of CAT in the case of **Sri Saraju Prasad Sinha and others vs. Union of India & others**; 2004(2) Administrative Total Judgments, 624. In this order, in para 14, it was observed that relief was to be granted on yet another ground since the revising authority had not passed the impugned order within a period of six months from the date of the appeal, hence the order was not passed within a reasonable period of time.

9. For this, Rule 29 of the 1965 Rules may be looked into. The relevant portion of Rule 29 may be reproduced as under:-

"29. Revision –(1) Notwithstanding anything contained in these rule--

- (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 member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Service Board and Adviser (Human Resources Development) Department of Tele-communications in the case of a Government servant serving in or under Tele-communication Board, or
- (iv) the head of a department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the

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Secretariat or the Posts and Telegraphs Board), under the control of such head of a department, or

(v) the appellate authority, within six months of the date of the order proposed to be 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 other wise call for the records of any inquiry and revised 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, after consultation with the Commission where such consultation is necessary, 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 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 :

.....

.....

...

(2) 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.

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

10. From a plain reading of this rule it will appear that the limitation of six months

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has been prescribed only for the appellate authority exercising the power of revision. For other authorities including the Head of the Department, the power of revision can be exercised 'at any time', either on his or its motion or otherwise, who may call for the records of any enquiry and revise any order thereunder. The CPMG was not the appellate authority, hence the limitation of six months was not applicable to him. However, it may be mentioned here that exercise of power under Rule 29 of the 1965 Rules, even if done suo motu, should be done at the earliest, particularly when the punishment already awarded is being undergone.

11. Nevertheless, the contention of the learned counsel for the applicant that after expiry of the aforesaid period of six months, the power of revision could not be exercised, cannot be accepted in the facts of this case. In the case of Sri Saraju Prasad Sinha (supra) the legal provisions, for holding that revision could not have been ordered beyond a period of six months from the date of passing of the order by the appellate authority, have not been discussed. Therefore it may be taken that such observation was made because the Hon'ble Members were of the opinion that the revision was done not within a reasonable period.

12. However, the view taken by us finds support on the point from the view held by a Division Bench of Ahmedabad Bench of the Tribunal in case of **R.P.Jadeja vs. Union of India and others**; 2004(I) All India Services Law Journal(CAT),138.

13. Now we will come to the second argument of the learned counsel that by the time the CPMG had revised the order of the appellate authority, the proceedee had already undergone the punishment, hence awarding of an enhanced punishment could amount to punishing the delinquent employee twice. In this regard the learned counsel

has relied upon the decisions of the two Benches of the CAT in the case of Saraju Prasad Sinha(supra) and in the case of R.P.Jadeja(supra).

14. In the case of Saraju Prasad Sinha, in para 12 of the order, it was observed that the passing of the impugned order by the revisional authority is of no consequence in as much as the appellate order affirming the punishment stands till the Appellate Authority's order is quashed. Thus the question of cancelling the charge sheet and setting aside the penalty order would be a futile exercise and if on the basis of the impugned order, further proceedings are held and any punishment is imposed, that would give rise to doctrine of double jeopardy and on that count also the impugned order suffers from infirmity and cannot be sustained. In that case the delinquent employee was awarded punishment by the disciplinary authority by stoppage of increments for two years when it fell due, without cumulative effect. That order was confirmed in the appeal vide order dated 16.7.2001. Then the revising authority issued order dated 11.12.2002 remitting back the case to the disciplinary authority with a direction to initiate a major penalty proceeding, also ordering cancellation of the punishment imposed by the disciplinary authority.

15. The disciplinary authority in that case had awarded punishment on 15.2.2000 and the period of punishment of two years had expired before the recording of order by the revisional authority. Obviously, the facts of the instant application are different. Here the punishment was not totally undergone as we will see. But before that the other decision relied upon by the learned counsel for the applicant in the case of R.P.Jadeja (supra) may also be looked into. In that case the applicant had faced a departmental proceeding in which 2 out of 3 charges were found to be substantiated in the report.

The disciplinary authority recorded punishment of dismissal from service holding that all the 3 charges were proved. An appeal was preferred and the appellate authority, vide order dated 4.8.98 set aside the findings of the disciplinary authority so far Article No.3 of the charge-memo was concerned and reduced the quantum of punishment by reinstating the applicant in service and imposing penalty of reduction of pay for two stages for a period of 4 years with effect from 8.10.97. This order of the appellate authority was accepted by the applicant of the case, but then he received a notice dated 7.5.99 telling him that the revisional authority, in exercise of powers under Rule 29 of the 1965 Rules, proposed review of the order of the appellate authority and, with a view to award a suitable penalty, asked the applicant to show-cause as to why review should not be done. The applicant submitted his show-cause but received an order dated 24.12.2001 stating therein that the reviewing/revisional authority had accepted the advice of the U.P.S.C. and had set aside the orders of the authorities below him and directed restart of the proceedings from the stage of communicating the reasons of disagreement of disciplinary authority with the findings of the Enquiry Officer. In this case, a clear stand was taken by the applicant that this order was recorded when the applicant had already undergone the entire punishment awarded by the appellate authority, hence restarting the proceedings with a view to award major punishment would amount to double jeopardy. The Hon'ble Members held that the *maxim Nemo debet bis vexari* clearly applied which stipulated that no person should be vexed twice.

16. The facts of that case were obviously different from this one.

17. In the instant case the disciplinary authority recorded his order on 30.4.2003 vide Annexure-A/3 reducing the applicant to the minimum stage of his scale of pay for a



period of one year with cumulative and immediate effect. The aforesaid order dated 30.4.2003 was modified by the order of the appellate authority vide his order dated 16.2.2005(Annexure-A/4) reducing the same to withholding of next one increment for three years without cumulative effect. This order therefore was recorded before the period of punishment awarded by the disciplinary authority had expired itself. The order of the appellate authority which replaced the order of the disciplinary authority was to come into force with effect from the date when the next increment became due to the applicant. Now the revisional authority revised the punishment awarded by the appellate authority by order dated 12.4.2006 awarding the punishment that was awarded by the disciplinary authority. Therefore, this order was passed before the punishment awarded by the appellate authority had been undergone by the applicant which had a duration of three years.

18. On factual basis also, the order of the revisional authority can hardly be said to be arbitrary or wrong. The revisional authority in its order in para 3 has mentioned that the applicant had not handed over the amount of those deposits to the S.P.M. on the concerned dates, hence the S.P.M. did not take the amount into the Government account. The revisional authority also noted the fact that the applicant subsequently had voluntarily credited the whole amount of loss, to the tune of Rs.51,000/-, to the Govt. account. Therefore he had increased the punishment on finding that considerable amount which should have gone into the Govt. account had been withheld by the applicant.

19. Taking an overall view we do not find this is a case in which it can be said that the punishment awarded by the appellate authority had been fully undergone before the



revisional authority had recorded his orders.

20. In so far as the third argument of the learned counsel is concerned, that the enquiry could not have been conducted by a retired Postal officer, the learned counsel has relied upon a decision of the Ernakulam Bench of the Central Administrative Tribunal in the case of **Y.Baby vs. Sub-Divisional Engineer and others**; (1998) 37 Administrative Tribunals Cases 293. But the facts of that case were also different. The argument on which the Tribunal had relied upon was that the Enquiry Officer, during the pendency of the enquiry, had retired from service, hence he could not have continued to conduct the enquiry as Enquiry Officer even after his retirement as retired personnels could not be empanelled for conducting an enquiry under Rule 14 of the 1965 Rules. The Tribunal, on perusal of Rule 14 (5)(b) of the 1965 Rules held that a disciplinary authority might enquire into the charges itself or appoint another authority to conduct the enquiry, but he would have no jurisdiction to proceed with the proceedings after his retirement, which followed that the Enquiry Officer who acted as per the authority delegated by the disciplinary authority, could not also so function after his retirement.

21. In this case a retired senior officer was appointed, from the beginning, to conduct the enquiry. However, the Tribunal in the case of Y.Baby also had taken notice of a scheme drawn up by the competent authority which was on the record of the Original Application, ^{which} provided for expediting the enquiry and clearing the backlog of pending enquiries, further permitting empanelment of selected retired officers who might be appointed as Enquiry Authority. But the Hon'ble Members also noted that the scheme itself said that the head of circles might adopt a cautious approach and

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engage retired officers as Enquiry Officers in a few cases to assess the workability of the scheme.

22. Therefore there ^{was} a scheme which also provided ^{for} the engagement of a retired and experienced senior officer of the Department to conduct the enquiry. In the context of the present case, therefore, what has to be seen is whether the applicant was in any way prejudiced by conduct of the enquiry by a retired personnel.

23. Learned counsel for the applicant could not show that at any time during the conduct of the enquiry, till the order was recorded by the appellate authority, the applicant had made any objection about conduct of the enquiry by a retired senior officer, or had prayed for a change of the Enquiry Officer on that ground. Therefore, having submitted himself to the authority of the Enquiry Officer, now he must be estopped from challenging appointment of a retired personnel as Enquiry Officer. Therefore, in our opinion, at this stage the applicant cannot be granted relief on this ground as also because nothing has been pointed out to show that in any way the applicant was prejudiced by conduct of enquiry by a retired officer.

24. In the circumstances of the case, we do not find that the impugned order needs any interference by this Tribunal.

25. This application, therefore, is dismissed. No costs.


(S.N.P.N.SINHA)
MEMBER(A)


(P.K.SINHA)
VICE CHAIRMAN