BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.805/88

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Ambernath Sonu Pawar,
Income Tax Quarters,
No.VI, Opp.State Bank of India,
New CIDCO,
Nashik - 9. .. Applicant

vs.

1. Union of India
through
The Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. Chief Commissioner of
Income Tax,
Aayakar Bhavan,
Sadhu Vasvani Road,
Pune.

3. Commissioner of Income Tax,
Kendriya Ra Rajaswa Bhavan,
2nd Floor, Gadkari Chowk,
Old Agra Road,
Nashik.

4. The Deputy Commissioner of
Income Tax,
Nashik Range - I,
Kendriya Rajaswa Building,
2nd Floor,
Gadkar Chowk,
Old Agra Road,
Nashik. .. Respondents

Coram: Hon'ble Vice-Chairman Shri P.S.Shah
Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances;

1. Mr.M.A.Mahalle,
Advocate for the
Applicant.

2. Mr.S.R.Atre
(for Mr.P.M.Pradhan)
Advocate for the
Respondents.

ORAL JUDGMENT: Date: 12.7.1989
(Per Shri P.S.Shah,Vice Chairman)

The facts giving rise to this application are as follows:

The applicant who was appointed in the Income Tax Department as Lower Division Clerk in the year 1969 was later on promoted in the year 1974 as Upper Division Clerk. While he was working as Upper Division Clerk, on 19.1.1980 he was chargesheeted under Rule 14 of the Central Civil Services(Classification,

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Control and Appeal) Rules(CCS/CCA Rules) for some misconduct alleged to have been committed by him in the year 1977. The Inquiry Officer submitted his report on 2nd March,1983 to the Disciplinary Authority viz. Inspecting Asstt.Commissioner of Income Tax Department. By his order dtd. 1st July,1983 the Disciplinary Authority agreed with the finding of the Inquiry Officer who held the charges against the applicant proved and directed removal of the applicant from service.

3. On July 27,1983 the applicant preferred an appeal to the Commissioner of Income Tax,Nasik challenging his removal by the Disciplinary Authority. By his order dtd. 5th October,1983 the Appellate Authority reduced the penalty imposed on the applicant, to the reduction of the applicant to the lower post viz. the post of Lower Division Clerk. The Appellate Authority passed the consequential order of reinstatement and reversion of the applicant to the post of Lower Division Clerk. The other consequential directions were:

" (i) The period from 1st July,1983 to the date of joining will be treated as extra-ordinary leave without pay, and will not be treated as duty period for any purpose.

(ii) Shri Pawar will be considered for the promotion to U.D.C.'s post in the first DPC which may be held after the 1st October,1985;

(iii) After fixing the pay on promotion as U.D.C. under FR 22(c), he will be allowed two increments in the scale of U.D.C. on account of passing the departmental examination for Inspectors(which were not granted to him in the year 1979 when he qualified himself)."

The Appellate Authority issued a corrigendum dtd. 25th November,1983 whereunder the aforesaid clause (ii) was substituted as under:

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" (ii) Shri Pawar will be the seniormost L.D.C. as on the date of this order. He is reduced to the lower post of L.D.C until he is found fit after a period of two years from the date of this order to be restored to the post of U.D.C."

On 5th October,1987 the period of punishment was over and thereafter on July 7,1987 the applicant was promoted to the grade of Upper Division Clerk. After the promotion of the applicant the respondent No.1 issued a notice on 31.8.1987 under Rule 29 of the said rules informing him that the President proposes to enhance the penalty from reduction in rank to that of dismissal from service and the applicant was asked to show cause as to why the penalty of dismissal as proposed should not be imposed against him. By his representation dated 4th November,1987 the applicant showed cause. On October,14,1987 the President passed the order under Rule 29 directing removal of the applicant from Government service with effect from the date of service of the order. The applicant has filed this application challenging the order of his removal passed by the President.

4. Mr.Mahalle, learned advocate, appearing for the applicant urged the following contentions before us. Firstly he submitted that the applicant having already undergone punishment imposed by the Appellate Authority the President's order imposing a fresh penalty amounts to double jeopardy and offends against the provisions of Article 20 of the Constitution. Secondly he submitted that having regard to the wording of Rule 29 the President is not invested with the powers to revise the order passed by the Appellate Authority. Thirdly he submitted that the applicant was entitled to a personal hearing before the impugned order was passed by the President which was not afforded to the applicant. Lastly he submitted that, in any event, having regard to the fact that the Inquiry Officer

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started enquiry in the year 1980 in respect of the alleged misconduct in 1977, and the appellate authority having reduced the penalty imposed on the applicant long back in the year 1983 and after the period of punishment was over he was even promoted to the grade of UDC, the President was not justified in imposing the drastic punishment of removal of the applicant. He submitted that the revisional powers conferred on the President can be exercised by him within a reasonable time and not after a lapse of 4 years from the date of the order sought to be revised.

5. As regards the first contention that the order of the President imposing a fresh penalty is amount to the double jeopardy, it is to be noted that the impugned order has been passed by the President in the same proceedings viz. the proceedings in which orders were passed by the Disciplinary Authority and the Appellate Authority. Merely because the powers of revision can be exercised by the President suo moto it does not mean that it is a fresh independent proceedings in respect of the same misconduct with which the applicant was initially charged. The proceedings before the Disciplinary Authority, the Appellate Authority and the Revision before the President are continuation of the same proceedings. Just as the Appellate Authority has a power to modify the order appealed against and even impose a higher punishment, the revisional authority, namely the President in this case, has the power to revise the order passed by the Appellate Authority. Under the circumstances it is difficult to uphold the contention that the exercise of the power of revision by the President in the present case violates Article 20 of the Constitution. It cannot be said that the applicant is being punished twice for the same misconduct. The matter would have been different if a fresh departmental proceeding on the same facts and in respect of the same misconduct was commenced against the applicant. In such a situation it would have been possible to contend that the delinquent is put to double jeopardy. We, therefore, find

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no merit in the contention urged by the applicant.

6. Rule 29 confers the powers of revision on various authorities including the President in the circumstances and subject to conditions mentioned in the ~~section.~~ rule. The provisions of Rule 29 show that the President 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. Mr.Mahalle's contention is that in the present case an appeal admittedly lay and the same was preferred and once such appeal is decided, the powers of revision cannot be exercised by the President. It is not possible to accept this submission of the learned advocate for the simple reason that the order passed by the Appellate Authority in this case is not appealable and obviously in view of Rule 29 the President is empowered to exercise his revisional powers. There is nothing in Rule 29 to restrict its operation to a case where no appeal at all lies against the initial order. Rule 29 would operate even when no appeal lies against the appellate order which is sought to be revised. On a plain reading of Rule 29 the President is empowered to exercise revisional powers in a case where the order of the Appellate Authority is not appealable. If there is no appeal provided against the order passed in appeal then also the condition laid down in Rule 29(i) gets satisfied and the powers of revision can very well be exercised. In the present case admittedly no further appeal is allowed against the appellate order. If that be so, the conditions laid down in the Rule for exercise of the revisional powers by the President are satisfied.

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7. Our attention has been drawn to a judgment of a Bench of this Tribunal in Krishnaji Hari Joshi v. Union of India,(1988)6 ATC 554 where it has been held that the revisional authority should ordinarily give a personal hearing to the delinquent. This view was taken following the decision of the Supreme Court in Ram Chander v. Union of India, (1986)3 SCC 103. In the present case it is found that the extreme penalty has been enhanced by the revisional authority after a lapse of several years, during which period not only the petitioner had suffered the penalty but was also promoted to a higher post. If the petitioner was given a personal hearing it would have been possible for him to explain these and several aspects of the case to convince the authority that extreme penalty may not be imposed. There is,therefore, substance in the contention of the petitioner that failure to afford to the petitioner a personal hearing vitiates the impugned order. The impugned order is liable to be set aside on this ground.

8. In our opinion the impugned order also cannot be sustained on account of the unreasonable delay in passing the order. In this connection the facts to be noticed are that the incident of alleged misconduct has happened in the year 1977. The chargesheet was served on the petitioner in January,1980. The Inquiry Officer submitted his report three years thereafter i.e. in March,1983 and in July,1983 the Disciplinary Authority agreeing with the report of the Inquiry Officer passed the order of removal. The petitioner challenged the order of the Disciplinary Authority by filing an appeal under the rules.The Appellate Authority disposed of the appeal in October,1983. The period of 2 years punishment imposed on the petitioner by the Appellate Authority came to an end in July,1987. Thus the petitioner had fully suffered the penalty imposed upon him by the Appellate Authority. After this period was over the petitioner was even promoted to the post of higher grade of UDC. Thereafter for the first time the first respondent issued the showcause notice dtd. 31stAugust,1987. It is true that Rule 29 mentions that powers of the revision can be exercised by the President"at any time" However, it cannot be said that the powers are unbridled to the extent that ~~it~~ these can be exercised after several years of the passing of the order sought to be revised.The expression

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"at any time" will have to be considered to mean that the power should be exercised within a reasonable time. In our opinion the use of such expression of wide amplitude does not exclude the concept of reasonableness.

9. In this connection it would be useful to refer to the observations of the Supreme Court in State of Gujarat v. P.Raghav,AIR 1969 SC 1297, where the question of interpreting the provision of Section 211 of the Bombay Land Revenue Code arose. The Court observed that though there is no period of limitation prescribed under Section 211 for exercise of powers by the authorities concerned, this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised. In New Delhi Municipal Corporation v. LIC, AIR 1977 SC 2134, also there are observations to the effect that the use of expressions of wide amplitude like "at any time" does not exclude the concept of reasonableness.

10. In the present case the powers of revision have been exercised several years after the orders said to be revised was passed. Even the show cause notice was issued after four years of the order sought to be revised. There is no explanation put forward by the respondents as to why it took such a long time to initiate that action. It is to be noted that the applicant had already suffered the penalty imposed by the Appellate Authority. He was also promoted thereafter. It would be highly unjustifiable and inequitable to reopen the matter after a lapse of 4 years particularly having regard to the facts and circumstances of the case.

11. Our attention is also invited to a decision of Rajasthan High Court,1986(2)SLR 201. The facts of that case were that the inquiry was held in 1966. The Inquiry Officer exonerated the petitioner of all the charges, but the Deputy Inspector General of Police found the petitioner guilty of one charge and consequently passed the order dtd. May 20,1969 for stoppage of two grade increments without cumulative

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effect. It appears that in exercise of the powers under Rule 34(similar to Rule 29 with which we are concerned) action was initiated against the applicant for enhancement of the punishment. In May,1971 a notice was issued to the petitioner but the same was not served. However, he was served with a notice in September,1976. Ultimately by an order dtd. October 23,1978 the Governor enhanced the penalty from withholding two increments with cumulative effect to that of reduction in rank from Sub Inspector to Head Constable for a period of two years. On these facts the Court observed:

> "In the present case, the final order imposing the punishment was passed on 20.5.69 and the petitioner was not even served with any show-cause notice upto September,1976,so, almost for a period of more than 9 years, the petitioner was not aware that any action has been initiated against him for enhancement of the punishment. It is true that the action was initiated within the reasonable time, but that alone is not sufficient. If after initiating the action, the power is not exercised within a reasonable time then that too would be taken as an arbitrary and unreasonable exercise of the power. It was most unreasonable to enhance the penalty after lapse of 9 years more particularly, when for a period of 7 years, no notice was served on the petitioner. During all these nine years, the petitioner continued to serve in the capacity of Sub-Inspector of Police. All powers, which are vested in the authorities under the Statute of the Rules should be exercised within a reasonable time else the exercise of the power can be found to be vitiated on the ground that it has been exercised in an unreasonable manner after a long lapse of time. The petitioner took it that he has been punished and he accepted punishment. It would be highly unjust after lapse of 9 years, his punishment may be enhanced. Thus, on this ground alone that the power has not been exercised within a reasonable time, in my opinion, the order dated October 23,1978 enhancing the punishment deserves to be quashed."

12. The facts of the instant case stand on a better footing in the sense that even the show cause notice was not issued for a period of four years and by that time the petitioner had suffered the penalty and was even promoted to a higher post.

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13. In the result the application is allowed. The impugned order dtd. 14.10.1988 passed by Respondent No.1 is quashed and set aside and the consequential order dated November 1,1988 passed by Deputy Commissioner of Income Tax(DA),Respondent No.4 is also quashed and set aside.

14. In the circumstances of the case there is no order as to cost.

P.S. Chaudhuri

(P.S.CHAUDHURI)
Member(A)

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(P.S.SHAH)
Vice-Chairman