

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Dated this *Thursday* the 19<sup>th</sup> day of June, 2003

Coram: Hon'ble Mr.V.K.Majotra - Member (A)  
Hon'ble Mr.Shankar Raju - Member (J)

O.A. 546 of 2000

Jagannath Laxman Arne,  
aged about 48 years,  
Ex-Postal Assistant,  
Nasik Head Post Office,  
Nasik,  
R/o Post Surgana,  
Tal Surgana,  
District Nasik.

(By Advocate Shri S.V.Marne) - Applicant

Versus

1. Union of India  
through the Director General  
of Postal Services,  
New Delhi.
2. The Member (Personnel),  
Postal Services Board,  
Department of Post,  
New Delhi.
3. The Post Master General,  
G.P.O., Aurangabad.
4. The Director,  
Postal Services,  
G.P.O.Aurangabad.
5. The Senior Superintendent  
of Post Offices,  
Nasik Division, Nasik.  
(By Advocate Shri V.S.Masurkar) - Respondents

ORAL ORDER

By Hon'ble Mr.Shankar Raju, Member (J) -

Applicant impugns Respondents' punishment of dismissal imposed upon him by an order dated 24.4.2000. Show cause notice issued under Rule 29 (1) (v) of the CCS (CCA) Rules, 1965 issued on 10.3.2000 as well as the punishment of compulsory retirement imposed by the disciplinary authority vide its order dated 30.9.1999. Quashment of the above has been sought with a

direction to reinstate the applicant with all consequential benefits.

2. Applicant while working as a Postal Assistant was proceeded against through a memorandum under Rule 14 (ibid) dated 20.3.1978 for a major penalty proceedings on the allegation of issuing Rs.20,000/- less amount on 22.7.1997 as well as withdrawing Rs.40,000/- from the account of one Mrs. S.B.Dusane.

3. Enquiry Officer called his report, held the Applicant guilty of the charges. It was responded to by a representation resulting in imposing of punishment of compulsory retirement by the disciplinary authority on 30.9.1999.

4. Applicant preferred an appeal against the order of compulsory retirement on 30.11.1999.

5. The Appellate Authority by a show cause notice issued on 10.3.2000 exercising his jurisdiction and power under Rule 29 (1) (v) of the Rules proposed alleged punishment of dismissal upon the Applicant through show cause notice.

6. The aforesaid show cause notice was responded to by the Applicant. The Appellate Authority enhanced the punishment <sup>60</sup> to 60<sup>u</sup>

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dismissal <sup>of</sup> that of compulsory retirement with a view to set an example to others who commit grave irregularities in future. The aforesaid <sup>in</sup> ~~order~~ has given rise to the present OA.

7. Several contentions have been put forth by the learned counsel for the Applicant Shri D.V.Gangal but at the outset it is stated that the alleged punishment is not legally sustainable as the appellate authority has without jurisdiction exercised powers under Rule 29 (1) (v) of the Rules (ibid) without any competence. This according to the Applicant has blocked the remedy of revision against the punishment.

8. Shri Gangal contends that under Rule 29 (1) (v) of the Rules (ibid) the Appellate Authority within six months of the date of the order proposed to be revised may at any time on its own motion or otherwise by calling the records of an enquiry revise any order from which an appeal is allowed but from which no appeal has been preferred and further referring to Rule 29 (2) of the Rules (ibid) contends that no proceedings for revision shall commence until after the expiry of the period of limitation for an appeal and also after the disposal of the appeal where such an appeal has been preferred.

9. In the conspectus it is contended that acting on an appeal the Appellate Authority may have jurisdiction to pass [ appropriate order under Rule 27 of the Rules (ibid) but the condition precedent for exercising jurisdiction under Rule 29 (v)



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to do justice which is paramount consideration and further with a view not to shut out the litigant from raising such plea which goes to the root of the lis involved.

12. Having regard to the aforesaid as the question regarding exercising power under Rule 29 (v) of the Rules (ibid) by the Appellate Authority is established on the record and it no more requires any further investigation and is a pure question of law. The aforesaid plea of the Applicant is very much admissible and is allowed to be raised.

13. In our considered view Appellate Authority under Rule 27 of the Rules (ibid) while considering an appeal, preferred against any of the penalties specified under Rule 11 of the CCS (CCA) Rules, 1965 to exercise his jurisdiction to pass orders even enhancing the punishment which mandates issuance of a show cause notice and is double opportunity is a condition precedent.

14. However, Rule 29 (v) of the Rules (ibid) the Appellate Authority has a right to revise the orders within a period of six months from the date of the order but is subjected to Rule 29 (2) which stipulates that it to be done in a case where no appeal is preferred and limitation for filing an appeal i.e. 45 days has expired and also when no appeal has been preferred the cogent reading of these provisions and applying the cardinal principle of interpretation in its contextual and literal meaning the Appellate Authority in case of acting on appeal is precluded from

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exercising revisional powers under Rule 29 (v) of the Rules (ibid) to enhance the penalty. Show cause notice issued to the applicant is in exercise of power under Rule 29 (1) (v) of the Rules (ibid) is in clear violation of the aforesaid rules and explicitly the Appellate Authority having no jurisdiction to act under Rule 29 (v) of the Rules (ibid) the show cause notice and the enhanced punishment imposed is not legally sustainable.

15. In so far as prejudice caused to the Applicant by the act of the Appellate Authority in the context of the fact that such power exists under Rule 27 of the Rules (ibid) which envisages show cause notice and a reasonable opportunity, we find that had this order been passed by the Appellate Authority under Rule 27 of the Rules (ibid) Applicant's right of revision would have remained intact. <sup>by</sup> exercising powers to enhance the punishment under Rule 29 (v) of the Rules (ibid), Applicant has been deprived of his statutory remedy of revision under Rule 29 against the enhanced punishment.

16. While dealing with a similar controversy whether the Appellate Authority having passed the order of dismissal, the Apex Court in *Electronics Corporation of India Vs. G. Muralidhar*, 2002 SCC (L&S) 718 held this to be a denial of right of appeal. Applying the aforesaid ratio, the same analogy mutatis-mutandis is applicable to the facts of this case. As exercise of jurisdiction by the Appellate Authority under Rule 29 (v) of the Rules (ibid) has <sup>been</sup> deprived against an enhanced punishment, the right of appeal/revision <sup>of</sup> the Applicant, <sup>is</sup> in fact has prejudiced him.

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17. The other contention put forth are not adjudicated as the OA is liable to succeed on the aforesaid illegality itself.

18. In the result, <sup>in</sup> ~~for~~ the foregoing reasons this OA is partly allowed. The impugned order of enhancing punishment of dismissal and show cause notice are quashed and set aside. However, this shall not preclude the Respondents, if so advised, to proceed further in accordance with the Rules. The Applicant shall also be entitled to all consequential benefits which shall be paid to him within a period of three months from the date of receipt of a copy of this order.

19. There shall be no order as to costs.

*S. Raju*  
(Shankar Raju)  
Member(A)

*V.K. Majotra*  
(V.K. Majotra)  
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.107/2003 in OA.NO.546/2000

Monday this the 3rd day of November,2003.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A)

Hon'ble Shri S.G.Deshmukh, Member (J)

Jagannath Laxman Arne,

...Applicant

By Advocate Shri D.V.Gangal

vs.

Union of India & Ors.

...Respondents

By Advocate Smt.H.P.Shah

O R D E R (ORAL)

{Per : Shri Anand Kumar Bhatt, Member (A)}

This is a Contempt Petition for non compliance of the order of the Tribunal in OA.No.546/2000 in which order was passed on 19.6.2003. In the said order, the order of dismissal at the appellate stage and the show cause notice have been set aside and it was directed that the applicant shall be entitled to all the consequential benefits which shall be paid to him within a period of three months. It was also decided by the Tribunal that respondents may proceed in accordance with the rules, if they are so advised.

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2. The learned counsel for the applicant in oral submission before us has stated that applicant has not received any provisional pension and he has not received any show cause notice for enhancement of punishment till 15.10.2003.

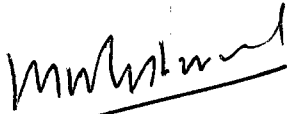
3. On the other hand, Smt. Shah <sup>for respondents</sup> has stated that a fresh show cause notice has been issued to the applicant on 14.10.2003 as per the directions of the Tribunal. As regards provisional pension, she has produced the records of the office in which the authorisation for provisional pension has been issued on 15.10.2003 taking the applicant's retirement date as 30.9.1999 (A.N.).

4. Learned counsel for the applicant very forcefully states that the fresh show cause notice is not tenable in view of the judgement of the Hon'ble Apex Court in S.S.Rathore vs. State of Madhya Pradesh.

5. We have considered the case and have heard both the counsels at length. The fresh show cause notice has been issued as per the directions of this Tribunal and in such case the judgement cited by the learned counsel for the applicant of the Apex Court does not apply here. As regards the provisional pension, the learned counsel for the respondents has been able to satisfy that provisional pension orders have been issued by the Department.

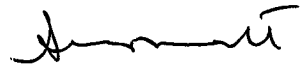


6. It has been decided several times by the Apex Court that the scope of Contempt Petition is very limited. Show cause notice has been issued as per the directions of the Tribunal. Contempt Petition is dismissed.



(S.G. DESHMUKH)

MEMBER (J)



(ANAND KUMAR BHATT)

MEMBER (A)

mrj.

Order/Intimation despatched  
to Applicant/Respondent (0)  
ON 07/11/03

