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ORIGINAL APPLICATION NO. 416/90.

Shri Ghanashyam M. Naik

... Applicant.

v/s.

Senior Superintendent of Post Offices
and another.

... Respondent.

Coram: Hon'ble Member (A), Shri P.S. Chaudhuri

Hon'ble Member (J), Shri T.C. Reddy.

Appearances:

Mr. V.B. Nadkarni instructed
by Mr. A.C. Navelkar, Advocate,
for the applicant and Mr. G.R.
Sharma, Advocate for the respondents.

JUDGEMENT:

Dated: 21.6.1991

(Per T.C. Reddy, Member (J))

This is an application filed by the applicant
under Section 19 of the Administrative Tribunals Act, 1985.

2. The facts giving rise to this application in brief
are as follows. The applicant was originally working as
Postal Assistant, Panaji. While working so as Postal
Assistant, a departmental enquiry was conducted under
CCS (CCA) Rules 1965 against the applicant for allegedly
misappropriating temporarily a sum of Rs. 4,060/- . In the
said departmental enquiry, the Enquiry Officer held, that
the said misappropriation, had been proved against him.
Consequently the disciplinary authority accepted the
findings of the Enquiry Officer and vide order dated
7-12-1984 passed by the disciplinary authority, the applicant
was retired compulsorily from government service with
immediate effect. As against the order passed against the
applicant compulsorily retiring him from service the
applicant did not prefer any appeal on the departmental side.

3. For the very same charge of misappropriation the
applicant was also tried in the Court of Judicial Magistrate.

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Ist Class, Mapusa of the offence under Section 408 IPC. By the judgement dated 31-1-1989 the learned Judicial Magistrate, Ist Class Mapusa acquitted the applicant of the said charge under Section 408 IPC. No appeal was preferred by the State as against the said acquittal of the applicant. After the said acquittal of the applicant in the criminal case the applicant put in a representation to the Senior Post Master, Head Post Office, Panaji, Goa, to reinstate him in service on the ground that he had been acquitted in the said criminal case of the said offence under Section 408 IPC for which he was tried for the alleged misappropriation and also to pay him the amount of DCRG that was not claimed by him. The Superintendent of Post Offices, Goa Division sent a reply dated 11-1-1990 to the applicant stating that there was no question of reinstating the applicant in service. So the applicant filed the present application impleading the Senior Superintendent of Post Offices, Goa as 1st respondent and Union of India through Secretary, Ministry of Telecommunication as 2nd respondent for the following reliefs:

- (a) To quash and set aside the decision conveyed to the applicant in the letter of Superintendent of Post Offices dated 11-1-1990.
- (b) To quash and set aside the order of the Senior Superintendent of Post Offices dated 7-12-1984 and reinstate the applicant in the post of Sub-Post Master with all consequential benefits such as arrears of pay, seniority, counting of past service, etc. or in the alternative.
- (c) To direct the respondents to review the Order of Senior Superintendent of Post Offices dated 7-12-1984 in the light of the Judicial

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findings in the Judgement of Judicial Magistrate, First Class at Mapusa dated 31st January, 1989 and after hearing the applicant.

(d) To declare that in the facts and circumstances of the case, the penalty of compulsory retirement as imposed by order dated 7-12-1984 is harsh and disproportionate.

The respondents filed their reply opposing the said application. //

4. When this application came for hearing, the learned counsel for the applicant gave up for the present all the reliefs the applicant has prayed for and contended that a direction may be given to the revisions authority to consider the representation of the applicant dated 26-12-1989 and to decide the said representation in accordance with the Rule 29 of CCS (CCA) Rules 1965 which deals with the powers of the revisions authority under the CCS (Classification, Control and Appeal) Rules, 1965. Rule 29 of the said CCS (CCA) Rules 1965, is hereby extracted to the extent that is necessary for the purpose of disposal of this application: "29. (Revision) (1) Notwithstanding any contained in these rules:-

- i) Omitted.
- ii) Omitted
- iii) the Member (Personnel) Post Services Board in the case of a Government servant serving in or under the Postal Service Board and Member (Personnel) Telecommunications Board in the case of Government servant serving in or under the Telecommunications Board, or
- iv) to (vi) omitted

may at any time, either on his 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, after consultation with the Commission where such consultation is necessary, and may

- (a) confirm, modify or set aside the order; or
- (b) to (d) omitted"

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The fact that the Member (Personnel) Postal Services Board is the revision^{mg} authority in the case of a Government servant serving in or under the Postal Service Board cannot be doubted in view of Clause (iii) of the said rule extracted above. So it is the duty of the applicant to address a representation ~~as against~~ ^{in regard to} his grievance to the said Member (Personnel) Postal Services Board for consideration. But the applicant has addressed the representation to the Senior Post Master, Head Post Office, Panaji on 26-12-1989 without addressing the same to the Member (Personnel) Postal Services Board. The Central Government has also issued certain clarifications in D.G. P&T Letter No.6/13/71-Disc.I, dated 12th January, 1973 with regard to submission of revision petition to the revising authority without preferring appeal. Admittedly in this case the applicant had not preferred any appeal as against the orders passed by the disciplinary authority compulsorily retiring him. The instruction (iii) of the above said letter reads as follows :-

"(iii) The authority competent to conduct a revision should personally issue the reply to the petition for revision unless delegation to a lower authority has been made, in which case the latter authority would be competent to furnish a reply to the petitioner."

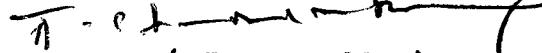
The Rule 29 extracted above and the clarification (iii) mentioned above makes it more than clear that the applicant himself has got a right to prefer a revision ^{and get a reply from the authority} before the revising authority. When such is the case we do not find any need to give any direction in this matter to the said revising authority to decide the representation made by the applicant. Hence the petition is liable to be dismissed.

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But the applicant will be at liberty to submit his representation, if any, to the revisions authority and to ask the revisions authority to decide his representation. If the applicant still feels aggrieved by the decision of the revisions authority, he will be at liberty to approach, in accordance with Law, this Tribunal and if he is so advised. With the said observation the said application is dismissed. In the circumstances of the case the parties shall bear their own costs.



(T.C. Reddy)
Member (J)



(P.S. Chaudhuri)
Member (A)

21-6-1991