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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 640/92 199

DATE OF DECISION 9-11-1992

Shri K M Sahu Petitioner

Shri D V Gangal Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri V S Masurkar Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S K Dhaon, Vice Chairman

The Hon'ble Mr. Ms. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whethertheir Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

SKD
V.C.

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IN THE CENTRAL ADMINISTRAIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDIG NO.6
PRECOT ROAD, BOMBAY 1

OA NO. 640/92

Shri K M Sahu — Applicant

V/s

Union of India
throgh Secretary
Ministry of Defence
South block
New Delhi-11 & 3 ors. — Respondents

Coram: Hon. Shri Justice S.K. Dhaon, Vice Chairman
Hon. Ms. Usha Savara, Member (A)

APPEARANCE:

Mr. D V Gangal
Counsel
for the applicant

Mr. V S Masurkar
Counsel
for the respondents

ORAL JUDGMENT: DATED: 9.11.1992
(Per: S.K. Dhaon, Vice Chairma)

The applicant, a casual labour, has come up to this Tribunal with a number of prayers. However, at the Bar the only submission made on his behalf is that an appropriate direction in the nature of Mandamus may be issued to the Chief of the Naval Staff, Naval Headquarters, New Delhi, to dispose of the revision application preferred by him, on 18.12.1991, on merits and in accordance with law.

2. A reply has been filed on behalf of the respondents. Counsel for the parties have been heard

for quite some time.

3. The material facts are these. Some time in the year 1980 the applicant was employed as a Casual labour in the Naval Dockyard. On 17.6.1983 he was removed from service. An appeal preferred by him was dismissed on 21.7.1986. On 18.12.1991 he preferred the revision application.

4. Does Rule 29 of the Central Civil Services (Classification Control and Appeal) Rules (herein after referred to as the Rules) contemplate a revision application against an appellate order also? For reasons stated hereafter, our answer is in the affirmative. Certain types of orders enumerated in Rule 22 are not appealable. Rule 23 talks of types of orders against which appeal lies. One of the orders appealable is an order imposing any of the penalties specified in Rule 11 whether made by the disciplinary authority or by any appellate or revising authority. It is thus clear that orders passed by the appellate as well as the revising authority are appealable in certain situations. It is implicit in Rule 23 that all orders passed by the appellate authority are not appealable. Thus two classes of appellate orders are contemplated. One class is subject to an appeal and the other is not.

5. Rule 29, as material, provides that notwithstanding any thing contained in the Rules, the authorities enumerated in (i) to (iv) may at any time, call for the record of any inquiry and revise any order made under the rules from which an appeal is allowed, but from which no appeal has been preferred, or from which no appeal is allowed. General appellate powers are given to the revising authority. There is no limitation or embargo upon the exercise of those powers. There is no indication whatsoever either express or implied that an order passed in appeal is not subject to a revision. Surely an appellate order is an order passed under the Rules (Rule 27). There can be an appellate order from which an appeal is allowed, but from which no appeal

such orders. Thus all orders are revisable. We have already indicated that rule 23 contemplates certain orders passed in appeal can be subjected to a further appeal. If it is held that appellate orders are not revisable, the result would be that those appellate orders from which no appeal is permitted will become final. This will result in an anamolous situation which should be avoided, if permissible. The language of rule 29 does not, as already indicated, differentiate between original orders whether appealable or not and appellate orders whether appealable or not. Therefore, there should be no difficulty in taking the view that appellate orders are revisable under rule 29. Such a consturction will not render a person aggrieved by a non-appealable appellate order remedyless. Further, such an interpretation will be in accordance with the scheme of the rules which provides for a complete code.

9. The second proviso to rule 29, as material, posits that no power of revision shall be exercised by certain officers mentioned therein unless - the authority which made the order in appeal is subordinate to them. The proviso also indicates that an order made in an appeal is subject to a revision under rule 29. Sub-rule (2) of rule 29 lays down inter-alia that no proceeding of revision shall commence 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. This provision also indicates that the existance of an appellate order does not constitute a bar to the exercise of revisional jurisdiction.

10. In C. RAVINDRANATHAN Vs. UNION OF INDIA & ORS., 1988(3)(CAT), All India Service Law Journal, 295, an order of compulsuory retirement under rule 14 of the Rules was passed against a Government servant. His appeal was dismissed. He preferred an application under section 19 of the Administrative Tribunals Act. One of the objections raised on behalf of the respondents was that since the applicant there did not prefer a petition for revision under rule 29 of the Rules, the application could not be entertained in view of S. 20 of the said

Act. The Madras Bench of this Tribunal held that what is provided in S. 20 of the Act is that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. It was held that it deals with the considerations to be had at the time of admission of the application and not at the final hearing. Immediately thereafter the crucial observations are: "That apart Rule 29 of the rules has no application to the instant case since the applicant had preferred an appeal from the order of the disciplinary authority. It is only in a case where no appeal has been preferred, or no appeal is allowed by the rules that the revisional jurisdiction under Rule 29 operates." With respect, in view of the provisions of rule 29 as highlighted above, the observations of the learned Members as aforequoted are per incuriam.

11. Shri Masurkar, learned counsel for the respondents, urged that in view of the provisions as contained in S.20(2)(b) of the Administrative Tribunals Act, this Tribunal should decide the matter itself and not direct revisional authority to dispose of the revisional application preferred by the applicant. Sub-section(1) of section 20 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Under sub-section(2) there is a relaxation, and it is provided amongst others that the person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievance where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired. Sub-section 2 of

Section 20 relaxes the rigour of sub-section(1) and creates a fiction so as to enable the Tribunal to entertain the application unde section 19 of the Act in spite of pendancy of representation etc. Sub-section (2) does not mandate that in all eventualities the Tribunal shall decide the matter itself. In the instant case a glance at the contents of the revision application would indicate that factual controversies are raised therein. We have already indicated that the power contained in rule 29 is a general appellate power. The revisional authority is, therefore, entitled to interfere even on merits after appraising the evidence on record. Such a power is not given to this Tribunal. The interest of the applicant is bound to suffer if we entertain this application and dispose it of on merits instead of asking the revisional authority to exercise its power under rule 29.

12. It is next contended ~~urged~~ by Shri Masurkar that the contents of rule 25 should be imported or read into rule 29 with a view to providing a period of limitation for prefering a revision application. Rule 25 prescribes the period of limitation for preferring an appeal. The argument is that since the appeal is to be preferred within a prescribed period of 45 days it should be inferred that the revisional application should be preferred within 90 days at the most. We are unable to appreciate this submission. A period of limitation has to be specifically provided for. It can neither be imported nor implied. A rule of limitation bars the remedy. It is, therefore, a restriction on a remedy provided by the statute. Such a restruction should be clear and specific.

13. The right to prefer an appeal is a vested right. ~~This is not so~~ In the case of an appeal a person aggrieved is entitled to get relief if he makes out a case. However, in the case of a revision application the giving of relief is discretionary. Of course, the discretion has to be exercised on sound judicial principles. Even in the absence of a provision prescribing a period of limitation for filing a revision

application, it is open to the revising authority to exercise ~~his~~ discretion in favour of an applicant if it is satisfied that there is ~~no~~ negligence, laches or acquiescence on the part of the applicant so as to disentitle him or her ~~in~~ to the grant of relief.

14. A reading of the appellate order dated 21.7.1986 indicates that the Vice Admiral proceeded on the assumption that the appeal preferred by the applicant was being disposed of for the first time. However, in the reply filed on behalf of the respondents it is asserted that the applicant had earlier preferred an appeal which had been disposed of on merits. Thereafter, he made some representation to the higher authority and having failed to get any redressal he filed yet another appeal. It is the second appeal which has been disposed of by the aforementioned order. On the material on record before us, and even otherwise, we are not inclined to go into this question. We, however, make it clear that it would be open to the revisional authority to examine this question, if the same is raised before it by the department.

15. The application succeeds in part. We issue a writ in the nature of mandamus to the revisional authority viz., the Chief of Naval Staff, Naval Head Quarters, New Delhi, to dispose of the revision appplication dated 18.12.1991 preferred by the applicant on merits and in accordance with law as expeditiously as possible, but not beyond a period of six months from the date of production of a certified copy of this order by the applicant before him. The applicant is permitted to transmit a certified copy of our order under Registered Post Acknowledgement Due.

16. There shall be no order as to costs

(Ms. Usha Savara)
Member(A)

(S.K. Dhaon)
Vice Chairman

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