

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1306/94

9.8.2000

Date of Decision :

V.S.Cutinho _____ Applicant.

Shri S.P.Saxena _____ Advocate for the
Applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri R.K.Shetty _____ Advocate for the
Respondents.

CORAM :

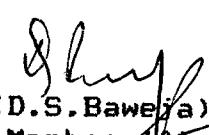
The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ?

(iii) Library


(D.S.Baweja)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1306/94

Dated this the 9th day of August 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

V.S.Cutinho,
Junior Scientific Assistant Gr.I,
Explosives Research & Development
Laboratory Pashan, Poona.

... Applicant

By Advocate Shri S.P.Saxena

V/S.

1. The Union of India through
the Secretary,
Ministry of Defence,
New Delhi.

2. The Director,
E.R.D.L., Pashan,
Poona.

... Respondents

By Advocate Shri R.K.Shetty

O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant while working as Junior Scientific Assistant Gr.I in the Explosives Research & Development Laboratory, Pune was issued a chargesheet dated 28.2.1985 for imposing minor penalty. The applicant replied to the chargesheet as per his letter dated 19.3.1985. Thereafter, the disciplinary

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authority imposed punishment of 'Censure' as per order dated 23.4.1985. The applicant did not file appeal against the same. However, subsequently, the President of India issued a Memorandum dated 18.9.1986 proposing to hold an enquiry under Rule 14 of CCS(CCA) Rules, 1965 on the same charges of misconduct for which the penalty of 'Censure' had been earlier imposed without cancelling the earlier punishment order. The applicant submitted reply to the chargesheet on 9.10.1986. Thereafter, the ^{President exercising power under rule 29(1)} cancelled the disciplinary proceedings earlier finalised by Respondent No. 2 by imposing the penalty of 'Censure'. An Enquiry Officer was nominated an Enquiry Officer submitted his report on 24.9.1987 holding that the charges are not proved. The copy of the enquiry report was not furnished to the applicant. The disciplinary authority as per order dated 16.2.1989 imposed a punishment of stoppage of promotion for a period of 5 years, dis-agreeing with the findings of enquiry officer but without giving the reasons for dis-agreement to the applicant before imposing of punishment. The applicant filed OA.NO.410/89 to challenge this penalty. This OA. was allowed setting aside the impugned punishment order with a liberty to the Respondent No. 1 to proceed with the disciplinary proceedings, if so desire, from the stage of issue of show cause notice to the applicant. In pursuance of this direction, show cause notice was issued ~~to~~ the applicant on 22.2.1993 advising the reasons of dis-agreement by the disciplinary authority with the findings of the enquiry officer.

The applicant submitted reply to this show cause notice. Thereafter, the President as per order dated 4.10.1994 has imposed the penalty of withholding of promotion for a period of one year. The applicant has further submitted that as a result of disciplinary proceedings, his promotion was held up and number of juniors in the meantime had been promoted. The applicant was promoted on adhoc basis on 15.3.1994 but in view of the punishment order dated 4.10.1994, the applicant has been reverted as per the order dated 8.11.1994. Feeling aggrieved by these orders, the applicant has filed the present OA. on 17.11.1994 seeking the following reliefs :- (a) to set aside the impugned orders dated 4.10.1994 and 8.11.1994. (b) to hold that the applicant is entitled for being considered for promotion to the post of Sr. Scientific Assistant after 23.5.1986. (c) to direct respondents to hold review DPC to consider the case of the applicant for promotion to the post of Sr. Scientific Assistant and if found fit, he be promoted to this post from the date his immediate junior has been promoted. (d) to direct respondents to give all consequential benefits including arrears of pay and allowances and promotion as Sr. Scientific Assistant from the day he is entitled for promotion.

2. The applicant has sought to make his case for seeking the reliefs as prayed for on the following grounds :- (a) Suo moto action of the President for issue of the Memorandum dated 18.9.1986 proposing to hold enquiry under Rule 14 after the

earlier penalty of 'Censure' as per the order dated 23.4.1985 having become final was illegal and bad in law. (b) Memorandum dated 18.9.1986 was issued without cancelling the earlier disciplinary proceedings as per chargesheet dated 28.2.1985 and the penalty already imposed. Therefore, the chargesheet suffers from illegality. (c) The order of the President lacks application of mind. (d) Order dated 8.11.1994 stating that the penalty of withholding of promotion for one year would be effective from 1.11.1994 is clearly bad in law. Even if the penalty of withholding of promotion for a period of one year as per order dated 4.10.1994 is held legal, the said penalty will have effect from 23.5.1985 and not from 1.11.1994. The penalty order would be over on 23.5.1986 and, thereafter, the applicant is entitled to be considered for promotions as due.

3. The respondents have filed the written statement opposing the application. The respondents submit that the President on review of the punishment order dated 23.4.1985 formed the ^{opinion} ~~review~~ that the offence committed by the applicant warranted a major penalty. Accordingly, exercising power under Rule 29 of CCS (CCA) Rules, 1965, a chargesheet dated 18.9.1986 for major penalty was issued. The earlier disciplinary proceedings which resulted in punishment of 'Censure' were cancelled by the President as per order dated 24.3.1987. The respondents contend that since the President can review the punishment suo-moto at any time under Rule 29, there is no illegality if the earlier proceedings

were cancelled after the issue of the fresh charge-sheet on 18.9.1986. It is also submitted that the order of the disciplinary authority is speaking order and has been passed after due application of mind. As regards the effect of the punishment order dated 4.10.1994, the respondents contend that the same punishment order will be effective from the date of service of the order and will not relate back to the date of the earlier punishment order. In respect of the promotion, the respondents' stand is that since the disciplinary proceedings were continuing against the applicant, the applicant could not be promoted as per the extant rules. His case for promotion will be considered after the penalty is over. Since the applicant was imposed punishment, the reversion of the applicant as per order dated 4.4.1994 is as per the extant rules as the applicant was given adhoc promotion as Senior Scientific Assistant pending finalisation of the disciplinary proceedings.

4. The applicant has filed the rejoinder reply. The applicant while controverting the submissions of the respondents has maintained his grounds taken in the OA. The applicant has also contended that the respondents failed to follow the sealed cover procedure since the applicant was due for promotion in 1986.

5. The respondents have filed additional written statement in reply to the rejoinder reply. The respondents while reiterating their stand in the written statement have stated that

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the applicant was due for promotion in 1986 and his name was considered by the DPC but was not placed on the panel because of lower merit rating. Similarly, in the subsequent DPCs held till 1988, he was not found fit. He was cleared for promotion by the DPC held on 15.3.1989, but by the time the punishment of with-holding promotion for 5 years imposed and therefore his case was not kept in sealed cover.

6. We have heard Shri S.P.Saxena and Shri R.K.Shetty, learned counsel for the applicant and respondents respectively.

7. The applicant has raised two issues in the OA. one being the challenge of the punishment order and other being of reversion from the post of Senior Scientific Assistant. Taking the first issue, the applicant has assailed the punishment order dated 4.10.1994 mainly on two grounds. The first ground is that the chargesheet dated 18.9.1986 was issued without cancelling of the earlier disciplinary proceedings which had been concluded with the punishment order dated 23.4.1985. The cancellation of the earlier proceedings by subsequent order dated 24.3.1987 makes the chargesheet dated 18.9.1986 as illegal. From the facts, we note that the President had reviewed the punishment order dated 19.3.1985 on his own motion exercising powers under Rule 29 of CCS (CCA) Rules,1965 and formed the opinion that major penalty was warrant considering the gravity of the misconduct. Accordingly, chargesheet for major penalty dated 18.9.1986 was

issued to the applicant. On going through the Rule 29~~4~~, we note that the President on his own motion or otherwise can review the punishment order at any time. If he is satisfied that punishment needs enhancement, then show cause notice is to be given for the same. If the inquiry is required to be conducted for imposing the proposed penalty, then under Rule 14, action has to be taken. Therefore, the issue of the chargesheet dated 18.9.1986 is legally valid. The only infirmity pointed out by the applicant in this exercise of power is that the earlier chargesheet has been cancelled subsequently. It is admitted fact that President's order dated 24.3.1987 for cancelling of the earlier proceedings finalised with order dated 23.4.1985 and initiation of fresh chargesheet was issued on 24.3.1987 after the issue of the chargesheet dated 18.9.1986. With this fact situation, we find merit in the contention of the applicant. Now the issue which needs to be deliberated whether this infirmity vitiates the punishment order dated 4.10.1994. On consideration of the facts and circumstances of the case, our answer is 'no'. It is because of the fact that the applicant had after the issue of the letter dated 24.3.1987 participated in the inquiry and based on the inquiry report, he was also imposed the punishment. The punishment order was challenged in OA.NO.410/1989. The main ground of the challenge was that the reasons leading to differing of the disciplinary authority with the findings of the inquiry officer were not conveyed to the applicant before imposing punishment. The infirmity now brought out stating that the same

makes the very issue of the chargesheet dated 18.9.1986 as illegal was not taken as a ground. If the applicant challenges the impugned chargesheet itself as being illegal, then any infirmity in the process of the inquiry proceedings based on the said chargesheet will be of secondary importance. In the judicial review, it was to be first seen whether the chargesheet dated 18.9.1986 could be issued for the same charges for which the disciplinary action had been already concluded with the penalty order dated 23.4.1985. Obviously, the applicant did not raise this ground for assailing the disciplinary proceedings in the OA.NO.410/89. The applicant cannot come around now to take this ground in the present OA. With this background, we are not persuaded to see any merit in this ground.

8. The second ground is that the order of the disciplinary authority is not speaking order as it lacks application of the mind. We have carefully gone through the order dated 4.10.1994 and unable to support the contention of the applicant. The order dated 4.10.1994 is speaking order which has been passed after due application of mind.

9. Now we come to the alternative prayer of the applicant. The applicant has contended that even if the Tribunal upholds the impugned punishment order, the penalty as per order dated 4.10.1994 should relate back to date of punishment order in the first chargesheet, i.e. 23.4.1985. The penalty of stoppage of



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promotion for one year will be thus over on 23.4.1985 and the applicant is entitled for due promotion thereafter. The applicant has relied upon the following orders of the Tribunal during the hearing :-

- (a) I.C.Sharma vs. Union of India Ors.
1992 (21) ATC 63.
- (b) Shiv Shanker Saxena vs. Union of India
1989 (1) SLJ 247.
- (c) S.K.Malik vs. Union of India
(1992) 19 ATC 592.
- (d) K.P.Dohare vs. Union of India
1990 (3) SLJ 215.

10. For going into the merits of the above ground, we will refer to Rule 29 of CCS (CCA) Rules. From the order dated 24.3.1987 (A-8), it is noted that the President exercising power under Rule 29 (I) reviewed the punishment imposed on his own motion and formed the opinion that a major penalty was called keeping in view the gravity of the charges and passed order dated 24.3.1987. Though the respondents in the written statement have used the word 'review' but Rule 29 (I) under which the power is exercised by the President refers to revision power. Relevant portions of Rule 29 (I) are extracted for ready reference :-

- (1) Notwithstanding anything contained in these rules -
 - (i) the President ; or
 - (ii), (iii), (iv), (v), (vi) - omitted

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 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 or 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;

[Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary].

11. From above extracted provisions in Rule 29, it is clear that in case of Revision, if the competent authority, (President in this case) comes to the conclusion on review either on his own motion or otherwise that the order imposing penalty needs to be modified by way of enhancement, then he is required to issue a show cause notice to the delinquent employee to give him opportunity to represent against the proposed enhancement of

punishment before the order for punishment is passed. If the proposed enhanced penalty is a major penalty covered by clause (v) to (ix) of Rule 11 and the inquiry under Rule 14 had not been already conducted, then the inquiry under Rule 14 is required to be conducted. This would mean that the Revision authority will take steps for conducting of inquiry as per the provisions of Rule 14 from the stage of issue of chargesheet. Since the satisfaction of the competent authority for need to enhance the punishment is the result of review on his own motion (as in the present case) or otherwise, this would imply that the earlier punishment stands till the same is revised by the revision authority after following the due process as laid down in Rule 29 and deliberated earlier. Thus, any order passed by the Revision authority enhancing the punishment following the procedure laid down in Rule 29 will substitute the original punishment order which was proposed to ^{be modified} ~~raise~~ ^{revised} through show cause notice. The logical inference which will flow from the provision of Rule 29 is that the revised order of punishment will relate back to date of the original punishment order. In view of this analysis of the provisions of Rule 29, we are unable to accept the contention of the respondents that the order of the Revision authority enhancing the punishment will be effective from the date of issue of the order. The respondents have perhaps taken this stand on the misplaced understanding of Rule 29 that with the issue of chargesheet dated 18.9.1986, the earlier disciplinary proceedings and the punishment order dated 23.4.1985 stand cancelled and

fresh proceedings would start with issue of chargesheet dated 18.9.1986. In fact, the action of the Revision authority to cancell the earlier punishment order dated 23.4.1985 as per his order dated 24.3.1987 was not called for as per the provisions of Rule 29. The earlier punishment order would stand till the same is substituted by modified order of Revision authority after following the due process for enhancing the punishment. There was no need to cancel the earlier punishment order. What was required to be done was to issue a show cause notice for enhancing punishment and then take steps for holding inquiry if the inquiry was not already held and the proposed enhanced penalty is major penalty as per Rule 14. In this connection, we refer to the decision 5 of Government of India below Rule 29 dated 14.5.1968 at pages 110-111 of Swamy's Compilation of CCS (CCA) Rules (2000 Edition) ^{wherein the} ~~which~~ action to be taken under Rule 29 with regard to the earlier punishment order which is sought to be revised. ^{has been detailed} ~~has been detailed~~

12. In the cited order of Principal Bench in the case of I.C.Sharma (Supra), similar issue has been gone into. In this case, the chargesheet was issued on 15.10.1962. After holding inquiry the applicant was exonerated as per order dated 1.3.1969. While he was waiting for promotion, the President on his own motion reviewed the penalty under Rule 29 (1) (i) and issued show cause on 31.7.1990 proposing enhancement of the punishment and differing with disciplinary authority. After considering reply to the show cause notice, the President imposed punishment as per



order dated 18.2.1974. The issue under challenge was that President's order will be effective from 1.3.1969 being in substitution and the applicant deserved the due promotions. The Bench while interpreting the legal meaning of word 'substitute' came to the conclusion that President's order dated 18.2.1974 will be effective from 1.3.1969 as the same was passed to modify the original punishment order. We have earlier looked at the matter in terms of provisions of Rule 29 itself and concluded that the Rule 29 itself amply makes it clear that order passed on revision of the order by following the due process as laid down modifies the original punishment order and therefore relates back to that date. We are therefore in respectful agreement with what is held in I.C.Sharma's case and ratio of the same applies to the present case on all fours. We have therefore no hesitation to accept the contention of the applicant that penalty imposed by the Revision authority as per order dated 4.10.1994 will relate back to the impugne punishment order dated 23.4.1985.

The other three cited orders of the tribunal at (b), (c), (d) in para 9 are not relevant to the issue of relating back of the punishment order and no review of these orders is therefore called for. In view of our findings above that the punishment order dated 4.10.1994 will relate back to the order dated 23.4.1985, the penalty of stoppage of the promotion for one year will be over on 22.4.1986. Therefore, the reversion of the applicant from the adhoc promotion to the post of Senior Scientific Assistant as per the order dated 8.11.1994 in

consequence to the imposition of the penalty as per order dated 8.11.1994 cannot be held to be sustainable. The reversion order deserves to be quashed. The applicant in the result of the same is entitled for pay and allowances as if he had not been reverted.

13. As regards the claim of the applicant for promotion as Senior Scientific Assistant from the date his junior has been promoted, the case of the applicant is required to be considered by the review DPC after the penalty is over on 22.4.1986. The respondents have brought out in the written statement that the applicant was considered for promotion but not found fit for promotion by some of the DPCs. Without going into these submissions, the respondents are required to be directed to hold review DPC for consideration of the promotion of the applicant and promote the applicant regularly from the date the applicant is found fit by the DPC. The applicant will be entitled for the payment of pay and allowances from the date he is promoted and all other consequential benefits of seniority and subsequent promotions as per the law.

14. As a consequence of the above deliberations, we allow the OA. partly with the following directions :-

- 1. (a) Impugned punishment order does not call for any interference.



(b) The punishment order dated 4.10.1994 will relate back to the original punishment order dated 23.4.1985.

(c) The order dated 8.11.1994 reverting the applicant from the post of Senior Scientific Assistant is set aside. The applicant will be entitled to the payment of pay and allowances of the promoted post as if he was not reverted.

(d) The case of applicant will be considered for promotion by the review DPC after the penalty of stoppage of promotion is over on 22.4.1986. The applicant will be regularly promoted from the date DPC declares him fit for promotion. The applicant will be entitled for the payment of pay and allowances and increments from the date of promotion. The applicant will also be entitled for other consequential benefits of seniority and further promotions as become due as per the extant rules.

(e) Compliance of the order to be done within four months from the date of receipt of the order.

(f) No order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

mrj.

D.S.Baweja
(D.S.BAWEJA)

MEMBER (A)