32

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 329/92 DATE OF JUDGMENT: 23-3-95

BETWEEN:

J. Obulesu : Applicant

and

1. Union of India, rep. by
   The Secretary to Govt.
   Deptt. of Posts
   New Delhi

2. The Post Master General
   Kurnool

3. The Director of Postal Services
   Office of the Post Master General
   Kurnool

4. The Supdt. of Post Offices
   Kurnool Division
   Kurnool : Respondents

COUNSEL FOR THE APPLICANT: SHRI K.S.R. ANJANEYULU, Advocate

COUNSEL FOR THE RESPONDENTS: SHRI N.V. Raghava Reddy
Sr./Addl.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI A.B. GORTHI, MEMBER (ADMN.)

CONTD....

OA.329/92

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri K.S.R. Anjaneyulu, learned counsel for the applicant and Sri N.V. Raghava Reddy, learned counsel for the respondents.

2. Charge memo dated 27-2-1991/4-3-1991 was issued by alleging that the applicant while working as Office Assistant Regional Office, Kurnool, assaulted and scolded Sri MP Yellana, then Group-D official, of office of the Superintendent of Post Offices, Kurnool, without any provocation in the public office during working hours at about 1240 on 18-8-1989. After considering the representation dated 14-3-1991 of the applicant, R-4 i.e. the Superintendent of Post Office issued memo No.B-3/160-A, dated 30th April, 91 withholding one increment by way of punishment. Thereupon the applicant preferred appeal dated 21-6-1991 to R-3, the Director of Postal services. R-3 issued memo No.STI/13-7/91 dated 4-10-91 under Rule 29(1)(v) CCS(CCA) Rules proposing to enhance the punishment by way of withholding three increments instead of one as ordered by R-4. Thereupon the applicant submitted representation dated 12-10-1991. After consideration of the same, R-3 dismissed the appeal and enhanced the punishment by way of withholding three increments as per memo No.STI/13-7/1991 dated 29-11-1991. It is assailed in this OA.

3. The contentions for the applicant are as under :

a) R-3 being the appellate authority has no power to issue memo proposing to enhance punishment, while the appeal was pending.

..3.

b) There is violation of Principles of natural justice as copy of the preliminary inquiry report was not furnished to the applicant, and

c) Having observed that the Group-D official referred to in the notice issued under Rule 16 was guilty of gross misconduct, the punishment of withholding one increment should not have been enhanced.

4. Respondent No.3, the appellate authority issued memo.No.ST.I/13-7/91 dated 4-10-91 (Annexure-6 to the OA) whereby the applicant was called upon to explain against the proposal to enhance the punishment of withholding one increment for a period of one year to withholding of one increment for three years without cumulative effect. The provision under which the enhancement of punishment was proposed was not indicated in the said memo. Rule 27(2)(i) of the CCS(CCA) Rules lays down that the appellate authority after considering the aspects referred to in Rule 27(2) has to pass the orders confirming, enhancing (emphasis is supplied) reducing or setting aside the penalty. Thus the appellate authority, during the consideration of the appeal, has power to enhance the penalty.

Rule 29(1)(b) of the CCA Rules empowers the appellate authority to exercise the power of revision; of course within the period stipulated. Rule 29(1)(b) states that the revisional authority may confirm, reduce, enhance (emphasis is supplied) or set aside the penalty ~~again~~ imposed by the order or impose penalty where no penalty has been emposed. Thus the appellate authority, even in exercise of power of revision, has the authority to enhance the penalty.

contd...4.

A question naturally arises as to whether the issual of notice proposing to enhance the punishment by the appellate authority in a case where appeal is preferred, is in exercise of the power under Rule 27(2) (i) or Rule 29(1) (b).

Para 124 of the Postal Manual, Volume-III is to the effect that the appellate authority under its review powers is competent to review a disciplinary case only after the period prescribed for preferring an appeal is over but within the time limit stipulated. Para 125 of the said Manual states that the appellate authority either on review or in consideration of appeal can enhance the penalty imposed on an officer but a fresh show-cause should be served on the accused officer before passing such an order. In the counter affidavit of the Respondents, the above para 125 is referred to. But para 125 refers to power of appellate authority to enhance the penalty either on review or in consideration of appeal. Thus it is not a case where ~~appea~~ para 125 refers to only consideration of appeal.

While Rule 29 specifically says that a show-cause notice has to be issued in case the revisional authority proposes to enhance the penalty, Rule 27(2), proviso (iv) also lays down that show-cause notice has to be given for imposing an enhanced penalty other than the penalties prescribed in Rule 11 (v) to (ix).

contd....5.

(43)

5. The appellate authority has the power to enhance the penalty on consideration of appeal and also as a revisional authority. In either case show cause notice has to be given about the proposal for enhancement before the penalty is enhanced. The appellate authority cannot exercise the revisional power before the expiry of the period prescribed for preferring the appeal or later to the six months time stipulated under Rule 29(1)(v). Rule 29(2)(ii) further states that no proceedings for revision shall commence until and after the disposal of the appeal where appeal has been preferred.

6. When the power to enhance the penalty both under Rule 27 and Rule 29 is same in regard to the appellate authority except the limitations under Rule 29 and as it is necessary to consider the various provisions in an Act or Rules harmoniously it is just and proper to hold as under:

In a case where an appeal is not preferred and if the appellate authority on perusal of the records feels that the circumstances warrant enhancement of the penalty, then the appellate authority can exercise the revisional power under Rule 29 after the expiry of the period of limitation preferring for appeal and before the expiry of six months from the date of the order proposed to be revised as envisaged under Rule 29(1)(v). But when the appeal is preferred, the appellate authority can exercise the power under Rule 27(2)(i) for enhancement of the penalty in case enhancement

contd...6.

is warranted. If such a power is exercised under Rule 27, Rule 29(2)(ii) does not come into play for it is not a case of the appellate authority exercising the power as a revisional authority. The issual of show cause notice for enhancing the penalty arises during the pendency of the appeal only in case the appeal is preferred and if the appellate authority feels that it is a case of enhance - ment of penalty. When such a power can be exercised under Rule 27, the question of exercising the revisional power under Rule 29 does not arise in regard to the appellate authority. As such the question as to whether the appellate authority in exercise of revisional power can issue a show cause notice for proposing to enhance the penalty before the disposal of the appeal, when Rule 29(2)(ii) prohibits the exercise of revisional power during the pendency of the appeal, is academic.

7. The object and purpose in incorporating Rule 29 (2)(ii) can be looked into. If the authority above the appellate authority is going to exercise the power of revision, during the pendency of the appeal, in case the appeal is preferred, it is one of giving indication to the appellate authority as to how it has to consider the appeal. The appellate authority discharges the duties as a quasi judicial authority in disposing the appeal. No authority however high it may be can give a direction to the appellate authority in regard to the ultimate order that has to be passed in the appeal. Thus both the appeal and

contd...7.

revisional proceedings cannot be considered simultaneously. We feel that for that reason, it is stated that as per Rule 29(2)(ii) no proceedings for revision shall commence until the disposal of the appeal where an appeal has been preferred. But if it is a case where the appellate authority himself proposes to revise, during the pendency of the appeal, it is not a case where any authority higher to appellate authority gives an indication in regard to the ultimate order that has to be passed in the appeal. Further it may be noted that period of limitation is prescribed for exercising revisional power by the appellate authority. If it is going to be held that the appellate authority cannot exercise the power of revision till the disposal of the appeal, the period of limitation might expire even during the pendency of the appeal, and we feel that the legislature might not have intended to have such a result. So it is just and proper to hold that even in a case where the appellate authority exercises the revisional power for enhancing the penalty, during the pendency of the appeal, it cannot be held that it is barred under Rule 29(2)(ii) for such a bar is applicable only in regard to an authority above the appellate authority but not to the appellate authority itself. Anyhow we do not feel it necessary to further advert to it as it is mere academic for such a power can be exercised by the appellate authority under Rule 27 in a case where appeal is preferred.

contd...8.

8. Hence it can be stated that the appellate authority issued the memo. dated 4-10-91 proposing to enhance the penalty under Rule 27, and in fact the impugned order enhancing the penalty was also passed under Rule 27 of the CCA Rules.

9. As such the contention for the applicant that the appellate authority has no power to issue memo. proposing to enhance the punishment while the appeal is pending, has to be negatived.

10. Rule 16(1)(b) postulates inquiry in accordance with sub-rules 3 to 23 of Rule 14 even in case of minor penalties, if the disciplinary authority is of the opinion that such inquiry is necessary. The applicant after receiving notice under Rule 16has not submitted that an inquiry as contemplated under Rule 16(1)(b) has to be ordered. When the applicant has not made such a request it cannot be held that he is prejudiced when the copy of the preliminary inquiry report was not furnished to him. It may be noted that the

contd...9.

To

1. The Secretary to Govt. Dept.of Posts,
   Union of India, New Delhi.
2. The Postmaster General, Kurnool.
3. The Director of Postal Services,
   O/o the Postmaster General, Kurnool.
4. The Superintendent of Post Offices,
   Kurnool Division, Kurnool.
5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
6. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

pvm

incident alleged is not on the basis of material which was not within the knowledge of the applicant. So, the contention that the proceeding is vitiated when copy of the preliminary Inquiry Report was not served on the applicant, cannot be countenanced.

11. The scope of review by the Court/Tribunal in regard to the punishment is very limited. Unless the punishment is found to be highly excessive or unconscionable, the Court/Tribunal cannot interdict. We cannot accede to the contention for the applicant that the enhanced punishment by R-3 is such a case.

12. It is stated that by December, 1989, the case of the applicant for allowing him to cross EB has to be considered and it is not yet considered. When once the applicant is not allowed to cross EB, he will not be entitled to any increment and hence the question of operating punishment of withholding increments is not possible. But it does not mean that in order to implement the order of punishment the applicant should be automatically allowed to cross the EB. The same has to be considered in accordance with law. It is not stated as to why steps were not initiated for considering the case of the applicant for crossing EB. Hence R-4 has to take steps expeditiously and preferably by 30-6-1995 for consideration of the case of the applicant in regard to crossing of EB, in accordance with law.

13. Subject to above, the OA is dismissed. No costs.

(A.B. Gorthi)
Member(Admn)

(V. Neeladri Rao)
Vice Chairman

Dated : 23 March, 95
Dictated in Open Court

sk /mhb

Deputy Registrar (J) cc

TYPED BY

COMPARED BY

CHECKED [redacted]

APPROVED [redacted]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE- CHAIRMAN

AND

THE HON'BLE MR.R. ~~RANGARAJAN~~ A.B.GORTHI M(ADMN)

DATED - 23 - 3 1995.

~~ORDER~~/JUDGMENT:

M.A./R.A./C.A.No.

O.A.No. 329/92 in

T.A.No. (W.P.)

[redacted] and Interim directions