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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.784 of 1999

DATE OF JUDGMENT: 22 DECEMBER, 1999

BETWEEN:

Smt. R. PRASANTHI .. APPLICANT

AND

The Deputy Director,
National Sample Survey Organisation,
(Field Operation Division),
Andhra Pradesh (North) Region,
8th Floor, West wing, Gaganvihar,
Hyderabad 500 001.

.. RESPONDENT

COUNSEL FOR THE APPLICANT: Mr. GVRS VARA PRASAD

COUNSEL FOR THE RESPONDENT: Mr. V. VINOD KUMAR, Adl. CGSC

CORAM:

HON'BLE SRI JUSTICE D.H. NASIR, VICE CHAIRMAN

HON'BLE SRI R. RANGARAJAN, MEMBER (ADMN.)



JUDGMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.V.Vinod Kumar, learned standing counsel for the sole respondent. The learned counsel for the applicant has submitted written arguments for perusal.

2. The applicant in this OA is working as UDC in the office of the sole Respondent. While the applicant was working as UDC/Cashier getting a special pay of Rs.200/- per month, was issued with a memorandum calling for explanation in regard to lot of corrections in the acquittance rolls and mismatching with the authorisation forms presumably suspecting some falsification of records, by the Memorandum No.A-24013/1/PA/AP(N)/98-99, dated 4.3.99 (Annexure 'F' at page 16 to the OA) and Memorandum No.A-20013/1/PA/AP(N)/98-99, dated 15.3.99 (Annexure 'E' at page 15 to the OA). The applicant submitted her reply by her letter dated 20.3.99 (Annexure 'D' at page 13 to the OA). The sole respondent awarded her a minor penalty under Rule 16 of the CCS (CCA) Rules by withholding of her next two increments for a period of three years without cumulative effect by the Office Order No.C-14013/2/PA/RP/AP(N)/98-99, dated 10.5.99 (Annexure 'C' at page 11 to the OA). By the impugned order No.C-14013/2/PA//RP/AP(N)/98-99, dated 14.5.99 (Annexure 'B' at page 10 to the OA), the said punishment order issued by the Office Order dated 10.5.99 was cancelled. Another Memo was also issued on the basis of the instructions from the Headquarters to the same effect cancelling the earlier memos dated 4.3.99 and 15.3.99 by the impugned Memorandum No.A-20013/1/PA/AP(N)/99-2000, dated 20.5.99 (Annexure 'A' at page 9 to the OA).



3. This OA is filed praying for declaration that the order dated 14.5.99 of the sole respondent in No.G-14013/2/PA/RP/AP(N)/98-99, cancelling the penalty order is illegal, arbitrary and violative of the instructions of the Government and without jurisdiction and for consequential direction to set-aside the same. It is also prayed to set-aside the Memorandum No.A/20013/1/PA/AP(N)/99-2000, dated 20.5.99 cancelling the Office Memos dated 4.3.99 and 15.3.99 calling for explanation from the applicant.

4. A reply has been filed in this OA. The main contention of the respondent in the reply is that the applicant was issued with the punishment order by Office Order dated 10.5.99. In view of the powers vested with the Deputy Director General as Head of the Department under Rule 29 of the CCS (CCA) Rules as also keeping in view the instructions contained in the Govt. of India decision No.3 below Rule 14 of the CCS (CCA) Rules (D.G. P&T Letter No.6/19/72-Disc.I, dated 29.11.72), the Deputy Director General approved cancellation of memos dated 4.3.99 and 15.3.99 and issue of the Order dated 14.5.99 and that was conveyed to the respondent by the Head of the Department by Order NO.C-14013/4/99-Vig, dated 2.6.99 (Annexure 'R-1' to the reply). Thereafter the applicant has also been issued with the major penalty charge sheet under Rule 14 of the CCS (CCA) Rules by Memo No.A-20013/1/PA/RP/AP(N)/99-2000, dated 26.5.99 (Annexure R-2 to the reply). The applicant having committed serious mistake has to reap the consequences of it by the major penalty. In order to avoid



the major penalty, she wants the minor penalty awarded to be retained which penalty was issued without following proper rules. Hence, the respondent states that the application is liable to be dismissed.

5. A rejoinder and a written statement has been filed by the applicant. The main contention that emerges from these two documents are,

(i) that the applicant having been awarded with the minor penalty, that penalty can be revised by the proceedings only after the expiry of the period of limitation for appeal or disposal of the appeal where any such appeal has been preferred, as contained in sub-rule 2 of Rule 29 of the CCS (CCA) Rules. Cancellation of the impugned minor penalty by the memo dated 14.5.99 and cancellation of the memo dated 4.3.99 and 15.3.99 had been done even before she could appeal and even before the period of appeal is over. Hence these two memos are issued without following the rules.

(ii) No major penalty charge sheet can be issued by reviewing the earlier orders without the period as mentioned in Rule 29 (2) of the CCS (CCA) Rules, is over. The order issued on 14.5.99 is arbitrary and the Appellate Authority cannot delegate his powers to his subordinates. Cancellation of the minor penalty was issued by the Deputy Director who cannot do it on telephonic instructions from the Head of the Department. Hence the letters dated 14.5.99 and 20.5.99 are against the rules as can be seen from the DP&AR OM No.134/1/81-AVDI, dated 13.7.81.

6. From the above contentions and the counter contentions, the first point to be examined is whether the



applicant was awarded with the minor penalty in accordance with the rules as contained in CCS (CCA) Rules. Rule 11 of CCS (CCA) Rules indicates the major and minor penalties. The applicant was punished under the said rule by withholding of her next two increments for a period of three years without cumulative effect. This is embodied in Rule 11(iv) of the Penalties mentioned under Rule 11. The method of imposing minor penalties has been indicated in Rule 16. This rule reads as follows:-

"16. Procedure for imposing minor penalties:

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to

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(23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of

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pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such case shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

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(vii) the orders on the case together with the reasons therefor."

7. It is to be seen whether the extant procedure under the rule for imposing minor penalty has been followed or not. It has been stated under rule 16 of the CCS (CCA) Rules that the record of proceedings for imposing minor penalties shall include a copy of the intimation to the Government servant of the proposal to take action against him, a copy of the statement of the imputations of misconduct or misbehaviour delivered to him and other details. A standard form for issue of the memo of charges for minor penalties without holding an inquiry is under Form 11 of the standard forms which can be seen at page 163 of the CCS (CCA) Rules, 1965 (1999 Edition). The said standard form is reproduced below:-

"Standard form of memorandum of charge for minor penalties
(Rule 16 of CCS (CCA) Rules, 1965)

No.

Government of India

Ministry/Office of

Dated.....

MEMORANDUM

Shri.....(Designation).....
(Office in which working).....is



hereby informed that it is proposed to take action against him under rule 16 of CCS (CCA) Rules, 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed.

2. Shri..... is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri..... fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri..... ex parte.

4. The receipt of this Memorandum should be acknowledged by Shri.....

(By order and in the name of the

President

Signature

Name and designation of

Competent authority

To

Shri.....

....."



8. From the above, it is evident that before issuing the minor penalty, a standard form as extracted above has to be issued to which statement of articles of to be charges is /enclosed. A perusal of the documents dated 4.3.99 and 15.3.99 does not adhere to the above instructions. It was mechanically issued asking the applicant herein to explain her stand in regard to certain charges indicated in that memo. Such a memo cannot be treated as a standard form as mentioned in CCS (CCA) Rules which has been extracted above. The applicant had given her reply and on that basis Office Order NO.C-14013/2/PA/RP/AP(N)/98-99, dated 10.5.99 awarding her the minor penalty was issued. The minor penalty, in our opinion, was issued without adhering to the instructions given in the CCS (CCA) Rules and without issuing the charge memo in accordance with the standard form. Hence when the respondent submits that the penalty order issued to the applicant is in contravention of the rules, his statement cannot be said to be incorrect. The sole respondent viz, the Deputy Director had issued the minor penalty charge sheet without following any rules. Hence the said penalty cannot be upheld and it has to be held that the applicant was not punished with minor penalty. The view taken by the Head of the Department that the applicant was not awarded with minor penalty, has to be upheld.

9. The Deputy Director who had issued the minor penalty charge sheet cannot escape from his responsibility for not following the rules in this connection. Hence the Head of the Department should look into the arbitrary issue



of the minor penalty charge sheet by the Deputy Director without adhering to the rule and initiate such action as he deems fit to avoid such arbitrary action in future.

10. Having come to the conclusion that award of minor penalty is non-existent, it is to be seen whether issue of the letters dated 14.5.99 and 20.5.99 is in order or not. As we have already come to the conclusion that the order of minor penalty is non-existent, ~~now~~ the impugned cancellation of memorandum dated 14.5.99 is of no consequence. The earlier memo asking for explanation from the applicant herein dated 4.3.99 and 15.3.99 by the impugned memo dated 20.5.99 though issued by the Deputy Director, the same has been confirmed by the Head of the Department by his order dated 2.6.99 (Annexure R-1 to the reply). Hence the impugned memo dated 20.5.99 is supported by the proper order of the competent authority. In that view, setting aside of the impugned memo dated 20.5.99 does not rise.

11. Having come to the conclusion that the minor penalty order is not in order, ~~now~~ the Head of the Department is at liberty to initiate such proceedings as he deems fit for the omissions of the applicant in accordance with the rules. The Head of the Department has issued the major penalty charge sheet to the applicant by the memo dated 20.5.99. Hence that memo should be proceeded with in accordance with the rules.

12. The applicant contends that issue of the memo dated 14.5.99 is invalid in view of the DP&AR O.M.No.134/1/81-AVDI, dated 13.7.81. No doubt, the disciplinary/appellate/reviewing authorities exercise the

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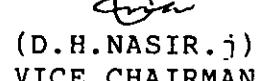
quasi-judicial powers and as such they cannot delegate their powers to their subordinates and hence it is essential that the decision taken by such authorities are communicated under their own signature to comply with the legal requirement. In the present case, as issue of the minor penalty charge sheet is illegal, the same was asked to be cancelled by the Head of the Department which was done by the Deputy Director by his orders dated 14.5.99 and 20.5.99. If it stops there, then it can be said that the DOP&T letter dated 13.7.81 is not complied with. But it did not stop there. The Head of the Department by his order dated 2.6.99 had confirmed his telephonic direction in writing. Hence it cannot be said that there is violation of DP&AR OM dated 13.7.81. Hence the contention of the applicant that the DP&AR OM dated 13.7.81 is violative cannot be upheld.

13. The applicant submits that sub-rule (2) of Rule 29 of CCS (CCA) Rules is violated. ^{the same cannot be accepted as we have already come to the conclusion that issue of the minor penalty charge sheet itself is against the rules and hence it is to be treated as a non-existent/} In that view, it cannot be said that there is violation of sub-rule (2) of Rule 29 of CCS (CCA) Rules.

14. In view of what is stated above, we find that the applicant has not made out a case for the relief prayed for in this OA. Hence this OA is liable only to be dismissed. Accordingly it is dismissed. No order as to costs.



(R. RANGARAJAN)
MEMBER (ADMN.)



(D.H. NASIR.j)
VICE CHAIRMAN

DATED: 21 DECEMBER, 1999

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH.
HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HDHNJ

TYPED BY
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2. HRRN M (ADMIN)

THE HON'BLE MR. JUSTICE DH. NASIR
VICE-CH. CHIEF

3. HOSCR.M. (JUDL)

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMIN)

4. D.R. (ADMIN)

THE HON'BLE MR. B. S. JAI PARMESHWAR
MEMBER (JUDL)

5. SPARE

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER 22/12/99

MA/RM/SP.NO.

IN
CA.NO. 784/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

