

FORM NO. 4
 (See Rule 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH:
ORDERSHEET

1. ORIGINAL APPLICATION No : ----- / 2009

2. Transfer Application No : ----- / 2009 in O.A. No. -----

3. Misc. Petition No : ----- / 2009 in O.A. No. -----

4. Contempt Petition No : ----- / 2009 in O.A. No. -----

5. Review Application No : 8/2010 / 2009 in O.A. No. 46/2010

6. Execution Petition No : ----- / 2009 in O.A. No. -----

Applicant (S) : Union of India & Ors

Respondent (S) : Sri Motinal Kanti Das = II

Advocate for the
 Applicant (S) : Dr. J.L. Sarkar, Rly. S.C.

Advocate for the
 Respondent (S) : Mr. J.P. Das

Date of the Registry Date Order of the Tribunal

This Review application
 filed by Dr. J.L. Sarkar,
 Rly. S.C. praying for
 review of the order
 dated - 9.6.2010 passed
 in M.P. 44/2010 (O.A. 46/09). /bb/
 Under Section 22(F) of
 The A.T. Act, 1985 read
 with Section 24 of
 the said Act.

13.09.2010 Heard Dr. J.L. Sarkar, learned counsel
 for the review applicants and Mr. J.P. Das,
 learned counsel for opposite party.
 Reserved for orders.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
 Member (A) Member (J)

13.09.2010 Judgment pronounced in open court,
 kept in separate sheets. RA is dismissed in terms
 of aforesaid order.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
 Member (A) Member (J)

Laid before The
 Hon'ble court for favours
 of order.

11/09/2010
22/11/2010
 Section Officer (S)

21.7.2010

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No. 08 of 2010
In
Misc. Application No.44 of 2009 (OA 46/2009)

Date of Order: This, 13th day of September, 2010

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

1. The Union of India represented by
The General Manager
N.F. Railway
Guwahati-781 011.
2. The Commercial Manager
N.F. Railway
Guwahati-781 011.
3. The Addl. Divisional Railway Manager
N.F. Railway, Lumding-47
District: Nagaon.
4. The Senior Divisional Commercial Manager
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
District: Nagaon (Assam).
5. The Divisional Commercial Manager (Ticket Checking)
N.F. Railway, Lumding-47
District: Nagaon.
6. The Divisional Commercial Manager
N.F. Railway, Station Road
Guwahati-781 001.
7. The Asstt. Commercial Manager
Lumding, Nagaon.

...Review applicants

By Advocate: Dr.J.L.Sarkar

-Versus-

Sri Mrinal Kanti Das-II
S/o Late Nakul Chandra Das
R/o 146/A, Adarsha Colony
Maligaon, Guwahati-781 011.
Dist: Kamrup (Assam).

...Opposite Party

By Advocate: Mr.J.P.Das

ORDER

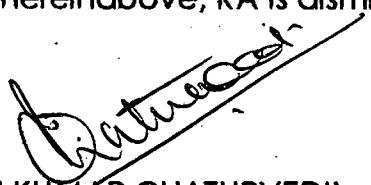
MUKESH KUMAR GUPTA, MEMBER (J):

Present review application has been filed by Union of India and others seeking review and recall of an order dated 09.06.2010, whereby respondents' MA No.44/2010 seeking permission of this Tribunal to General Manager to exercise the suo motu power of revisional authority had been rejected.

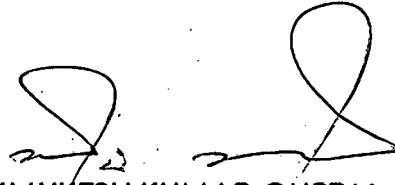
2. Basic ground urged, in support of aforesaid prayer, is that as per clarification issued under Rule 29 of CCS (CCA) Rules, 1965, which is paramataria to corresponding provisions of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968, superior reviewing authority can review the orders of inferior reviewing authority under aforesaid rules. Language employed under said rules place no limitation of time in case such an exercise has to be undertaken by a superior reviewing authority or by the President. In other words, there is no restriction of time limit.
3. Dr.J.L.Sarkar, learned counsel for review applicants placing strong reliance on AIR 1976 SC 1115 M/s. S.B.Gurbaksh Singh v. Union of India & Others, vide para 11 and AIR 1969 SC 1297, State of Gujarat v. Patel Raghav Natha & Others, contended that this being an error of law, exercise of power of review can be resorted to. Further contention raised is that Rule 25 does not preclude the General Manager the power of exercise of review, when it is not appellate authority without restriction of any time limit.
4. We have heard Dr.J.L.Sarkar, learned counsel for review applicants, Mr.J.P.Das, learned counsel for opposite party/original applicant and perused the pleadings in detail. Before pronouncing the

judgment on review application, we may note that OA No.46 of 2009 filed by the applicant has been allowed vide order dated 1.09.2010, whereby orders passed by the disciplinary, appellate and revisional authorities have been quashed and set aside. The basic prayer sought vide MA No.44 of 2010 had been to authorize or enable the General Manager to exercise suo motu power of revisional authority. In our considered view, when the orders of the authorities below, namely, disciplinary, appellate as well as of revisional have been quashed and set aside, question of exercising suo motu power of revision does not arise. Apart from this, we may note that the penalty was imposed upon the applicant vide order dated 16.11.2005. Appeal was rejected on 15.05.2006 and revision was also rejected on 20.09.2007. Almost close to 3 years period, MA No.44 of 2010 was preferred by the respondents (Railways) to seek permission to exercise suo motu power of review. Law is well settled that in absence of any time limit prescribed by the statute, authority is required to initiate the proceedings within a reasonable time. In our considered view, when the applicant had already approached this Tribunal challenging validity of said orders, exercise of revisionary power, that too suo motu, cannot be said to have been, within a reasonable time.

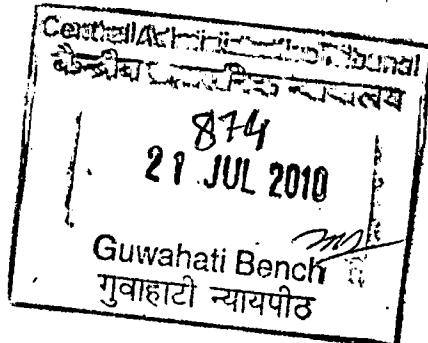
5. In any case, we are of the considered view that there is no error apparent on the face of record and in the given circumstances, noticed hereinabove, RA is dismissed.


(MADAN KUMAR CHATURVEDI)
MEMBER (A)

/BB/


(MUKESH KUMAR GUPTA)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH,
GUWAHATI.



R. A. No. 8/2010

IN

M. A. No. 44/2010

IN

O. A. No. 46/2010

Shri M. K. Das-II

Vs.

Union of India & Ors.

- And -

IN THE MATTER OF :

An application praying for
review of the order dated
9.6.2010 in M.A. No. 44/2010
(in O.A. No. 46/2010) under
Section 22(f) of the A.T. Act,
1985 read with Section 24 of
the said Act.

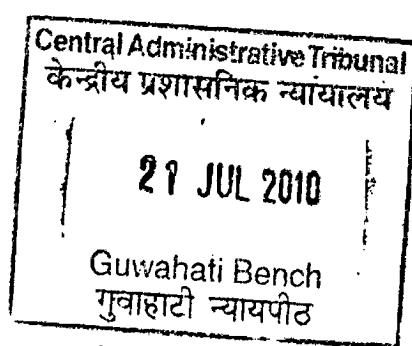
- And -

IN THE MATTER OF :

1. Union of India

Represented by the
General Manager,
N. F. Railway,
Guwahati-II.

Contd..... 2



2. The Commercial Manager

N. F. Railway,
Guwahati-11.

3. Addl. Divisional Railway

Manager,
N. F. Railway,
Lumding-47
Dist. Nowgaon.

4. The Senior Divisional
Commercial Manager

N. F. Railway,
Lumding
Dist. Nowgaon.

5. The Divisional Commercial
Manager (Ticket Checking)

N. F. Railway,
Lumding.

6. The Divisional Commercial
Manager,

N. F. Railway, Station Road,
Guwahati-1

7. The Asstt. Commercial
Manager,

Lumding, Nowgaon.

..... Applicants.

Contd....3

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
21 JUL 2010
Guwahati Bench
गुवाहाटी न्यायपीठ
N. F. Railway, Guwahati-11
Addl. Divisional Railway Manager, N. F. Railway, Lumding-47
Dist. Nowgaon.
Senior Divisional Commercial Manager, N. F. Railway, Lumding
(Ticket Checking)
Divisional Commercial Manager, N. F. Railway, Station Road, Guwahati-1
Asstt. Commercial Manager, Lumding, Nowgaon.
..... Applicants.
Contd....3

- Vs -

Sri Mrinal Kanti Das-II
S/O Late Mukul Ch. Das
147/A, Adarsha Colony
Maligaon, Guwahati-11.

..... Respondent.

The review applicants most respectfully states as under :

1. That the aforesaid order dated 9.6.2010 has been received by the Counsel for the applicants on 18.6.2010 was thereafter received by the office of the applicant No. 1 (Respondent No. 1 in O.A.) on 21.6.2010.
2. That the applicants respectfully states that the M.P. No. 44/2010 was filed during the pendency of the O.A. it has come to the notice of the higher authorities that the copy of the inquiry report was not served on the applicant of the O.A. receiving acknowledgement and calling for his written representation as mandated by Rule 10(2)(a) of the Railway servants (Discipline & Appeal) Rules, 1968, and the General Manager as Head of the Zonal Railway is competent to pass necessary orders for due compliance of the procedural requirements. During the pendency of the O.A. the permission of the Hon'ble Tribunal was prayed for.

Contd.....4

কুমিল প্রকাশ প্রকাশ
১০ টুইন্সে/গুগলিং
Sr. Dptl. Commr. Manager

3. That as per law, laid down by the Hon'ble Apex Court, non-supply of copy of Enquiry report would render the order of penalty bad calling for a remand to the authorities, later on law of prejudice/no prejudice has also been enunciated.

4. That the General Manager, the authority under Clause (iii) of Rule 25(1) of the R.S. (DAR) Rules, 1968 and the President, and Railway Board (Clauses (i) and (ii) under the said Rule 25(I), are, it is respectfully stated competent authorities to pass revisional orders in the present case. The General Manager has not considered or passed any order himself in the present case. The ousting of power under Rule 25(4)(i) is not applicable, which contemplates revision by the same authority which passed the order is not permissible. It is respectfully submitted that the General Manager is competent to exercise revisional power; the Railway Board, and the President are also competent, the prayer was made for exercise of the power by the General Manager. It is humbly submitted that for exercise of the power by the General Manager in the present case, there is no restriction of any time limit under proviso to Rule 25(5) of the Rules, 1968. In view of the said provision of law clause (4)(ii) of Rule 25 is also not applicable in the present case.

5. That the words "in these rules" in Rule 25(1) also include the Rule 25 itself and the contents of the said rule 25 do not preclude the General Manager to exercise the power of revision, when it is not the appellate authority, without restriction of any time limit.

দুরিত নির্দল পারিষদ প্রবণতা
ডু. পুরো রেডিয়ো/টেলিভিশন
Sr. Civl. Commr. Manager
N R. Bhattacharya

Surkot
Date 1st

6. That as mentioned in the order of the Hon'ble Tribunal it is stated that no mention was made about President, because the Rules provided for President's power even when he is the appellate authority, and in the present case the General Manager is higher than the appellate authority and has not passed any order either as appellate or revising authority, and therefore it was considered scope/time for invoking President's power had not occurred.

7. That Rule 29 of the CCS (CCA) Rules, 1965 is the Revisional provision for Central Govt. Civil servants except Railways, for whom Rule 25 of R.S.(D.A) Rules, 1968 is the provision.

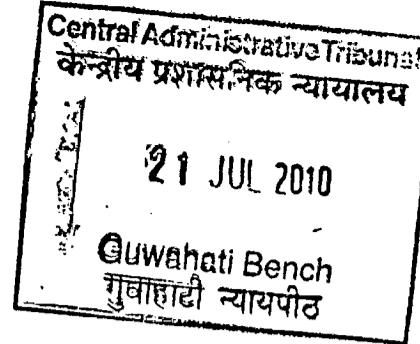
Government of India's Instructions on Rule 29 of CCS(CCA) Rules, 1965 is as under :

Whether an order of revision can be further revised and if so, the authority competent to do so ?

Clarification given on points relating to Rule 29 of CCS(CCA) Rules, 1965 is given below :

Points raised

(a) Rule 29 of C.C.S(C.C.&A.) Rule passes an order of review would authorises exhaust his power under rules and review of "any" would become functus officio. In view order made under of the proviso (2) of sub-Rule(1)



Mr. Subrata Sarker

পরিষদ মণ্ডল গারিজন প্রবেশপথ
পু. সী. রেলবে/প্রাথমিক
Sr. Civl. Comm. Manager

Points raised

"these" Do the words ' of Rule 29, he cannot review his ' 'these rules' inclu ' own order. However, a superior ' -de an order of ' reviewing authority can review the, ' review under Rule 29' orders by an inferior reviewing ' be further reviewed? ' authority under the aforesaid ' rule.

(b) Can the Preside- The language of sub-rule(1) of ' nt review an order Rule 29 would show that the ' passed by him under reviewing authorities including ' a Rule other then the President can "review any ' Rule 29.

words "any order" indicate that any order passed by the President, including an order passed as a result of review under Rule 29 itself, would be an order under these rules. The second proviso to this Rule limits the power of review in the case of certain reviewing authorities like the Auditor General posts and Telegraphs Board, and Head of a Department to the order passed by subordinate authorities only. No such limitation has been made in the case of President. The President can, therefore, review his own orders passed by him including an order passed under Rule 29 itself.

21 JUL 2010

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Guwahati Bench
गুৱাহাটী ন্যায়পীঠ

(Above clarification has been incorporated from the Book
Departmental Enquiries against Government Servant's, by
Ejaz Ahmed, 1998 ed, Ashoka Law House, New Delhi, P.1028).

It is stated that the limits stipulated for Auditor General, Post and Telegraph Board and Head of a Department is also the limit for the Railway Board and the General Manager, i.e. to the order passed by subordinate authorities only in the matter of Rule 25 of R.S.(D &A) Rules, 1968.

Copy of the above clarification

is enclosed as Annexure-RA-1.

Copy of digest of letter dated 16/4/09
is enclosed as Annexure-RA-2.

8. That it is respectfully stated that the order dated 9.6.2010 has in effect made the proviso to Clause(5) of Rule 25 non-existent i.e. the mandate of the rule empowering General Manager to undertake revision "without restriction of any time limit." This has been the main reason of the rejection of permission of revision by the General Manager.

9. That sub-rule (4) of Rule 25 prohibits exercise of power of revision in the cases the appellate or revisional authority "where it has" passed orders, i.e. the revisional authority where it has passed orders cannot again exercise power of revision. There is no restriction in revision of the order of lower authority, by higher authority.

10. That it is respectfully stated that in case of revision there may be :

21 JUL 2010

Guwahati Bench
गুৱাহাটী বায়োপোষ

-: 8 :-

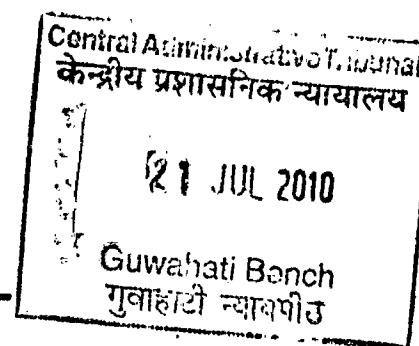
(i) An application by the delinquent. The right of the applicant for revision is governed by the Rule 25.

(ii) Revision may be on his or its own motion or otherwise", "revise any order made under these rules".

The exercise of revisionary power it is humbly stated, that shall be following provisions of Rule 25. The words "order under these rules" as mentioned in (ii) above it is respectfully submitted, includes order under Rule 25 also. It is, therefore, permissible for suo moto revision by higher authority of the revisional order by subordinate authority. Time frame shall have to be maintained. In this connection it is reiterated that under proviso to Clause (5) there is no restriction as to time limit for such exercise of power by President, Railway Board and General Manager.

11. That it is humbly stated that in para 5 of the order dated 9.6.2010, it has been observed"....a revision can be undertaken by the Railway Board or by the President without restriction of any time limit". It is submitted that the omission of General Manager in this context has rendered the order dated 9.6.2010 perverse, and deserves to be reviewed/and order modified.

12. That para 7 of the order dated 9.6.2010 it has been observed that when the M.A. 44/2010 had been preferred on 9.3.2010 a period of two and half years beginning from the



- 9 -

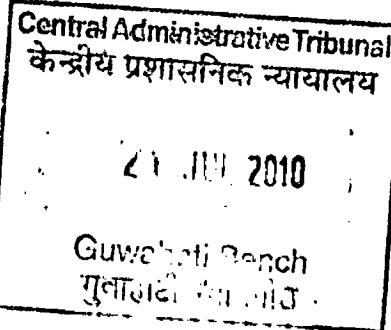
date of revisional authority order or about five years from the date of the order inflicting penalty had expired. Thus it is neither within six months or one year. These observations have been made on examining the case under Sub-Rule (2) and Sub-rule(5).

It is respectfully submitted Sub-rule(2) is not applicable, and as regards sub-rule(5), rule should be read as a whole, the proviso of sub-rule(5) ought not to have been omitted from consideration by the Hon'ble Tribunal. Said proviso reads as under :

"Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Respectfully it is stated that an error, has crept into the order of the Hon'ble Tribunal as regards the fact, in as much as it is not a case of revision on a petition by the employee. An error has also crept in for ignoring the proviso to sub-Rule(5). Non-application of mind and omission

Contd.....10



Hiren Lal Sarkar

परिदृष्ट युक्त बाबिलूप्य प्रबंधक
पू. ग्र० ऐस्ट्रे/प्राप्तिपूर्व
S. Div. Comm. Manager

of proviso to Rule(5) have rendered the order of the Hon'ble Tribunal, resulting in denial of cause of justice, which in humble submission of the applicants (respondents in O.A.) calls for a review of the order, and for orders for cause of justice.

13. That the prayer in the M.A. is for review by General Manager on its own motion for which permission of the Hon'ble Tribunal has been sought for due to the pendency of the O.A. It is not a case on any petition by the delinquent.

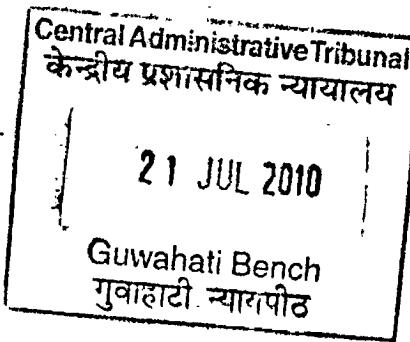
14. That in the circumstances explained above, it is respectfully submitted that, the order dated 9.6.2010 of the Hon'ble Tribunal in M.A. No. 44/2010 deserves to be reviewed. The review is also prayed for on the following, amongst other

- G R O U N D S -

(i) For that there has been a grievous omission of the statutory provision of law under proviso to Rule 25(5) of R.S.(D.A) Rules, 1968.

(ii) For that clarification of Rule 29 of CCS(CCA) Rules, 1965 (analogous to Rule 25 of R.S.(D.A.) Rules, 1968) exists that an authority cannot review his own order, a superior reviewing authority can review the orders by an inferior reviewing authority. The same position

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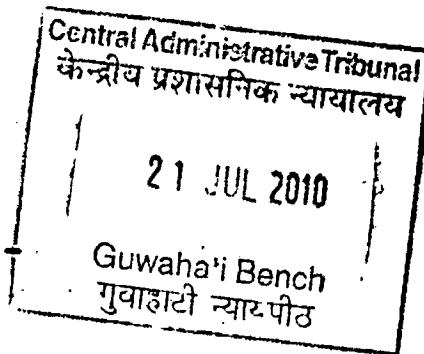
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is true for Rule 25 of R.A.(D.A) Rules, 1968.

Sankar
Sankar Das
পরিষদ মন্ত্র বাসিন্দা প্রতিষ্ঠান
ডঃ পুঁ পুঁ রেখে/প্রাপ্তিষ্ঠিত
Dr. Biplab Chettri, Manager

- (iii) For that the non-obstente caluse is applicable to Rule 25 itself also. This does not obliterate any provision of the said rule, rather it reinforces the legal position for cause of justice, specifying powers by the General Manager and others for "on its own motion," and such powers are exercisable without detriment to any provision of Rule 25 or other rules, and without detriment to any party.
- (iv) For that in the instant case the prayer for permission has been made ^{for} innocuous reason, for examination as to the compliance of procedure under the rules of 1968, particularly as regards supply of the copy of the report of the Enquiry. In any event of the matter this power would also be exercised following mandats of Rule and law.
- (v) For that General Manager is competent in the present case to exercise ^{of} revisional power without restriction of any time limit and before exhausting this power, it has not been considered fit to invoke President's power.
- (vi) For that the Hon'ble Tribunal has not read the facts correctly to observe and refer to President in the matter of the revision, G.M. is competent authority.

Contd.....12



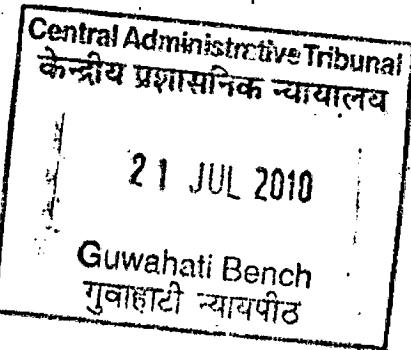
Shri. S. S. Sonkar
परिषद पंडित याजिमपा श्रीकृष्ण
१० सी० ऐलवे/पासारिपु
Dr. Div. Cormi. Manager —

(vii) For that the time of six months and one year in sub-rule(5) is not applicable in the matter of the exercise of power by the General Manager. Errors of fact and law have crept into the order dated 9.6.2010 of the Hon'ble Tribunal.

The applicants craves for liberty to present other Grounds during hearing, as and when called for.

Under the circumstances the applicants pray that the Hon'ble Tribunal may be pleased to invoke the power under Section 22 (f) of the A.T. Act, 1985, read with Section 24 of the said Act, and Section 151 of the C.P.C., and be pleased to admit this application and be pleased to review the order dated 9.6.2010 passed by this Hon'ble Tribunal, and be pleased to pass orders setting aside the said order dated 9.6.2010, and permit such exercise by the General Manager as prayed for, and/or pass such other order/orders as the Hon'ble Tribunal deems fit and proper ⁱⁿ the circumstances of the case.

And for this the applicants shall pray.



A F F I D A V I T.

I, Shri Hiralal Sankar..., aged about
.... 59 years, son of Lal Hori Mohan Sankar
working as S.R.D.C.M. / Lending N. F. Railway, do
hereby solemnly affirm and say that I am conversant with
the facts and circumstances of the case, and that I have
been authorised by the other applicants to swear in this
affidavit which I do accordingly and say that the statements
in para 1 to 14 and the Grounds are true to my knowledge
and that I have not suppressed any material facts.

I sign this verification this 14th day of July,
2010 at Guwahati.

Hiralal Sankar.

Identified by me

Signature.

S.N. Tammali
S.N. Tammali
Advocate.

वरिष्ठ मंडस बायिज्ज व्रबंधक
श्री सी. रेलवे/सामर्द्ध
Sr. Div. Comm. Manager
Solemnly affirmed before me

being identified by ...S.N..
...Tammali (Advocate) this 14th
day of July, 2010, at Guwahati.

Lahmidar K. Lachauhan
Advocate
14. 07. 10

Signature.

Control and Appeal) Rules, 1965, for revising the penalty imposed on an employee if such a revision is necessitated under some peculiar circumstances, as for example, in a case where the penalty of recovery is ordered but subsequently it is found that no loss has been sustained by the department.¹

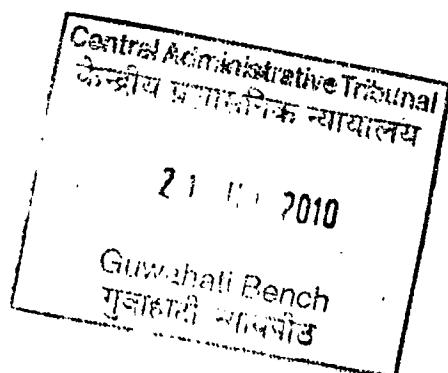
■ Effect of setting aside of appellate order :

An appellate order replaces the punishment order. Accordingly, if an appellate order is set aside for procedural defects, the punishment order will also simultaneously stand quashed. In such a case, it should, therefore, be necessary to initiate *de novo* proceedings against the concerned officer.²

■ Whether an order of revision can be further revised and if so, the authority competent to do so :

Clarification given on points relating to Rule 29 of the C.C.S. (C.C. & A.) Rules, 1965, is given below—

Point raised	Clarification
(a) Rule 29 of the C.C.S. (C.C. & A.) Rules authorises review of "any order made under these". Do the words 'these rules', include an order passed under Rule 29 as well, i.e., <u>can even an order of review under Rule 29 be further reviewed ?</u>	A reviewing authority as soon as he passes an order of review would exhaust his power under rules and would become <i>functus officio</i> . In view of the Proviso (2) of sub-rule (1) of Rule 29, he cannot review his own order. However, a <u>superior</u> reviewing authority <u>can review</u> the orders by an inferior reviewing authority under the aforesaid rule.
(b) Can the President review an order passed by him under a Rule other than Rule 29 ?	The language of sub-rule (1) of Rule 29 would show that the reviewing authorities including the President can "review any order under these rules". The words "any order" and "under these rules" indicate that any order passed by the President including an order passed as a result of review under Rule 29 itself, would be an order under these rules. The second proviso to this rule limits the power of review in the case of certain reviewing authorities like the Auditor-General, Posts and Telegraphs Board, and Head of a Department to the order passed by subordinate authorities only. No such limitation has been made in the case of the President. The President can, therefore, review his own orders passed by him including an order passed under Rule 29 itself.



Alleged
Officer
Alleged
Officer

1. Rule 127 of P. & T. Manual, Volume III.
2. Rule 129 of P. & T. Manual, Volume III.

(From E. Ahmad's *Departmental Enquiries against Govt. Servts.*)
J.S.

Digest of **DISCIPLINE, APPEAL** & **CONDUCT RULES**

(An Exhaustive Commentary and Case Law on
Railway Servants Discipline, Appeal and
Conduct Rules and Allied Matters)

Central Administrative Tribunal
केन्द्रीय नियन्त्रिक न्यायालय

2010

by:

B. S. MAINEE

M.A., LL.B., D.LL.
Advocate

Guwahati Bench
गुवाहाटी न्यायपीठ

Mrs. MEENU MAINEE

B.A., B.Ed., LL.B.
Advocate

V.P.S. MAINEE

B.Sc., LL.B.

Attested
S. S.
(Advocate)

BAHRI BROTHERS

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21 JUL 2010

(g) If it is felt that a penalty should be enhanced action should be initiated within 6 months. This restriction should not be evaded by cancelling the earlier penalty.

[R.B.E. 104/90]

It has been clarified by Railway Board that Rule 25(5) is applicable only in cases of suo-moto revision by the Revising Authority and not when Revision Petition is submitted by the employee. [R.B.'s. No. E(D&A)95 RG-6-40, dated 30.9.96; RBE No. 104/96.]

(5) No time limitation when the case to be revised by General Manager or Railway Board :— When the revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other railway unit or administration when they are higher than the appellate authority, and by the president even when he is the appellate authority, this can be done without restriction of time limit.

(6) Bar to exercise the powers of revision :— Powers of revision shall not be exercised :—

- By the appellate or the revising authority where it has already considered the appeal or the case and has passed orders thereon, and
- By a revising authority unless it is higher than appellate authority where an appeal has been preferred or where no appeal has been preferred and time limit laid down for revision by the appellate authority has expired.

Note :— This rule will not apply in cases of revision by the President.

(7) Procedure for revision should be commenced after appeal :— The proceedings for revision shall not be commenced until after :—

- the expiry of the period of limitation for an appeal;
- the disposal of the appeal where any appeal has been preferred;

Provided that the provisions of this rule shall not apply to the revision of penalties in cases of railway accidents.

(8) Revising authority when the railway servant transferred :— In terms of Sub-rule 1 (iii) and 1 (v) of Rule 25 of the Railway Servants (D&A) Rules, 1968, only that authority can act as revising authority under whose control the railway servant is working. It would, therefore, not be permissible under the said rules for the authority on the Railway/Division where the employee was previously working and punished, to act as revising authority after his transfer from that Railway/Division. The revising action can be taken only by the appropriate revising authority on the Railway/Division where the employee is working at the time of the proposed review.

In cases, however, where the appellate authority act as revising authority in terms of Sub-rule 1 (iv) of Rule 25, within the prescribed time limit, there is no objection for the appellate authority to act as a revising authority even after the employee's transfer to another Railway/Division. [R.B.'s. No. E (D&A) 69 RG 6-8 of 19-6-69].

(9) A revising authority, as soon as, it passes an order of revising would exhaust its powers under the rules and would become functus officio. It cannot revise its own orders. However, a superior reviewing authority can review the orders by an inferior revising authority under the rules. [G.I., MHA No. F 39II/69 Ests. (A) 16 A of 16.4.69.]

Amended
10/11/2010
Amended

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Received copy

on
18/6/2010
[Signature]

Misc. Application No. 44 of 2010

In

Original Application No. 46 of 2009

Date of Decision: This, the 09th day of June, 2010.

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

The Union of India & Ors.

.. Misc. Petitioners/Respondents

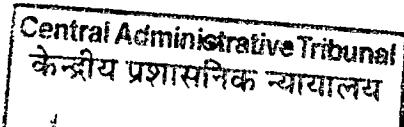
By Advocate: Dr.J.L.Sarkar, Railway Standing counsel

-Versus-

Sri Mrinal Kanti Das-II

Opposite party/applicant

By Advocate: Mr.J.P.Das



21 JUL 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

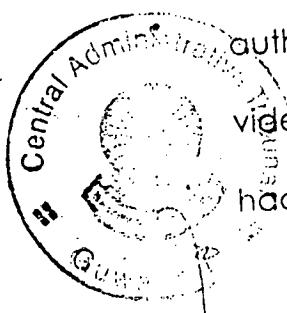
ORDER (ORAL)

MUKESH KUMAR GUPTA, MEMBER (J):

Initially, O.A.46/2009 had been disposed of vide order dated 16.03.2010 accepting the prayer of respondents made in M.A.44/2010, whereby they had sought permission of this Tribunal to appropriate authority i.e., the General Manager to exercise the powers of revisional

authority. Said order had been challenged before the Hon'ble High Court vide W.P.(C) No.2814/2010. Vide order dated 17.05.2010, aforesaid order

had been quashed and set aside and the matter was remitted to



consider afresh in accordance with law by a Division Bench. Hence, the matter i.e., M.A.44 of 2010, was taken up for hearing.

2. The case of the applicant is that in a departmental proceedings initiated vide charge memorandum dated 03.09.2002, penalty was inflicted vide order dated 16.11.2005. Appeal as well as revision had been dismissed vide orders dated 15.05.2006 and 28.09.2007 respectively. Challenging the same, present O.A. was filed. During its pendency, the respondents filed M.A. 44/2010 seeking permission of this Tribunal to exercise revisional authority's power by the General Manager.

3. Learned counsel appearing for the applicant Mr.J.P.Das contends that Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 is inapplicable in as much as said provisions are applicable only when the appeal as well as revision are not preferred, and the time limit for filing of same has expired. Since in present case, the appeal as well as revision petition were not only preferred but also rejected, as noticed hereinabove, there remains no further scope for exercising the power of revision by any authority except the President. Admittedly, vide M.A. No.44/2010, permission was not sought to exercise the power of revisional authority by the President, and therefore, said provision would have no application at all.

4. On the other hand, Dr.J.L.Sarkar, learned counsel for the respondents states that Rule 25 of aforesaid rules begins with non-obstante clause and the authorities prescribed therein, namely, the President, Railway Board, General Manager and appellate authority not

below the rank of Divisional Railway Manager as well as other authorities not below the rank of Deputy Head of the Department can exercise the power of review either on his or its own motion or otherwise and confirm, modify or set aside the order besides remitting back to the authority which passed the order.

5. Reliance was placed on Sub-Rule (3) as well as Sub-Rule (5) of the said Rules. Sub-Rule (3) provides the manner in which application for revision has to be dealt with. Sub-Rule (5) requires that a revision can be undertaken by the Railway Board or by the President without restriction of any time limit. Thus, it was canvassed that since Rule 25 begins with non-obstante clause, which overrides the other provisions of 1968 Rules and thus, respondents were well within their rights to seek permission to exercise the powers of revisional authority.

6. We have heard learned counsel for both sides, perused the pleadings and other materials placed on record including Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968. In order to appreciate the contentions raised, it would be expedient to note complete text of said rules, which reads thus:-

"25.

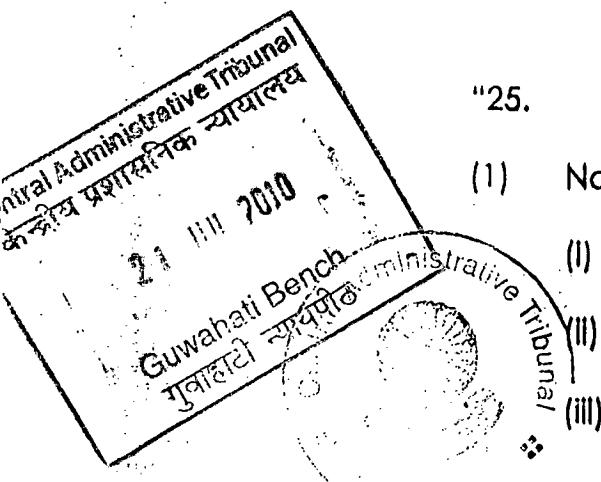
REVISION

(I) Notwithstanding anything contained in these rules –

(II) the President, or

the Railway Board, or

the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or



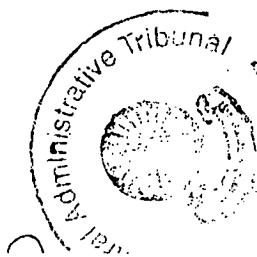
- (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or
- (v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control-

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 29, 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 or to any other authority directing such authority to make further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such orders as it may deem fit:

Provided that –

- (a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;
- (b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for Inquiry in the manner laid down in Rule 9, unless such Inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.



(2) No proceeding for revision shall be commenced until after –

- (i) the expiry of the period of limitation for appeal;
- or
- (ii) the disposal of the appeal where any such appeal has been preferred;

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this rule –

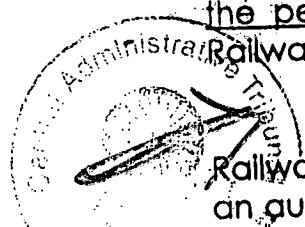
- (i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and
- (ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired;

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by –

- (a) an appellate authority other than the President;
- or
- (b) the revising authorities mentioned in item (v) of sub-rule (1)-

after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant;



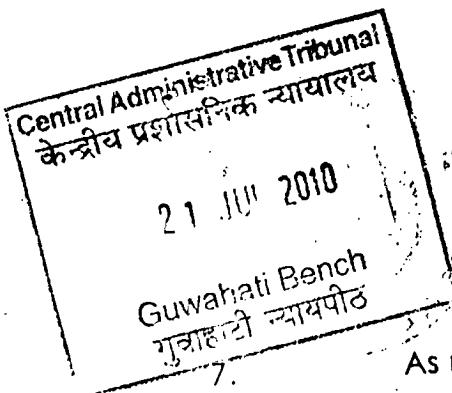
Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any Other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even he is the

appellate authority, this can be done without restriction of any time limit.

Explanation: For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders."

(emphasis supplied)

Admitted facts are that charge memorandum dated 02.09.2002 contained one article of charge to the effect that applicant failed to maintain absolute integrity and devotion to duty in as much as on 20.11.2001, he demanded and accepted illegal gratification of Rs.100/- for providing a sleeper class birth in train No.5621. Since the charge had been denied, an oral enquiry was held and vide penalty order dated 16.11.2005, his pay was reduced to lower time scale of pay for two years with cumulative effect. His statutory appeal was rejected on 15.05.2006. Revision was also rejected on 28.09.2007. Challenging aforesaid orders, present O.A. was preferred on 17.03.2009. Notices were issued vide order dated 17.08.2009. Reply had not been filed to O.A. despite last opportunity granted on 15.12.2009. Thereafter, M.A.44/2010 had been filed with the following relief:-

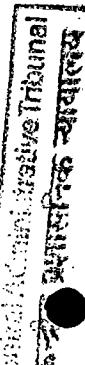


"In the circumstances, this Hon'ble Tribunal may be pleased to pass an order for allowing to pass appropriate order by appropriate authority i.e. General Manager N.F.Railway for the ends of justice and for this petitioner shall be remain ever grateful."

(emphasis supplied)

As noticed hereinabove, appeal as well as revision had been attended to and rejected by the concerned authorities. Thus, limited

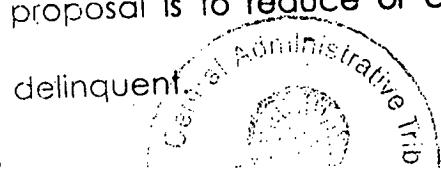
question arises for consideration is whether there is any substance in the prayer made vide M.A.44/2010. Rule 25 has to be read in its entirety and not in isolation. It is no doubt true that Rule 25 of said rules begins with non-obstante clause, namely, 'Notwithstanding anything contained in these rules'. In other words, said rules overrides the other provisions of said rules. But as far as understanding and implementation of said rules is concerned, said rules has to be read as a whole and meaning of each clause has to be given effect to. Law is well settled that the intention of the Legislation/rule making authorities has to be gathered from the language employed in the rules and given its full meaning. No part of the rules either made unworkable or rendered otiose. Under Sub-Rule (1), five authorities have been authorized to exercise the powers of revision, namely, the President, Railway Board, General Manager, appellate authority not below the rank of Divisional Railway Manager and any other authority not below the rank of Deputy Head of the Department. Even exercise of that power hinges by the time limit provided under Sub-Rule (2) as well as Sub-Rules (4) and (5). Under Sub-Rule (2), the proceedings for revision cannot be initiated after, (i) the expiry of the period of limitation; or (ii) the disposal of the appeal where any such appeal has been preferred. Under Sub-Rule (5), similar time limit is prescribed i.e., "six months from the date of the order to be revised", where it is proposed to impose or enhance a penalty or modify the order to the detriment of the delinquent. However, said period is enhanced to "one year" when the proposal is to reduce or cancel the penalty imposed in favour of the delinquent.



21 JUL 2010

Guwahati Bench
Assam Legislative Assembly
21 JUL 2010

Guwahati Bench
Assam Legislative Assembly
21 JUL 2010



Guwahati Bench

गुवाहाटी न्यायालय

Examining the case of hand from either angle – Sub-Rule (2)

or Sub-Rule (5), we may note that even last order of the revisional authority had been dated 22.09.2007. Even on the date, when the M.A. 44/2010 had been preferred on 09.03.2010, a period of two and half years beginning from the date of the revisional authority order or about five years from the date of the order inflicting penalty had expired. Thus, it is neither within six months or one year even it is presumed that General Manager of N.F.Railway intended to exercise powers of revision in favour of the applicant. As far as Sub-Rule (3), as reproduced hereinabove, is concerned, it only provides with the mode for dealing with the application for revision and nothing else can be read in between and added to it. It does not change the colour and contents of the revision petition and exercise of such power. Similarly, Sub-Rule (4) also puts an embargo on exercise of such power, namely, when the appellate or revisional authority have considered revision, the power of revision cannot be exercised. Sub-Rule (4)(ii), ^q further provides that revising authority cannot initiate any action unless it is higher than the appellate authority where an appeal has been preferred or no appeal has been preferred and the time limit for making such revision has expired. In present case, the applicant had exhausted the power of appeal as well as revision, and both of such petitions had been rejected, as noticed hereinabove. Thus, examining the case from either angle, we are of the considered view that exercise of power of revision under Rule 25 of said Rules was not available to the respondents. Furthermore, we may observe that M.A. 44/2010 does not make even a reference or suggest directly or indirectly that power of

M.A.44/2010 in O.A.46/2009

revision was proposed to be exercised by the President, which is the only exception provided under proviso to Sub-Rule (5) of Rule 25.

8. Thus, we are of the considered opinion that there is no substance and justification in M.A.44/2010. Accordingly, M.A.44/2010 is rejected.

TRUE (K)
प्रतिलिपि
18.6.2010
अनुभाग अधिकारी
Section Officer (Judicature)
Central Administrative Tribunal
गुवाहाटी न्यायपाल
Guwahati Bench
गुवाहाटी/Guwahati

Sd/- M.K.Gupta
Member (J)
Sd/-M.K.Chaturvedi
Member (A)

Affected
(Advocate)

