

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 205/2011

ORDER RESERVED ON : 10.02.2015

DATE OF ORDER : 31.3.2015

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER.
HON'BLE MRS. CHAMELI MAJUMDAR, JUDICIAL MEMBER.

Nahar Singh son of Late Shri Devi Singh Rathore, aged about 47 years, resident of Chhar Bhuja Colony, Beawar Road, Kekri, District Ajmer (Rajasthan)
... Applicant.

(By Advocate Shri R. D. Tripathi for the Applicant)

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi.
2. Superintendent of Post, Beawar Division, Beawar - 305901.
3. Director, Postal Services, Rajasthan Southern Region, Ajmer.
4. Post Master General, Rajasthan Southern Region, Ajmer 305 001.
5. The Principal Chief Post Master General, Rajasthan Circle, Jaipur 302 007.
6. the Inquiry Officer, Inspector Posts, Kekri Sub Division, Kekri 305 404.

... Respondents.

(By Advocate Mr. Mukesh Agarwal).



ORDER

Per : Smt. Chameli Majumdar, Member (J).

The applicant, in this O.A., has challenged various orders passed by various authorities at various point of time, which are as follows :

- (i) Order No. Memo No. F 4/Misc/06-07
- (ii) Date of Order 21/28.08.2007
- (iii) Passed by Superintendent of Post Offices, Beawar Division, Beawar.
- (iv) Subject in brief Upon Memo of charges dated 25.05.2007 for conducting departmental enquiry under Rule 16 of CCS (CCA) Rules, 1965, whereby awarded the penalty of withholding one annual increment without cumulative effect.

And

- (i) Order No. Memo No. Staff/SR/44-8(9)07
- (ii) Date of Order 21/22.01.2008
- (iii) Passed by Director Postal Services, Rajasthan Southern Region, Ajmer.
- (iv) Subject in brief Whereby reviewed the order dated 21-28.08.2007 under Rule 29 of CCS (CCA) Rules, 1965 and remit back to conduct enquiry under Rule 14 of CCS (CCA) Rules, 1965.

And

- (i) Order No. Memo No. STA/SR/44-8(9)/2007
- (ii) Date of Order 28.5/08.06.2010
- (iii) Passed by Director Postal Services, Rajasthan Southern Region, Ajmer.
- (iv) Subject in brief By setting aside the penalty of order dated 21/28.08.2007 inflict the penalty of compulsory retirement with immediate effect.

and impugned

- | | | |
|-------|------------------|--|
| (i) | Order No. | Memo No. STA/SR/44-8(9)/2007 |
| (ii) | Date of Order | 16.03.2011 |
| (iii) | Passed by | Post Master General, Rajasthan Southern Region, Ajmer 305 001. |
| (iv) | Subject
brief | in This learned Tribunal by its order dated 14.02.2011 in O.A. No. 32/2011 directed Respondent No. 4 to decide the appeal of the applicant and whereby same has been dismissed by upholding the penalty of compulsory retirement, so being highly aggrieved. |

2. It appears that the final order was passed by the Post Master General in the appeal filed by the Applicant. This Tribunal was pleased to pass an order on 14.02.2011 in O.A. 32/2011 filed by the applicant by directing the Post Master General, Rajasthan Southern Region, Ajmer, being the Respondent No. 4, to decide the appeal of the applicant dated 12.06.2010 within a period of one month from the date of receipt of a copy of the order by passing a reasoned and speaking order keeping in view the contention raised by the applicant to the effect that it was not permissible for the appropriate authority to invoke power of review as contemplated under Rule 29 of the CCS (CCA) Rules, 1965. Pursuant to the said order of the Tribunal in O.A. 32/2011, the Respondent No. 4 being the Post

Master General, decided the appeal of the Applicant. The appeal was dismissed by the Post Master General by upholding the punishment of compulsory retirement. The relevant portion of the order dated 14.02.2011 in O.A. No. 32/2011 is set out herein below :

"Accordingly, Post Master General, Rajasthan Southern Region, Ajmer (Respondent No. 4) is directed to decide the appeal of the applicant dated 12.06.2010 (Annexure A/11) within a period of one month from the date of receipt of a copy of this order by passing a reasoned and speaking order keeping in view the contention raised by the applicant to the effect that it was not permissible for the appropriate authority to invoke power of review as contemplated under Rule 29 of the CCS (CCA) Rules, 1965. In case the applicant is still aggrieved by the order to be passed by respondent no. 4, it will be open for him to file substantive O.A. for the same cause of action."

Being highly aggrieved, the applicant has filed this O.A.

3. The facts of the case in nutshell is that the Respondent No. 2, i.e., the Superintendent of Posts, Beawar Division, Beawar, had issued a charge memorandum dated 25.05.2007 for initiating a departmental enquiry under Rule 16 of the CCS (CCA) Rules, 1965 for the charge of misappropriation of Government money while working as Sub Postmaster at Masooda and also for committing financial irregularities. The applicant submitted his reply on

16.06.2007. He stated in his reply that he had been working alone and he did not have any assistance. Therefore, due to overload of work he faced mental disturbance and committed irregularities in calculation without having any bad intention. The liability should also shift to other officers like the then Sub Postmaster. The applicant prayed for the following reliefs :

“(i) To direct or order the Respondents to reinstate the applicant in his post with all entitled consequential benefits by quashing and setting aside the impugned order dated 16.03.2011 i.e. Annexure A/1 passed by Respondent No. 4 in continuation order dated 28.05/08.06.2010 i.e. Annexure-A/11 and 21/22.01.2008 i.e. Annexure A/5 passed by Respondent No. 3 and order dated 21/28.08.2007 i.e. Annexure A/4 passed by Respondent No. 2 respectively.

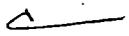
(ii) Any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.

(iii) Cost of this Original application also may be awarded in favour of the applicant.

4. The applicant's contention is that the Respondent No. 2, without following the rules of natural justice and without applying the mind, imposed the penalty of stoppage of one annual increment without cumulative effect on 21/28.08.2007 in the departmental proceedings under Rule 16 of the CCS (CCA) Rules. Thereafter, the Director Postal

Service, Rajasthan Southern Region, Ajmer, being the Respondent No. 3, on 21/22.01.2008, reviewed the said order and remitted back the matter to the Disciplinary Authority with a direction to conduct enquiry under Rule 14 of the CCS (CCA) Rules, 1965 and to submit the report without assigning any new reason or cause of action or ground. The Disciplinary Authority, being the Respondent No. 2, issued another memorandum of charge dated 26.03.2008 under Rule 14 of the CCS (CCA) Rules. The applicant raised preliminary objection by his letter dated 16.09.2008 inasmuch as according to Government of India, Ministry of Home Affairs, O.M. Dated 03.09.1981 the powers of review under Rule 29-A is vested in the President and not in any other authority. The applicant moved a petition to the Principal Chief Post Master General, Rajasthan Circle, Jaipur, on 31.10.2008 for revision of illegal orders issued by the Director Postal Services, Ajmer, i.e. Respondent No. 3, whereby the order of the Disciplinary Authority had been reviewed by exercising the powers illegally under Rule 29 of the CCS (CCA) Rules, 1965.

5. In the meantime, the Inquiry Officer, i.e.,



Respondent No. 6, conducted the enquiry against the applicant. The applicant's grievance is that no proper opportunity of hearing was given. Without providing a copy of the enquiry report dated 24.09.2009 the enquiry officer completed and concluded the enquiry. The Inquiry Report dated 24.09.2009 was received on 22.03.2010. The applicant submitted his representation by raising all the grounds of law and fact by stating that the enquiry had been conducted without following norms of CCS (CCA) Rules, 1965 and also without giving opportunities of hearing. That the Director Postal Services, Rajasthan Southern Region, Ajmer (Respondent No. 3) by his Memorandum dated 08.06.2010 again exercised power conferred upon him under Article 29 of the CCS (CCA) Rules, 1965. The said Director of Post Offices enhanced the punishment to compulsory retirement with immediate effect..

6. In the instant case, we find that the applicant, while working as officiating Sub-Post Master committed fraud and was charge sheeted. On a preliminary enquiry conducted by the Sub-Divisional Inspector on 30.10.2006 the following irregularity was detected :



1. Insured VPP Money Order value Rs. 1000.00 +
Comm. Rs. 50.00 Total Rs. 1050.00
2. Money Order payment - Rs. 15,580.00
3. T.R.C. Rs. 7,856.00

The amount of loss caused to the Government was recovered from the applicant and credited in the Government account in the relevant heads on 27.09.2006, 01.11.2006, 09.11.2006 and 13.03.2007 respectively. Therefore, a charge sheet was issued by the Superintendent of Post Offices on 01.06.2007. The Superintendent of Post Office, Beawar Division, Beawar, i.e., Respondent No. 2, imposed the penalty of stoppage of one increment for one year without cumulative effect vide order dated 21/28.08.2007.

7. This punishment order was reviewed by the Director Postal Service, Rajasthan Southern Region, Ajmer, in exercise of powers conferred under the provisions of Rule 29 of CCS (CCA) Rules. He remitted back the matter to the Disciplinary Authority with a direction to conduct an enquiry under Rule 14 of the CCS (CCA) Rules. After going through the report of the Inquiry Officer and the representation of the applicant, the Director Postal Services after exercising power under Rule 29 of the CCS (CCA) Rules, vide order dated 28.05/08.06.2010 set aside the penalty order and issued a show cause notice to the applicant as to why the penalty should not be enhanced



commensurating with the gravity of the charge. Therefore, the Director Postal Services vide communication dated 22.01.2008 issued a show cause notice to the applicant proposing to enhance the penalty to any of the major penalties stipulated under Rule 11 of the CCS (CCA) Rules, 1965, for which it was also proposed to give a reasonable opportunity to the applicant.

8. The grievance of the applicant is that the Respondent No. 2, i.e., the Superintendent of Post Offices, imposed the penalty of stoppage of one increment without cumulative effect under Rule 16 of the CCS (CCA) Rules but Respondent No. 3 illegally by exercising power under Rule 29 of CCS (CCA) Rules, 1965, reviewed the order dated 21/28.08.2007 with a direction to conduct enquiry under Rule 14 of the CCS (CCA) Rules. The contention of the Applicant is that the Director Postal Services, being the Appellate Authority of the Applicant is not competent to review the order. The reviewing power is only with the President. A charge sheet was issued. The applicant took a preliminary objection by his letter dated 16.09.2008 that the power under Rule 29-A is vested only on the President and not in any other authority. The applicant thereafter submitted a petition on 30.10.2008 to Respondent No.5 but that was also not replied. The applicant received a covering letter along with an enquiry report dated 24.09.2009 by the Respondent

No. 3 on 22.03.2010.

9. The applicant submitted his representation to the enquiry report on 05.04.2010 raising all grounds of law and fact that the enquiry had been conducted without following the norms of CCS (CCA) Rules and giving no opportunity to the applicant. It further appears that the applicant submitted his representation to the Director Postal Services, Rajasthan Southern Region, Ajmer and the Director Postal Services, considering the representation, exercised his power under Rule 29 of the CCS (CCA) Rules and inflicted punishment of compulsory retirement with immediate effect upon the applicant.

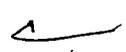
10. The applicant thereafter preferred an appeal on 12.06.2010 to the Respondent No. 4, being the Post Master General, Rajasthan Southern Region, Ajmer, by giving copy to the Respondent No. 1 and 3 respectively but the appeal was not considered. The applicant preferred an O.A. No. 32/2011 before the Tribunal. The Tribunal disposed of the O.A. on 14.02.2011 directing the Respondent No. 4, being the Postmaster General, to consider the appeal of the applicant. The appeal of the applicant was dismissed by the Respondent No. 4 on 16.03.2011 upholding the punishment of compulsory retirement and hence the O.A. was filed by the applicant.

11. The applicant has challenged the order on the following grounds :

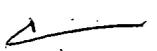
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The applicant has taken the ground that the attract attention of Rule 29 of CCS (CCA) Rules which deals with power of revision but not for review of the order. Power of review is envisaged in Rule 29-A of CCS (CCA) Rules. Rule 29-A has been added after Rule 29 specifying the power of the President to review any order passed earlier, including an order passed in Revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. The applicant has also contended that while the President and other authorities enumerated in Rule 29 of the CCS (CCA) Rules, 1965, exercise the power of Revision under the Rule, the power of Review under Rule 29-A is vested in the President only and not in any other authority. With the amendment of Rule 29 and introduction of Rule 29-A, the heading of Part-VIII of the CCS (CCA) has also been appropriately changed as "Revision and Review." Therefore, it will be crystal clear that the powers of Review exercised in Rule 29 of CCS (CCA) Rules by the Respondent No. 3 is illegal and without jurisdiction.

12. We have perused the order passed by the Director Postal Services being Respondent No. 3 in the instant O.A. In the order the Director Postal Services has mentioned that the initial disciplinary case was reviewed by the Director Postal Services



under the provisions of Rule 29 of the CCS (CCA) Rules, 1965, and the said authority came to the conclusion that the penalty awarded by the SPOs Beawar did not commensurate to the gravity of charge and warranted enhancement of penalty. Therefore, a show cause notice 22.01.2008 proposing to enhance the penalty to any one of the major penalties as stipulated in Rule 11 of CCS (CCA) Rules, 1965, was issued. It was also proposed to give a reasonable opportunity to the applicant. Accordingly, the SPOs Beawar was directed to conduct enquiry under Rule 14 of CCS (CCA) Rules, 1965 and submit his report on conclusion of the inquiry. The show cause notice was delivered to him on 23.01.2008. The SPOs Beawar issued charge sheet under Rule 14 of CCS (CCA) Rules, 1965 vide memo dated 26.03.2008. The applicant denied the charges levelled against him and demanded an open enquiry. During the enquiry, the applicant submitted his representation requesting that the powers of Review under-Rule 29-A is vested in the President only and not in any other authority. He was however informed through SPOs Beawar that according to the provisions contained in Rule 29 the Appellate Authority could review the case within six months.



13. The Inquiry Officer submitted his report on 29.09.2009 wherein the applicant was found to be guilty of all the three charges levelled against him. A copy of the Inquiry Report was sent to the applicant vide letter dated 22.03.2010 to submit his representation within 15 days. After considering the representation, the Respondent No. 3 passed his order.

14. The Respondent No. 3, being the Director of Postal Service has held in the impugned order that the applicant was given adequate opportunity to defend at each stage. The applicant stated that the oral enquiry was illegal whereas it was observed that the Inquiry Officer carried out inquiry under the provision of Rule 14 of CCS (CCA) Rules, 1965. It was held by the Respondent No. 3 that since all the three charges levelled against the charged officials were fully proved beyond doubt and keeping in view the gravity of the charges proved, the delinquent employee deserved harsh punishment, therefore, exercising power under Rule 29 of the CCS (CCA) Rules, 1965, the penalty of withholding of increment for one year without cumulative effect imposed upon the applicant by the Superintendent of Post Offices,



Beawar Division, Beawar, was set aside and a punishment of compulsory retirement with immediate effect was imposed.

15. We have heard Shri R. D. Tripathi, Learned Counsel for the applicant and Shri Mukesh Agarwal, Learned Counsel for the respondents. We have also perused the pleadings along with the documents annexed therewith.

16. Learned Counsel for the respondents refuted all the allegations of the applicant. He further submitted that Director Postal Service, being the Appellate Authority, was competent to revise the order of the Disciplinary Authority under Rule 29(1) (v) of CCS (CCA) Rules. He relied on the following judgments :

(i) Suresh Pathrella Vs. Oriental Bank of Commerce [2006 (10) SCC 572]

(ii) O.A. No. 260/2004 [Dhala Ram Choudhary Vs. Union of India & Others] decided on 28.07.2005 by Jaipur Bench

(iii) O.A. No. 378/2011 [Ram Niwas Vs. Union of India & Others] decided on 14.05.2013 by Jaipur Bench.

17. At the time of hearing the learned counsel for

the applicant confined his argument only with regard to the competence of Director of Postal Services in reviewing the order of the Disciplinary Authority.

18. We have gone through the order passed by the Tribunal in O.A. No. 32/2011 filed by the applicant. The Tribunal's order has been set out in para 1 herein above. In terms of the said order, the scope of adjudication on appeal is restricted to the question whether the Director of Post Service could review/revise the order of punishment.

19. Referring to Rule 29-A of the CCS (CCA) Rules, the Learned Counsel for the applicant submits that review has been provided under Rule 29-A. Rule 29-A clearly says that the President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice.

20. It is true Rule 29 of the CCS (CCA) Rules was amended to make it clear that the power available under that rule is the power of revision and a new

rule, Rule 29-A was introduced specifying the powers of the President to make a review of any order passed earlier, including an order passed in revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. It may also be noted that while the President and other authorities enumerated in Rule 29 of the CCS (CCA) Rules, 1965, exercise the power of revision under that rule, the power of review under Rule 29-A is vested in the President only and not in any other authority. With the amendment of Rule 29 and the introduction of Rule 29-A, the heading of Part VIII of the CCS (CCA) Rules, 1965, has also been appropriately changed as "Revision and Review".

21. The entire Rule 29 is set out herein below for correct adjudication of the matter :

"29. Revision

(1) Notwithstanding anything contained in these rules -

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board

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and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the appellate authority, within six months of the date of the order proposed to be revised or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

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 :

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

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

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

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

22. Rule 29(1)(v) envisages that the Appellate Authority within six months of the date of order proposed to be revised may at any time either on his own motion

call for the records of the enquiry 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 these authorities can confirm, modify or set aside the order. They can confirm, reduce or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed or remit the case back 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.

23. After carefully going through the provision of Rule 29 and Rule 29-A, we are of the view that Part-IV has been described as Revision and Review. Revision is written in a bracketed portion against Rule 29 whereas Review is mentioned against Rule 29-A. The power of revision has been vested on the following persons :

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or

(iv) the Head of a Department directly under

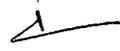
the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the appellate authority, within six months of the date of the order proposed to be revised or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

24. Rule 29(v) says that even if no appeal is preferred but the Appellate Authority may revise the order of the Disciplinary Authority. In the instant case, the Respondent No. 3, i.e., the Director of Postal Service is the Appellate Authority, therefore it was within his power to revise the order under Rule 29(1)(v) and 29(1)(vi). The power of the Revisioning Authority has been described as the Revisioning Authority may confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed. Rule 29 (v) is attracted in the instant case. Respondent No. 3, being the Appellate Authority, while exercising his power as a Revisioning Authority under Rule 29(v) can remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case.

25. It appears that the Director Postal Services, the Appellate Authority, acting as a Revisionary Authority,



under Rule 29(1)(v) remitted back the matter to the Disciplinary Authority and directed the said Disciplinary Authority to initiate disciplinary proceedings under Rule 14 of the CCS (CCA) Rules. The same Director of Postal Services, being the Appellate Authority and exercising his power under Revisioning Authority passed the order. The Disciplinary Authority, after holding an enquiry under Rule 14 in accordance with the first proviso of Rule 29 (1), passed the order enhancing the punishment to compulsory retirement.

26. We find that similar issue has been decided by Jaipur Bench of this Tribunal in **O.A. No. 378/2011 (Ram Niwas Vs. Union of India & Others)**. While adjudicating on the issue of competence of the Director of Postal Services to invoke the provision of Rule 29 of CCS (CCA) Rules, 1965, held that the applicant did not prefer any appeal against the punishment order, therefore, it was implied that the applicant accepted the punishment. While deciding this issue of competence of the Director of Postal Services, etc. to invoke Rule 29(1), this Tribunal held that Rule 29(1)(v) of CCS (CCA) Rules, 1965, which provides that the Appellate Authority, within six months of the date of the order proposed to be revised may at any time either on his or its own motion call for the records of any inquiry and revise any order made under these rules. Rule 29(1)(v) also provides for

any other authority specified in this behalf by the President by a general or special order and within such time as may be prescribed in such general or special order may revise any order made under these rules.

27. The issue involved in the said O.A. was with regard to the power exercised by the Original Appellate Authority, being the Director of Postal Services under Rule 29 of CCS (CCA) Rules, 1965.

28. In the instant case, the Original Appellate Authority exercised his power of Revision under Rule 29 (1)(v) of the CCS (CCA) Rules, 1965. Under Rule 29(1)(v) of CCS (CCA) Rules, the Appellate Authority, being the Director of Postal Services, is competent to revise order made under these rules within six months from the date of the order proposed to be revised.

29. Central Administrative Tribunal, Jaipur Bench, in O.A. No. 378/2011 [Ram Niwas Vs. Union of India & Others] decided on 14.05.2013 relied on the ratio of Dhala Ram Choudhary Vs. Union of India & Others decided by C.A.T. Jodhpur Bench [O.A. No. 260/2004] decided on 28.07.2005.

"20. Learned counsel for the respondents argued that the said notification issued by the Government of India under Rule 29 (1)(vi) of the CCS (CCA) Rules, 1965, has since been quashed and set aside by the Hon'ble Supreme Court in the case of **Union of India and Others Vs. Vikrambhai Maganbhai Chaudhari** (supra). However, the issue in the present O.A. is with regard to the powers exercised by the Appellate Authority under rule 29(1)(v) of CCS (CCA) Rules, 1965. In this connection,

learned counsel for the respondents referred to the order dated 28.07.2005 passed by C.A.T., Jodhpur Bench in O.A. No. 260/2004 (Dhala Ram Choudhary Vs. Union of India & Ors.); relevant part of para 10 of this order is reproduced hereunder :

"10. A close analysis and perusal of the aforesaid Rule indicates that there are six authorities who could undertake the proceedings of Review under Rule 29 of the Rules. The word 'or' is mentioned amongst them. This clearly implies that any of the six authorities mentioned in Rule 29(1) of rules can exercise the power of revision. The only difference is that for the Appellate Authority the time of six months has been specified for exercising the power of revision. In other words, the order can be revised within six months from the date of order proposed to be revised..... Therefore, we hold that the competent authority has rightly issued the impugned notice and the same cannot be said to in any way arbitrary, faulty or without jurisdiction by any stretch of imagination.

21. In the present case, Appellate Authority has passed order dated 08.02.2010 (Annexure A/1) having exercised power under Rule 29(1)(v) of CCS (CCA) Rules, 1965. Thus, I am of the opinion that the ratio decided by this Bench of the Tribunal in O.A. No. 450/2010 - Ram Khilari meena Vs. U.O.I. & ors. (supra) is not applicable under the facts and circumstances of the present case. The Appellate Authority under Rule 29(1)(v) of CCS (CCA) Rule, 1965, has the power to call for records of any inquiry and revise any order made under these rules within six months from the date of order proposed to be revised. Further, I am of the considered opinion that the ratio decided by the C.A.T., Jodhpur Bench in the case of **Dhala Ram Choudhary Vs. Union of India & Ors. (OA No. 260/2004)** is squarely applicable under the facts and circumstances of the present case."

30. With regard to the issue of competence of Director Postal Services in passing the orders, we

hold that the Director Postal Services, being the Original Appellate Authority, was competent to revise the order passed by the Disciplinary Authority after following due procedure as envisaged in Rule 29. Pursuant to the order of this Tribunal on 14.02.2011 in O.A. No. 32/2011 filed by the applicant challenging the order dated 28.05/08.06.2010 whereby the penalty imposed by the Disciplinary Authority was enhanced to that of compulsory retirement. We find that while the said O.A. was filed the appeal was pending. The applicant preferred his appeal to the Post Master General being the next higher authority. Accordingly, the Tribunal directed the appropriate authority, being the Postmaster General to dispose of the appeal. Pursuant to the said order, the Post Master General passed the order on 16.03.2011 which is also under challenge in this O.A. The Director Postal Service, although the Appellate Authority, but since he invoked his power under Rule 29(1)(v) and enhanced the order of punishment, as such the appeal was preferred to the Post Master General and the Post Master General acting as the Appellate Authority, passed an order upholding the penalty of compulsory

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retirement imposed by the Revisioning Authority. The Post Master General has also held that the applicant argued that Director Postal Services, i.e. the Respondent No. 3, is not competent to review the disciplinary case but has power to make revision under Rule 29 of CCS (CCA) Rules. Evidently, DPS has revised the original orders of disciplinary authority after following the prescribed procedure of Rule 29 of the said rules. In the final paragraph the PMG has written that the penalty of compulsory retirement imposed by the Revisioning Authority, i.e., the Director of Postal Services was upheld.

31. From the records as well as orders certain facts are relevant to note.

The Superintendent of Post Offices, is the Disciplinary Authority of the Applicant. The Superintendent of Post Offices initiated an enquiry under Rule 16, being the minor penalty proceeding. He imposed the punishment of stoppage of one increment without cumulative effect. Invoking Rule 29(1)(v) of the CCS (CCA) Rules, 1965, the Appellate Authority, being the Director of Postal Services, who is fully empowered under Rule 29(1)(v) to exercise power of revision, set aside the order and remitted

back the matter to the Disciplinary Authority to initiate a proceeding under rule 14 of the CCS (CCA) Rules. A memorandum of charge sheet was issued. A full fledged enquiry was held. The Inquiry officer found him guilty of all the charges. The Director Postal Services thereafter passed an order after issuing show cause notice to the applicant. As provided under Rule 29, he enhanced the punishment to compulsory retirement. Since the Director Postal Services acted not as an Appellate Authority but as Revisional Authority, the applicant, on his own, submitted his appeal to the Post Master General as his Appellate Authority. After this Tribunal passed an order to dispose of the appeal, the Post Master General, as the Appellate Authority passed its order wherein he has clearly mentioned that he acted as a Revisional Authority and upheld the order of the Director Postal Services, who passed the order of punishment in the instant case.

32. The whole controversy arose for the use of the word 'review' instead of 'revision'. However, such use of word 'review' cannot take away the competence but the same has to be judged from the stand point of content and context of the orders. Rule 29(1)(v) of

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No. 393 & 394 Dated. 31-3-15
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