

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-796/2011

New Delhi, this the 28th day of October, 2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

Virender Singh Lakra,
S/o Late Sh. Karan Singh,
The Then Postal Assistant,
New Delhi, GPO reverted
As Postman, and transferred
To Srinivaspuri Post Office,
New Delhi-110065.

R/o House No. S-132, Gali No. 2,
Sanjay Colony, Narela,
New Delhi-110040.

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Applicant

(by Advocate : Sh. Ashok Kumar Sharma)

Versus

1. Union of India,
Through the Secretary,
Department of Posts,
Dak Bhawan
New Delhi-110001.
2. Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan
New Delhi-110001.
3. Sh. Ajay Singh Chauhan,
The Then Director,
New Delhi GPO,
New Delhi-110001
At present working at Dak Bhawan,
New Delhi-110001.
4. Sh. D.C. Sharma,
Assistant Director,
New Delhi GPO,
New Delhi-110001.
5. Director
New Delhi GPO,
New Delhi-110001.

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Respondents

(by Advocate : Sh. Ranjan Tyagi)

ORDER (ORAL)**Hon'ble Mr. Justice Permod Kohli**

The applicant has challenged the memo of charge dated 01.01.2009 (Annexure-P-1), disagreement note dated 23.12.2009 (Annexure-P-5), order of imposition of penalty of reduction to the cadre of Post Master passed by the Disciplinary Authority (Annexure-P-9), order of transfer of the applicant (Annexure-P-13) and order of compulsory retirement by way of penalty passed by Disciplinary Authority (Annexure-P-18) in this OA.

2. While serving as a Postal Assistant, the applicant was served with a charge memo dated 01.01.2009 for initiating Disciplinary Proceedings for major penalty under Rule 14 of the CCS (CCA) Rules, 1965 along with articles of charge, imputations of misconduct or misbehaviour and list of documents etc seeking his response within 10 days. The applicant submitted his representation. The Disciplinary Authority on consideration of the representation ordered disciplinary inquiry. After the appointment of Inquiry Officer and the Presenting Officer, inquiry was held against the applicant. The Inquiry Officer submitted his report dated 07.08.2009 holding the charges not proved against the applicant. The Disciplinary Authority on consideration of the inquiry report recorded his note of disagreement with the findings of the inquiring authority and its own findings holding the charge to be proved against the applicant. Note of disagreement along with the inquiry report were served upon the applicant for his representation. The applicant made his representation on 28.01.2010 (page-144). The Disciplinary Authority on consideration of the representation vide its order dated 26.02.2010 awarded punishment of reduction to the lower cadre of Postman with immediate effect for three years with further direction that during the currency of punishment, he will not be promoted and will not earn any

increment with further stipulation that he would be restored to the post of Postal Assistant and regain his pay and seniority after expiry of three years.

3. The applicant chose not to file statutory appeal but preferred a revision against the aforesaid penalty order to the Chief Post Master General, Delhi Circle on 28.04.2010. It is not in dispute that the revision filed by the applicant is still undecided. In the meantime, the Director of Postal Services, respondent No. 3 seems to have initiated review proceedings in respect to the award of punishment to the applicant, and issued show cause notice to the applicant for enhancement of penalty. After receiving the response from the applicant, Respondent No. 3 vide impugned order dated 06.08.2010 enhanced the penalty of reduction to the lower cadre, as noticed hereinabove, to compulsory retirement, holding that the punishment awarded by the Disciplinary Authority is not commensurate with the gravity of the offence.

4. We have heard learned counsel for the parties. It is not in dispute that the applicant did not prefer any appeal against the order of the Disciplinary Authority imposing penalty of reduction to the lower grade. Rather, he preferred to file a revision to the Chief Post Master which is still pending. From the record, we do not find what prompted the Director of Postal Services to initiate suo motto proceedings for review, in purported exercise of powers of reviewing authority.

5. Legality, propriety and validity of the order dated 06.08.2010 passed by the Director in purported exercise of powers of the reviewing authority has been seriously questioned in the present OA on various grounds. The challenge is primarily on following grounds:

- (i) the director who exercised the review jurisdiction was not competent to exercise review jurisdiction under rule 29-A of the CCS (CCA) Rules, 1965;

- (ii) no ground existed for invoking review jurisdiction;
 - (iii) the order impugned is without any reason, much less a legal and valid reason, and suffers from non-application of mind; and
 - (iv) the Director could not have passed the order impugned in view of the pendency of the revision petition filed by the applicant before the competent revisional authority, who was/is higher in rank and status.
6. Part VIII of the CCS (CCA) Rules, 1965 contains the provisions for revision and review. Rule 29 deals with the exercise of revisional powers, whereas rule 29-A deals with exercise of review jurisdiction. Both these rules are reproduced hereunder:

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 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 [and the Government servant has been given an opportunity of representing against the advice of the Commission]:

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.

29-A. Review

"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:

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring 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 [and the Government servant has been given an opportunity of representing against the advice of the Commission]."

Under rule 29(1)(iii), Member (Personnel), Postal Services Board, in case of a Government servant serving in or under the Postal Services Board, is the revisional authority. Under sub-rule (1) (iv) of the aforesaid rule, the head of a department directly under the Central Government in the case of a Government servant serving in a department or office, except in respect of a Government servant in the Secretariat or the Posts and Telegraphs Board, is the revisional authority, if the Government servant is under the control of such head

of department. Clause (v) of sub-rule (1) also empowers the appellate authority to exercise revisional jurisdiction within six months of the date of the order proposed to be revised. Clause (vi) confers jurisdiction upon the President to prescribe by a general order or special order the revisional authority to exercise the revisional jurisdiction under the Rules. The applicant was serving in the Department of Post and thus under sub-rule (1) (iv), the head of department would be the revisional authority. The applicant has, however, referred to Department of Post notification No.C-11011/1/2001-VP dated 29.05.2001, to contend that under clause (vi) of sub-rule (1) of rule 29, the President has designated Principal Chief Post Master General (CPMG, for short) as the revisional authority. The applicant has reproduced the said notification in para 4.15 of the OA. Same reads as under:

“(10) Revising Authority in Department of Posts-No. S.O. 1279 dated 9.6.2001- In exercise of powers conferred by Clause (VI) of sub-rule (1) of Rules 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby specified that in the case of a Government servant serving the Department of Posts for whom the Appellate Authority is subordinate to the authority designated as the Principal Chief Postmaster-General or the Chief Postmaster-General (other than the Chief Postmaster-General of Senior Administrative Grade) of a Circle, the said Principal Chief Postmaster-General or the said Chief Postmaster-General, as the case may be, shall be the revising authority for the purpose of exercising the powers under the said Rule 29.

(G.O. Dept. Of Posts, Notification No. C-11011/1/2001-VP, dated the 29th May, 2001.”

Though a copy of the notification has not been produced by any of the parties, however, in the counter affidavit specific reference to the aforesaid notification is not disputed. There is also no denial in respect to the existence of this notification and the authority designated for exercising revisional jurisdiction therein. The applicant has also placed on record copy of the revision petition as Annexure P-10 addressed to the CPMG, Delhi Circle, and the said revision is still

pending before him. In view of the aforesaid notification the CPMG is the competent authority to exercise revisional jurisdiction.

7. Rule 29-A of the CCS (CCA) Rules, 1965 confers the power of review only upon the President. There is nothing on record nor there is any averment in the counter affidavit that the President at any given time delegated his powers of review to the Director, who is the head of department. In any case, in order to invoke the review jurisdiction, whether *suo moto* or otherwise, the circumstances indicated in rule 29-A must exist. Under rule 29-A review jurisdiction can be exercised by the President when any new material or evidence which could not be produced or was not available at the time of passing of 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. No such circumstance is said to have existed when the respondent No.5 exercised the power of review.

8. We have also examined the show cause notice issued to the applicant before passing the impugned order dated 06.08.2010. The show cause notice dated 27.04.2010 has been issued by the respondent No.5 in purported exercise of the appellate/revisional jurisdiction. Relevant extract of the show cause notice reads as under:

"And whereas, the undersigned being the appellant/revising authority and in exercise of powers conferred upon me vide Rule 29 of CCS(CCA) Rules 1965 do not consider the punishment awarded to Sh. Virender Singh Lakra/KS, Postman (Formerly PA) commensurate with the gravity of the offence. Hence it is proposed to enhance the penalty of reduction to Postman cadre for three years to that of compulsory retirement from service.

Now, therefore, the undersigned given an opportunity to the official to submit his representation, if any, against the said proposal within ten days of receipt of this memo failing which the case will be decided ex-parte."

However, while passing the impugned order dated 06.08.2010, the respondent No.5 in the first line of the order has mentioned, "This is the review disciplinary proceedings". In second para the respondent No.5 describing itself to be the revising authority has mentioned, "Being the Revising Authority, undersigned did not consider the punishment awarded to the aforesaid official commensurate with the gravity of the offence", and in the *pen ultimate* para the said respondent has imposed the penalty of compulsory retirement upon the applicant "in exercise of powers conferred upon the... vide Rule 29(v) (b) of CCS (CCA) Rules 1965".

9. The impugned order has created utter confusion. At some place, the respondent No.5 refers itself to be the reviewing authority and at other places as revisional authority. The respondent has also noticed the contention of the applicant in the following words:

"(ii) That the revision petition has been pending with the highest authority in the circle, who is the revising authority, since three days earlier than the show cause notice left from NDGPO."

However, he has not dealt with this submission of the applicant at all, but one thing becomes clear that the revision petition was pending before another authority and from the memo of the revision petition it is evident that the revision petition was filed before the CPMG, Delhi Circle, who, according to our observations hereinabove, is the competent revisional authority. It is thus not clear as to in what capacity the impugned order has been passed by the respondent No.5. Assuming, the respondent No.5 had the jurisdiction, whether it is revisional or review jurisdiction. Neither the show cause notice nor the impugned order indicates as to the ground for exercising review jurisdiction, i.e., new material or evidence having been brought to his notice, which could not be produced at the time of passing of the order by the disciplinary authority. Thus, there was absolutely no ground for invoking review jurisdiction

notwithstanding the fact that the respondent No.5 could have exercised review jurisdiction (which does not seem to be conferred upon him). In any case, the impugned order dated 06.08.2010 passed by the respondent No.5 is without any reason whatsoever except that he has mentioned in the impugned order that the order of penalty imposed by the disciplinary authority is not commensurate to the gravity of the offence.

10. For the above reasons, the order impugned enhancing the penalty imposed by the disciplinary authority from the penalty of reduction to the lower cadre of Postman, as noticed hereinabove, to that of compulsory retirement is not sustainable in law. We are constrained to set aside the impugned order.

11. Learned counsel appearing for the respondents has vehemently argued that even if the penalty of compulsory retirement is set aside for non-compliance with the statutory rules, the penalty imposed by the disciplinary authority is still sustainable in law. Since the revision filed by the applicant before the competent revisional authority is pending, and it appears that on account of the intervening circumstances, i.e., passing of the order of compulsory retirement by the respondent No.5, the revisional authority has not dealt with the revision filed by the applicant, we do not propose to comment anything in respect to the penalty order dated 26.02.2010 passed by the disciplinary authority.

12. Having held the impugned order dated 06.08.2010 as illegal and also violative of principles of natural justice, this OA is disposed of with the following directions:

- (1) Impugned order dated 06.08.2010 passed by the respondent No.5 is hereby set aside.

- (2) The revisional authority, i.e., respondent No.2, who is seized of the revision petition filed by the applicant is directed to decide the revision within a period of two months from the date of receipt of copy of this order.
- (3) As a consequence of setting aside the order passed by the respondent No.5, the applicant is entitled to be reinstated in service immediately.
- (4) In view of the setting aside of the order of compulsory retirement, the competent authority shall also decide about the payment of emoluments and other consequential benefits to the applicant in terms of Fundamental Rule 54-A within a period of two months.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

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