

**Central Administrative Tribunal
Principal Bench**

OA No.3010/2015

New Delhi, this the 27th day of September, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Kumar Rajeev
Aged about 42 years,
S/o Shri A. K. Singh
Under Secretary,
Election Commission of India.
r/o F-1/605, Neeti Khand-1,
Indirapuram,
Ghaziabad (UP).

.... Applicant.

(By Advocate : Shri M. C. Dhingra)

Vs.

Election Commission of India
Through its Secretary
Nirvachan Sadan,
Ashoka Road,
New Delhi.

.... Respondent.

(By Advocates: Shri P. R. Chopra).

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman :

The applicant was appointed as an Assistant in the Election Commission of India. A charge sheet was issued to him on 05.11.2003 wherein it was alleged that he made false declaration about the dependence and income of his parents in the context of getting the name of his mother included in the Central Government Health Scheme (CGHS)

Token Card, and he claimed reimbursement of medical expenses amounting to Rs.74,269/- fraudulently.

2. The applicant submitted his explanation to the charge sheet. Not satisfied with the explanation, the Disciplinary Authority appointed Inquiry Officer (IO). After the inquiry was conducted, a report was submitted on 30.08.2004 holding that the charges are proved. The applicant was given an opportunity to defend himself, by supplying a copy of the report of the IO. On consideration of the representation made by the applicant, the Disciplinary Authority (DA) passed an order dated 13.12.2004 imposing the punishment of compulsory retirement.

3. The applicant filed an appeal before the Chief Election Commissioner, i.e., the Appellate Authority. Through an order dated 17.05.2005, the Appellate Authority modified the punishment to the one of “withholding future promotion for five years”, and directing that the CR Dossiers of the applicant shall be placed before the Departmental Promotion Committees (DPC) that are to be held in future. The period between the date of his compulsory retirement and the date of reinstatement was directed to be treated as *dies non*.

4. Not satisfied with the order passed by the Appellate Authority, the applicant preferred a Revision before the President of India on 12.07.2012. The Revision was forwarded to the Appellate Authority by making reference to Rule 29 (1) (v) of the CCS (CCA) Rules, 1965 (for short, the Rules). Ultimately, the Revision was rejected through Memorandum dated 27.08.2014.

5. This OA is filed challenging the order of punishment dated 13.12.2004, order of Appellate Authority dated 17.05.2005 and the memorandum dated 27.08.2014 rejecting the Revision.

6. The applicant contends that in the disciplinary inquiry, neither any witness was examined, nor any opportunity was given to him to defend his case. It is stated that the entire enquiry is vitiated on account of violation of principles of natural justice and failure to follow the prescribed procedure. In respect of the order passed by the Appellate Authority, the applicant contends that it is bereft of reasons and contrary to the principles of law, and as regards the Memorandum dated 27.08.2014, the contention of the applicant is that no reasons were assigned for rejecting the Revision and the same cannot be sustained in law.

7. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the inquiry was held strictly in accordance with the prescribed procedure, and since the applicant admitted his acts of misconduct, the necessity to examine any witness did not arise. It is also stated that the Appellate Authority has shown utmost indulgence and modified the order of punishment to the benefit of the applicant, and still he is not satisfied. According to them, the revision was not maintainable.

8. Shri M. K. Dhingra, learned counsel for the applicant submits that all the three orders are vitiated on account of one reason or the other, and they cannot be sustained in law. He submits that in Revision, the Election Commissioner itself constituted a committee to go into the matter, and the committee, in turn, made several recommendations by recording its findings and without taking those into account, the Memorandum dated 27.08.2014 was issued.

9. Shri P. R. Chopra, learned counsel for the respondents submits that the disciplinary inquiry was held strictly in accordance with law, and once the applicant accepts his misconduct, he cannot turn around and complain about the procedure. He submits that the

revision filed by the applicant was not maintainable, apart from being barred by limitation or laches.

10. The charges against the applicant are in relation to the information furnished by him in the context of obtaining the CGHS Token Card. An employee of the government can include the name of his mother in the CGHS Card, if only the income of his father is below particular limits. In the concerned proforma, the applicant is said to have mentioned that the income of this father is less than Rs.1500/- per month. However, on verification it emerged that the father of the applicant was receiving much more.

11. After the charge sheet was issued, the applicant submitted his explanation and thereafter an Inquiry Officer was appointed. In the inquiry, the applicant admitted the mistake on his part. However, he pleaded that the reason for his ignorance about the actual income was that he was not visiting his native place, and was not conversant with the relevant facts. Before the Inquiry Officer, he offered to refund the amount which was claimed by him towards reimbursement. The Disciplinary Authority took these aspects into account, and after extensive discussion, imposed the penalty of compulsory retirement.

12. The Appellate Authority passed order through Memorandum dated 17.05.2005. The plea of the applicant that it is bereft of reasons is indeed, correct. The Memorandum reads as under:-

“Memorandum

Subject : Appeal to the Chief Election Commissioner of India under Rule 23 (ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 filed by Shri Kumar Rajeev, Assistant in the Election Commission of India.

On an appeal filed by Shri Kumar Rajeev, Assistant in the Election Commission of India before the Chief Election Commissioner under Rule 23 (ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, against the Order of the disciplinary authority No.193/2/III(I)/2003, dated 13th December, 2004 ordering him to be compulsorily retired from government service with immediate effect under the provisions of Rule 11 (vii) of the aforesaid rules, the Appellate Authority has passed the following order:-

“Keeping in view all relevant facts and circumstances of the case, as an appellate authority and in exercise of powers vested under Rule 27 of CCS (CCA) Rules, I hereby order that the penalty imposed upon Shri Kumar Rajeev be reduced to withholding of his future promotion for five years. Further, a copy of the order should be placed on his CR dossier and placed before any and all Departmental Promotion Committees (DPC) that are held in future, for the DPC to take the appropriate view as and when cases of promotion/crossing of efficiency bar in the cadre are taken up. Further, the period for which he did not serve the Commission, i.e. from the date of his compulsory retirement in pursuance of the order of the disciplinary authority and till the date of his reinstatement in pursuance of the present order, shall be treated as “dies non”.

2. Accordingly, Shri Kumar Rajeev is hereby reinstated in service as Assistant in the Election Commission from the date he reports for duty.

3. He would not be entitled to any pay and allowances or any other benefits for the period from the date of his compulsory retirement upto the date of his reinstatement in service.

(STANDHOPE YUHLUNG)
UNDER SECRETARY”

If the ordinary principles of adjudication are to be applied, the order is liable to be set aside. However, if the applicant is in service today, he owes it to this very Memorandum. Obviously for this reason, the applicant did not press the relief vis-a-vis this memorandum during the course of the arguments. Ultimately the challenge is only to the order passed in the Revision.

13. It is fairly well settled that Revision is not as a matter of right, and unless it is conferred by specific provision of law, it cannot be either availed or entertained. The applicant filed his Revision before the President of India, seven years after the Appellate Authority passed the order. It is straightway addressed to the President of India. The language employed therein would indeed surprise any officer, not to speak of the office of President of India. For example, in the first page of the Revision, the applicant wrote as under:-

“Not only that the guilt verdict is erroneous but even the procedure for imposing punishment adopted by

the Election Commission was not in consonance with the Rules.”

At one place, it is stated that his family belongs to lower middle class and asking the income of his father would have meant to demean him. No provision of law is mentioned in the revision. The revision seems to have been forwarded to the Election Commission by the President’s Secretariat. However, in its wisdom, the Election Commission thought it fit to appoint a committee, even while the OA challenging the order of punishment and order of appellate authority was pending before this Tribunal. The Committee, in turn, is said to have undertaken some exercise and made recommendations. The Legal Advisor, however, informed the respondents the steps to be taken in matters of this nature. Ultimately, the Revision was rejected through Memorandum dated 27.08.2014, which reads as under:-

“MEMORANDUM

With reference to his petition dated 12.07.2012 to Hon’ble President of India, which was forwarded to the Commission for appropriate action vide letter dated 24.07.2012, and representation dated 16.12.2013 to the Deputy Election Commissioner, Election Commissioner of India to treat the same as Revision Petition under Rule 29 (1) (v) of the CCS (CCA) Rules, 1965, Sh. Kumar Rajeev, Under Secretary is hereby informed that the Competent Authority has decided not to overturn the earlier decision taken in the matter.

By Order

(B. C. Patra)

UNDER SECRETARY”

Confronted with a specific question as to under which provision, the Revision was filed, learned counsel for the applicant submitted that it is referable to Rule 29 of CCS (CCA) Rules, 1965. A perusal of this Rule discloses that the remedy of revision is available only against an order from which an appeal is allowed, but from which no appeal has been preferred, or from which no appeal is allowed.

14. In the instant case, the remedy of appeal is allowed, and it was availed by the applicant. Therefore, the question of availing the remedy of Revision does not arise. The mandate under sub rule (3) of Rule 29 of CCS (CCA) Rules, 1965 that an Application for Revision shall be dealt with in the same manner as if it was an appeal under the rules, would become relevant, only when the revision as such is permissible.

15. At any rate, the Revision was filed seven years after the order of Appellate Authority. Though the rules are silent about the period within which the remedy can be availed, if otherwise available, the inordinate delay would certainly make it not maintainable, on the grounds of laches.

16. We do not find any merit in the OA, and is accordingly dismissed.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/