

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A.No.269/773/2014

Date of Reserve:21.01.2019

Date of Order: 07.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Bhaskar Rao, aged about 54 years, S/o. Late B.Lachhmaya, At-Brahma Street, PS-Jeypore, Dist-Koraput, presently working as P.A. Jeypore H.O., At/PO-Jeypore, Dist-Koraput

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-1210 001.
2. Member (D), Postal Services Board, Dak Bhawan, New Delhi-110 001.
3. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751 001.
4. Director, Postal Services, O/o., Post Master General, Berhampur Region, At/PO-Berhampur, Dist-Ganjam-760 001.
5. Senior Superintendent of Post Offices, Koraput Division, At/PO-Jeypore (K), Dist-Koraput-764 001.

...Respondents

By the Advocate(s)-Mr.A.C.Deo

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(A)(J):

Applicant was working as Postal Assistant under the Department of Posts at the time of filing this Original Application. Being aggrieved by the Memo dated 6.7/11.2013 (A/7) whereby and whereunder the Director, Postal Services, Office of the CPMG, Odisha Circle, Bhubaneswar (Res.No.4) in exercise of powers conferred upon him under Rule-29(1) of CCS(CCA) Rules,

1965 proposed to review the punishment as imposed by the Disciplinary Authority vide Memo dated 3.7.2013 and to impose punishment of compulsory retirement, thus giving an opportunity to the applicant for making representation on the penalty proposed and the order dated 13/16.10.2014 (A/8) imposing punishment of compulsory retirement from service on the applicant with immediate effect. In the circumstances, the applicant in this O.A. under Section 19 of the A.T.Act, 1985, has approached this Tribunal seeking for the following reliefs:

- i) That the order dated 06/7.11.2013 proposed to review of punishment (A/7) and the order of punishment dated 13/16.10.2014 (A/8) be quashed.
- ii) And further be pleased to pass any order/order(s) as deemed fit and proper to give complete relief to the applicant.

2. Briefly stated, the facts of the matter are that the applicant while working as Postal Assistant in the Head Post Office, Koraput Division, had been proceeded against under CCS(CCA) Rules, 1965 vide Memo dated 7.1.1993 and on conclusion of the disciplinary proceedings, he had been imposed punishment of compulsory retirement. The appeal preferred by him having been rejected by the Appellate Authority, he approached this Tribunal in O.A.No. No. 9 of 2006. Since the applicant, during pendency of the said O.A., preferred a revision petition, this Tribunal disposed of the matter vide order dated 14.7.2009 with a direction to dispose of the review petition within stipulated time frame. The review petition having been turned down by the reviewing authority, the applicant approached this Tribunal in O.A.No.593 of 2009 challenging the legality and validity of the order of punishment dated 29.12.2013 issued by the Disciplinary Authority, order dated 28.2.2005 of the Appellate Authority rejecting his appeal as well as the order dated 9.9.2009

passed by the reviewing authority rejecting his review petition. This Tribunal after hearing the matter on merit disposed of O.A. No. 593 of 2009 vide order dated 22.04.2012 in the following terms:

“Law is well settled that fairness is a rule to ensure that the power vested with the authority is not abused but properly exercised. Fairness is also a principle to ensure that statutory authority arrives at a just decision after granting full opportunity to the delinquent in the enquiry. In a plethora of judicial pronouncements it has been held by the Hon’ble Apex Court that justice should not only be done but be seen to have been done. Enquiry held should not be an empty formality. It is seen that the applicant attended the enquiry held on 29.7.2002 but according to him could not attend the enquiry on 29.11.2002 due to sudden demise of his father in law on the previous day for which he has sent a telegram which was not denied by the Respondents either in the counter or in any of the orders impugned in this OA. When the enquiry was opened/held by the order of the higher authority, the Inquiry Officer on a single sitting, could not have examined the xerox copies of the records, examined the witnesses and closed the enquiry behind the back of the applicant. In view of this we feel that justice would be met if we remit the matter back to the Disciplinary Authority for conducting the enquiry from the stage where it was closed by the IO, i.e. on 29.11.2002 and thereafter proceed in the matter in accordance with Rules. Ordered accordingly. The applicant is to cooperate with the enquiry and should not seek adjournments without any valid reason.

With the aforesaid observation and direction the orders of the Disciplinary Authority, Appellate Authority and Revisional Authority are quashed and the OA is allowed to the extent stated above. Consequently, the applicant will be relegated to the position he was holding prior to the date of compulsory retirement. The interregnum period between the date of compulsory retirement and relegation to the position by the applicant shall be decided by the D.A. on conclusion of the proceedings as directed above. No costs”.

3. Thereafter, the I.O. as it reveals from the record, conducted the de novo inquiry and submitted its report on 8.3.2013 holding that all the Articles of Charges framed against the applicant stand not proved beyond any doubt. Applicant was communicated with a copy of the report of the I.O. vide communication dated 4.4.2013 requesting him to make representation, if any,

within 15 days. Be that as it may, vide No.F/OA 593/2009 dated 3.7.2013, the Senior Superintendent of Post Offices, Koraput Division in the capacity of Disciplinary Authority inflicted punishment of withholding of one increment when falls due next for a period of three years without cumulative effect in modification of earlier punishment of compulsory retirement vide Memo dated 29.12.2013. it was further ordered by the Disciplinary Authority that the interregnum period from 30.12.2003 to 27.7.2012 be treated as duty for all purposes. The financial benefits so accrued will be reckoned for adjustment of pension and pensionary benefits already disbursed to the charged official.

4. While the matter stood thus, the Director of Postal Services, O/o. CPMG, Odisha Circle, Bhubaneswar vide Memo dated 6/7.11.2013(A/7), as already indicated above, issued notice to the applicant proposing enhancement of punishment to that of compulsory retirement from service and thereby giving an opportunity to the applicant to make representation if any, in that behalf. The applicant submitted his representation and in consideration of the same, the Director of Postal Services, Berhampur Region vide order dated 13/16.10.2014 (A/8) issued the enhanced punishment as under:

“After going through all aspects of the case with application of mind, I am not convinced by the arguments brought out by the charged official in his defence. I do not agree with the findings of the inquiry as produced by the inquiring authority. I also do not agree with the findings of the disciplinary authority regarding disproving the charges levelled against the charged official. Under the circumstances, the punishment should have been more deterrent and I feel the quantum of punishment imposed by the disciplinary authority is inadequate. Further, when the charged official's integrity has been called into question and his retention in the Govt,. Service is totally unjustified. However, taking into consideration of all aspects & in exercise of statutory powers conferred vide Rule-29(1)(v) of CCS(CC&A) Rules, 1965, I hereby order to enhance the punishment of Shri Bhaskar Rao, PA, Jeypore (K) HO to that of “Compulsory Retirement” from service with immediate effect as against the punishment imposed by the

SSPOs, Koraput Division vide his Memo No.F/OA-593/2009 dated 03.07.2013".

Hence this, Original Application with the reliefs as mentioned above.

5. The grounds on which the applicant has mainly based his claim are that as per G.I. M.H.A. O.M. No.F.7/14/61-Ests. (A) dated 24th January, 1963, officers performing the current duties of a post cannot exercise statutory powers under the rules. It is stated that the Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (i.e. Income Tax Act) or Rules, Regulations and By Laws made under various Articles of constitution e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc. Further, it has been submitted that it is the settled principle of law that an order passed without powers, authority and jurisdiction is a nullity. According to applicant, since the notice dated 06/07.11.2013 (A/7) proposing review of the order of punishment dated 03.07.2013 as imposed by Disciplinary Authority was issued by the Director of Postal Services, O/o. CPMG, Odisha Circle, Bhubaneswar when he was in additional charge as DPS, Berhampur Region and the order enhancing punishment, i.e., compulsory retirement from service was passed (A/8) dated 13/16.10.2014 by the DPS, Sambalpur Region while holding additional charge as DPC, Berhampur Regional the same are void ab initio. Further, the applicant has pointed out that as per the settled principle of law that if a certain thing has to be done it should be done in a manner as prescribed in the statutory rules or else should not be done.

6. Per contra, the respondents have filed their counter. They have submitted that the Director of Postal Services, (BD & Mrkt.), O/o. the CPMG, Odisha Circle, Bhubaneswar being empowered to exercise the statutory powers of Director Postal Services, Berhampur Region (Appellate Authority), he, in exercise of the powers conferred on him under Clause (V) of Sub Rule (1) of Rule 29 of CCS(CCA) Rules, 1965 proposed to review the punishment order dated 03.07.2013 imposed on the applicant by the Disciplinary Authority. According to Respondents, as per Rule-29 of CCS(CCA) Rules, 1965, the Director of Postal Services in the capacity of the Appellate Authority is empowered to revise the punishment imposed by the Disciplinary Authority within six months of the date of the order proposed to be reviewed if no appeal is preferred. The Appellate Authority is empowered to confirm, modify or set aside the order in conformity with the powers vested upon a delinquent under the provisions of the said Rule. Respondents have pointed out that reasonable opportunity was given to the applicant to submit his representation against the proposed review of punishment already imposed on him by the Disciplinary Authority. The Appellate Authority not being satisfied with the quantum of punishment imposed by the Disciplinary Authority, proposed to review the punishment as per the powers vested on him. The reviewing authority passed his order dated 13/16.10.2014 after careful consideration of the representation of the applicant and therefore, there being no infringement of any rule or instruction and/or violation of the principles of natural justice, the order enhancing the punishment of compulsory retirement as imposed by the reviewing authority should not be interfered with.

7. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission submitted by the parties concerned.

8. It is the specific case of the applicant that the impugned orders have been passed by the Director of Postal Services who were in additional charge of Berhampur Region and therefore, they were not within their powers, authority and jurisdiction to review the order of punishment with a view to imposing enhanced punishment. In this connection, we have examined the pros and cons of the rules governing Revision and Review under Rule-29 of Swamy's CCS (CCA) Rules. A perusal of the same makes it clear that the Director of Postal Services in the capacity of Appellate Authority is empowered to propose and review the order within a period of six months of the date of the order. However, whether the said appellate authority or for that matter the Director of Postal Services, as in the instant case, being in additional charge could so review/revise is inconspicuous under Rule-29 of CCS(CCA) Rules. Respondents except making a bald statement that the Director of Postal Services in the capacity of Appellate Authority is empowered to review/revise the order under Rule-29 of CCS(CCA) Rules, have not been able to substantiate their view point by adducing any corroborative material that even the Director of Postal Services being in additional charge can act or function as an Appellate Authority and in this respect statutory power of review is exercisable by him. On the other hand, the applicant, as already mentioned above, has pointed out that as per G.I.M.H.A. OM No.F.7/14/61-Ests.(A) dated 24th January, 1963, officer performing current duties of a post cannot exercise statutory powers under the rules and in this respect, the advice tendered by the Law Department

makes it clear that officer appointed to perform current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory power, whether those powers are derived direct from that throw an Act of Parliament (i.e. Income Tax Act) or Rules, Regulations and By Laws made under various Articles of constitution (e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.). Viewed from this, we find considerable force in the contentions raised by the applicant that the proposed order for enhancement of punishment of the orders of the Disciplinary Authority and the enhanced punishment imposed on the applicant in the capacity of Appellate Authority while holding the current duties of the post of Director of Postal Services, Berhampur Region is bad in law and hence, does not stand to judicial scrutiny.

9. For the reasons aforesaid, we quash and set aside the order dated 06/7.11.2013 proposing review of punishment (A/7) and the order of punishment dated 13/16.10.2014 (A/8).

10. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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