

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.1196 of 2013
&
M.A.No.599/2017 in O.A.No.1196/2013

Date of CAV:08.03.2019.

Date of Order : 05.04.2019.

Between :

K.Krishna, s/o K.Venkataraman,
Aged about 49 yrs, Occ:Inspector, Posts,
Railway Mail Service, TP-2nd Sub Division,
Nellore.

...Applicant

And

1. Union of India, rep., by its Secretary to the Government of India, M/o Communications & IT, Dept. Of Posts, Dak Bhavan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, A.P.Circle, Dak Sadan, Abids, Hyderabad-500 001.
3. The Postmaster General, Kurnool Region, Kurnool-518 002.
4. Superintendent, Railway Mail Service, AG Division, Guntakal, Anantapur District-515 801.
5. Superintendent of Railway Mail Service, TP Division, Tirupati-517 501.
6. Head Record Officer, TP Division, Tirupati-517 501.

... Respondents

Counsel for the Applicant ... Mr.M.Venkanna
Counsel for the Respondents ...Mr.K.Venkateswarlu, Addl. CGSC
Rep., by Mrs.Swarna Latha

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant has filed the present OA challenging the impugned order dated 02.09.2013 passed by the 2nd respondent (in his capacity as Revising Authority) in enhancing the penalty of Censure to that of (a) withholding one increment for two years without cumulative effect and (b) recovery of Rs.1,50,000/- @ Rs.5000/- per month in 30 instalments.

2. **Brief facts of the case:**

The applicant was appointed as Postal Assistant on 05.05.1983 in the Department of Posts and after completion of 16 years in the said post, he was granted Time Bound One Promotion with effect from 1999. Subsequently, he appeared for the Limited Departmental Competitive Examination (LDCE) for the post of Inspector of Post Offices. He was appointed as such on 22.07.2002. While working as Inspector of Post Offices in Piler Sub-Division in Tirupati Division, during the period from 26.05.2005 to 22.03.2009, he carried out inspection at Damalcheruvu SO a/w Chandragiri Head Post Office, Tirupati Division with effect from 31.12.2007 to 27.02.2008 and submitted an inspection report to the Superintendent of Post Offices, Tirupati Division, that he had verified the balances of Cash and Stamps and it was found correct. However, in the review report, it was pointed out that the details of cash and stamp balances retained by the SPM were not indicated and in the absence of

these details, it could not be confirmed whether excess cash with or without liabilities was being retained. Explanation of the applicant was sought for and he stated that the cash and stamp balances held by the SPM were below the authorized limits and hence no details for liabilities were recorded by him. It was therefore alleged that the applicant failed to reflect the details of cash and stamp balances verified by him on 31.12.2007 in the inspection report dated 08.03.2008, thereby failed to maintain devotion to duty as required in Rule 3 (1) (ii) of the CCS (Conduct) Rules, 1964. Therefore, he was proceeded under Rule 16 of the CCS (CCA) Rules, 1965. This resulted in imposition of a minor penalty of "Censure", vide memo dated 25.06.2012. No appeal was filed before the Appellate Authority since the applicant was satisfied with the punishment imposed.

3. The 2nd respondent (i.e., the Revising Authority), vide memo dated 27.03.2013 issued a notice proposing to modify the punishment of Censure to that of withholding of one increment for a period of two years without cumulative effect and recovery of an amount of Rs.1,50,000/-.

4. It is the contention of the applicant's counsel that an important point of law in this case is that the 2nd respondent, who is the Revising Authority under Rule 29 (vi) of the CCS (CCA) Rules 1965, is a special authority appointed by the President by a special order to revise the penalty within the prescribed period and unless and until there is a specific time mentioned in the special order, the Revising Authority cannot exercise his power to revise the penalty imposed.

5. The Counsel for the Applicant contended that in a similar matter dealt with by the Hon'ble Apex Court in *Union of India & Others v. Vikrambhai Maganbhai Chaudhari* in Civil Appeal No.2602/2006, dated 01.07.2011, which was an appeal against the order of the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No.16575/2005, dated 12.08.2005 and an Order of the Central Administrative Tribunal, Ahmedabad Bench, in O.A.No.333/2004, dated 20.04.2011, the Apex Court had struck down the notification dated 29.05.2001 along with the power available to the 2nd respondent under Rule 29 (1) (vi) of the CCS (CCA) Rules, 1965, which is extracted hereunder:

“6) As rightly observed by the Tribunal, the above Sub- Rule (1) of Rule 29 indicates 6 categories of revision authorities.

If we go further it shows that while no period is mentioned in sub-clauses (i) to (iv), sub-Clause (v) refers to a period of six months from the date of order proposed to be revised. Since order was passed by exercising power under sub-Clause (vi), we have to see whether in the Notification specifying an authority a time limit has been mentioned or even in the absence of the same, the outer limit can be availed by exercising power under sub-Clause (v). According to learned ASG, there is no need to specify the period in the Notification authorizing concerned authority to call for the record for any enquiry and revise any order made under the Rules. We are unable to accept the said claim for the following reasons.”

It was categorically held in the above judgement that –

“7.....The argument that even in the absence of specific period in the Notification in view of clause (v),

the other authority can also exercise such power cannot be accepted. To put it clear sub Clause (v), the other authority can also exercise such power cannot be accepted. To put it clear, sub-Clause (v) applies to appellate authority and Clause (vi) to any other authority specified by the President by a general or special order for exercising power by the said authority under sub-Clause (vi).

There must be specified period and the power can be exercised only within the period so prescribed.

8) *Inasmuch as the Notification dated 29.05.2001 has not specified any time limit within which power under Rule 29(1) (vi) is exercisable by the authority specified, we are of the view that such Notification is not in terms with Rule 29 and the Tribunal is fully justified in quashing the same. The High Court has also rightly confirmed the said conclusion by dismissing the Special Application of the appellants and quashing the Notification on the ground that it did not specify the time limit. Consequently, the appeal fails and the same is dismissed. No order as to costs."*

6. The Counsel for the applicant argued that the notification No.SO 1279, dated 9.6.2001 issued by the President has to indicate a stipulated period and since there is no specific period mentioned in the said notification , the 2nd respondent does not have power to revise the orders of the 4th respondent.

7. It is submitted by the applicant's counsel that the 2nd respondent had passed the orders after a lapse of more than 1 year 3 months since the 4th respondent had passed the final orders imposing a penalty of Censure. It

was reiterated that since the Notification No.SO 1279, dated 09.06.2001 did not prescribe any time limit, the impugned order dated 02.09.2013 is nonest and contrary to the provisions under Rule 29 (vi) of the CCS (CCA) Rules 1965.

8. The Counsel for the Respondents stated that the Principal Chief Postmaster – General or the Chief Postmaster General, who is the Revising Authority, for the purpose of exercising the powers under the said Rule 29, 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 confirm, modify or set aside the order or confirm, reduce, enhance or set aside the penalty imposed. However, the reply statement makes no mention of the Hon'ble Supreme Court's judgment in *Union of India & Others v. Vikrambhai Maganbhai Chaudhari* in Civil Appeal No.2602/2006, dated 01.07.2011, which has struck down the notification dated 29.05.2001 along with the powers available to the 2nd respondent under Rule 29 (1) (vi) of the CCS (CCA) Rules, 1965.

9. In view of the above and the ratio laid down by the Hon'ble Supreme Court in *Union of India & Others v. Vikrambhai Maganbhai Chaudhari* (Para 5 (supra)), the present OA is allowed. The impugned orders of the 2nd respondent vide memo dated 02.09.2013 are hereby quashed and set aside.

10. In view of the final orders in the main OA, the MA.No.599/2017 seeking vacation of interim orders stands dismissed.

11. No order as to costs.

Sd/-

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 05th day of April, 2019

DSN