

(1983) 10 DEL CK 0025

In the Delhi High Court

Case No : Letter Patent Appeal No. 41 of 1975

Kailash Prasad Sinha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-10-1983

Acts Referred:

Citation : (1984) 6 DRJ 296 : (1984) LabIC 1329 : (1984) 2 SLJ 385

Hon'ble Judges : Rajinder Sachar, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : S. Balakrishnan and M.L. Sachdev, for the Appellant;

Judgement

Sachar, J.

(1) This is an appeal against the order of the learned Single Judge (Prakash Narain, J.) as he then was dated February 28, 1975 by which he dismissed the petition and upheld the action for review started under Rule 29 of the Central Civil Services Rules (to be referred to hereinafter as Ccs Rules).

(2) The petitioner is a confirmed Upper Division Clerk in the Central Bureau of Investigation. He was issued two charge-sheets. One under Rule 14 of the Ccs Rules, 1965 was issued on March 24, 1970. Another one was issued to him on January 25, 1971 under Rule 16.

(3) In the charge under Rule 16 the Disciplinary Authority awarded the penalty of "censure". The petitioner has accepted it and that is not the subject-matter of challenge before us. However, in the other charge under Rule 14, enquiry was held. After the show-cause the matter was considered by the Deputy Director, C.B.I, who was the Disciplinary Authority. He passed order on December 31, 1971 and exonerated the petitioner in the enquiry which was held under Rule 14.

(4) On 31st July 1972, the Director, C.B.I, purporting to act under Rule 29 of the Ccs Rules issued show-cause to the petitioner indicating that he was proposing to pass an order of removal from service and asking him to make representation.

On receipt of this show-cause the petitioner moved this Court. By an interim order the Director was restrained from passing the final order. The writ petition was, however, later on dismissed as above and that is why the present appeal.

(5) Mr. Bala Krishnan sought to raise before us a number of points which had also been raised before the learned Single Judge. He had urged that there was no fresh material on the basis of which review could be considered by the Director C.B.I, and referred us to *R.K. Gupta v. Union of India* (1981) 26 Slr 752. He also raised the point that the show-cause under Rule 29 was issued on July 31, 1972 and the same was beyond the period of six months from the order dated 31-12-1971 of exoneration passed by the Disciplinary Authority. These points have been found against the petitioner by the learned Single Judge. Counsel also sought to raise a point that even if it was permissible to initiate review no punishment could be imposed on the petitioner without first holding a de novo and fresh enquiry and referred us to the first proviso to the Rule 29 and says that as it was proposed by the Director to impose a penalty of removal no such penalty could be imposed except after holding an enquiry in the manner laid down under Rule 14.

(6) Counsel concedes that an enquiry was undoubtedly held earlier by the Disciplinary Authority. But says this is not sufficient and in case where an employee has been exonerated and the reviewing authority wishes to impose a penalty mentioned in Clause (v) to Clause (ix) of Rule 11 of the Ccs Rules (Clause (viii) being for removal) it is incumbent as a condition precedent to again held a fresh enquiry under Rule 14. We do not propose to decide these matters in view of the decision that we propose to give on the question of maintainability of the power of review. We may note that counsel for the respondent has controverted the pleas of appellant on these points.

(7) The main argument of Mr. Bala Krishnan is by invoking second proviso to Rule 29, relevant of which reads as under : "Provided further no power of review shall be exercised by the Comptroller and Auditor-General, the Posts and Telegraphs Board 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."

(8) The argument in short is that the petitioner's Disciplinary Authority was the Deputy Director, C.B.I. Appeal against his order would have lain to the Director, C.B.I. Hence, review could only be exercised by an authority which would not be subordinate to the appellate authority, the power of review could only have been exercised by an authority higher than that of Director C.B.I, and not by Director himself. Now it is stated in the writ petition a number of times that the appellate authority was the Director, C.B.I, and, Therefore, he could not initiate the proposal for review. No doubt the power of review is given to the head of the department by virtue of Rule 29(1)(iv) but the same is subject to second proviso,

which means that even if the Director Cbi was head of the department he was still debarred from initiating the review because he himself being the appellate authority was not a higher officer than the appellate authority as is the requirement in second proviso. This point has been emphasised in the writ petition wherein it is stated that the head of the department can only review the matter where the appellate authority is subordinate in rank to the head of the department which portion does not exist here. The petitioner was however told as per letter dated 24-5-1973, from Director vide annexure E to the writ petition that notice to the appellant was issued by him not as an appellate authority but as a head of the department having power to review. This stand of the Director is a clear admission that the Director Cbi was the appellate authority but since he was exercising his power as the head of the department the power of review was available to him unencumbered by any period of limitation. That apparently was also the stand which was repeated in the counter-affidavit where in explaining the notice of 24-5-1973 issued by the Director the position taken was that it was wrong to contend that notice was issued by him as an appellate authority but in fact it was issued as a head of the department having power of review. Again this very problem of Director being the appellate authority was assumed where in para 14 it was stated that there could have been no question of respondent No. 2 being the appellate authority in respect of orders dated 31-12-1971 of the Disciplinary Authority exonerating the petitioner as no appeal lies to an authority against such an order. This was also the stand which was persisted at the time of hearing of the writ petition by the learned single Judge. The learned single Judge also has held that the Director was the head of the department. But he went on to observe that as the appellant had been exonerated in the proceedings under Rule 14 obviously no appeal could have or in fact has been filed against the said order, the Director did not and could not act as the appellate authority. The learned Judge accepted that had an appeal been filed under Rule 14, Director would have been the appellate authority, and if he had sought to review the order than, it could be said that he had reviewed the order as an appellate authority and he Therefore held that Shri Sen had acted as the head of the department in ordering the order of review and not as an appellate authority and his action would be legal. We are unable to agree with the finding of the learned Single Judge. Second proviso to Rule 29 clearly says that no power of review shall be exercised by the head of the department unless the authority to which an appeal would lie where no appeal is preferred is subordinate to him (view Sub-clause ii). Thus merely being a head of the department is not sufficient by itself to exercise a power of review. What has further to be seen is whether the head of the department is not the appellate authority) can not be said to be subordinate to himself. In such eventuality review could be exercised by some authority higher than the head of the department i.e. Director C.B.I. In our opinion the learned Single Judge was in error in holding that the question of who is appellate authority depended upon whether an appeal had been filed or could be filed. The Rules of Service lay down who is an appellate authority. He remains so whether an appeal is filed or not. The object of 2nd proviso Rule 29 is to

provide that though the head of department can exercise the power of review, it is only in those cases where the appellant authority is subordinate to the former. But as in the present case the appellate authority and the reviewing authority are the same person i.e. Director C.B.L, the condition precedent in 2nd Proviso to Rule 29 is not satisfied. In this view of the matter the finding of the learned Single Judge that the review notice could be issued by the Director C.B.I, even when he was the appellate authority cannot be sustained. The mere fact that no appeal could be filed because of the exoneration is totally immaterial because Sub-clause Ii to 2nd Proviso to Rule 29 clearly says that the authority to which an appeal would lie where no appeal had been preferred. Thus the actual filing or not of the appeal is of no consequence. What is crucial is that the appellate authority can not exercise the power of reviewing authority under Rule 29. In that view it has to be held that the Director C.B.I, being the appellate authority could not exercise the power of reviewing authority under Rule 29, and the impugned notice thus issued by him was not warranted in law.

(9) We are not inclined to permit the respondent to reopen the matter by permitting them to issue a further review notice by any other authority considering that period of 11 years have passed and it will be sheer harassment and injustice to re-start the proceeding.

(10) In view of the matter we would allow the appeal and set aside the order of the learned Single Judge, and quash the impugned notice of review dated 24-5-1973. The result will be that the order of the disciplinary authority exonerating the petitioner by the order of 31st December 1971 will stand. The petitioner is entitled to its costs in this appeal. Counsel's fee Rs. 500.00 .

(11) Before parting with the case we may note that during the hearing of appeal Mr. Sachdeva, the counsel for the respondent had attempted to urge that the appellate authority in fact was the Joint Director C.B.I. (who was subordinate to Director C.B.I.). He referred to notification issued on December 31, 1973 by which Upper Division Clerk of the General Central Civil Service Class lit in the C.B.I, the competent authority to impose punishment, is DIG/Deputy Directors in C.B.I, and the appellate authority was the Joint Director C.B.I. But this notification of 1973 has no relevance to the impugned notice issued in December, 1971. Mr. Sachdeva today files an affidavit Along with a letter of Ministry of Homes, dated 7-6-1963, addressed to 1.G. Police, which shows that post of Joint Director is created in the C.B.I, and that the said post is shown equivalent to Additional 1.G., and also of Deputy Director and says that the appeal would have lain from the order of Deputy Director to the Joint Director. Mr. Sachdeva then seeks to refer to part 111 of the Schedule to Ccs Rules and says that the service for which the punishing authority is the Deputy I.G. and appellate authority the I.G. is only that belonging to the Central Secretariat Clerical Services and this is inapplicable to the appellant because he is a member of subordinate ministerial establishment in C.B.I. (Special Police Establishment) and is not a member of Central Secretariat Clerical Services. Now this argument raises so many

questions of fact for which no foundation has been laid anywhere earlier. These arguments of Mr. Sachdeva assumes so many facts, equivalence of posts, the service cadre of the appellant. To permit contentious matters to be raised after a lapse of over 10 years is to work sheer injustice and to permit the respondents to build a completely new case. It is well to remember that when the appellant objected to the Director C.B.I, being the appellate authority and Therefore not competent to issue review notice, the Director C.B.I., by his letter of 24-5-1973 never disputed that he was not the appellate authority. The only justification given was that in issuing impugned notice that he was acting as the Head of the department. No , where there was any indication, as now suggested by Mr, Sachdeva that the appellate authority was the Joint Director C.B.I., and the Director, C.B.I, was a superior authority. We fail to see any Explanation for silence if it was a fact. Even in reply to writ petition, no suggestion was whatsoever was given that the Joint Director C.B.I, was the Appellate Authority and Therefore the Director being head of the department was competent to issue the impugned notice for review. Even before the Single Judge no such plea was taken. Even in the present appeal, no such cross objection were filed more especially as the learned Single Judge had proceeded on the basis that the appellate authority was the Director C.B.I. We cannot allow a completely new point to be raised at this stage, namely that the Joint Director C.B.I, was in fact appellate authority. This is nothing but sheer harassment to a clerk who has been facing this dread of having the matter reopened and reviewed even after his disciplinary authority had found the charge not proven and exonerated him a decade back. We feel that the matter must be allowed to " repose and not become an occasion for interminable enquiry on new points sought to be put forth after a lapse of 10 years. As a result of above the appeal is allowed and the necessary writ is issued as above with costs.