
(2013) 07 DEL CK 0092

In the Delhi High Court

Case No : Writ Petition (C) 3622 of 2013

Union of India and Others

APPELLANT

Vs

Dharam Pal Gupta

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0092

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : B.K. Berera, for the Appellant; Jyoti Singh, Ms. Saahila Lamba and Mr. Sanjeev Chaswal, for the Respondent

Judgement

V. Kameswar Rao, J.—The challenge in the writ petition is to the order dated November 22, 2012 in Original Application No. 2667/2011 and order dated March 14, 2013 in Review Application No. 47/2013 and M.A. 658/2013 in Original Application No. 2667/2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the Tribunal has allowed the Original Application and set aside the order passed by the Director Postal Services under Rule 29 of the CCS (CCA) Rules, 1965 and further dismissed the Review Application filed by the petitioners herein. The short question that arises for our consideration in this writ petition is whether the Director Postal Services could have exercised the power under Rule 29 of the CCS (CCA) Rules, 1965?

2. The petitioners had initiated disciplinary proceedings against the respondent under Rule 14 of the CCS (CCA) Rules, 1965. The respondent denied the charges and the inquiry commenced. During the course of the inquiry a corrigendum to the charge sheet was issued to the extent that the loss suffered by the Government because of the alleged conduct of the respondent is Rs. 19,092/- and not Rs. 38,612/-, as earlier alleged.

3. The Inquiry Officer had held that the charges levelled against the respondent have not been fully proved. According to him only part of the charge levelled

against the respondent relating to the affixation of stamps on pass books and both the schedules is proved. According to him the respondent is guilty of carelessness.

4. After following the process as laid down in the Rules, the Disciplinary Authority has found the respondent guilty of charges levelled against him and imposed a penalty/withholding of the increment vide his order dated March 31, 2009 without cumulative effect and recovery of Rs. 19,092/- towards the loss suffered by the Government.

5. The recovery was to be effected from the salary of the respondent in ten instalments of Rs. 2,000/- along with an amount of Rs. 1092/-. For the reasons best known to the respondent, he did not prefer an appeal against the order of the Disciplinary Authority dated March 31, 2009.

6. The Director of Postal Services, Bareilly being of the opinion that the punishment awarded to the respondent is not commensurate with the allegations made out against the respondent, vide a memorandum dated July 17, 2009 issued a notice to the respondent calling upon him to show cause why the penalty imposed against him vide order dated March 31, 2009 should not be enhanced to that of reduction to minimum in time scale of pay in P.B. 2 of Rs. 5200-20200 with grade pay of Rs. 2800/- till his superannuation with cumulative effect and recovery of Rs. 38,612/-.

7. The respondent submitted his representation. Thereafter the Director of Postal Services vide his order dated February 17, 2011 enhanced the penalty imposed on the respondent vide order dated March 31, 2009 to that of what has been stated in the notice dated July 17, 2009.

8. Being aggrieved the respondent filed an Original Application No. 2667/2011 wherein the respondent has prayed for quashing of the order of enhancement of penalty imposed upon him by the Director of Postal Services vide his order dated February 17, 2011. The Tribunal allowed the Original Application vide his order dated November 22, 2012 filed by the respondent by stating as under:-

We have heard the learned counsel for the parties. We have also perused the entire documents available on record. Admittedly, the impugned order of revision has been passed by the Director Postal Services and the same is contrary to Rule 29 of CCS (CCA) Rules, 1965 wherein no such power has been conferred upon the aforesaid authority. Therefore, the impugned order is passed by an incompetent authority and the same is nullity in the eyes of law. We, therefore, quash and set aside the aforesaid impugned revision order and restore the earlier order passed by the disciplinary authority in the matter.

9. The petitioner being aggrieved by the order of the Tribunal dated November 22, 2012 filed a Review Application No. 47/2013. The same was dismissed by the Tribunal.

10. Learned counsel or the petitioner would submit that the Tribunal has erred in

setting aside the order of the Director of Postal Services dated February 17, 2011. According to him under Rule 29 of the CCS (CCA) Rules, the Director Postal Services being an Appellate Authority is within its competence to exercise the power under the said Rule. In the case in hand, since no appeal was filed by the respondent the Appellate Authority was within its right to exercise the power under Rule 29 (1) (v). There is no illegality.

11. Learned senior counsel for the respondent on the other hand would support the order of the Tribunal. According to her it is only the Member (Personnel) Postal Services Board who could exercise the power under Rule 29. She would further state that even otherwise the Director Postal Services has gone beyond the charge and imposed a punishment for recovery of Rs. 38,612/-.

12. Having heard the counsel for the parties we are of the view, it is an accepted position of the parties that Director Postal Services is the Appellate Authority. The Appellate Authority, in the absence of appeal could have exercise the power within a period of six months. In the case in hand the Director Postal Services, the Appellate Authority has within a period of six months issued notice to the respondent for enhancement of the penalty. Whether as submitted by the counsel for the respondent, the final order must also be passed within a period of six months is another issue which arises for our consideration.

13. In that regard the Director General Postal and Telegraph has issued a letter dated July 27, 1972 which is reproduced hereunder:-

(4) How to reckon the period of revision of six months.-According to Rule 29 (1) (v), an Appellate Authority may within a period of six months of the date of the order proposed to be revised call for the records of any enquiry at any time either on his own motion or otherwise and revise any order made under these rules. In D.G., P & T., Letter No. 15/10/67-Disc., dated the 22nd May, 1968 (not printed), it was stated that the Appellate Authority, calling for the relevant records of the case with a view to revising an order already passed within six months of the date of the order to be revised would be acting well within this time-limit. It has now become necessary, however, to revise this order in view of a recent judgment of a High Court. Accordingly, it is hereby clarified that it will be incumbent upon the Appellate Authority to make a specific mention of the fact that it proposes to revise the order already passed, when calling for the papers. In other words, the Appellate Authority should clearly indicate in the order calling for the records of the case that it proposes to revise the order already passed, when calling for the papers. In other words, the Appellate Authority should clearly indicate in the order calling for the records of the case that it proposes to revise the order and it is in this connection the papers are being called for. At the same time, the Government servant should also be informed that the Appellate Authority proposes to revise the order. It is necessary to ensure that the intention of the Appellate Authority to revise the orders in this way is conveyed to all concerned within the stipulated period of six months from the date of the order proposed to be revised.

14. The said letter clarifies the position that the Appellate Authority is required to convey its intention to revise the orders within a period of six months. In other words it is not necessary that a final order in that regard has to be passed within the stipulated period of six months. A Full Bench of the Tribunal in a case reported in (1991) 15 ATC 920 K.G. Mohanan v. General Manager, Telecommunication, Ernakulam & Ors. has taken a view in this regard in para 24. The same is reproduced hereunder:

In the light of the foregoing, the correct legal position as regards the power of the appellate authority while exercising the power of revision is that it is incumbent on the said authority to call for the records of the enquiry and initiate the proceedings by issue of a notice to the government servant concerned within six months of the date of the order proposed to be revised, subject to what is stipulated in Rule 29(2). The said authority is also expected to dispose of the revision proceedings within a reasonable time. To this extent, decision of the Hyderabad Bench in Rajaram case does not lay down the correct interpretation of the scope of Rule 29(1)(v) of the CCS (CCA) Rules, 1965.

15. Even the High Court of Madras in its judgment reported as Union of India (UOI) and Another Vs. V. Sekar and Another, , represented by the Secretary to Government of Pondicherry, Revenue Department & Anr. v. V. Sekar [W.P. (C) Nos. 6839/2002 and 6846/2002 decided on October 01, 2004] has taken the following view in so far as the Rule 29 of CCS (CCA) Rules is concerned.

As far as the first contention of the learned counsel for the petitioner the Revision Authority initiated the proceedings on 21.3.2000 or revising the order dated 2.9.1999. On a reading of the Rule 29 along with its proviso, we are of the view that initiation is the point of time which is to be reckoned for finding out the compliance of the said rule for the purpose of limitation. In the case on hand, when the Disciplinary Authority passed orders on 2.9.1999, six months period within which, the Revising Authority is empowered to review the order of the Disciplinary Authority would expire by 2.3.2000. The Rule does not state that final orders should have been passed within six months time in order to come within the prescribed time limit of Rule 29 of the CCS(CCA) Rules. The Rule only prescribes that the proceedings should be initiated within six months time. Therefore, when the Revising Authority passed orders on 23.2.2000, it will have to be held that the same was initiated well within the prescribed time limit and therefore, the order of the second respondent Tribunal on that score cannot be sustained.

16. We are in agreement with the aforesaid view of the Tribunal and High Court of Madras. We hold that the Director Postal Services, being the Appellate Authority has rightly exercised the power under Rule 29(1) (v) and the said power has been exercised within a period of six months by issuing a show cause notice to the respondent which shows that he has conveyed his intention to revise the order. We do not find any illegality in the exercise of power of enhancement of punishment by the Appellate Authority vide order dated

February 17, 2011. To that extent the order of the Tribunal is liable to be set aside.

17. It is not in dispute that the respondent has retired from service. It is also not in dispute that what is proved against the respondent is of being careless. It is also not in dispute that while inflicting the penalty the Disciplinary Authority has kept in view the fact that the financial loss due to carelessness of the respondent was Rs. 19,092/- which amount was directed to be recovered in instalments. It is also not in dispute that the Director of Postal Services wrongly took into account that the financial loss was Rs. 38,612/- and for which we find he relied upon the charge sheet ignoring the corrigendum issued reducing the amount to Rs. 19,092/- as the loss caused. In that view of the matter, on merits, we hold that the penalty imposed by the Disciplinary Authority as per order dated March 31, 2011 was appropriate and has to be restored. For said reason we uphold the impugned order passed by the Tribunal for the reason its effect is the quashing of the order dated February 17, 2011 passed by the Director of Postal Services and restoration of the penalty order imposed by the Disciplinary Authority. No costs.