

(2016) 09 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 21599 of 2015

Union of India

APPELLANT

Vs

B.B. Sharma

RESPONDENT

Date of Decision : 15-09-2016

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 29(1)(v)

Citation : (2017) 1 MPLJ 497

Hon'ble Judges : Shri R.S. Jha and C.V. Sirpurkar, JJ.

Bench : Division Bench

Advocate : Shri Shyam Krishna Mishra, Learned Counsel, for the Petitioner; Shri Vijay Kumar Tripathi, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Jha, J.—The petitioners have filed this petition being aggrieved by the order dated 16-10-2015 passed by the Central Administrative Tribunal, Jabalpur, in O.A.No. 200/00745/2014 whereby the revision proceedings initiated by the petitioners against the respondent under Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the "Rules of 1965") have been quashed on the ground that the impugned show cause notice proposing to initiate revision proceedings against the respondent was not issued within six months of the original order imposing punishment upon the respondent.

2. The brief facts giving rise to the present petition are that the respondent while working as Sorting Assistant was served with the show cause notice on 13-06-2013 and after considering the reply filed by the respondent a minor punishment of censure was imposed upon him by order dated 03-10-2013. Thereafter, by letter dated 21-01-2014 the respondent was informed that the petitioner/authorities have decided to suo motu review the punishment imposed upon him in exercise of powers under Rule 29(1)(v) of the Rules of 1965. The respondent was informed that after reviewing the matter appropriate action

would be taken. Thereafter, a notice was issued to the respondent on 08-07-2014 proposing to modify the minor punishment imposed upon him from censure to withholding of one increment for three years without cumulative effect and he was asked to submit his reply to the same within ten days. Thereafter, by the impugned letter dated 22-08-2014/02-09-2014 the respondent has been informed that his objection regarding issuance of show cause notice after lapse of six months of the date of the order proposed to be revised was misconceived and was accordingly rejected and he was granted a further period of ten days" time to file his reply.

3. The respondent being aggrieved by the aforesaid communication as well as the show cause notice filed O.A.No. 200/00745/2014 before the Central Administrative Tribunal, Jabalpur, which has been allowed by the Tribunal by order dated 16-10- 2015 by recording a finding to the effect that the show cause notice was issued beyond a period of six months from the date of the order imposing punishment of censure dated 03-10-2013 and, therefore, no proceedings for review could be initiated by the petitioner/authorities. The Tribunal has also held that the intimation dated 21-01-2014 issued by the petitioner/authorities informing the respondent that they had decided to suo motu review the punishment imposed upon him in exercise of powers under Rule 29(1)(v) of the Rules of 1965 did not amount to initiation of proceedings and, therefore, on the basis of the communication dated 21-01-2014 it could not be held that the revision proceedings had been initiated within six months.

4. The learned counsel appearing for the petitioners submits that Rule 29 of the Rules of 1965 does not specifically provide that the appellate authority must issue a show cause notice/charge sheet to an employee within six months for the purposes of exercising the powers of revision under Rule 29 of the Rules of 1965. It is submitted that the only stipulation and requirement in the rules is that the appellate authority must call for the records of the enquiry within six months of the order proposed to be revised. It is submitted that in view of several instances of confusion the Director General, Postal and Telegraph, by its letter/circular, dated 27-07-1972 has clarified this position regarding reckoning of period of limitation of six months prescribed under Rule 29 of the Rules of 1965 and has specifically provided that the appellate authority, if it wishes to revise any order or proceedings of the disciplinary authority, is required to call for the records of the proceedings or order it proposes to revise within six months and while doing so, inform the Government servant concerned that the appellate authority proposes to revise the case same so that such an intention of the appellate authority is duly conveyed to all concerned within the stipulated period of six months.

5. It is submitted that the petitioners have duly complied with the rule and circular and in such circumstances, the conclusion recorded by the Central Administrative Tribunal, Jabalpur, in the impugned order to the effect that the appellate authority has not issued a show cause notice/charge sheet to the

respondent within six months from the date of the order proposed to be revised and failure on its part to do so was fatal is erroneous and contrary to law.

6. The learned counsel appearing for the respondent, per contra, submits that the proceedings for revision can be said to have been initiated only on the issuance of a show cause notice proposing punishment to the respondent and mere intimation regarding calling of record and proposing to take up revision proceedings does not amount to a show cause notice as contemplated under Rule 29 of the Rules of 1965. It is submitted that in the facts and circumstances of the present case, as admittedly, the show cause notice was issued to the petitioner beyond the period of six months from the date of the order proposed to be revised, the Tribunal has rightly allowed the petition and quashed the impugned notice issued by the appellate authority in revision proceedings.

7. Both the learned counsel appearing for the parties in support of their submissions have referred to and relied upon the decision of Delhi High Court rendered in the case of Union of India and others v. Dharam Pal Gupta, decided on 24-07-2013 which has also been referred to and relied upon by the Tribunal while allowing the petition filed by the petitioner.

8. To appreciate the submissions of the learned counsel appearing for the parties in the proper perspective it is necessary to take into consideration the provisions of Rule 29 of the Rules of 1965 which confer the power of revision upon the revisional authority and is in the following terms :-

"29. Revision - (1) Notwithstanding anything contained in these rules-

(i) ?.....

(ii) ?.....

(iii) ?.....

(iv) ?.....

(v) the appellate authority, within six months of the date of the order proposed to be revised or

(vi) ?.....

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-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 subject to the provisions of rule 19, and except after consultation with the Commission where such consultation is necessary :

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications 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.

(2) No proceeding for revision shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules."

9. A bare perusal of the rule makes it clear that notwithstanding anything contained in the Rules of 1965 the appellate authority within six months of the date of the order proposed to be revised, may at any time either on his own motion or otherwise call for the record of any enquiry and revise any order made under the Rules of 1965 and may either confirm, modify or set aside the order or confirm, reduce, enhance or set aside the penalty imposed or remit the matter back to the authorities for re-decision and pass any such order as they deem fit. The first proviso appended to the Rule 29(1) provides that the revisional authority shall not pass any order imposing or enhancing any penalty unless the Government servant concerned has been given a reasonable opportunity of filing a representation against the proposed penalty and in cases where the penalty sought to be imposed by the revisional authority is a major penalty and a full fledged departmental enquiry has not been held previously, no such major penalty shall be imposed upon the Government servant concerned unless a

detailed departmental enquiry against the concerned Government servant is held.

10. It is pertinent to note that in the instant case the learned counsel appearing for the petitioners as well as for the respondent have not disputed and in fact have admitted before this Court that the rule does not contemplate completion and finalization of the revisional proceedings within six months in view of the fact that the rule gives power to initiate revisional proceedings on an application being filed by the Government servant concerned or suo motu by the revisional authority and also contemplates giving of an opportunity to represent and in cases of major penalty, conducting a full fledged departmental enquiry as well as the provisions of Rule 29(2) which provides for excluding the period of limitation prescribed for filing an appeal which commences from the date of communication of the order of punishment while computing the period of six months.

11. In view of the aforesaid submissions of the learned counsel for the parties in respect of which there is no dispute, we are not required to go into the issue as to whether the revision proceedings suo motu initiated by the authority under Rule 29(1)(v) are required to be finalized and completed within six months.

12. The only issue required to be considered and decided by us is as to whether issuance of the notice dated 21-01-2014 which admittedly has been issued within six months from 03-10-2013 which is the date of the order proposed to be revised, amounts to taking the necessary steps for revising the order of punishment or as to whether a show cause notice proposing a different punishment is mandatorily required to be issued by the authority within six months from the date of the order proposed to be revised to enable the authority to exercise its revisional powers under Rule 29(1). In other words, whether issuance of a notice informing the respondent that the authority had decided to suo motu review the punishment imposed upon him was sufficient to exercise powers of revision or whether Rule 29(1) of the Rules of 1965 mandatorily provides issuance of a show cause notice proposing to modify the punishment within six months.

13. A perusal of Rule 29 of the Rules of 1965 makes it clear that there is no mention in the rule regarding initiation of revisional proceedings by issuance of a show cause notice. The words "show cause notice" or "initiation of proceedings" have nowhere been used in the rule. On the contrary, the rule provides that the appellate authority within six months of the date of the order proposed to be revised, may at any time either on his or its own motion or otherwise call for the records of any enquiry. Apparently, what is required to be undertaken by the appellate authority is to call for the records of any enquiry or order within six months from the date of the order proposed to be revised. To hold otherwise would amount to reading the words "initiate the revisional proceedings by issuing a show cause notice/charge sheet into the rule, which would be against the basic principles of statutory interpretation which provide that when the words used in the statutory provision are clear and unambiguous and have a clear and definite meaning, the Courts cannot modify the same by reading words into the rules

which the legislature or the rule making authority has itself deliberately not used.

14. The aforesaid aspect and the requirement of the rule is further clarified by the Circular dated 27-07-1972 relied upon by the petitioner/authorities which is in the following terms :-

"(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. and 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 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."

15. A bare perusal of the aforesaid clarificatory circular makes it clear that the Director General, Posts and Telegraph in its letter dated 15-10-1967 had previously stated that calling for the relevant records of the case by the appellate authority with a view to revising an order already passed within six months of the date of the order proposed to be revised would be treated as initiation of the proceedings within six months' time as prescribed in the rule. However, pursuant to a judgment of the High Court the previous circular dated 15-10-1967 has been clarified by issuing circular dated 27-07-1972 and it has been provided that henceforth it would be incumbent upon the appellate authority while calling for the records to make a specific mention of the fact that it proposes to revise the order and clearly indicate in the order calling for the records of the case that it proposes to revise the order and that while doing so, to inform the Government servant concerned that the appellate authority proposes to revise the order. By the aforesaid clarificatory circular it has been provided that it is necessary to ensure that the intention of the appellate authority to revise the order is conveyed to all concerned including the incumbent within the stipulated period of six months from the date of the order proposed to be revised. In other words, the petitioner/authorities by issuing the clarificatory circular dated 27-07-1972 have now provided that mere calling of the records within six months would not

be sufficient but in addition, the authority would also have to issue an intimation informing all concerned of its intention to revise the order and to call for the records for that purpose with a clear and specific notice of its intention in this regard to the incumbent concerned.

16. From a perusal of the facts in the present case, it is apparent that the petitioner/authorities in compliance of the provisions of Rule 29(1)(v) and the clarificatory circular dated 27-07-1972 clearly and specifically informed the respondent on 21-01-2014 i.e. within six months from the order of punishment dated 03-10-2013 that the appellate authority has decided to revise the order of punishment in exercise of powers under Rule 29(1)(v) of the Rule of 1965 and for that purpose the record of the case including the service profile of the respondent was requisitioned and called for with a clear and specific notice and intimation to the respondent. All these facts are apparent from a bare perusal of the communicated dated 21-01-2014.

17. In view of the aforesaid, we are of the considered opinion that the petitioner/authorities had taken up the necessary steps of calling the records with intimation/notice to the respondent within six months from the date of the order proposed to be revised as provided in Rule 29(1)(v) of the Rules of 1965 and, therefore, no fault could be found with the revisional proceedings initiated by the petitioners as the same were within the time prescribed under the rules. We are also of the considered opinion that the conclusion recorded by the Tribunal by the impugned order that it was necessary for the revisional authority to issue the notice/charge sheet to the respondent proposing to impose higher punishment upon him within a period of six months for the purposes of exercising revisional powers under Rule 29(1)(v) and that calling for the records of the proceedings with notice and intimation to the respondent was not sufficient is erroneous and is apparently contrary to the provisions of Rule 29 of the Rules of 1965 and the circular dated 27-07-1972 and is, therefore, set aside and quashed.

18. We think it appropriate to clarify that the period of six months mentioned in Rule 29(1)(v) is for the purposes of restricting and prohibiting the appellate authority from calling for the records and exercising revisional powers after six months from the date of the order proposed to be revised. To put it differently, the rule has taken away the discretion and the power of the appellate authority to exercise powers of revision at any time that it pleases and binds and restricts the appellate authority to initiate the exercise of revisional powers within six months from the date of the order proposed to be revised by calling for the records of the case within six months from the date of the order proposed to be revised and the period of six months has not been prescribed for the purpose of initiating proceedings by issuing a notice or charge sheet. This is the object and purposes for prescribing the period of limitation in Rule 29(1)(v) which is evident from a bare perusal of the entire rule and the specific words used therein.

19. Keeping the aforesaid object and purposes in mind and having applied our mind to the facts and circumstances of the case and the provisions of the rule,

we are unable to up hold the conclusion recorded by the Tribunal to the effect that the rule mandatorily requires issuance of a charge sheet/notice proposing to revise the punishment within six months. We are also unable to agree with the interpretation and meaning accorded by the Tribunal to the decision of Delhi High Court in the case of Dharam Pal Gupta (*supra*) specifically in view of the fact that the Delhi High Court judgment relied upon by the Tribunal has to be read along with the Full Bench decision of the Central Administrative Tribunal in the case of K.G. Mohanan v. General Manager, Telecommunication, Ernakulam and others, (1991) 15 Administrative Tribunal Cases 920 and the decision of Madras High Court rendered in the case of Union of India v. V. Sekar and another, 2005 (1) CTC 566 wherein the Madras High Court has upheld the exercise of revisional powers by the authorities under similar circumstances under Rule 29(1)(v) of the Rules of 1965.

20. In the aforesaid facts and circumstances of the case, the petition filed by the petitioner/authorities deserves to be and is hereby allowed. The impugned order passed by the Central Administrative Tribunal, Jabalpur, dated 16-10-2015 is quashed and the petitioner/authorities are permitted to proceed further in the revisional proceedings initiated by them against the respondent.