

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 62 of 2019**

**Present: Hon'ble Mr. Sudhi Ranjan Mishra, Judicial Member  
Hon'ble Mr. Pramod Kumar Das, Administrative Member**

1. Bijay Kumar Barik, aged about 61 years, S/o Late Krushna Chadndra Barik, Plot No. 1223/3754, Basistha Nagar, Canal Road, Bhubaneswar, Ex-Secretary to the Curt, Central Government Industrial Tribunal – cum – Labour Court, H/24, Nageswar Tangi, Lewis Road, Bhubaneswar, Dist Khurda.

.....Applicants

VERSUS

1. Union of India represented through its Secretary to Government, Ministry of Labour & Employment, Shramashakti Bhawan, Rafi Marg, New Delhi – 110001.
2. Under Secretary to Government of India, Ministry of Labour & Employment, Shramashakti Bhawan, Rafi Marg, New Delhi – 110001.
3. Presiding Officer, Central Government Industrial Tribunal, H/24, Nageswar Tangi, Lewis Road, Bhubaneswar – 751002, Dist Khurda.

.....Respondents

For the applicant : Mr. R Acharya, counsel.

For the respondents: Mr. M R Mohanty, counsel.

Heard & reserved on : 25.04.2024

Order on : 29.04.2024

O R D E R

Mr. Pramod Kumar Das, A.M.

The applicant challenging the order of punishment dated 11.01.2018 issued by Respondent No. 1 and order of relieving dated 25.01.2018 has filed this OA praying for the following reliefs:

- a) The order of punishment i.e. Compulsory Retirement along withholding 20% monthly pension for a period of 5 years dated 11.1.2018 by the Respondent No. 1 under Annexure A/1 may kindly quashed.
- b) The relieve order dated 25.01.2018 passed by the Disciplinary Authority may kindly be quashed.
- c) And pass any other order/orders, direction/directions as this Hon'ble Tribunal deem just and proper in the facts and circumstances of the case.

2. The brief facts of the case as inter alia averred by learned counsel for the applicant in the OA is that a departmental proceeding was initiated against the applicant under Rule 14 of CCS (CCA) Rules 1965 in the year 2007 and after completion of the same, punishment of withholding of two annual increment permanently was imposed on the applicant vide order dated 22.07.2011. It is submitted that the Presiding Officer, CGIT, Odisha Bhubaneswar vide order dated 26.06.2014 (A/3) revoked the order of punishment dated 22.07.2011 and ordered dismissal from service. The applicant submitted an appeal dated 30.06.2014 (A/4) before Secretary, Ministry of Labour & Employment, New Delhi i.e. Respondent No. 1 and vide order dated 03.08.2015 (A/5), Respondent No. 1 quashed the order of dismissal. According to the applicant after quashing of the said order only the order of punishment of withholding of two annual increment survived. It is submitted that vide order dated 28.01.2016, Respondent No. 2 intimated that the department proposes to revise the order of punishment dated 22.07.2011 and directed the applicant to submit his written statement of defence. It is submitted that the applicant submitted his defence vide letter

dated 11.02.2016 (A/6) and filed OA No. 660/2016 challenging the show cause memo dated 28.01.2016. Notices were issued and as interim measure it was directed that no coercive action shall be taken by Respondent No. 1. It is submitted that during pendency of the OA, Respondent No. 1 issued direction to the application to submit representation on the advice of the UPSC which had suggested if penalty of compulsory retirement is imposed then withholding of 20% of monthly pension for 5 year would meet ends of justice. It is submitted that applicant submitted his representation dated 04.08.2017 with a prayer to exonerate the proposed punishment suggested by UPSC. It is submitted that this Tribunal disposed of the OA NO. 660/2016 on 11.02.2017 and the RA No. 01/2018 filed by the applicant was also dismissed vide order dated 15.01.2018. It is submitted that during pendency of the RA, Respondent No. 2 vide order dated 11.01.2018 had communicated the decision of the Hon'ble President of India setting aside earlier orders of punishment and imposing punishment of compulsory retirement along with withholding of 20% of the monthly pension otherwise admissible to the applicant for a period of 5 years. It is submitted that Respondent No. 3 vide order dated 25.01.2018 communicated the order of punishment wherein direction was given to the applicant that he is deemed to be relieved from his duties w.e.f. 11.01.2018 on compulsory retirement.

3. The respondents in their counter inter alia averred that the Competent Authority reviewed the matter in accordance with the powers vested in him under CCS (CCA) Rules 1965 and noted that the penalty of withholding of two increments permanently is not commensurate with the gravity of the charges proved in the Inquiry Report dated 22.05.2009 and it

is against the public interest to retain such official in service as the misconduct are grave in nature. Thereafter seeking advice of UPSC which was communicated to the applicant and after his reply was obtained the President in exercise of powers conferred upon him vide Rule 29 (1) (i) of CCS (CCA) Rules, 1965 set aside the penalty order dated 22.07.2011 and 03.08.2015 and imposed penalty of compulsory retirement along with withholding of 20% of the monthly pension otherwise admissible to the applicant for a period of 5 years. It is submitted that there is no violation of rules or principle of natural justice during the entire process. Therefore they pray for dismissal of the OA.

4. The applicant in his rejoinder submitted that after 3 years of closure of departmental proceeding vide order dated 22.07.2011, Respondent No. 3 revoked the said order and imposed the order of punishment of dismissal from service was imposed vide order dated 26.06.2014. The appellate authority after considering his appeal vide order dated 03.08.2015 set aside the order of dismissal and accepted the earlier order of punishment dated 22.07.2011. It is submitted that all of a sudden Respondent No. 2 vide letter dated 28.01.2016 stated that the President proposes to revise the order which is bad in law since President has power to review the order of the appellate authority if at all it was passed within six months from the date of order of punishment. He further relying on decision of Hon'ble Apex Court in the case of Union of India vrs Vikrambhai Maganbhai Chaudhair (2011) 2 SCC L&S 250 submitted that the revision is to be done within 6 months.

5. Heard both sides, perused the records and citations relied by respective parties.

6. The applicant in this OA is challenging the order of punishment dated 11.01.2018 i.e. Compulsory retirement along with withholding 20% monthly pension for a period of 5 years issued after revision by President and subsequent relieving order dated 25.01.2018. The short issue to be decided in this case is whether the revision of order of punishment by President is in accordance with rules or not.

7. It is the stand of learned counsel for the applicant that President has exercised his power under Rule 29 (1) (i) which is highly inconsistent since the rule provides that President has power to review the order of the appellate authority if at all it was passed within six months from the date of order of punishment i.e. 22.07.2011. It is submitted that since the said was done after four years have lapsed the same is illegal.

8. On the other hand it is the stand of the learned counsel for the respondents that under Rule 29 (1) (i) the President 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 the rules.

9. The relevant portion of the review in CCS (CCA) Rules 1965 is extracted below:

**29. Revision**

**(1) Notwithstanding anything contained in these rules-**

**(i) the President; or**

**(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or**

*(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or*

*(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or*

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

*(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;*

*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.*

***Government of India's Instructions***

- (1) Procedure to be followed while proposing enhancement of the penalty already imposed on a Government servant :-*

*Instances have been brought to the notice of this Ministry in which when orders of punishment passed by the subordinate authorities were reviewed under Rule 29 (1) of the CCS (CCA) Rules, 1965, and a provisional conclusion reached that the penalty already imposed was not adequate, the authorities concerned set aside/cancelled the order of punishment already passed by the subordinate authorities and simultaneously served show-cause notices for the imposition of higher penalties. Thereafter, the replies of the Government servants to show-cause notices were considered and the Union Public Service Commission also consulted, wherever necessary, before the imposition of enhanced penalties.*

*It is clarified that in case of the kind mentioned in the preceding paragraph, it is not appropriate to set aside/cancel the penalty already imposed on the Government servants, more so when the revising authority is the President, as strictly speaking cancellation of the penalty, if done in the name of the President amounts to modification by the President of the earlier order of the subordinate authority, for which prior consultation with the Union Public Service Commission is necessary under Regulation 5 (1) (c) of the UPSC (Exemption from Consultation) Regulations, 1958. The correct procedure in*

*such cases will, therefore, be to take action in accordance with the first proviso to Rule 29 (1) of the CCS (CCA) Rules, 1965, without cancelling/setting aside the order of the subordinate authority. It is only at the final stage when orders are issued modifying the original penalty, that it would be necessary to set aside the original order of penalty.*

*(G.I. MHA OM No. 39/2/68-Ests.(A) dated the 14<sup>th</sup> May, 1968).*

#### **29-A. Review**

*The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice:*

*Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring 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.*

#### **Government of India's Instructions**

##### **(1) President's power of review under Rule 29 –**

*Attention is invited to this Department Notification of even number dated the 6<sup>th</sup> August, 1981 amending Rule 29 of the CCS (CCA) Rules, 1965, and introducing Rule 29-A therein. The amendment has been necessitated by the judgment of the Delhi High Court in the case of Shri R.K.Gupta Vs. Union of India and another (Civil Writ Petition Nos. 196 of 1978 and 322 of 1979) in which the High Court has held that under Rule 29 of the CCS (CCA) Rules, 1965*

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**(1) the President has power to review any order under the CCS (CCA) Rules, 1965 including an order of exoneration, and**

**(2) the aforesaid power of review is in the nature of revisionary power and not in the nature of reviewing one's own order.**



*The matter has been examined in consultation with the Ministry of Law who has observed that the judgment of the Delhi High Court would indicate that the President cannot exercise his revisionary powers in a case in which the power had already been exercised after full consideration of the facts and circumstances of the case. There is, however, no objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Accordingly, Rule 29-A, has been introduced specifying the power of the President to make a review of any order passed earlier, including an order passed in revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. It may also be noted that while the President and other authorities enumerated in Rule 29 of the CCS (CCA) Rules, 1965 exercise the power of revision under that rule, the power of review under Rule 29-A is vested in the President only and not in any other authority. With the amendment of Rule 29 and the introduction Rule 29-A, the heading of Part VIII of the CCS (CCA) Rules, 1965 has also been appropriately changed as "Revision and Review".*

10. It is seen that Rule 29 (1) (i) clearly says that the President may at any time either on his or its own motion or otherwise call for the records or any inquiry and revise any order made under the rules from which an appeal allowed but from which no appeal has been preferred or from no appeal is allowed after consultation with commission and may under sub rule (a) confirm, modify or set aside the order. In the present case the President after receiving suggestion from UPSC, copy of which was supplied to applicant and he had made appeal against it, decided to impose the punishment of compulsory retirement and withholding of 20% of pension for 5 years. Rule 29 (A) also clearly states that the President has power to review any order under the CCS (CCA) Rules, 1965 including an order of exoneration, and the aforesaid power of review is in the nature of revisionary power and not in the nature of reviewing one's own order. In the instant case also the President is not reviewing any of his earlier order but

exercising the power of review in the nature of revisionary authority. Therefore the action of the respondents are in accordance with Rule 29 of CCS (CCA) Rules 1965 and there is no illegality on the part of the respondents warranting interference by this Tribunal.

11. The OA is dismissed being devoid of merit. No costs.

(PRAMOD KUMAR DAS)  
MEMBER (A)

(SUDHI RANJAN MISHRA)  
MEMBER (J)

(csk)