

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13292/2004

PRADEEP VARSHNEY Petitioner
Through Mr. D.K. Garg, Advocate.

versus

HINDUSTAN PAPER CORPORATION LT Respondent
Through Mr. Ratan K. Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
22.04.2008

1. The petitioner has suffered punishment of removal from service vide order dated 6th November, 2003 passed by the disciplinary authority.
2. The statutory rules of Hindustan Paper Corporation Limited the respondent employer provide for an appeal and a review against any order passed by the disciplinary authority. The relevant rules read as under:-

“32. APPEALS

- i) An employee may appeal against an order imposing upon him any of the penalties specified in Rule 23 or against the order of suspension referred to in Rule 20. The appeal shall be to the authority specified in the Schedule.
- ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the

Appellate Authority specified in the schedule and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority within 15 days. The appellate authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The Appellate Authority may pass order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the Appellate Authority proposes to impose is a major penalty specified in clause (e), (f) and (g) of rule 23rd and an inquiry as provided in rule 25 has not already been held in the case; the Appellate Authority shall direct that such an inquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of the inquiry and pass such orders as it may deem proper.

If the Appellate Authority decides to enhance the punishment but an inquiry has already been held as provided in Rule 25, the Appellate Authority shall give a show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The Appellate Authority shall pass final order after taking into account the representation, if any, submitted by the employee.

33. REVIEW

Notwithstanding anything contained in these Rules, the reviewing authority as specified in the schedule may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that if the enhanced penalty, which the reviewing authority proposes to impose, is a major penalty specified in clauses (e), (f) or (g) of Rule 23 and an inquiry as provided under Rule 25 has not already been held in the case, the reviewing authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of the enquiry and pass such orders as it may deem proper. If the Appellate Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of Rule 25, the reviewing authority shall give show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The reviewing authority shall pass final order after taking into account the representation, if any, submitted by the employee.”

3. The petitioner had filed a petition on 20th April, 2004 before Chairman-cum-Managing Director impugning order dated 6th November, 2003 imposing penalty of removal. It is admitted case of the parties that Chairman-cum-Managing Director is the reviewing authority under Rule 33 and not the appellate authority under Rule 32. Power of review under Rule 33 begins with a non-obstante clause. Rule 33 does not state that an application for review will not be maintainable unless the delinquent employee has first exercised option and filed an appeal. Rule 33 further stipulates that an application for review can be filed within a period of six months. An appeal, on the other hand, can be filed within a period of 30 days. Rule 32 does not provide for

condonation of delay in filing of an appeal. However, in the counter affidavit filed by the respondent corporation it has been stated that no application for condonation of delay was filed and, therefore, the appeal was barred by limitation and the same was dismissed in limine without examining merits. It is also stated in the counter affidavit that the petition dated 20th April, 2004 filed before the Chairman-cum-Managing Director of the respondent corporation was transferred to the appellate authority treating the same as an appeal and the Chairman-cum-Managing Director, the reviewing authority, did not consider the same as review petition. It is admitted case of the parties that in case petition dated 20th April, 2004 is treated as a review petition, the same was filed within the period of limitation of six months.

4. I feel the appellate authority should not have dismissed the petition by treating the same as an appeal without informing the petitioner and bringing it to his notice that the petition filed by him dated 20th April, 2004 is being treated as an appeal under Rule 32 and the same is barred by limitation. The petitioner should have been given an opportunity to atleast rectify and take remedial steps. It may be also noted that the order of removal dated 6th November, 2003 was received by the petitioner only on 11th November, 2003 and, therefore, an appeal could have been filed by 12th December, 2003, whereas a review could have been filed on or before 12th May, 2004. The petitioner could have protested and stated that the petition dated 20th April,

2004 should be treated as a review and not as an appeal.

5. Keeping all these aspects in mind, I feel the impugned order dated 23rd June, 2004 is liable to be quashed. The petition dated 20th April, 2004 which was filed on 21st April, 2004 will be treated as a review petition under Rule 33 and will be disposed of in accordance with law within a period of four months from today. Learned counsel for the petitioner does not press for other reliefs as the petitioner has already been paid the amounts due and payable to him as per law and nothing survives on that account. In the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

APRIL 22, 2008

VKR

