

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 13856 of 2009 (O&M)
DATE OF DECISION :- September 29, 2015

Barjinder Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. K.S. Khehar, Advocate for the petitioner.

Mr. IPS Doabia, Advocate for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. The petitioner was charge sheeted under Rule 14 of the Central Civil Services (C.C.A.) Rules 1965 on 20.9.2002, when he was serving as Upper Division Clerk on the allegation that he remained absent from duty from 19.10.1998 onwards without sanction of any leave. Penalty of censure was awarded in the above enquiry as per the order passed by the disciplinary Authority on 16.11.2005. The petitioner filed earlier Original Application

55/PB/2007 before the learned Central Administrative Tribunal, Chandigarh Bench for issuance of a direction to the respondents to treat the period of absence as leave of the kind due to him and to consider his case for promotion. The respondents issued show cause notice on 14.9.2007, calling upon the petitioner to explain as to why the penalty of censure imposed upon him be not reviewed. The above proceedings for reviewing the penalty imposed on the petitioner were kept in abeyance till the disposal of the Original Application 55/PB/07 by the learned Tribunal on 4.2.2009. Thereafter, fresh show cause notice was issued for the aforesaid purpose on 27.5.2009 and the Revisional Authority revised the penalty of censure and imposed a penalty of reduction to a lower post of LDC considering the magnitude and gravity of misconduct committed by the petitioner. The above order passed by the Revisional Authority was challenged before the Tribunal. The Tribunal was pleased to dismiss the application filed by the petitioner on the ground that the Revisional Authority who has been empowered under Rule 29 of CCS (CCA) Rules, 1965 has rightly revised the penalty of censure to the penalty of reduction to a lower post of LDC which was not disproportionate to the gravity of misconduct.

2. Learned counsel appearing for the petitioner submitted that the respondents have reviewed the order of penalty imposed by the Disciplinary Authority without any new material or evidence as

contemplated under Rule 29A of the Central Civil Services (CCA), Rules 1965, therefore, the order passed by the Review Authority is not sustainable in the eyes of law. The learned counsel appearing for the respondents submitted that the Head of the Department had invoked Rule 29 which empowered him to call for the records and revise the orders.

3. On a careful perusal of the impugned order passed by the Head of the Department, we find that the Head of the Department had invoked the Revisional power conferred on him under Rule 29 (1) (iv). As per the above provision, the Head of the Department may at any time, either on his own motion or otherwise call for the records of any enquiry and revise the order passed by the Disciplinary Authority confirming, modifying or setting aside the penalty imposed by the Disciplinary Authority. But no order imposing or enhancing of any penalty shall be made by any Revisional Authority unless the government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed.

4. It is to be noted that the impugned order was passed by the Head of the Department and not the Appellate Authority. We are conscious that the Appellate Authority has the power to invoke the Revisional Power under Rule 29(1)(v) within six months from the date of the order proposed to be revised. But no such time frame has been set to invoke the Revisional power under Rule 29(1)(iv) by the

Head of the Department.

5. In the instant case, it is found that the petitioner was afforded a reasonable opportunity of making his representation by the Revisional Authority before passing the impugned order. Further, the Revisional Authority has rightly found that for the period of unauthorized absence from 19.10.1998 to 28.01.2003 (4 years and 3 months, penalty of Censure was not the appropriate penalty. The Revisional Authority has considered the gravity of misconduct and awarded an appropriate punishment for the charge established.

6. It is not out of place to mention that the Review Authority, namely, the President can always invoke Rule 29A of CCS (CCA) Rules to review any order passed under these Rules when there is any new material or evidence which could not be produced or was not available at the time of passing the order under review. In the instant case, it was not the President who invoked the power under Rule 29A to revise the order but it was only the Head of the Department who invoked its Revisional power under Rule 29 (1) (iv).

7. Learned counsel appearing for the petitioner cited a decision of the Coordinate Bench of this Court in ***Daya Singh versus State of Haryana and others 2003(1)RSJ 140*** wherein it has been held as follows :-

“6. It is a settled rule of law that once a delinquent officer/official has been subjected to a departmental procedure in accordance with law and has been punished, he cannot be compelled to face another

enquiry or punishment for the one and the same charge. In the present case, even the appellate authority had held as a matter of fact that it will not be appropriate to impose any higher punishment upon the delinquent. Once the appellate authority had affirmed the order and dismissed the appeal of the petitioners with the afore-noticed remarks there was no jurisdiction vested in the lower authority i.e. respondent No. 3 to re-open the case and pass the impugned order of punishment. In disciplinary proceedings, power to review its own order cannot be read or construed unless such power was so vested in the authority under a specific provision. Admittedly, there is no provision of review vested in the authority which passed the order. The impugned order, thus lacks inherent jurisdiction and is opposed to settled canons of service jurisprudence.”

8. In the light of the above decision, it was submitted by learned counsel appearing for the petitioner that the petitioner was unjustifiably punished twice for the same charge.

9. On a careful perusal of the above decision, we find that the Disciplinary Authority had re-opened the disciplinary proceedings again and passed a revised order of penalty, despite the fact that the order of penalty originally imposed by the Disciplinary Authority was put to challenge before the Appellate Authority who chose to affirm the order of penalty imposed by the Disciplinary Authority. In the instant case, there was no dual punishment awarded to the petitioner for the same charge. The penalty originally imposed by the Disciplinary Authority was revised by the Revisional Authority under

the above provision of law after giving due opportunity to the petitioner. Therefore, the above decision will not apply to the facts of this case.

10. Learned counsel appearing for the petitioner further submitted that it is totally unjustifiable for the Revisional Authority to revise the penalty imposed, when the penalty of censure was affirmed in the separate proceedings initiated by the petitioner before the learned Tribunal.

11. What was under challenge before the learned Tribunal earlier was only the original order of penalty of censure passed by the Disciplinary Authority. Confirmation of the original order passed by the Disciplinary Authority by the learned Tribunal does not take away the power of the Revisional Authority under Rule 29 (1) (iv) of the CCS (CCA) Rules, 1965. Further, we do not find any malafide intention on the part of the respondents in invoking the Revisional power, inasmuch as the proceedings already initiated by the Revisional Authority had been brought to the notice of the learned Tribunal. The earlier proceedings initiated by the petitioner before the learned Tribunal do not have an adverse effect on the enhancement of punishment awarded by the Revisional Authority after giving due opportunity to the petitioner under Rule 29 (1) (iv) of the CCS (CCA) Rules, 1965.

12. In view of the above facts and circumstances, we are of the considered view that there is no merit in the Writ Petition filed by

the petitioner. Therefore, the Writ Petition fails and it stands dismissed. The original records summoned from the Central Administrative Tribunal, Chandigarh Bench be returned to it.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

September 29, 2015
p.singh