

R-13

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

+ **W.P. (C) 4142/2002**

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Date of Judgment: 07th December, 2016

UNION OF INDIA & ANOTHER Petitioners

Through Mr. Bhagwan Swaroop Shukla, Adv.

versus

DAYA SHANKAR Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. Challenge in this writ petition is to the order of Central Administrative Tribunal (hereinafter referred to for short as the '*Tribunal*') dated 14.03.2002 in OA No. 2545/2001, whereby the Tribunal has allowed the OA and quashed the order passed by the Revisional Authority and the petitioner herein were directed to restore the pay and accordingly re-fix and re-calculate his pension within a period of three months after receipt of a copy of order.
2. The respondent was working as Junior Engineer in Central Water Commission, under the Ministry of Water Resources. He was sanctioned a LTC advance of Rs.13,800/- by Executive Engineer, North Eastern Investigation, Division No. 3, CWC, Etanagar, vide office Order No. NEIC-III/Adm.9/5968/1 dated 31.12.1997 to perform to and

fro journey for self and his four family members to visit New Delhi in December, 1997. The respondent submitted a LTC claim for self of performing to and fro journey and for four of his family members for outgoing journey on 19.01.1998. The claim was paid to him. He again submitted LTC claim of Rs.6,140/- on 25.04.1998 in respect of his four family members for inward journey showing therein that his four family members travelled in AC 3TIER class of Rajdhani Express from Delhi to Gauhati. On conducting an inquiry, Executive Engineer found that no such journey was performed by the members of the family of the respondent. Due to establishment of false claim, recovery with penal interest was effected from the respondent.

3. Disciplinary proceedings under CCS (CCA) Rules were initiated and a charge sheet was issued to the respondent under Rule 14 CCS (CCA) Rules vide Memorandum No. NEIC/PA/Conf.III(a)/98/354 dated 22.02.2000. The respondent vide his letter dated 01.01.2000 accepted the charges and penalty of censure was imposed by the Superintendent Engineer, NEIC, Shillong being the disciplinary authority vide order dated 10.04.2000. However, the Chairman, CWC, who is also Head of the Department, suddenly revised the penalty and enhanced the same from censure to reduction of pay under Rule 29 (1) (v) of CCS (CCA) Rules vide order dated 24.08.2000. The respondent was given an opportunity to make a representation. The representation of the respondent dated 15.09.2000 was considered by the Revisional Authority and it was dismissed on 23.07.2001.
4. The respondent preferred O.A. No. 2545/2001 before the Tribunal. The said O.A. was allowed by the Tribunal vide order dated 14.03.2002 and

the order of the Revisional Authority dated 23.07.2001, enhancing the penalty, was quashed. Reliance was placed on Rule 29 (1) (v) of CCS (CCA) Rules and a judgment of Division Bench of this court in ***“Kailash Prasad Singh Vs. Union of India & Anr., 1985 (1) SLR 24.***

5. The petitioners have now challenged the order of the Tribunal on the ground that the Proviso to Rule 29 of CCS (CCA) Rules applies only to exercise of the revisional power of the Head of the Department under Rule 29 (1)(iv) and it does not apply where the revisional power is exercised by the Appellate Authority under Rule 29 (1)(iv) and the judgment of ***Kailash Prasad Singh*** (supra) is distinguishable.
6. It is contended by the learned counsel for the petitioner that the revisional power was exercised by the Chairman, CWC in his capacity as Appellate Authority and not as the Head of the Department under Rule 29 (1)(iv) of CCS (CCA) Rules and therefore the second proviso to Rule 29 is not applicable.
7. We have heard learned counsel for the petitioner and considered his contentions.
8. None has appeared on behalf of the respondent.
9. Before dealing with the contention of the learned counsel for the petitioner, it is relevant to refer Rule 29 (1)(v) of CCS (CCA) Rules, which reads as under: -

29. Revision

(1) Notwithstanding anything contained in these rules –
(v) 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 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

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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.*

10. This rule came for consideration before a Division Bench of this Court in ***Kailash Prasad Singh (supra)*** and it was held that if the Head of the Department is also the Appellate Authority, he cannot be said to be subordinate to himself and in such eventuality, review could be exercised by some authority higher than Head of the Department. Relevant extract of Para No. 8 is as under: -

..... Second proviso to Rule 29 clearly says that no power of review shall be exercised by the head of the department unless the authority to which an appeal would lie where no appeal is preferred is subordinate to him (view Sub-clause ii). Thus, merely being a Head of the department is not sufficient by itself to exercise a power of review. What has further to be seen is whether the Head of the department is not the appellate authority) can not be said to be subordinate to himself. In such eventuality, review could be exercised by some authority higher than the Head of the department i.e. Director, CBI.....The object of second proviso rule 29 is to provide that though the Head of department can exercise

the power of review, it is only in those cases where the appellate authority is subordinate to the former.”

11. A bare perusal of the above said rule reflects that under the second proviso, this power of revision is not available to the Head of the Department as the authority before whom appeal could be filed or the authority before whom appeal could have been filed and where no appeal is preferred, is subordinate to him. Admittedly, in the present case no appeal has been filed by the petitioner and had any appeal been filed, it would have been filed before the Chairman, CWC, who is none else, but the Head of the Department and therefore the Head of the Department being the Appellate Authority himself could not have exercised the power of revision.
12. In view of the above discussion, there is no infirmity in the order of the Tribunal and we do not find any merit in the Civil Writ Petition and the same is hereby dismissed. No costs.

VINOD GOEL, J.

G. S. SISTANI, J.

DECEMBER 07, 2016

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