

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2324 OF 2018

The Principal Chief Commissioner,
Central GST & CX., Mumbai Zone
& Ors.

...Petitioners

Versus

Harichandra Joma Mhatre

...Respondent

Mr. A. R. Gole for Petitioners.
None for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 25 APRIL 2018

P.C. :

1] Heard Mr. A. R. Gole for the petitioners.

2] The challenge in this petition is to the impugned judgment and order dated 12th December 2016 made by the Central Administrative Tribunal (CAT) in Original Application No. 317 of 2013 instituted by the respondent.

3] By the impugned judgment and order, the limited relief granted by the CAT, reads thus :

“18. The impugned order dated 02.04.2012 is accordingly set aside. The appeal which has been preferred to the Hon'ble President of India by the applicant dated 07.09.2011 shall be treated as a revision / review. The Competent Authority is directed to consider the said revision/ review petition dated 07.09.2011 in accordance with law and pass an order withing a period of four weeks from the date of receipt of copy of the order.

19. We make it clear that we have not gone into the merit of the revision / review. All questions of fact and law are kept open.”

4] Mr. Gole, the learned counsel for the petitioner however submits that since, the respondent's application under CCA (Leave) Rules, 1972 came to be rejected, as against such rejection, no appeal / revision / review is at all maintainable under the CCS(CCA) Rules, 1965. He therefore submits that the direction in the impugned judgment and order to treat the appeal instituted by the respondent as a revision / review is in excess of jurisdiction.

5] In this case, the CAT, has relied upon Rule 23(iv)(a) of the CCS (CCA) Rules, which reads as follows :

“23. Orders against appeal lies
(i)
(ii)

- (iii)*
- (iv) an order which -*
 - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or”*

6] By the order which was appealed by the respondent, the respondent, was denied leave and the period of absence was directed to be treated as unauthorised absence. This means that the order denies the respondent pay allowance and to a certain extent also operates to his disadvantage in matters of conditions of service. The issue is not whether such order is legal and valid or not. The issue is whether such an order is appealable under Rule 23 of the CCS (CCA) Rules. The CAT, has held that such an order is appealable and we see no jurisdictional error in the view taken. In any case, the CAT has held that such order is revisable under Rule 29 of the CCS (CCA) Rules and therefore has issued a direction that the appeal instituted by the respondent be treated as a revision and disposed of in accordance with law. There is no good ground to interfere with the impugned judgment and order.

7] For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

8] However, at the request of Mr. Gole, the learned counsel for the petitioner, the time for disposal of the revision / review is extended by a period of eight weeks from today.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA