High Court for the State of Telangana

The Hon'ble The Acting Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A.Rajasheker Reddy

W.P. No. 19025 of 2015

Date: 24-04-2019

Between:

The Senior Superintendent of Railway Mail Services
Hyderabad Sorting Division, Hyderabad and 3 others

…Petitioners

and

Sri C. Laxman and another.

…Respondents

Counsel for the petitioners: **Mr. G. Venkateshwarlu, for Mr. B. Narayana Reddy, Asst. Solicitor General**

Counsel for the respondent No.1: **Mr. M. Venkanna**

The Court made the following:

Order: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The petitioners have challenged the legality of order dated 12-08-2013, passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short 'the Tribunal'), whereby the learned Tribunal has allowed the appeal filed by the respondent No.1, Mr. C. Laxman, and set aside the notice dated 04-11-2011, issued by the Chief Postmaster General, the appellant No.3, wherein he proposed to enhance the punishment for the respondent No.1.

Briefly the facts of the case are that, the respondent No.1, Mr. C. Laxman, was appointed in 1981 as an Extra Departmental Mail Man. Subsequently, by order dated 30-08-1990, he was promoted to the post of Mail Man. After completing sixteen years of service, in 2006, he was granted a time bound one time promotion. However, during the tenure of his service, he was served with a chargesheet wherein it was alleged that he had committed theft of certain items being sent through mail. After conclusion of the departmental enquiry, by enquiry report dated 11-06-2009, the charges were said to be proved against him. Therefore, after furnishing him with the second show cause notice, and after going through his reply thereto, by order dated 31-08-2009, the respondent No.1 was imposed with a penalty of reduction of pay by five stages without cumulative effect for a period of four years.

Since the respondent No.1 was aggrieved by the punishment order dated 31-08-2009, on 13-10-2009, he filed a departmental appeal. However, the same was rejected by order dated 19-05-2010. Since the respondent No.1 was aggrieved by the order dated 13-10-2009, he preferred a revision petition before the Chief Postmaster General, the appellant No.3. However, without referring to the revision petition, on 04/08-11-2011, the appellant No.3 issued a notice to the respondent No.1 wherein he proposed that the punishment should be enhanced from '*reduction of pay by five stages without cumulative effect for a period of four years*' to a '*compulsory retirement*'. Since the respondent No.1, Mr. C. Laxman, was aggrieved by the said notice, he filed an OA, namely O.A.No.1178 of 2011 before the learned Tribunal. As stated above, by order dated 12-08-2013, the said OA was allowed, and the notice dated 04/08-11-2011, was set aside. Hence, the respondents therein have filed the present appeal before this Court.

Mr. G. Venkateshwarlu, the learned counsel for the appellants, has vehemently pleaded that by notification dated 29-05-2001, the President had appointed the Chief Postmaster General as the revisional authority under Rule 29 (VI) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'the CCA Rules'). Considering the fact that grave charges were established against the respondent No.1, the Chief Postmaster General, the appellant No.3, was justified in issuing the impugned notice. Therefore, the learned Tribunal was not justified in allowing the OA, and in setting aside the impugned notice.

On the other hand, Mr. M. Venkanna, the learned counsel for the respondent No.1, submits that in the case of **Union of India and others vs. Vikrambhai Maganbhai Chaudhari[1],** the Hon'ble Supreme Court had already struck down the notification dated 29-05-2001. Therefore, the Chief Postmaster General is not the competent authority to issue the impugned notice. Hence, the learned Tribunal was

[1] Civil Appeal No.2602 of 2006, dated 01-07-2011

justified in setting aside the impugned notice. The learned counsel has, accordingly, supported the impugned order.

Heard the learned counsel for the parties, and perused the impugned order.

Rule 29 of the CCA Rules is as under:

"*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 [revised] 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*
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> *(b) confirm, reduce, enhance or set aside 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 inquiry 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."

According to Rule 29(1)(vi) of the CCA Rules, any other authority, specified by the President, by general or a special order, and within such time as may be prescribed in such general or special order, as the revisional authority, is required to exercise its revisional power. Admittedly, by notification dated 29-05-2001, the Chief Postmaster General, the appellant No.3, was specified as the authority, which could exercise the revisional power under Rule 29(1)(vi) of the CCA Rules. However, the said notification was challenged in the case of **Vikrambhai Maganbhai Chaudhari** (supra); it was duly struck down by the Hon'ble Supreme Court. Once the notification was struck down by the Apex Court, obviously, the Chief Postmaster General does not have the power to issue a notice. Hence, the learned Tribunal was justified in setting aside the notice issued by another competent authority.

For the reasons stated above, this Court does not find any merit in the present appeal. It is, hereby, dismissed.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

(Raghvendra Singh Chauhan, ACJ)

(A.Rajasheker Reddy, J)

Dt: 24th April, 2019
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