IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9619 of 2022

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Kameshwar Singh S/o Late Deo Narayan Singh, Mohalla-Lala Coloney, Sambika Path, New Diliyan, Dehri on Son, District-Rohtas, 821307

... ... Petitioner/s

Versus

1. The Union of India through the D.G. cum Secretary, Department of Posts, Dak Bhawan, New Delhi-110001.
2. The Director of Postal Services (HQ), O/o Chief Postmaster General, Bihar Circle Patna 800001.
3. The Superintendent of Post Offices, Rohtas Division, Sasaram 821115.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Jayant Kumar Karn, Adv.
For the Respondent/s : Mr.Kanak Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 11-07-2022

Heard learned counsels for the parties.

2. In the instant petition the petitioner has assailed the order dated 05.11.2020 passed in OA/050/00410/2020 passed by the Central Administrative Tribunal, Patna Bench, Patna.

3. The petitioner was subjected to disciplinary proceeding. It was concluded in imposition of penalty of compulsory retirement on 15.05.2019. It was affirmed by the Appellate Authority on 26.11.2019 while rejecting the petitioner's appeal. Thus petitioner has invoked remedy before the Central Administrative Tribunal, Patna Bench, Patna. The Tribunal

proceeded to dismiss the petitioner's application on the sole ground that petitioner had remedy of revision under Rule-29 of CCS (CCA) Rules, 1965 read with Section 20(i) of the Administrative Tribunal Act, 1985. The learned counsel for the petitioner vehemently contended that filing of revision under Rule-29 of CCA Rules, 1965 is not mandatory, without filing revision he can invoke remedy before the Administrative Tribunal under the provisions of Administrative Tribunal Act, 1985.

4. In the petitioner's application before the Tribunal in Para-6 of the original application he has stated as under:

> "6. Details of Remedies Exhausted:- The applicant submits that after rejected of his appeal by the Appellate Authority, as at Annexure-A/2 he has availed of all the remedies available to him under the relevant service rules, in terms of Section -20(2)(a) of A.T. Act, 1985. Hence, the applicant is before Your Lordships."

5. The learned counsel for the petitioner submitted that in terms of Section 20(2)(a) of the Act, 1985 the petitioner need not exhaust remedy of revision under Rule-29 of CCA Rules, 1965. The Tribunal had not appreciated Section 20(2)(a) of the Act, 1985.

6. Heard the learned counsel for the petitioner.

7. Crux of the matter in the present petition is whether petitioner need not invoke Rule-29 of CCA Rules, 1965 in filing Revision before the Revisional Authority or not? In order to overcome Section 20(2)(a) of Administrative Tribunal Act, 1985 or not?. Rule-29 of CCA Rules, 1965 reads as under:

> **"29. [Revision]**
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> (1) Notwithstanding anything contained in these rules-
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> (I) the President; or
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> (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or
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> (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
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> (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
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> (v) the appellate authority, within six months of the date of the order proposed to be revised or
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> (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;
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> 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, and may-
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> (a) confirm, modify or set aside the order; or
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> (b) confirm, reduce, enhance or set aside the 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 enquiry 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.

8. Further Section 20(2)(a) of Administrative Tribunal Act, 1985 reads as under:

Section 20(2)(a) of Administrative Tribunal Act, 1985

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

9. The learned counsel for the petitioner submitted that filing of revision under Rule-29 of 1965 is not an efficacious remedy. In terms of Section 20(2)(a) of Administrative Tribunal Act, 1985, if it is to be invoked in that event the petitioner need not exhaust a remedy of Rule-29 of CCA Rules, 1965. Section 20(2)(a) of Administrative Tribunal Act, 1985 is required to be read with Section 20(3). The petitioner need not prefer any memorial before the President or the respective Governor. He is required to exhaust remedy under Rule-29 of CCA Rules, 1965. Rule-29 specifically provide for revision and the Revisional Authority is required to decide the revision in the form of deciding appeal. Therefore, revision under Rule-29 is nothing but another appeal vide Rule-29(3) of Rules 1965. Section 20(2)(a) of Administrative Tribunal Act, 1985 could not assist the petitioner in the light of Rule-29(3) of Rules, 1965 and language employed therein.

10. In light of these facts and circumstances, the petitioner has not made a case. In fact petitioner has mislead the Tribunal while stating in para-6 of the original application that he has availed all other remedies. In other words the petitioner should have apprised the Tribunal stating that he had a revision remedy under Rule-29 of CCA Rules, 1965, still it is not an efficacious

remedy. On the other hand, he has not highlighted in his original application that he had a remedy of revision in para-6 of the original application.

11. Having regard to the conduct of the petitioner also the original application filed before the Tribunal was not maintainable. Apex Court in the case of **Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors.** reported in **(1999) 8 SCC 304** at para-4 held as under:

> "4. The respondent No. 1 Udham Singh Kamal on 2nd June, 1994 filed Original Application (O.A.) before the Himachal Pradesh Administrative Tribunal. This O.A. was admittedly beyond the prescribed period of limitation of three years as provided under Section 21 of the Administrative Tribunals Act, 1985. As regards the limitation in paragraph 5, the first respondent has stated as under :
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> "The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."
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> This averment clearly indicates that the first respondent was all along asserting that he had filed O.A. within limitation but it was not so. The appellants in both these appeals have raised a contention that the O.A. was beyond three years and, therefore, the same was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. Section 21 (3) of the Act gives power to the Tribunal to condone the delay if sufficient cause is shown."

12. If the aforesaid principle is applied the petitioner's averment at para-6 of the original application which is cited supra the original application before CAT is not maintainable. Accordingly, the present petition stands dismissed while affirming the order of the Central Administrative Tribunal dated 05.11.2020 passed in OA/050/00410/2020. The petitioner is at liberty to invoke remedy of revision within a period of eight weeks from today. If such revision is filed before the Revisional Authority, he/she is hereby directed to decide the petitioner's revision petition on merits within a reasonable period of six months from the date of receipt of revision petition.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.07.2022
Transmission Date	