

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

WRIT PETITION NO. 7926 OF 2021

**Mr. Sambhaji Babu Pradhan } Petitioner
Versus
Union of India and Ors. } Respondents**

Mr. Rajeev N. Kumar for the petitioner.

Ms. Neeta Masurkar with Ms. Nieyaati
Masurkar for the respondents.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: FEBRUARY 3, 2022

P.C.:

1. The petitioner approached the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) by instituting Original Application No. 221 of 2012 challenging the revisional order dated 2nd January 2012 passed by the Chief Postmaster General, Maharashtra Circle and all orders/proceedings that preceded the same. By the impugned revisional order, the penalty of 'removal from service' was imposed on the petitioner by the revisional authority upon enhancement of the penalty of 'compulsory retirement from service' ordered by the appellate authority. By a judgment and order dated 25th November 2019, the Tribunal dismissed the original application. The judgment and order of the Tribunal is under challenge in this writ petition.

2. Although the petitioner had assailed the orders of the revisional authority, the appellate authority and the disciplinary authority on diverse grounds before the Tribunal, all of which failed, he has restricted his challenge in this writ petition to the revisional order on a short ground.

3. Revision was preferred by the petitioner under Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter "the Rules", for short) challenging the appellate order dated 23rd March 2010, whereby the appellate authority, in exercise of power conferred by Rule 27(2)(i), reduced the penalty of 'removal' imposed on the petitioner by the disciplinary authority to that of 'compulsory retirement'. As noticed above, the revisional authority restored the penalty of 'removal' passed by the disciplinary authority.

4. The short point that Mr. Kumar, learned advocate for the petitioner canvasses, while assailing the revisional order, is that the penalty of 'compulsory retirement' could not have been enhanced by the revisional authority without giving the petitioner an opportunity of making a representation against the penalty that was proposed to be imposed by way of enhancement. Our attention has been drawn to the first proviso to Rule 29(1) of the Rules by Mr. Kumar which, according to him, is in the nature of a mandate that the revisional authority is required to follow but such mandate had been observed in the breach by not giving him any opportunity to make a representation. Mr. Kumar has, accordingly, prayed for quashing of the order of the revisional authority.

5. The writ petition is opposed by Ms. Masurkar, learned advocate for the respondents. She raises three contentions.

6. According to Ms. Masurkar, no opportunity of making representation was required to be given to the petitioner since, in terms of sub-rule (3) of Rule 29, an application for revision is required to be dealt with in the same manner as if it were an appeal under the Rules. Provisions for consideration of appeal are embodied in Rule 27 of the Rules, which do not provide any opportunity of making a representation to the appellant or for granting him an opportunity of personal hearing. She contends that the revision of the petitioner challenging the appellate order was considered in the same manner as if it were an appeal and accordingly, non-grant of opportunity to make representation or to personally hear the petitioner prior to imposition of enhanced punishment, cannot be faulted.

7. It is the further contention of Ms. Masurkar that there has been no enhancement of penalty. What the revisional authority has directed is restoration of the penalty ordered by the disciplinary authority. In such view of the matter, question of invocation of the first proviso to Rule 29(1) of the Rules did not arise and the revisional authority was justified in passing the order dated 2nd January 2012 without putting the petitioner on prior notice.

8. Ms. Masurkar also contends that the appellate authority not having decided the appeal on merits, but having ordered that the petitioner ought to be compulsorily retired from service on humanitarian ground, it was well within the jurisdiction of the revisional authority to consider the entire

facts and circumstances and to reach the conclusion he ultimately did.

9. Ms. Masurkar, accordingly, prays for dismissal of the writ petition.

10. We have heard Mr. Kumar and Ms. Masurkar as well as perused the materials on record, together with the relevant Rules.

11. Having regard to the short point that has been urged before us, we need not refer to the charges or the subsequent proceedings. What we are tasked to decide is whether there has been a procedural infirmity while ordering 'removal' of the petitioner from service by the revisional authority.

12. It appears, on perusal of the revisional order dated 2nd January 2012, that the revisional authority noted the grounds on which revision of the appellate order was asked for by the petitioner, considered the memorandum of charge, findings of the inquiry officer, decision of the disciplinary authority as well as that of the appellate authority and returned findings, which are recorded in paragraph 2. Paragraphs 3 and 4, being the last two paragraphs of the order, are quoted below: -

"3. It is proven case of deliberate and willful deviation from extant orders on the subject. Such acts could have taken place without anything in return either in the form of cash or kind. The evidence adduced during the oral enquiries amply prove lack of integrity on the part of the petitioner. His demand for any documentary evidence for gratification is, therefore, nothing short of a weak defence. The circumstances and the corroboration of the persons involved in giving illegal gratification strongly disproves even this weak defence. Petitioner's call that each and every transaction ought to have a written document in support of

that is something unbelievable. Such written commitment could be happening only in a society full of such characters of the kind exhibited by the petitioner. Ours is a society where these incidences are rare and looked down upon with contempt. No person of any standing would go to the extent of receiving written commitment for such illegal transactions.

4. I am uncomfortable with the decision of the appellate authority for having diluted the punishment from that of removal from government service to that of compulsory retirement for no acceptable reasons. An official with supervisory responsibility is looked up to by those under him for right guidance and support and when he is found indulging in deliberate acts of mis-conduct he does not deserve to be in government service, least of all in a public service being run by Department of Posts. Petitioner has exhibited not only lack of integrity but total lack of trust in his position as a supervisor and, therefore, in exercise of powers vested in me vide rule 29 of CCS (CCA0 Rules, 1965 I uphold the punishment ordered by the disciplinary authority of removal from government service modifying the one ordered by the appellate authority."

13. While so ordering, the revisional authority perhaps lost track of the first proviso to Rule 29(1) of the Rules. The said proviso is quoted below: -

"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 and the Government servant has been given an opportunity of representing against the advice of the Commission."

(emphasis ours)

14. The aforesaid proviso, in no uncertain terms, ordains that while in *seisin* of a revision at the instance of an officer/staff suffering an appellate order of penalty, the revisional authority must give an opportunity to the revisionist to make a representation if, on the basis of consideration of the materials on record, such authority proposes to enhance the penalty imposed by the order sought to be revised. Since the revisional authority was not *ad-idem* with the decision of the appellate authority and perceived that the appellate authority had diluted the punishment by ordering 'compulsory retirement' of the petitioner instead of he being removed from service, we wonder why the procedure prescribed by the proviso to Rule 29(1) was not followed and instead, the revisional authority straight away proceeded to enhance the penalty. Obviously, the petitioner could not have been worse off for filing a revision. On this sole ground, we hold that the revisional order is contrary to law and, therefore, unsustainable.

15. Reference to Rule 29(3) of the Rules by Ms. Masurkar appears to us to be clearly misplaced. If the revisional authority, upon considering the revision, is of the opinion that the order of the appellate authority under revision does not require any interference, the revisional authority is under no obligation to hear the revisionist or to give him any

opportunity to make any representation over and above the revision that he has filed. The procedure prescribed for consideration of appeals would necessarily have to be followed in such a case. However, while considering a revision in the same manner as if it were an appeal, the revisional authority is bound by the first proviso to Rule 29(1) of the Rules. If he proposes to enhance the penalty imposed by the order of which revision is sought, the first proviso kicks in. The conclusion that necessarily follows is, even while considering the revision in the same manner as if it were an appeal, the revisional authority is obliged, nay bound, to grant the revisionist an opportunity of making a representation should the revisional authority be *prima facie* not in agreement with the appellate order and is inclined to enhance the penalty.

16. The other contention of Ms. Masurkar that there has been no enhancement of penalty and, therefore, the revisional authority's order does not merit interference suffers from a fundamental fallacy. Here, the petitioner was visited with the penalty of 'removal' passed by the disciplinary authority. Such order was carried in appeal and the appellate authority, in substitution of the penalty of 'removal', ordered 'compulsory retirement'. Once the appeal was disposed of by the appellate authority's order, there occasioned merger of the original order of 'removal' in the appellate order of 'compulsory retirement'. With the coming into existence of the appellate order, the order of 'removal' did not exist in the eye of law and it was the appellate order which became the enforceable order. The question of enhancement would, therefore, have to be considered bearing in mind the appellate order and not the

order of 'removal' passed by the disciplinary authority which merged in the appellate order. Viewed from such perspective, imposition of the penalty of 'removal' upon revision of the appellate order of 'compulsory retirement' is most certainly an enhancement of penalty, which the revisional authority could not have ordered without compliance with the first proviso to Rule 29(1) of the Rules.

17. Finally, it is immaterial as to whether the appellate authority passed the order of 'compulsory retirement' considering the merits of the appeal or on humanitarian ground. While exercising the power of revision it is not open to the revisional authority, in the absence of express power, to make a dissection that the order under revision not having been passed on merit, he derived the jurisdiction to order enhanced penalty without complying with the first proviso to Rule 29(1). The argument of Ms. Masurkar in this behalf is without substance and deserves rejection outright.

18. For the reasons aforesaid, we find sufficient force in the submission of Mr. Kumar that the revisional authority was not justified in breaching the statutory mandate of the first proviso to Rule 29(1) and ordering the penalty of 'removal' without complying with natural justice which is expressly provided therein.

19. We are also not *ad-idem* with the Tribunal that the order of the revisional authority did not merit interference. Although it is true that before the Tribunal the petitioner claimed a right of hearing prior to the revisional authority proceeded to enhance the penalty, which obviously is not provided in the first proviso to Rule 29(1), we have failed to comprehend as

to how the Tribunal could fail to notice that such proviso contains a provision for extending opportunity to the revisionist to make a representation. Turning a blind eye to the requirement of giving the petitioner an opportunity to represent against the proposal for enhanced penalty, the original application stood dismissed. To that extent, non-application of mind by the Tribunal is manifest. The Tribunal being a judicial forum constituted for the purpose of doing justice to a cause at the first instance, in our considered opinion, it ought to have looked into the text of the first proviso to Rule 29(1) and decided the original application. Regrettably, the Tribunal failed to do so and has rendered a decision resulting in miscarriage of justice. The order of the Tribunal, accordingly, stands set aside.

20. The order of the revisional authority too stands set aside, with the result that the order of the appellate authority dated 23rd March 2010 stands revived. The petitioner shall be entitled to the benefits envisaged in such order. Whatever financial benefit the petitioner is entitled to as result of his 'compulsory retirement', shall be computed and released in his favour, in accordance with law, within a period of 3 (three) months of receipt of a copy of this order. The petitioner shall, however, not be entitled to any interest.

21. The writ petition stands allowed to the extent mentioned above. Parties shall bear their own costs.

SALUNKE
J V

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(M. S. KARNIK, J.)

(CHIEF JUSTICE)