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

WRIT PETITION NO.17862 OF 2024

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Union of India & Ors. ... Petitioners

V/s.

Harikishan Chandrakant Koli ... Respondent

Ms. Smita Thakur with Ms. Jyoti Yadav i/by Mr. Suresh Kumar for the petitioners.

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy for the respondent.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ
&
AMIT BORKAR, J.**

DATED : DECEMBER 19, 2024

P.C.:

1. Heard Ms. Thakur, learned counsel appearing for the petitioners-Union of India and Mr. Ramamurthy, learned counsel representing the respondent.

2. Challenge in this petition filed under Article 226 of the Constitution of India has been made to the judgment and order dated 14 February 2024 passed by the Central

Administrative Tribunal, Mumbai Bench (hereinafter referred to as 'the Tribunal') in Original Application No.749 of 2019 (hereinafter referred to as 'OA'), whereby the OA filed by the respondent has been allowed, and the order impugned before the Tribunal, dated 5 July 2019 has been quashed and set aside, whereas the order dated 17 February 2019 passed by the Appellate Authority has been restored.

3. The submission of the learned counsel for the petitioners is that the reason given by the Tribunal while allowing the OA in the impugned judgment and order to the effect that under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as '1965 Rules'), the Appellate Authority can review his order, is erroneous for the reason that even Appellate Authority can revise his order in terms of the power conferred on it under rule 29(1)(v) of the 1965 Rules.

4. On the other hand, Mr. Ramamurthy vehemently opposed the writ petition and stated that under the scheme of 1965 Rules no authority is vested with the Appellate Authority to review his order and, accordingly, the findings recorded by the Tribunal in the impugned judgment and order are correct

and do not call for any interference by this Court in the instant writ petition. He, thus, urges that the writ petition may be dismissed.

5. Before considering the rival submissions made by the learned counsel appearing for the parties, certain facts which are necessary for appropriate adjudication of the issue involved in this case may be noted.

6. The respondent entered into service with the petitioners as 'field worker' on 13 April 1994 under the category of Scheduled Tribe. The said employment was sought by the respondent on the basis of a certificate issued on 26 June 1998 issued by the Sub-Divisional Officer, Murud Janjira, Mangaon, District Raigad.

7. However, subsequently it was discovered by the petitioners that the said certificate was not genuine, and accordingly on the said basis the services of the respondent were terminated by means of order dated 1 June 2016, against which he preferred an appeal which was allowed by the Appellate authority by means of order dated 27 February 2017 with a further direction to the Disciplinary Authority to follow Rule 14 of the 1965 Rules. Once the disciplinary matter

was remitted to the Disciplinary Authority by the Appellate Authority by means of order dated 27 February 2017, a charge-sheet was issued to the respondent on 8 March 2017, pursuant to which an inquiry was conducted and inquiry report was submitted on 18 September 2017 by the inquiry officer.

8. Considering the inquiry report, the respondent was removed from service by the Disciplinary Authority by means of the order dated 20 December 2017. However, against the order of removal dated 20 December 2017, the respondent preferred an appeal on 3 July 2018. That appeal preferred by the respondent was allowed by the Appellate Authority by means of order dated 17 February 2019 and the case was remitted again to the Disciplinary Authority.

9. Pursuant to the order of the Appellate Authority dated 17 February 2019, the respondent was reinstated in service, and the intervening period was ordered to be treated to be period of suspension. The respondent, however, was again placed under suspension after his reinstatement, by means of order dated 11 March 2019 and by another order dated 24 March 2019 the order of reinstatement of the respondent was

ordered to be kept on hold. Thereafter the Appellate Authority by means of order dated 5 July 2019 reviewed his earlier order dated 17 February 2019 and held that appointment of the respondent to the post of field worker was void ab initio and, therefore, the respondent could not claim that he was holding a civil post, and accordingly the respondent was not entitled to the protection under Article 311 of the Constitution of India and 1965 Rules. The appeal preferred by the respondent against the order of removal dated 20 February 2017 was, thus, rejected.

10. The respondent filed OA before the Tribunal challenging order dated 5 July 2019 primarily on the ground that the Appellate Authority under the provisions of the 1965 Rules could not have reviewed his order and, therefore, the order of the Appellate Authority was completely illegal and without jurisdiction. The Tribunal by passing the impugned judgment and order has allowed the OA and set aside order dated 5 July 2019 passed by the Appellate Authority. It is this order of the Tribunal which is under challenge before us in these proceedings.

11. The sole question for consideration in the instant petition

is as to whether once the Appellate Authority exercised his power of appeal vested in him under Rule 23 of the 1965 Rules, is it open for the same Appellate Authority to review his earlier order.

12. Rule 23 of the 1965 Rules provides that a government servant may prefer an appeal against all or any of the orders mentioned therein, which include an order imposing any of the penalties specified in Rule 11. Rule 11 of the 1965 Rules prescribed certain penalties and penalty of removal from service has been prescribed in Rule 11 as one of the major penalties. Thus, a conjoint reading of Rule 23 and Rule 11 makes it clear that the government servant aggrieved by the order of removal from service can prefer an appeal before the appellate authority under Rule 23.

13. It is settled principle of law that any authority exercising any statutory functions has to exercise his power and authority within the four corners of the statute or statutory rules under which he exercises such authority. It is also equally well settled that a statutory authority is denuded of any power of review unless the statutory rules or any enactment specifically confer such a power of review upon the

authority concerned.

14. If we examine the scheme of 1965 Rules, it is abundantly clear that the said Rules do not confer any authority or power on the Appellate Authority to exercise power of review.

15. Reliance placed by the learned counsel for the petitioners on Rule 29(1)(v) of the 1965 Rules is highly misconceived. For appropriately considering the submissions made by the learned counsel for the petitioners based on the provisions contained in Rule 29(1)(v), we may reproduce Rule 29 of the 1965 Rules, which 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 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-

(a) confirm, modify or set aside the order; or

(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."*

16. Rule 29 in fact is a provision which contain the power of revision, according to which, such power of revision can be exercised by the authorities mentioned therein; the head of a department, the appellate authority or any other authority specified in this behalf by the President by a general or special order.

17. Thus, apart from various authorities mentioned in Rule 29(1)(i), (ii), (iii), and (iv), it is the appellate authority as well which has been vested with the power of revision, which can be exercised by the appellate authority within six months from the date of the order proposed to be revised. The power of revision can be exercised by the revisional authority mentioned in Rule 29 either on his own motion, or otherwise and the revisional authority has been vested with the power to call for the records of any inquiry and revise the order by either confirming it or modifying it or setting I t aside.

18. The order proposed to be revised under Rule 29 needs

to be passed under the 1965 Rules, however, the revisional jurisdiction can be exercised only in case petition for revision is preferred against an order against which remedy of appeal is available but it has not been preferred. This revisional jurisdiction can also be exercised where remedy of appeal is not available.

19. In the instant case, it is not only that against the order of the disciplinary authority dated 20 December 2017 remedy of appeal was available to the respondent, but he exercised the said right of appeal as well, and accordingly Appellate Authority passed order on 17 February 2019. Thus, once the appeal against the order of the Disciplinary Authority in the instant case was preferred and the Appellate Authority decided the same, in our considered opinion, in such a situation the power of revision available to the Appellate Authority under Rule 29 of the 1965 Rules could not have been exercised for the reason that such exercise of power will amount to exercise of power of review and revision as the power of revision in the instant case was exercised by the Appellate Authority against an order passed in appeal filed by the respondent.

20. Under Rule 29, the appellate authority can exercise the power of revision only in case despite availability of remedy of appeal, such remedy of appeal is not taken recourse to by the person concerned. However, once the power of appeal against the order is available and the aggrieved person prefers an appeal and the appellate authority exercised the appellate powers and passes an order, in such a situation, in our opinion, the power of revision under Rule 29(1)(v) of the 1965 Rules is not available.

21. In the aforesaid view, the submission made by the learned counsel for the petitioners is highly misconceived. It is also to be noticed that the earlier order passed by the Appellate Authority dated 17 February 2019 was in favour of the respondent, whereby the order of the Disciplinary Authority was set aside and the matter was remitted to the Disciplinary Authority for consideration afresh, and accordingly the Appellate Authority before passing order dated 5 July 2019 was under obligation at least to give an opportunity of hearing to the respondent. Though we have already held earlier that the order dated 5 July 2019 passed by the Appellate Authority in the instant case is completely without jurisdiction, for the reasons that the 1965 Rules do

not confer any such authority on the appellate authority to review his order; however, the order dated 5 July 2019 suffers from yet another legal defect of non-observance of principles of natural justice.

22. We also notice that by order dated 17 February 2019 the Appellate Authority has remitted the matter back to the Disciplinary Authority and the Tribunal in the impugned judgment and order has kept all the pleas open to the parties and, therefore, no prejudice is going to be caused to the petitioner by order dated 17 February 2019 passed by the Appellate Authority. The Disciplinary Authority has further directed to proceed in accordance with the Rules/law/extant circulars etc. and complete the disciplinary proceedings as directed by the Appellate Authority by means of the order dated 17 February 2019.

23. For the reasons aforesaid, we decline to interfere in the impugned order passed by the Tribunal in this case. The writ petition is highly misconceived and without any force, which is hereby dismissed. However, there will be no order as to costs.

24. The Disciplinary Authority is directed to complete the enquiry and pass final order in terms of the remand order

dated 17 February 2019, expeditiously, say within a period of three months from the date a copy of this order is brought to his notice.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)