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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.S. NO. 1391 OF 2012

Harish Chandra Dahariya, S/o Devnandan Dahariya, aged about 62 years, R/o Premnagar, Mova, Raiur, Tahsil & District Raipur (CG)

… Petitioners

versus

1. State of Chhattisgarh, through the Secretary, Revenue Department, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. Under Secretary, Revenue Department, D.K.S. Bhawan, Raipur (CG)
3. Commissioner, Raipur Division, Raipur (CG)
4. Collector, Kawardha, District Kabirdham (CG)
5. Chhattisgarh Public Service Commission, Raipur

… Respondents

For Petitioner	:	Mr. Raghvendra Pradhan, Advocate.
For Respondents 1 to 4	:	Mr. S.P. Kale, Dy. Advocate General.
For Respondent 5	:	Mr. Y.C. Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/10/2018

1. Challenge in the present writ petition is to the order dated 16.12.2011, Annexure P-1, whereby the respondents have issued an order of permanently withholding the pension payable to the petitioner.

2. Brief facts of the case are that at the relevant point of time the petitioner who was working as Naib Tahsildar in District Kawardha was proceeded in a departmental enquiry under Rule 14 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. Subsequently, the petitioner was inflicted with a minor punishment of stoppage of one increment without cumulative effect vide order dated 7/22.6.2002. The said order was not challenged by the petitioner and the same in due course of time attained finality and it was also acted upon by the respondents. Subsequently, after about 9½ years time, the appellate authority i.e. the Commissioner, Raipur, ordered for the review of the said punishment imposed upon the petitioner on 7/22.6.2002. Meanwhile, the petitioner stood retired from services on 30.4.2010.

3. Based upon the said review proposed by the appellate authority, the State Government issued a notice to the petitioner on 22.2.2010 but the same could not be served upon the petitioner and thereafter the respondents straightaway issued the order, Annexure P-1, whereby the respondents with the permission of his Excellency, the Governor, inflicted a major punishment of stopping of pension payable to the petitioner permanently.

4. The said order of stoppage of pension permanently was assailed by the petitioner primarily on two grounds. Firstly, the appellate authority could not have initiated review proceeding after 6 months which is permissible under the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. The second contention of the petitioner is that the order of punishment is also per se bad in law for the reason that the same has also been passed without affording a reasonable opportunity of hearing to the petitioner.

5. Learned counsel appearing for the respective respondents however opposing the petition submits that taking into consideration the gravity of the offence, the act on the part of the respondents cannot be said to be in any manner harsh or bad in law, neither can it be said to be contrary to rules, and thus prayed for the dismissal of the writ petition.

6. From the contentions put forth on either side, the admitted factual position is that the petitioner was working as Naib Tahsildar at the relevant point of time in District Kawardha. He was subjected to a disciplinary proceeding under Rule 14. The disciplinary proceeding finally culminated in an order of minor punishment, dated 7/22.6.2002, Annexure P-5, whereby the punishment of stoppage of one increment without cumulative effect was imposed. Subsequently, after a lapse of more than 9½ years time, the Commissioner (appellate authority) initiated a proceeding against the

petitioner for review vide memo dated 23.1.2010 and later on a notice dated 22.2.2010, Annexure R-2, issued to be served upon the petitioner through the concerned Collector where the petitioner was then posted. The notice, Annexure R-2, was for a hearing provided to the petitioner on 26.2.2010 at 12:00 noon.

7. The documents enclosed along with the writ petition would reveal that there is a note-sheet by the Collector, Mahasamund who has intimated the respondents - State authorities that the notice for the appearance of the petitioner on 26.2.2010 issued on 22.2.2010 was itself received by the Collector, Mahasamund much beyond the date given in the notice dated 22.2.2010. The note-sheets which have been enclosed along with the writ petition also reveal that the authorities under the State Government had accepted the said intimation of the Collector and have initially drawn a note-sheet for issuance of a fresh notice to the petitioner. However, subsequently, considering the fact that the petitioner was to retire in near future, they skipped the said procedure of issuing fresh notice and went on to decide the matter by passing of the impugned order, Annexure P-1.

8. This being the factual matrix of the case, which stands unrebutted from the record of the writ petition, it would be relevant to take note of the provision of law. Chapter VIII of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 deals with review. For ready reference Rule 29 is reproduced herein under:

> **"29.** (1) Notwithstanding anything contained in these rules except Rule 11–
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> (i) the Governor; or
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> (ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or
>
> (iii) **the appellate authority, within six months of the date of order proposed to be reviewed, or**

(iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order which may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review 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 and order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or imposed any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to 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 reviewing 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 penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14[X X X] and except after consultation with the Commission where such consultation is necessary :

Provided further that no power to review shall be exercised by the head of department 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.

Explanation. – (1) The powers conferred on the Governor under this sub-rule shall in the case of Class III or Class IV Government servant serving in a District Court or a Court subordinate thereto be exercised by the Chief Justice.

(2) No proceeding for review 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 review shall be dealt with in the same manner as if it were an appeal under these rules.

[*Explanation II.*– The powers conferred on the Governor under this rule shall, in the case of Judicial Officers be exercised by the High Court.] **"**

9. Sub-rule (iii) clearly of the aforesaid Rule provides the limitation within which the appellate authority can exercise its power for review and which is prescribed of six months. It is also relevant at this juncture to refer to the first proviso of Rule 29. the said proviso very clearly stipulates that no order imposing or enhancing can be made by any reviewing authority unless the delinquent employee has been given a reasonable opportunity of making a representation.

10. From the documents which are enclosed with the writ petition and also from the averments made in the writ petition against which again there is no rebuttal by any cogent documents by the respondents, it is evident that the review proceeding drawn by the respondents was without affording an opportunity of hearing inasmuch as the sole notice which was issued on 22.2.2010 could not be served upon the petitioner as by the time the notice reached the office of the Collector the date mentioned in the notice had already lapsed and it further reflects that since the date had lapsed the Collector did not serve the notice on the petitioner and sent the notice back to the competent authority in the State Government. As such, it is evident that the petitioner has not been given a reasonable opportunity of hearing on the subsequent decision of review proposed by the State Government.

11. It is also relevant at this juncture to refer to a judgment of the Hon'ble Supreme Court in the case of **Union of India and Others** *v*. **Vikrambhai Maganbhai Chaudhari**, **2011 (7) SCC 321**, wherein dealing with a similar situation and under the similar provision of law the Hon'ble Supreme Court in paragraph 10 to 13 has held as follows:

> **"10** As rightly observed by the Tribunal, the above sub-Rule (1) of Rule 29 indicates 6 categories of revisional authorities. If we go further it shows that while no period is mentioned in sub-clauses (i) to (iv), sub-Clause (v) refers to a period of six months from the date of order proposed to be revised. Since order was passed by exercising power under sub-Clause (vi), we have to see whether in the Notification specifying an authority a time limit has been mentioned or even in the absence of the same, the

outer limit can be availed by exercising power under sub-Clause (v). According to learned ASG, there is no need to specify the period in the Notification authorizing concerned authority to call for the record for any enquiry and revise any order made under the Rules. We are unable to accept the said claim for the following reasons.

11. It is to be noted that in cases where the appellate authority seeks to review the order of the disciplinary authority, the period fixed for the purpose is six months of the date of the order proposed to be revised. This is clear from sub-Clause (v) of sub-Rule 1 of Rule 29. On the other hand, Clause (vi) confers similar powers on such other authorities which may be specified in that behalf by the President by a general or special order and the said authority has to commence the proceedings within the time prescribed therein. Even though Rule 29(1)(vi) provides that such order shall also specify the time within which the power should be exercised, the fact remains that no time limit has been prescribed in the Notification.

12. We have already pointed out that no period has been mentioned in the Notification. The argument that even in the absence of specific period in the Notification in view of Clause (v), the other authority can also exercise such power cannot be accepted. To put it clear, sub-Clause (v) applies to appellate authority and Clause (vi) to any other authority specified by the President by a general or special order for exercising power by the said authority under sub-Clause (vi). There must be specified period and the power can be exercised only within the period so prescribed.

13. Inasmuch as the Notification dated 29.05.2001 has not specified any time limit within which power under Rule 29(1)(vi) is exercisable by the authority specified, we are of the view that such Notification is not in terms with Rule 29 and the Tribunal is fully justified in quashing the same. The High Court has also rightly confirmed the said conclusion by dismissing the Special Application of the appellants and quashing the Notification on the ground that it did not specify the time limit. Consequently, the appeal fails and the same is dismissed. No order as to costs.**"**

12. Taking into consideration the aforesaid factual matrix as it stands, this Court is of the firm view that the impugned order, Annexure P-1, is per se illegal on both grounds as have been raised by the petitioner; that is, firstly, the same could not have been exercised beyond the period of six months and, secondly, the same has been passed without affording an opportunity of hearing which again is a mandatory requirement under the proviso to Rule 29 of the Rules of 1966.

13. Keeping in view of the judgment of the Hon'ble Supreme Court referred in the preceding paragraph, this Court is of the view that the impugned order, Annexure P-1, is not sustainable and the same deserves to be and is accordingly set aside, with all consequential benefits to follow.

14. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

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