2026:AHC:233845-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 11149 of 2025

Union of India and 2 others

…..Petitioner(s)

Versus

Pramod Singh Yadav and another

…..Respondent(s)

Counsel for Petitioner(s) : Ashish Kumar
Counsel for Respondent(s) : Vinod Kumar

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard learned counsel:- Shri Ashish Kumar for the petitioners and Shri Vinod Kumar for respondent no. 1 (‘the respondent’).

2. This writ petition has been filed challenging the order dated 12.09.2024, whereby the Central Administrative Tribunal, Allahabad Bench, Allahabad (‘the Tribunal’) has allowed Original Application (OA) No. 38 of 2013 filed by the respondent setting aside the notice dated 12.12.2012 impugned therein.

3. The respondent was appointed as a Postal Assistant on 08.01.1996. He was placed under suspension vide order dated 10.06.2002, whereafter a First Information Report was lodged against him and seven other persons on 10.08.2002 levelling allegation of embezzlement of funds. As regards the criminal case based upon the FIR, there is no dispute that the

respondent has been acquitted therein by order dated 17.05.2023 passed by the trial Court.

4. A departmental charge sheet was issued to the respondent on 10.12.2002 on the same allegations on which the FIR was lodged against him. A departmental inquiry was conducted against the respondent, in which the charges were not found to be proved against him and, consequently, he was exonerated by the inquiry officer vide inquiry report dated 26.09.2008.

5. The Director of Postal Services, however, disagreed with the conclusion drawn by the inquiry officer and, vide order dated 12/17.03.2009, he directed initiation of fresh proceedings against the respondent, whereafter another charge sheet dated 21.04.2009 was issued to him. Pursuant thereto, a fresh inquiry was conducted by another inquiry officer who submitted his report dated 23.01.2012, wherein also charges were not found proved against the respondent.

6. There was another charge sheet dated 28.07.2008 issued to the respondent which also formed subject matter of another inquiry, wherein charges against the respondent were found to be proved and the disciplinary authority passed a punishment order dated 20.07.2012 whereby annual increment of the respondent for a period of two and a half years was stopped. The respondent accepted to undergo the said punishment and did not challenge the same.

7. About two and a half months after imposition of the above punishment, a show cause notice dated 03.10.2012 (herein-after referred to as ‘first SCN’) was issued to the respondent, purportedly under Rule 27 of Central Civil Services (Classification Control and Appeal) Rules, 1965 (‘Rules, 1965’) asking him to submit reply within a period of ten days on the point of enhancement of above-imposed penalty to that of stoppage of increment for next three years with cumulative effect and further recovery of Rs.50,000/-.

8. The respondent submitted his reply dated 15.10.2012 against the show cause notice and while no order was passed by the petitioners, they

issued another show cause notice dated 12.12.2012 (herein-after referred to as ‘second SCN’) under Rule 29 of the Rules, 1965 asking the respondent to submit reply within a period of 15 days about enhancement of punishment to that of ‘compulsory retirement’ with immediate effect. The respondent submitted his reply dated 02.01.2013 to the second SCN raising point of illegality.

9. The OA giving rise to the present writ petition was filed by the respondent challenging the second SCN with a further prayer to direct the petitioners herein not to interfere in his peaceful functioning on the post in question and further direct them to pay regular salary to him with all consequential benefits.

10. The Tribunal, by order dated 17.01.2013, stayed the second SCN, whereafter affidavits were exchanged *inter se* parties and, by final order dated 12.09.2024, the OA has been allowed setting aside the second SCN.

11. Learned counsel for the petitioners has made submissions that first SCN was withdrawn by the petitioners on 30.01.2013 and, therefore, the only notice being the second SCN, the same could not be interfered with by the Tribunal as Rule 29 of the Rules, 1965 empowers the appellate authority to enhance punishment and as the second SCN was issued in exercise of that statutory power, the Tribunal has erred in interfering with the same.

12. Submission has been made that OA against a mere SCN was otherwise not maintainable in view of Section 20 of the Administrative Tribunals Act, 1985 (‘the Act of 1985’), which bars entertainment of an application by the Tribunal unless the concerned applicant has availed all the remedies available to him under the relevant Service Rules as to redressal of grievances and by reading out sub-Sections (1) and (2) of Section 20, submissions have been made that an applicant shall be deemed to have availed all the remedies available to him only when a final order has been passed by the authority rejecting any appeal preferred or representation made by him and in case no final order has

been passed by the authority, the appeal preferred or representation made by the applicant remains pending for more than six months from the date of preferring the appeal/representation.

13. It is further submitted that once the respondent had responded to second SCN and his reply was pending consideration before the authority, unless final order was passed *qua* the notice, the OA was premature/not maintainable, however, the Tribunal not only erred in entertaining the same but also in passing the interim order in 2013 and, then, allowing the same in 2024 and, therefore, the order passed by the Tribunal deserves to be set aside holding the OA as not maintainable.

14. It is further submitted that the punishment earlier awarded to the respondent was a minor penalty under Rule 11 of the Rules, 1965 and once the authority disagreed with the conclusion drawn by the inquiry officer, he was competent to proceed with award of major penalty of 'compulsory retirement' which power was available to him under Rule 29 of the Rules, 1965 especially sub-Rule (1)(v)(a) and (b) thereof and, therefore, the petitioners rightly proceeded under Rule 14 of the Rules and there was no occasion to interfere with exercise of such statutory powers.

15. Further submission has been made that the Tribunal has recorded a perverse finding that first SCN was not cancelled, though the same was very much withdrawn on 30.01.2013, copy of which order was annexed with the counter affidavit and, therefore, the order passed by the Tribunal stands vitiated on the ground of perversity. Submission is that the first SCN was withdrawn as it wrongly indicated Rule 27 which, in absence of preference of an appeal by the respondent, could not be invoked and, therefore, the first SCN was rightly withdrawn/dropped.

16. It is lastly contended that interference in show cause notice can be made only in exceptional circumstances where the authority is not competent to issue the same or that the notice is without jurisdiction, however, in the present case, since the second SCN was issued in exercise of statutory powers conferred by Rule 29, the same was well

within jurisdiction and was not liable to be interfered with by the Tribunal.

17. In support of his submissions, learned counsel has placed reliance on **State of Uttar Pradesh vs. Brahm Datt Sharma and another : AIR 1987 Supreme Court 943**, **Union of India and another vs. Kunisetty Satyanarayana : AIR 2007 Supreme Court 906** and **S.S. Rathore vs. State of Madhya Pradesh : AIR 1990 Supreme Court 10**.

18. Per contra, learned counsel for the respondent has supported the order impugned by contending that, by the time the second SCN was issued, the first SCN was not withdrawn and the same was cancelled/withdrawn/dropped only after the Tribunal passed interim order in the OA and, therefore, the finding of the Tribunal to the effect that the second SCN was issued without cancelling the first SCN, is as per the record position.

19. Further submissions have been made that once the respondent did not challenge the order dated 20.07.2012 imposing minor punishment upon him and underwent the same, no further proceedings were warranted in the matter and even if the same could be initiated, once first SCN was issued, the same could be carried to its logical end but without waiting for culmination of proceedings based thereupon, the second SCN was issued, which was without jurisdiction and being contrary to rules, the OA was very much maintainable.

20. We have considered the submissions made and have perused the material available on record.

21. In the present case, chronology of events and the nature of orders passed/notice issued are of quite significance. Admittedly, in the first inquiry held based upon the charge sheet of 2002, the respondent was completely exonerated on 26.09.2008, however, on account of disagreement with the inquiry report, the Director of Postal Services proceeded to direct initiation of fresh proceedings. In the fresh inquiry conducted by a different inquiry officer, the respondent was again exonerated vide inquiry report dated 23.01.2012, however, based upon

another charge sheet dated 28.07.2008, a punishment order came to be passed on 20.07.2012 stopping annual increment of the respondent for two and a half years.

22. Though the petitioners were competent to enhance penalty by exercising power of review under Rule 29 of the Rules, 1965 and they proceeded to issue first SCN dated 03.10.2012 indicating a wrong provision, i.e., Rule 27 instead of Rule 29, by the said SCN, they proposed to enhance the punishment to that of stoppage of increment for next three years with cumulative effect and recovery of Rs.50,000/-. For a ready reference, the second SCN is reproduced as under:

> "DEPARTMENT OF POSTS
> OFFICE OF THE POSTMASTER GENERAL
> AGRA REGION, AGRA 282001
>
> Memo No. Vig/30-7/39-2012 Dated 03.10.2012
>
> Whereas penalty of "with holding of next one increment for two years six months" was imposed upon Shri Promod Singh Yadav, PA Mainpuri HO in disciplinary proceedings under Rule-14 of CCS (CCA) Rules 1965 vide SPOs Mainpuri memo No. F-3/1/02-03/Disc. Dated 20-07-2012.
>
> And whereas on going through the punishment order the undersigned is prima facie of the opinion that the punishment awarded to Shri Promod Singh Yadav, is not commensurate with the gravity of allegation made out against the official.
>
> **Now, therefore, the undersigned in exercise of powers conferred under Rule-27 of CCS (CCA) Rules 1965 propose upon said Shri Promod Singh Yadav, that the penalty be enhanced to that of stoppage of increment for next three years with cumulative effect and recovery of Rs.50,000/-.**
>
> Shri Promod Singh Yadav, is called upon to submit his representation, if any within 10 days from the day of receipt of this memo, as to why the proposed penalty should not be imposed upon him failing which it will be presumed that he has nothing to say against the aforesaid proposal and proposed penalty will be imposed upon him ex-Parte.
>
> (Umesh Kumar Verma)
> Director Postal Services
> Agra Region, Agra.282001"

23. There is no dispute *inter se* parties that even the first SCN was responded to by the respondent, however, on the one hand, no order was passed based upon the notice and its response, the petitioners issued second SCN dated 12.12.2012 (impugned in the OA), which reads as under:

"DEPARTMENT OF POSTS
OFFICE OF THE POSTMASTER GENERAL
AGRA REGION, AGRA 282001

Memo No. Vig/30-7/39-2012 "Dated at Agra the 12-12-12

Whereas penalty of "with holding of next one increment for two years six months" was imposed upon Shri Promod Singh Yadav, PA Mainpuri HO in disciplinary proceedings under Rule-14 of CCS (CCA) Rules 1965 vide SPOs Mainpuri Memo No.F-3/1/02-03/disc. Dated 20-07-2012.

Now therefore, the undersigned in exercise of powers conferred under Rule-29 of CCS (CCA) Rules 1965 and **after careful consideration of your representation dated 15-10-12 in response to the enhancement proposal issued vide this office memo even no. dated 03-10-12 the undersigned considers to enhance the punishment of with holding of next increment for the period of two years six months without cumulative effect awarded by the disciplinary authority vide his memo no.B/1/02-03/Disc./Mainpuri dated 20-07-12 to that of 'compulsory retirement' with immediate effect** as the punishment awarded by the disciplinary authority is not commensurate with the gravity of allegation made against the official. Shri Promod Singh Yadav PA Mainpuri Division is hereby given an opportunity to submit his representation If any within 15 days from the receipt of this memo. If no response is received within stipulated period it will be presumed that he has nothing to represent against the above proposal and the case will be decided ex-parte on merits of the case.

(Umesh Verma)
Director Postal Services
Agra Region, Agra.282001"

24. The second SCN refers to Rule 29 of the Rules, 1965, however, the Court is not inclined to accept the submissions made on behalf of petitioners that the second SCN was independent of the first SCN, inasmuch as the second SCN contained specific reference to not only the first SCN but also representation dated 15.10.2012 submitted by the respondent against the first SCN.

25. Submission of response to the second SCN, in the opinion of the Court, did not take away respondent's right to assail the second SCN before the Tribunal taking a plea that the very issuance of second SCN was without jurisdiction and we find that the second SCN was challenged *inter alia* on this very plea, as stands reflected from paragraph 4.24 read with ground 'N' contained in the OA.

26. The Tribunal stayed the second SCN on 17.01.2013, by which time also, the first SCN was in existence and it was only thereafter that the petitioners might have been advised to withdraw the first SCN so as to take a plea before the Tribunal as if only second SCN remains operative.

27. It would also be appropriate to reproduce the order dated 30.01.2013 by which the first SCN was withdrawn/dropped. The same reads as under:

> "Government of India
> Ministry of Communications & IT
> Department of Posts
> O/0 Post Master General, Agra Region, Agra-282001
> –
>
> Memo No. Vig/30-7/39-2012 Dated at Agra the 30-01-2013
>
> The show cause Notice issued vide this office memo no, even dated 03-10-12 under Rule-27 of CCS (CCA) rules 1965 to Shri Promod Singh Yadav, PA Mainpuri HO is hereby **dropped**.
>
> This is without prejudice to any further action against him.
>
> (Umesh Verma)
> Director Postal Services
> Agra Reglon, Agra 282001

28. A bare perusal of the order dated 30.01.2013 indicates that the same did not contain any reason for dropping the first SCN. Admittedly, by the time the order dated 30.01.2013 was passed, the second SCN had already been issued, however, even the reference of second SCN was not made in the order, rather, the last line of the order reads- "This is without prejudice to any further action against him", which shows the mindset of the petitioners to proceed against the respondent so as to somehow punish him more rigorously.

29. We also find that the post of Director, Postal Services, Agra Region, Agra was held by one Umesh Verma and it was he, who had issued the first SCN, the second SCN as well as passed the order dated 30.01.2013 dropping the first SCN and it was he only who had, earlier, disagreed with the inquiry report dated 26.09.2008, by which the

respondent had been exonerated and, by order dated 12/17.03.2009, he had issued directions for holding a *de novo* inquiry against the respondent by issuance of a fresh charge-sheet.

30. It is, thus, apparent on the face of the record that there was at least one officer, namely, Umesh Verma, who somehow intended to ensure that the respondent did not remain in service and pretended as if he was fairly exercising his statutory powers conferred by the Rules, 1965, although the situation reveals otherwise. We, however, clarify that any observation made in this order about the said officer may not be treated as an opinion against his conduct etc. as he was neither a party to the O.A. nor is a party before us, nor should any observation be taken as a tool to otherwise act against him and we have made these observations only for the purposes of this case.

31. As regards the submissions *qua* maintainability of the OA against second SCN, we find that mere submission of response to the notice and non-passing of an order by the authority would not preclude the respondent from assailing the very issuance of notice by filing OA as it is always open for a party aggrieved of issuance of a notice which may be contrary to the Rules or without jurisdiction, to raise a challenge to the same before the appropriate forum, which, in the present case, was the Tribunal.

32. The words "A Tribunal shall not ordinarily admit an application….." appearing in sub-Section (1) of Section 20 of the Act of 1985 make it clear that such alleged bar against admission of an application can be invoked under ordinary circumstances where remedies against the action have not been availed of by the concerned applicant. However, in exceptional circumstances, like the one involved in the present case, the Tribunal can very well entertain a challenge to the notice issued without jurisdiction. Further, in our opinion, merely because the respondent filed response to the second SCN, the same would not mean that he had availed a ‘remedy against the notice’ or that only passing of an order based thereupon would give rise to a cause of

action to him and not prior thereto. We, therefore, hold that the OA was maintainable.

33. The judgment in the case of **Brahm Datt Sharma** (supra) as relied upon by the learned counsel for the petitioners, reads against the petitioners themselves, inasmuch as interference with a notice issued without any authority of law has been found to be challengeable in writ jurisdiction and, therefore, we find that the challenge laid to the second SCN by filing the OA before the Tribunal, was sustainable.

34. The judgment in the case of **Kunisetty Satyanarayana** (supra) as relied upon by the learned counsel for the petitioners, also deals with entertainment of a writ petition against a show cause notice and does not deal with maintainability of an OA before the Tribunal and, even otherwise, on careful perusal of the said judgment, it is found that interference even in writ jurisdiction has been found to be appropriate when the show cause notice is found to be wholly without jurisdiction or, for some other reason, illegal.

35. The third judgment in the case of **S.S. Rathore** (supra) does deal with Section 20 of the Act of 1985 and the same lays down a proposition that the cause of action to file an OA arises when the remedies available to a public servant under the relevant service Rules as to redressal of grievance are disposed of. However, it was specifically laid down by the Hon'ble Supreme Court that the principle of exhaustion of remedies may not be applicable when the remedy availed of has not been provided by law.

36. In the present case also, as noted herein-before, submission of response against the second SCN or purported order to be passed thereon cannot be treated as ‘a remedy provided against the notice under the service Rules’ and no such provision has been placed before us where statutory obligation is cast upon the authority to dispose of the notice based upon its response in the sense that it becomes an order exhausting the remedy in furtherance of notice, so as to create a bar in ‘ordinary circumstances’ *qua* the challenge laid before the Tribunal.

37. In view of the above discussion, we are of the considered opinion that issuance of the second SCN was without any statutory sanction in light of the proceedings pursuant to the first SCN being pending and dropping of proceedings post issuance of the second SCN which, by way of an interim order, was interfered with by the Tribunal and the first SCN was withdrawn after the interim order was passed by the Tribunal, leads us to the conclusion that the action of the petitioners in somehow proceeding to punish the respondent by way of an enhanced penalty was contrary to the scheme of Rules, 1965. The exercise is found to have been undertaken to harass the respondent who was successively exonerated in previous inquiry proceedings and, at one point of time, had accepted and undergone minor punishment awarded to him on 20.07.2012.

38. For all the aforesaid reasons, we do not find any good ground to interfere with the order passed by the Tribunal.

39. The writ petition has no substance; the same is, therefore, **dismissed**.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

November 13, 2026
Sazia