

GAHC010131052013



2024:GAU-AS:8838

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4615/2013

NO. 971170449 CT/GD LEKH RAJ
CT/GD LEKH RAJ NOW DISMISSED FROM SERVICE S/O SRI HUKUM
CHAND R/O VILL- HATLI, P.O. HATLI P.S. KATHUA, DIST. MATHUAJAMMU
and KASHMIR

VERSUS

THE UNION OF INDIA and 3 ORS
THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI-
110001.

2:THE DIRECTOR GENERAL OF C.R.P.F. CGO COMPLEX
BLOCK NO. 1 LODHI ROAD NEW DELHI.

3:THE INSPECTOR GENERAL CRPF NORTH EASTERN REGION SHILLONG.

4:THE COMMANDANT 16 BN CRPF
RANCHI BANGAR MATHURA UTTAR PRADESH

Advocate for the Petitioner : MR.Z RAHMAN, MRM H AHMED,MR.M R CHOUDHURY
Advocate for the Respondent : MRM R ADHIKARI, ,C.G.S.C.

Linked Case : I.A.(Civil)/2366/2017

NO. 971170449 CT/GD LEKH RAJ

VERSUS

THE UNION OF INDIA and 3 ORS

Advocate for : M R CHOUDHURY

Advocate for : MRM R ADHIKARI appearing for THE UNION OF INDIA and 3 ORS

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 15.05.2024

Date of Judgment: 06.09.2024

Judgment & order(CAV)

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Heard Mr. M. H. Ahmed, learned counsel for the petitioner. Also heard Mr. M. R. Adhikari, learned CGC, appearing on behalf of all the respondents.

2. The challenge in the present proceeding, is to the orders, dated 04.10.2012 and 06.03.2013, passed by the Commandant-16 Bn, CRPF, imposing a fresh penalty upon the petitioner, which is contended to be not in consonance with the prescription as made in this connection under the provisions of the Central Reserve Police Force Act, 1949, and Central Reserve Police Force Rules, 1955. The petitioner has also prayed for regularization of the period w.e.f. 27.04.2002 to 21.09.2012 i.e. the period, he had remained away from service on account of the imposition of penalty of dismissal from service, as spent on duty with all consequential benefits of pay and allowances.

3. The petitioner, herein, on account of an incident occasioning on 25.10.2001, came to be placed under suspension vide order, dated 26.10.2001. Thereafter, the petitioner was issued with a memorandum of charges, dated 14.12.2001, levelling against him, 4(four) article of charges pertaining to the incident so occasioning on 25.10.2001. A perusal of the said memorandum of charges, dated 14.12.2001, would go to reveal that the petitioner, herein, was alleged to have consumed country liquor on the said date while being on duty and of misbehaving with civilians. The petitioner was

also alleged to have used abusive language against his superior. The petitioner was further alleged to have caused the death of his superior on account of firing resorted to by him by his personal weapon.

4. It is to be noted at this stage that basing on the said incident of firing, a criminal case was also instituted against the petitioner, herein. It is seen that after conclusion of the inquiry in the matter, in pursuance of the said memorandum of charges, dated 14.12.2001; the disciplinary authority of the petitioner, on consideration of the matter and holding the charges so levelled against him to be so established, proceeded to impose upon the petitioner, the penalty of dismissal from service with effect from the date, the order was so served upon him.

5. Being aggrieved with the said order, dated 27.04.2002; the petitioner had approached this Court by way of instituting a writ petition being WP(c)3783/2002. This Court on consideration of the issues so arising in the said writ petition; proceeded to dispose of the same, vide order, dated 10.03.2008. This Court, noticing the fact that in the criminal case so instituted against the petitioner, he was acquitted of the charges so levelled against him and accordingly, on considering the conclusions reached in the criminal proceeding so held against the petitioner by the learned trial Court; this Court interfered with the article of charges No. 3 & 4, so levelled against the petitioner. This Court, thereafter, proceeded to consider the remaining charges levelled against the petitioner and arrived at a conclusion that the remaining charges were established by the evidence and materials coming on record in the inquiry. Accordingly, by interfering with the order, dated 27.04.2002, imposing upon the petitioner, the penalty of dismissal from service; this Court required the respondents to re-decide on the quantum of penalty that should

now be imposed upon the petitioner keeping in view the findings and conclusions recorded by this Court in the said order.

6. The respondent authorities after a lapse of considerable period of time, assailed the said order, dated 10.03.2008, passed by this Court in WP(c)3783/2002, by way of instituting before this Court, a writ appeal being WA No. 121/2009. The Division Bench of this Court on considering the issues arising in the said writ appeal so preferred by the respondents, herein; proceeded vide order, dated 08.08.2012, to dismiss the said writ appeal upholding the order passed by a coordinate Bench of this Court. It is seen that after the dismissal of the said writ appeal; the respondent authorities vide order, dated 04.10.2012, proceeded to re-consider the issue and on such re-consideration, imposed upon the petitioner, a penalty of reduction of pay by two stages in the time scale of pay in the revised pay scale corresponding to the pay scale of Rs. 3050-75-3950-80-4590 for a period of three years with cumulative effect. The period, the petitioner was required to stay away from service w.e.f. 27.04.2002 to the date of retirement of service w.e.f. 21.09.2012, was regularized as such. The said order, dated 04.10.2012, was further clarified vide an order, dated 06.03.2013, and therein, it was specified that the period of absence of the petitioner w.e.f. 27.04.2002 to 21.09.2012, he shall not be paid any salary and/or bonus.

7. The petitioner, being aggrieved by the prescriptions made in the orders, dated 04.10.2012, and 06.03.2013; has instituted the present proceeding, assailing the same.

8. Mr. Ahmed, learned counsel for the petitioner, by reiterating the facts as noticed hereinabove, has contended that the penalty as imposed upon the

petitioner, herein, is not in consonance with the provisions made in this connection under Rule 27 of the Central Reserve Police Force Rules, 1955. The learned counsel has also contended that in the table so set-out under the provisions of Rule 27(a) of the Rules of 1955; the prescription of penalty is to the extent of "reduction to a lower stage in the time scale of pay for a specified period".

9. Mr. Ahmed, learned counsel, has contended that the reduction so specified, is without cumulative effect and accordingly, he has submitted that the respondent authorities vide the order, dated 04.10.2012, having imposed the penalty of reduction of pay by two stages in the time scale of pay in the revised pay scale corresponding to the pay scale of Rs. 3050-75-3950-80-4590 for a period of three years with cumulative effect; is clearly contrary to the prescription as stipulated under the provisions of Rule 27(a) of the Central Reserve Police Force Rules, 1955, and accordingly, he has prayed that the said prescription would require an interference by this Court.

10. Mr. Ahmed, learned counsel for the petitioner, has further submitted that the petitioner having been forced to remain out of service on account of imposition of penalty of dismissal from service by the respondent authorities and the same having been interfered with by this Court; the period of absence of the petitioner on account of such dismissal from service, was required to be regularized by the respondent authorities, as spent on duty with all consequential benefits of salary, pay, seniority, etc..

11. Mr. Ahmed, learned counsel, in support of his submissions, as relied upon a decision of this Court rendered in the case of **Rahul Kumar v. Union f India & ors.**, reported in **2018(5) GLT 444**.

12. Mr. Adhikari, learned CGC appearing on behalf of the respondents, on the other hand, has submitted that the penalty so imposed upon the petitioner is prescribed under the provisions of Rule 27 of the Central Reserve Police Force Rules, 1955. The learned CGC has accordingly submitted that this Court, in view of the facts and circumstances as existing in the matter, vide order, dated 10.03.2008, in WP(c)3783/2002, while interfering with the penalty of dismissal from service in respect of the petitioner; had not proceeded to direct that the petitioner would be entitled to all consequential benefits including salary for the period, he was required to remain out of service on account of imposition of penalty of dismissal from service.

13. Mr. Adhikari, learned CGC, has submitted that the respondent authorities on consideration of the matter, vide order, dated 04.10.2012, had found that the petitioner, herein, was guilty of the misconduct alleged against him under article of charges No. 1 & 2 of the memorandum of charges, dated 14.12.2001, and accordingly, the petitioner, not having been exonerated from the charges so levelled against him; it would not be permissible for him to claim the salaries for the period, he had remained out of service on account of imposition of the penalty of dismissal from service upon him. The learned CGC has further submitted that the petitioner belonged to a disciplined force and in the event, he is required to be paid his salaries for the period with effect from the date he was so imposed with the penalty of dismissal from service till the date of his reinstatement in service; the same would send a wrong signal and would have the effect of disturbing the discipline required to be maintained in a disciplined force like the Central Reserve Police Force.

14. Mr. Adhikari, learned CGC, has, accordingly, contended that the instant writ petition does not merit a consideration and the same is required to be

dismissed in *limini*.

15. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

16. At the outset, this Court would examine the penalty imposed upon the petitioner, herein, vide order, dated 04.10.2012, after the matter was remanded to the authorities by this Court after interfering with the order of dismissal from service as imposed upon him earlier. The penalty as imposed upon the petitioner, herein, being on relevance, is extracted hereinbelow:

“Reduction of pay by two stages in time scale of pay in the revised pay scale of corresponding pay scale of Rs. 3050-75-3950-80-4590 for a period of three years with cumulative effect. Reduction of pay by two stages will be effective after fixation of his pay. He will not earn increments during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing the future increments of pay.”

17. An examination of the penalty so imposed upon the petitioner, would go to reveal that the same has the effect of reduction of the pay of the petitioner in the revised scale of pay coming into force by 2 stages for a period of 3 years with cumulative effect. In other words, the reduction so effected in respect of the petitioner, is permanent and he would be set back by 2 stages in the pay scale so applicable along with the applicable increments; for the period, the penalty would remain in currency.

18. The Hon’ble Supreme Court in the case of **State Bank of India & ors. v. T. J. Paul**, reported in **(1999) 4 SCC 759**, and in the case of **Vijay Singh v. State of Uttar Pradesh & ors.**, reported in **(2012) 5 SCC 242**; had held that the punishment/ penalty not prescribed under the statutory Rules, cannot be

so imposed. Thus, the disciplinary authority could not have inflicted the penalty of stoppage of increments for 3 years with cumulative effect on the petitioner, as imposition of such penalty "with cumulative effect", was not prescribed in the Central Reserve Police Force Act, 1949, Act and the Rules, thereof.

19. This Court following the decision of the Hon'ble Supreme Court in the cases of **T. J. Paul**(supra); in the case of **Rahul Kumar**(supra), which again was a case arising out of the Central Reserve Police Force Act, 1949, and the Central Reserve Police Force Rules, 1955, had proceeded to hold, as under:

“14. It is seen that the Act does not prescribe for the penalty of stoppage of annual increment with cumulative effect. However, in the Rules framed there under namely the Central Reserve Police Force Rules 1955, more specifically Rule 27, the procedure for imposition of punishment is laid down. In the table appended thereto, in serial no.7 "stoppage of increment" finds place. However even in the Rules, there is no mention about "cumulative effect". The difference between the penalty of "stoppage of increment" and "stoppage of increment with cumulative effect" is a major difference where the later penalty is more severe where the stoppage of increment is for all times to come.

15. Considering the rival submissions made by the parties, no doubt the service of the petitioner is in a discipline force, the penalty inflicted has to be tested vis-a-vis the nature and gravity of the charge. The record reveals that there was indeed a recommendation for grant of leave to the petitioner and the same recommendation per se was not rejected. Only the condition was imposed that the leave would have sanctioned after completion of the pending works. However, based on the said recommendation, the petitioner had already left the headquarter after handing over the charge to one Mahesh Sen which was also done as per the recommendation. Ideally, the petitioner should have left the station after ascertaining that leave was duly sanctioned and leaving the station prior to grant of such sanction and only on the strength of the recommendation can perhaps be the only fault of the petitioner. However, the petitioner stated that there was an emergent situation for which he had to leave. In view of the same, it cannot be said, that petitioner had a deliberate intention to remain absent without grant of leave. However, it is also a fact that the petitioner was directed to report back to duties which he failed to do so. This fact has been admitted by the petitioner, however by giving certain explanation regarding his wife's illness.

16. Future prospect of the petitioner is relevant factor to be considered while taking a decision to impose penalty in a departmental proceeding which is

seemed to be done in the instant case. However, the penalty imposed of stoppage of annual increment with cumulative effect for 1 year apart from being harsh vis-à-vis the nature of charge read with the explanation, is not a prescribed penalty either in the Act or the Rules. As held by the Hon'ble Apex Court in the case of State Bank of India(supra) the authorities cannot impose any penalty which is not one of the enumerated penalties under the rules in force. This Court exercising powers under Article 226 of the Constitution of India can, in appropriate cases, mould the relief to minimize litigation and the time undertaken in such litigation. In this connection, one may refer to the landmark judgment of the Hon'ble Apex Court laid down in the case of B. C. Chaturvedi Vs. Union of India & ors., reported in (1995) 6 SCC 749."

20. Applying the decisions of the Hon'ble Supreme Court in the cases of **T. J. Paul**(supra) and **Vijay Singh**(supra) and of this Court in the case of **Rahul Kumar**(supra) to the facts of the present case; this Court is of the considered view that under the provisions of Rule 27(a) of the Central Reserve Police Force Rules, 1955, it being permissible to impose a penalty of reduction to a lower stage in the time scale of pay for a specified period, the respondent authorities could not have imposed upon the petitioner, herein, the penalty so imposed vide the impugned order, dated 04.10.2012, with cumulative effect, inasmuch as, the imposition of penalty of reduction to a lower stage in the time scale of pay prescribed for a specific period; is not prescribed under the provisions of the Central Reserve Police Force Rules, 1955, to be so imposed with cumulative effect.

21. Accordingly, the said penalty as imposed upon the petitioner vide the order, dated 04.10.2012, to the effect, it is so imposed with cumulative effect, stands interfered with by this Court. The said penalty, would now be maintainable against the petitioner, as follows:

"Reduction of pay by two stages in the time scale of pay in the revised pay scale corresponding to the pay scale of Rs. 3050-75-3950-80-4590 for a period of three years."

22. Having considered the penalty so imposed upon the petitioner and drawn conclusions thereon, as above; this Court would consider the further prayer of the petitioner with regard to the manner in which the period i.e. 27.04.2002 to 21.09.2012, was so dealt with by the respondent authorities.

23. It is an admitted position that the petitioner, herein, during the said period i.e. 27.04.2002 to 21.09.2012, was required to remain out of service on account of imposition of penalty of dismissal from service vide the order, dated 27.04.2002, upon him. The said penalty was, however, set aside by this Court vide order, dated 10.03.2008, in WP(c)3783/2002. Thereafter, the petitioner was reinstated in his service vide communication, dated 07.09.2012, and accordingly, the petitioner, herein, had joined his duty on 22.09.2012. After joining of the petitioner in his service; he was re-imposed with the modified penalty vide the order, dated 04.10.2012. The modified penalty as imposed upon the petitioner, would go to reveal that he was not held to be completely exonerated from the charges so framed against him vide the memorandum of charges, dated 14.12.2001, and accordingly, it is to be considered as to whether the respondents, in not releasing to the petitioner, his salaries for the said period i.e. 27.04.2002 to 21.09.2012; had committed any illegality in the matter.

24. This Court, vide order, dated 10.03.2008, in WP(c)3783/ 2002, had come to a conclusion that the charges so levelled against the petitioner of using abusive language to his superior and showing disrespect to a higher rank, was held to be established by the evidence and materials available on record. The misconduct so alleged against the petitioner, a member of the disciplined force; would have also warranted an imposition of a severe penalty. Accordingly, while considering the period of absence of the petitioner on

account of the imposition of the said penalty upon him; the nature of the allegations levelled against the petitioner, may also have been so considered by the respondent authorities in proceeding to deny to him, his pay and allowances for the period, he had remained out of service on account of imposition of penalty of dismissal from service.

25. In the facts and circumstances of the present matter; this Court is of the considered view that the said decision of the respondent authorities, in not releasing to the petitioner, his pay and allowances for the period w.e.f. 27.04.2002 to 21.09.2012; cannot be said to be erroneous.

26. Having noticed the above position; this Court would also observe that the penalty of dismissal from service as imposed upon the petitioner having been interfered with by this Court and a modified penalty, required to be so imposed upon him by the respondent authorities, the respondent authorities having imposed upon the petitioner such modified penalty, vide the order, dated 04.10.2012, and the same, to the extent, it is "cumulative in nature", having been interfered with by this Court; this Court is of the view that the petitioner, herein, would be entitled to no further relief.

27. However, the period of the pay and allowances of the petitioner for his service w.e.f. 27.04.2002 to 21.09.2012, shall be so calculated by the respondent authorities notionally and the pay of the petitioner, as on 21.09.2012, be fixed accordingly. The arrears of pay as working-out on such notional fixation w.e.f. 27.04.2002 to 21.09.2012, be released to the petitioner. While fixing the pay of the petitioner notionally for the period w.e.f. 27.04.2002 to 21.09.2012; the respondent authorities shall reckon the increments due to the petitioner, herein, as well as the revision of pay coming

into effect during the said period. Thereafter, the arrears of pay so working-out for the period w.e.f. 21.09.2012, till the date of its actual payment; shall be so computed and released to the petitioner.

28. In view of the above conclusions, this Court reiterates that the penalty as imposed upon the petitioner having been directed to be so imposed without cumulative effect and the said penalty having already been implemented; this Court also directs the respondent authorities to compute the benefits that would now flow to the petitioner, herein, on this count i.e. on account of removal of the words "with cumulative effect", and release the same to the petitioner.

29. The arrears of the pay in terms of the directions so passed by this Court hereinabove; shall be so computed and released to the petitioner, herein, within a period of 3 months from the date of receipt of a certified copy of this order.

30. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant