

GAHC010219522019



2024:GAU-AS:12178

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

Case No. : WP(C)/6871/2019

FORCE NO. 015183677 CT/GD RAVINDRA KUMAR
S/O ALOK KUMAR, PRESENTLY POSTED AT. GROUP CENTRE, GUWAHATI,
CENTRAL RESERVE POLICE FORCE, 9TH MILE, AMERIGOG, GUWAHATI,
ASSAM, PIN-781023

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI-
110003

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX
NEW DELHI-110001

3:THE INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE
NORTH EAST SECTOR
SHILLONG
MEGHALAYA
PIN-793001

4:THE INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE
BIBHUTIKHAND
GOMTINAGAR
LAKHNOW
UTTAR PRADESH
PIN-226010

5:THE DY INSPECTOR GENERAL OF POLICE

CENTRAL RESERVE POLICE FORCE
GROUP CENTRE
AMERIGOG
GUWAHATI
PIN-781023

6:THE DEPUTY INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE
ALLAHABAD RANGE
UTTAR PRADESH
PIN-21100

Advocate for the Petitioner : MR. R MAZUMDAR, MS. P K DEVI, MR. U SARMA, MR H
BEZBARUA, MRS P RAI

Advocate for the Respondent : ASSTT.S.G.I., MR. S K MEDHI, MR. D C BORAH, C.G.C. (R1-R6)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order (Oral)

Date : 28.11.2024

Heard Mr. R. Majumdar, learned counsel for the petitioner. Also heard Mr. M. R. Adhikari, learned CGC appearing for the respondents.

2. The petitioner, in the present proceeding has assailed the penalty imposed upon him vide the order dated 15.11.2007, passed by the Commandant 62 Battalion, Central Reserve Police Force (CRPF) to the extent that the same has been so imposed with "cumulative effect" on the ground that the same is 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.

3. The petitioner, while working as a Constable General Duty (GD) in Central Reserve Police Force (CRPF), a departmental proceeding came to be instituted

against the petitioner basing on the allegation that he had remained unauthorizedly absent, which was construed as misconduct. On conclusion of the departmental enquiry so held in the matter against the petitioner, the Commandant 62 Battalion, Central Reserve Police Force, Koilwar, ARA, Bihar, proceeded vide order dated 15.11.2007, to impose upon the petitioner a penalty of stoppage of annual increment for a period of 5(five) years with "cumulative effect". The said order of penalty was stipulated to be effective from the date of passing of the said order dated 15.11.2007. The appeal preferred against the petitioner against the order dated 15.11.2007 was rejected by the Appellate authority. The petitioner being aggrieved by the orders both passed by the Disciplinary authority and the Appellate authority, after lapse of considerable period of time, proceeded to prefer a revision petition before the revisional authority i.e. the Inspector General of Police, CRPF, Central Sector.

4. The revisional authority on consideration of the said revision petition as filed by the petitioner, proceeded vide order dated 19.02.2019, to reject the said revision petition both on the ground of being time barred and also on merits. The petitioner thereafter, instituted the present proceedings, assailing the penalty so imposed upon the petitioner by the Disciplinary authority vide order dated 15.11.2007, to the extent of imposition of penalty of withholding of increment for a period of 5 years with "cumulative effect".

5. The learned counsel for the petitioner has submitted that the penalty of withholding of increment for a period of 5 years with "cumulative effect" as imposed upon the petitioner, is clearly contrary to the prescriptions as contained under the provisions of Rule 27 (a) of the Central Reserve Police Force Rules, 1955 and accordingly, he has submitted that the prescriptions with "cumulative effect" so attached to the order of penalty as imposed upon the petitioner would require an interference by this Court.

6. Mr. R. Majumdar, learned counsel for the petitioner has further submitted that the petitioner had proceeded on voluntary retirement w.e.f. 31.01.2024 and accordingly, submits that on interference being made by this Court, the prescription of with “cumulative effect” as attached to the penalty as imposed upon the petitioner by the Disciplinary authority vide order dated 15.11.2007, the petitioner would be entitled to have the salaries as well as his pension and pensionary revised with release to him of the arrears so working out.

7. Per contra, Mr. M. R. Adhikari, learned CGC appearing on behalf of the respondents, has submitted that the penalties so imposed upon the petitioner is one prescribed under the provisions of Rule 27 (a) of the said Rules of 1955 and accordingly, he submits that the same would not call for any interference from this Court. Mr. Adhikari, learned CGC has further submitted that the penalty was so imposed upon the petitioner on 15.11.2007 by the Disciplinary authority and thereafter, the Appellate authority had dismissed his appeal on 17.05.2008. It is submitted that the petitioner had approached the revisional authority after around 11 years after the Appellate authority had rejected his appeal. Mr. Adhikari, learned CGC has submitted that the delay so occasioning on the part of the petitioner in preferring the revision petition and thereafter, approaching this Court, would rendered the petitioner herein, ineligible to any discretionary relief and accordingly, he submits that the present writ petition would be required to be dismissed *in limine*.

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

9. At the outset, this Court would examine the penalty imposed upon the petitioner herein, vide the order dated 15.11.2007. The penalty as imposed upon the petitioner being of relevance is extracted herein below:-

“..... *punishment of stoppage of annual increment of force No. 015183677*

Constable/General Duty Ravindra Kumar of C-62 Battalion, CRPF for a period of five years with cumulative effect, which shall be effective from the date of passing of this order."

10. An examination of the penalty so imposed upon the petitioner, would go to reveal that the same has the effect of withholding of the annual increment of the petitioner for five years with "cumulative effect". In other words, the withholding of the fine imposed upon the petitioner would be permanent and he would be set back by five increments in the pay scale so applicable for the whole of his service career along with the applicable increments for the period, the penalty would remain in currency.

11. The Hon'ble Supreme Court in the case of **State Bank of India & ors. vs T. J. Paul**, reported in **(1999) 4 SCC 759**, and in the case of **Vijay Singh vs 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 5 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.

12. 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-a-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."

13. 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 only 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 15.11.2007, 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.

14. Accordingly, the said penalty as imposed upon the petitioner vide the order, dated 15.11.2007, to the effect, it is so imposed with cumulative effect, stands interfered with by this Court. The said penalty would now be read and implemented, as follows:

"...stoppage of annual increment of force No. 015183677 Constable/General Duty Ravindra Kumar of C-62 Battalion, CRPF for a period of five years without cumulative effect, which shall be effective from the date of passing of this order dated 15.11.2007."

15. Having considered the penalty required to be so imposed upon the petitioner, in terms of the provisions of the Central Reserve Police Force Act, 1949 and Central Reserve Police Force Rules, 1955, this Court would now proceed to

examine the contention raised by the learned CGC appearing for the respondents, pertaining to the delay on the part of the petitioner, herein, in approaching the revisional authority and consequently, approaching this Court, presenting a challenge to the penalty so imposed upon him.

16. On perusal of the materials brought on record, it is clear that the petitioner was imposed with the said penalty by the Disciplinary authority vide the order dated 15.11.2007 and the appeals so preferred by him, in the matter was rejected by the Appellate authority vide an order dated 17.05.2008. The petitioner had thereafter, not taken any steps for assailing the orders passed by the Disciplinary authority as well as the Appellate authority in the matter. The petitioner had thereafter, instituted a revision petition in the year 2018 only.

17. The revisional authority, after noticing the delay so occasioning in institution of the revision petition, had vide order dated 19.02.2019, proceeded to reject the said revision petition as being time barred and also to be devoid of any merit.

18. The petitioner had thereafter, instituted the present proceedings before this Court on 06.09.2019 and accordingly, it is to held that there was an inordinate delay on the part of the petitioner in approaching this Court, towards challenging the order of penalty so imposed upon him by the Disciplinary authority.

19. The above being the position and this Court having already interfered with the penalty so imposed upon the petitioner to the extent that the same was so imposed with "cumulative effect", inasmuch as, the same is not in consonance with the provisions of the Central Reserve Police Force Act, 1949 and Central Reserve Police Force Rules, 1955, this Court accordingly, considering the delay occasioning on the part of the petitioner in instituting proceedings before this Court, towards challenging the penalty so imposed upon him, hereby directs that on account of the revision penalty imposed upon the petitioner, by this Court, the pay and allowances due to the petitioner in this connection, shall be computed by

the respondents notionally till the date of his superannuation.

20. The pension and pensionary benefits authorized to the petitioner would now be revised, in terms of the notional fixation of his pay directed herein above, on account of revision of the penalty imposed upon him vide order dated 15.11.2007 and the arrears of pension and pensionary benefits so working out be released to the petitioner within a period of 3(three) months from the date of passing of this order.

21. In view of the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant