

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13821 of 2015

Date of decision: 11.07.2016

Satinder Singh

...Petitioner

V/s.

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Gurpreet Singh, Advocate with
Ms. Ginnijeet Malhotra, Advocate for the petitioner.

Mr. Ajay Kumar Gupta, Sr. Panel Counsel
for Union of India.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, the petitioner is aggrieved by the order dated 01.06.2015 vide Annexure P-12 passed by the 3rd respondent.

The petitioner was appointed as a Constable in CRPF on 10.08.1998. His services were drafted for election duty at Baliya in Uttar Pradesh. During his stay in MNV Public Memorial School, Baliya, Uttar Pradesh, there was a scuffle between the petitioner and another Constable-Liladhar. Due to physical assault, simple injury was caused to Liladhar. Arising out of the allegations against the petitioner, he was charge-sheeted on 06.08.2014. In the enquiry, petitioner was found guilty for his misconduct. The Commandant-disciplinary authority imposed the penalty of removal from service on 22.12.2014. Petitioner filed a statutory appeal under Rule 28 of the Central Reserve Police Force Rules, 1955 (in short 'the Rules') before the appellate authority DIG, Chandigarh Range, Chandigarh. Petitioner's appeal was dismissed on 12.02.2015. Thereafter feeling aggrieved by the appellate authority's decision, he preferred a

revision petition under Rule 29 of the Central Reserve Police Force Rules, 1955 before the Inspector General of Police, NWS, CRPF, Hallomajra, U.T. Chandigarh. On 09.04.2015, the revisional authority allowed the revision petition of the petitioner while setting aside the order of removal from service and modified the penalty of removal from service to that of stoppage of three increments without cumulative effect.

On 23.04.2015, the Special Director General, J&K Zone, CRPF Group Centre, Bantalab Camps Jammu, kept in abeyance the order dated 09.04.2015 passed by the revisional authority. Thereafter, petitioner was served show cause notice by the 3rd respondent-Special Director General, J&K Zone, CRPF Group Centre, Bantalab Camps, Jammu. The Special Director General set aside the order of the revisional authority while upholding the order of removal from service passed by the Commandant-disciplinary authority. Hence, the petition.

Learned counsel for the petitioner contended that against the order of the appellate authority, he preferred revision before the revisional authority under Rule 29 (i)(a) of the CRPF Rules, 1955. The same was allowed in part while modifying the penalty of removal from service to that of stoppage of three increments without cumulative effect. Thereafter, under Rule 29(d) *suo moto* power is vested with the Director General or the Additional Director General or the Inspector General or the Deputy Inspector General to confirm, enhance, modify or annual the penalty. Rule 29(d) reads as follows: -

“(d) The Director General or the Additional Director General or the Inspector General or the Deputy Inspector General may call for the records of award of any punishment and confirm, enhance, modify or annual the same, or make or direct further

investigation to be made before passing such order: (GSR 784 dated 8.10.88).

Provided that in a case in which it is proposed to enhance punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced.

(GSR No. 476 dated 22.4.80).”

The petitioner has already exhausted the remedy of appeal and revision and the penalty has been modified by the revisional authority, therefore, Rule 29(d) cannot be invoked by the Special Director General. Rule 29(d) can be invoked only in respect of any punishment i.e. as and when disciplinary authority imposed the penalty before preferring an appeal, otherwise it is not permissible for the authority to invoke Rule 29(d). It was further contended that Rule 29(d) can be invoked by a competent authority *suo moto* and not at the behest of any other authority or any person. In the present case, reading of the impugned order dated 01.06.2015 vide Annexure P-12, it is evident that 3rd respondent while passing the order dated 01.06.2015 has referred to applications and communications made to the lower authorities. Since, Rule 29(d) does not permit for invoking the same with reference to application made by officer or any person. Therefore, Annexure P-12 is not in accordance with Rule 29(d) and impugned order is to be set aside.

Learned counsel for the petitioner further contended that the order of disciplinary authority who has imposed major penalty of removal from service was set aside by the revisional authority. Disciplinary authority i.e. Commandant informed his higher officer to invoke Rule 29(d). It is the Commandant while exercising statutory powers imposed the penalty and ceases to be authority in respect of this particular disciplinary

proceedings as and when final order (penalty) is passed. Statutory rules do not provide any provision asking or directing the disciplinary authority to make an application before the competent authority to invoke 29(d). Therefore, due to malafide intention of the Commandant Annexure P-12 has been passed.

Learned counsel for the respondents submitted that under Rule 29(d), power is vested with the competent authority to look into any punishment for the purpose of confirm, enhance, modify or annul the same. Therefore, there is no infirmity in Annexure P-12. It was further contended that administrative and financial powers of revisional authority viz; Inspector General of Police has been withdrawn. Therefore, revisional authority-Inspector General of Police is not competent to entertain revision petition filed by the petitioner. Hence, action under Rule 29(d) is in order.

Heard the learned counsel for the parties.

Question for consideration in this matter is whether Special Director General of Police, J& K Zone, CRPF, Jammu, 3rd respondent can invoke rule 29(d) of CRPF Rules, 1955 in the present case or not. Admittedly, petitioner was removed from service by the disciplinary authority. Feeling aggrieved by the same, petitioner preferred appeal before the appellate authority which was dismissed on 12.02.2015. Consequently, he preferred revision-application before the revisional authority, the revisional authority modified the penalty of removal from service to stoppage of three increments without cumulative effect. Under Rule 29(d) of CRPF Rules, 1955 power is vested with the certain authorities for interference in any punishment so as to confirm, enhance, modify or annul.

In the present case, the 3rd respondent exercised power under Rule 29(d) at

the behest of disciplinary authority-Commandant. The Commandant ceased to be authority after passing final order in the disciplinary proceedings. Rule 29(d) do not permit disciplinary authority to make a complaint-application to authorities mentioned in Rule 29(d). In other words, competent authority mentioned in Rule 29(d) have to take up the matter *suo moto* in respect of any punishment imposed by disciplinary authority. The 3rd respondent while setting aside the order of the revisional authority and upholding the order of removal from service invoked Rule 29(d) in the absence of power for the reason that petitioner had already exhausted remedy of appeal and revision. Rule 29(d) can be invoked against any punishment and not against any modified punishment by other than the disciplinary authority. Moreover, the authority mentioned under Rule 29(d) have to exercise power *suo moto* not at the behest of any other authority who is subordinate to the authorities mentioned in Rule 29(d). Reading of Annexure P-12 dated 01.06.2015, it is crystal clear that Commandant is after the petitioner for the reason that he has taken up the issue before the authorities mentioned under Rule 29(d) which is evident from the narration made in the impugned order and may be for the reason that his order was set aside by the revisional authority. Therefore, the order dated 01.06.2015 (Annexure P-12) is to be set aside.

It was also noticed from the facts and circumstances that penalty of removal from service after rendering 17 years' service and that too for an allegation of quarrel with colleague-Constable would be too harsh. Since the revisional authority has taken a lenient view in modifying the penalty of removal from service to stoppage of three increments without cumulative effect which is sufficient for the allegations/misconduct

committed by the petitioner.

In the absence of amendment to statutory Rules i.e. taking away vested statutory revisional powers from Inspector General of Police by means of known procedural laws IGP is not prohibited to exercise statutory powers. The learned counsel for respondents submitted that administrative and financial powers of Inspector General are withdrawn and revisional authority has no authority to modify penalty. Revisional authority has exercised quasi-judicial power to decide Revision Petition of the petitioner. Quasi-judicial power of IGP has not been withdrawn. If it is to be withdrawn then necessary amendment to Disciplinary Regulation is to be made. In the absence of such amendment the IGP rightly exercised quasi-judicial power while entertaining Revision Petition.

Hence, petition is allowed. Annexure P-12 dated 01.06.2015 passed by the 3rd respondent is set aside.

Respondents are directed to reinstate the petitioner within a period of one month from today. He is also entitled for all consequential benefits like service including monetary benefits during the intervening period from the date of dismissal to reinstatement except modified penalty. Monetary benefit shall be calculated and paid within a period of three months.

July 11, 2016
Divyanshi

(P.B.BAJANTHRI)
JUDGE