

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1462 OF 2014

Shri A. B. Adhao

..Petitioner

Vs.

The Union of India and Others

..Respondents

WITH

CIVIL APPLICATION NO.644 of 2014

IN

WRIT PETITION NO.1462 OF 2014

Shri. A. B. Abhao

..Applicant

Vs.

The Union of India and Others

..Respondents

Mr. V. N. Tayade, for the Petitioner and for the Applicant in
CAW.644.14

Mr. J. S. Saluja a/w Mr. P. S. Gujar i/b Mr. A. A. Ansari, for
Respondent Nos.1 to 4.

**CORAM :- S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

DATE :- JANUARY 5, 2017.

ORAL JUDGMENT (Per. S. C. Dharmadhikari, J.)

Rule. Respondents waive service. By consent, rule

made returnable forth with.

2 By this Writ Petition under Article 226 of the Constitution of India, the Petitioner is challenging the orders dated 22nd February, 2001, 9th May, 2010 and 30th December, 2011 passed respectively by the disciplinary authority, appellate authority and revisional authority (Respondent Nos.2,3, and 4). The request is that after examining the legality and propriety thereof, to quash and set aside the same.

3 Very few facts are required to be referred so as to appreciate the only contention of Mr. Tayade, appearing for the Petitioner. The Petitioner was appointed in the Central Reserve Police Force ("CRPF" for short) as a Constable. It is his case that he was working honestly particularly following the instructions of his superiors and has rendered more than 15 years of meritorious service. While he was posted at 140 battalion of CRPF, he was charged for an act of misconduct in that he did not deposit his arms and ammunitions immediately along with other party members on his return from a mission. The charge sheet mentioned that he left the rifle at Unit Quarter Guard near Guard Room instead of depositing it in proper and safe custody as

directed and took away the ammunitions along with him. He was negligent in not depositing even the ammunitions and within time. He was therefore charged and in terms of the disciplinary rules for this misconduct by terming it as grave and serious. He has also been charged with consuming illicit liquor and failing to attend the duty or respond to a call. The Petitioner denied these allegations, and therefore, a proper disciplinary enquiry was held. After conclusion of the enquiry, the Enquiry Officer submitted his report to the disciplinary authority, based on which an order was passed on 22nd February, 2001 awarding punishment of withholding of two increments for a period of two years with cumulative effect.

4 Then, the Petitioner challenged this order by way of an Appeal. The appellate authority concurred with the disciplinary authority. Therefore, the Appeal was dismissed. That is how, the Petitioner preferred a Revision Application. The Revision Application has also been dismissed.

5 The only contention raised before us by Mr. Tayade appearing for the Petitioner is that the Central Reserve Police Force Rules, 1955, in terms of Rule 72 appearing in Section IV-

Titled "Increments" states that if the increment of a member of the Force is withheld, the period for which it is withheld and the reason for withholding it shall be stated in the Force Orders. Such period shall not exceed one year. However, in the present case, the penalty awarded contravenes Rule 72 in as much as the increments have been withheld for a period of two years with cumulative effect.

6 On the other hand, Mr. Saluja, appearing on behalf of the Respondents would submit that there is no substance in this contention. The Petitioner was aware that he was proceeded against a charge of misconduct. He was chargesheeted. In pursuance thereof, he was tried for his misconduct as alleged in the chargesheet. The Petitioner voluntarily appeared before the Enquiry Officer. He submitted to the jurisdiction of the Enquiry Officer. Equally, he did not dispute the power of the disciplinary authority to impose above penalty. The penalty was challenged on merits in Appeal and Revision. Now, it is not open to the Petitioner to question the imposition of penalty and by relying on Rule 72. That Rule does not take away the power of the disciplinary authority to impose a punishment for misconduct. In

such circumstances, he would submit that the only contention has no substance and the Petition be dismissed.

7 The Petitioner has challenged an order of imposition of penalty pursuant to a disciplinary proceeding. The Petitioner was aware that the articles of charge are serious. There were two articles of charge. Since the Petitioner did not accept the allegations elaborating the same, the departmental enquiry was instituted. The Petitioner appeared before the Enquiry Officer. Prior thereto, he was placed under suspension. After the memorandum of charges and all the documents were supplied, the Petitioner filed a written statement of defence. Since that was not containing any reasonable and valid explanation on the act alleged, the departmental enquiry was held. After conclusion of the departmental enquiry, the disciplinary authority passed a detailed order. That order agrees with the factual findings and thereupon proceeds also to consider the case of the Petitioner against the proposed penalty. In these circumstances, the penalty of withholding two increments for a period of two years with cumulative effect, was imposed.

8 It is not necessary to burden this judgment with the concurrent findings rendered by the appellate and revisional authority. For properly appreciating the contention of Mr. Tayade, we would have to refer to the CRPF Rules. The Rules known as CRPF Rules, 1955 have been made in exercise of the powers conferred by Section 18 of the Central Reserve Police Force Act, 1949. Rule 2 contains the definitions. Chapter II of the Rules contains General Powers of Certain Officers. The members of the Force in the order of hierarchy are then listed and what we find is that there were various modes in which the employment can come to an end. Chapter-IV deals with the Organisation of a Battalion. Then comes Chapter-V titled as 'Training'. Chapter-VI is titled as 'Discipline'. Rule-27 therein provides for procedure for the Award of Punishments. We are concerned in this case with the table which has been set out below Rule 27. Since the Petitioner's case falls in Sr. No.7, namely, penalty of stoppage of increment, it is elaborated that how it is to be inflicted. We are only referring to the same. There is a entire procedure set out for conducting the departmental enquiry. Thereafter, how the order has to be passed is indicated with powers also of suspension pending enquiry or otherwise. The remedy of Appeal is provided by Rule-28 and

remedy of Revision is provided by Rule-29. Then, there are other provisions which are made but we are not concerned either with them or Chapter VI-A. Chapter VII is titled as 'Internal Management' and therein are appearing Rules-37 to 39. Chapter-VIII is titled as 'Pay Allowances, Pension, Superannuation and Financial Powers'. The pay and allowances which are admissible are set out in extenso in these Rules and particularly Rules 44,45, and 46. There are other provisions enabling the authorities to award pension and there are financial powers of the Commandant as well as the officers commanding detachments and those are to be found in Appendix-B. Rule 54 is important for our purpose and reads as under:-

54:- Force deductions:

The Commandant is authorised to make deductions from amount due to members of the Force in satisfaction of money owed by them to messing and other funds of the Force, provided that members of the Force are not asked to make any new contributions without the prior approval of the Inspector General.”

9 A bare perusal of this Rule would indicate as to how the Commandant is authorised to make deductions from amounts due to the members of the Force in satisfaction of money owed by them to messing and other funds of the Force, provided that

members of the Force are not asked to make any new contributions without the prior approval of the Inspector General. This follows the prior Rules which also enable the Commandant and Superiors to exercise financial powers, confer rewards and pension. Chapter-IX is titled as 'Rules for Promotion in which Section-I General Principles enlisting general promotions appears. Then follows the Sections relating to examination, promotions and what we find from Rule-65 onwards that there is an obligation to maintain Confidential Reports as far as additions to and removals from approved lists that is provided by Rule 66 and Rules 67 to 71 deal with Head Constables, Naik etc. Then appears Rule-72 which reads as under:-

“72:- Withholding of Increment:

If the increment of a member of the Force is withheld, the period for which it is withheld and the reason for withholding it shall be stated in the Force Orders. Such period shall not exceed one year.

10 We are of the clear opinion that if all the Chapters of these Rules and the Rules themselves are read together and harmoniously, then, it is apparent that what is provided in Rule-72 is an independent power to effect a deduction. That independent power of withholding an increment has co-relation to

Rule-54 and other Rules following the same. Once it comes to imposition of a penalty, we do not see any restriction being placed on the power to impose penalty of stoppage of increment. That is an independent power to award penalty in cases of proven misconduct. If the contention of Mr. Tayade is accepted it would mean that the power to impose a penalty including stoppage of increment is circumscribed, restricted and controlled by Rule 72. Once we have seen the placement of Rules, Chapters and title of the Rules themselves it is clear that they deal with distinct contingencies and events. They confer powers so as to ensure discipline and orderly conduct. Just as the Rules enable awarding of special pay, rewards, promotions, posting they can equally take care of the discipline of the force. Once serious misconduct has been noticed, then, there is an obligation to proceed against such employee who has been found guilty of the same. If this interpretation is not placed on the provisions and particularly Rule-72, it would mean all the Rules and which confer powers to take note of serious misconduct and proceed against the delinquents or guilty officials would be redundant and nugatory. We do not see how in the teeth of Appendix-A and B can it be said that Rule 72 would operate by its own Force and control the

powers to award penalties. Once there is no restriction placed on that power to impose penalty, then, in the peculiar facts and circumstances of this case, assistance of Rule-72 cannot be taken. In Section-4 which is falling in relevant Chapter, Rule-72 appears and it deals with withholding of increment. Therefore, there could be a case other than proven misconduct for which there is an independent power conferred to withhold the increment. Once that power is exercised, then, there is limit in that regard and placed by the Rules. However, as far as subject power is concerned and that is of awarding penalty, then, we do not find any restriction being placed thereon. It only says stoppage of increment and that is in the nature of punishment. Where-ever there is a restriction and which is sought to be placed on the power to impose punishment, then, the Rule make a specific provision to place a limit thereon. For example, fine and if that is the punishment imposed, then, the fine can be of any amount not exceeding one months pay and allowance. When there is confinement exceeding seven days imposed as a punishment but not more than 20 days with or without punishment drill of extra guard, fatigue or other duty than the restriction thereon has been clearly outlined. We do not see how therefore there is any

embargo or restriction as far as the outer limit on the penalty of the stoppage of increment and imposed pursuant to the disciplinary proceedings.

11 In such circumstances, we do not see any substance in the sole contention raised by Mr. Tayade.

12 As a result of the above discussion, the Writ Petition fails and it is dismissed. Needless therefore to clarify that we have allowed Mr. Tayade to raise this contention even though we find that it was never raised before the disciplinary authority, the appellate authority, revisional authority nor we find any pleading in that regard in the Writ Petition.

13 In view of the disposal of the Writ Petition, nothing survives in the above Civil Application and the same is disposed off as such.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)