

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20155 of 2013 (O&M)
Date of Decision:-17.08.2017.

Kamaljeet Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

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

Present: Mr. Rajeev Anand, Advocate for the petitioner.

Mr. Sanjay Vashisth, Senior Panel Counsel for
UOI-respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has sought for the following relief:-

- (i) Summoning the records of the case;*
- (ii) quashing the order dated 17.10.2010 (Annexure P1) wherein the Commandant (Respondent No.5) has ordered de novo disciplinary proceedings against the petitioner and further quashing of the department Enquiry Report dated 19.04.2008 (Annexure P-2), the order dated 05.06.2008 (Annexure P4), the dismissal order dated 15.06.2009 (Annexure P11) wherein appellate authority de-hors the rules has enhanced the punishment of the petitioner and further quashing of the order dated 23.04.2010 (Annexure P13) rejecting the statutory appeal and the order dated 07.05.2013 (Annexure P17) wherein the statutory revision petition against the dismissal of the petitioner from service based on the departmental proceedings which have been conducted in most illegal and unlawful manner and are*

liable to be set aside;

(iii) direction reinstating the petitioner in service alongwith all consequential benefits from the date of his removal i.e. 30.07.2009 and deemed to be in service with continuity from the said date;”

2.) The petitioner while working as a Constable on the allegation of misbehavior with the superiors, he was subjected to disciplinary proceedings which were concluded in imposing the penalty of stoppage of increment for 3 years with cumulative effect on 05.06.2008. Aggrieved by the order of penalty, he preferred an appeal on 30.06.2008. The Appellate Authority while considering the petitioner's appeal noticed that imposition of penalty of stoppage of increment for 3 years with cumulative effect is not commensurate with the charge proved against the petitioner. Consequently, Appellate Authority issued notice to the petitioner for enhancement of punishment to that of dismissal on 25.02.2009. Petitioner is stated to have submitted his reply to the notice. After receipt of the petitioner's reply, the Appellate Authority proceeded to enhance the penalty of stoppage of increment for 3 years with cumulative effect to that of dismissal from service on 15.06.2009. Hence, the present petition.

3.) Learned counsel for the petitioner restricted his argument only to the extent that Appellate Authority has no power to enhance the penalty under Rule 28 of CRPF Rules, 1955. It was submitted that while deciding the petitioner's appeal against the disciplinary authority's order, Appellate Authority invoked Rule 28 read with Rule 29 (d) of the CRPF Rules, 1955 which is contrary to Rule 28 which provides for deciding appeal. Therefore, it was submitted that Appellate Authority had exceeded his jurisdiction.

4.) *Per contra*, learned counsel for the respondents submitted that DIGP, CRPF can invoke Rule 29 (d) of the CRPF Rules, 1955 being the superior authority. Therefore, there is no infirmity in the order of dismissal while invoking Rule 28 read with Rule 29 (d) of the CRPF Rules, 1955 as an Appellate authority. It was further submitted that petitioner had misbehaved with his superiors and the charge levelled against the petitioner has been proved. Consequently, imposition of enhanced punishment from stoppage of increment for 3 years with cumulative effect to that of dismissal is in order and no interference is called for.

5.) Heard learned counsel for the parties.

6.) Crux of the matter is whether the Appellate Authority – DIGP, CRPF can exercise power under Rule 29 (d) of the CRPF Rules, 1955 while deciding the appeal of the petitioner which is under Rule 28 of the CRPF Rules, 1955. Rule 28 of CRPF Rules deals with appeal against the punishment order passed by the competent authority (disciplinary authority), whereas Rule 29 deals with the revision. Revision petition would be filed only against the Appellate Authority's order. Rules 28 and 29 of the CRPF Rules, 1955 reads as under:-

28. Appeal:

(a) Every subordinate officer or every officer of any other rank below him including all enrolled follower against whom an order under serial numbers 1 to 7 of the (table in rule 27 or under clauses (d) and (e) of Section 13 is passed is entitled to prefer one appeal against such order to the Inspector General, if the original order was passed by the Deputy Inspector General and to the Deputy Inspector General if the original order was passed by the Commandant.

(b) No appeal shall lie against an order by the competent authority inflicting any of the punishments mentioned in:-

(1) Serial Nos. 8 to 11 of the Table in rule 27-

(GSR No. 631 dated 27.8.1983)

(2) Clauses (a), (b) and (c) of Section 13,

(3) Against an order discharging recruit before the termination of his period of training (G.S.R. No 631 dt 27-8-1983)

(c) Every appeal preferred under these rules shall contain all material statements and arguments relied upon by the person preferring the appeal. It shall contain no disrespectful or improper language or irrelevant allegations and it shall be complete in itself.

(Substituted vide GSR 1618 dated 29.10.76)

(d) Every appeal, whether the appellant is still in the Force or not shall be preferred through the Commandant and shall not be sent direct to the appellate authority.

(e) An appeal which is not filed within 30 days of the date of the original order, exclusive of the time taken to obtain a copy of the order or record, shall be barred by limitation:

Provided the appellate authority may entertain time barred appeal if deemed fit,

(f) The Commandant may withhold an appeal to the Inspector General or Deputy Inspector General in cases:-

(1) Where under these rules no appeal lies,

(2) Where the appeal does not comply with the provisions of sub rules (c), (d) or (e) above.

(3) Where it is a further appeal presented after a final decision has been given by the competent appellate authority and no new facts have been brought out

necessitating reconsideration of the case:

Provided that in every case in which an appeal is withheld the person preferring the appeal shall be informed of the fact together with brief reasons there for;

(g) No appeal shall lie against an order with holding of an appeal by a competent authority:

Provided that in cases of failure to comply with the conditions stated in sub-rules (c) or (d) above, the appeal shall not. be withheld if it is preferred again in the prescribed form in conformity with the rules and is not time barred.

(h) A quarterly statement of all appeals withheld with brief reasons in respect of each appeal shall be furnished by the Commandant to the Deputy Inspector General.

29. Revision:

(a) A member of the Force whose appeal has been rejected by a competent authority may prefer petition for revision to the next Superior Authority. The power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed.

(b) The procedure prescribed for appeals under sub rules (c) to (g) of rule 28 shall apply mutatis mutandis to petitions for revision.

(c) The next superior authority while passing orders on a revision petition may at its discretion enhance punishment,

Provided that before enhancing the punishment the accused shall be given an opportunity to show cause why his punishment should not be enhanced:

Provided further that an order enhancing the punishment shall for the purpose of appeal. be treated as an original order except when the same has been passed

by the Government in which case no further appeal shall lie and an appeal against such an order shall lie.

(i) to the Inspector General if the same has been passed by the Deputy Inspector General: and

(ii) to the Director General, if the same has been passed by the Inspector General , and

(iii) to the Central Government, if the same has been passed by the Director General.

(second proviso substituted vide GSR 476 dated 22.4.80)

(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 annul 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.

(G.S.R. No-476 dt 22.4.80) ”

7.) Perusal of Rule 28, it is crystal clear that Appellate Authority has no power to enhance the penalty. On the other hand, Rule 29 which deals with the revision, there is a provision for enhancement of punishment under Rule 29 (d). Similar provision is not forthcoming in Rule 28. Petitioner's grievance is relating to consideration of appeal against the penalty order of stoppage of increment for 3 years with cumulative effect before the Appellate Authority. Thus, perusal of the above provision it is crystal clear that the Appellate Authority has exceeded its jurisdiction in

restricting his power under Rule 28 which deals with the appeal. Therefore, enhancement of penalty from stoppage of increment for 3 years with cumulative effect to that of dismissal from service invoking Rule 29 (d) of the CRPF Rules, 1955 in appeal dated 15.06.2009 is hereby set aside. Consequently, orders dated 23.04.2010 (Annexure P-13) and 07.05.2013 (Annexure P-17) are also set aside. Petitioner is entitled to all service and monetary benefits from the date of dismissal till reinstatement.

8.) Petition stands allowed.

9.) At this stage, learned counsel for the respondents submitted that against the order of Appellant Authority to the extent of enhancement of penalty from withholding of increment with cumulative effect to that of dismissal from service, petitioner had preferred a revision petition before the revisional authority. Revisional authority has affirmed the order of the Appellate Authority. Revisional authority's affirming the order of Appellate Authority in the present case is nothing but affirming a void order. Consequently, the order affirming the Appellate Authority's order by revisional authority is also set aside. The concerned respondent is hereby directed to reinstate the petitioner within a period of 3 weeks from today and calculate arrears of pay and disburse the same within a period of 3 months from today.

(P.B. BAJANTHRI)
JUDGE

August 17, 2017.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.