

Sr. No.211

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.18190 of 2008 (O&M)

Date of Decision: 03.05.2019

Rahul Bhardwaj

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Charanpreet Singh, Advocate,
for the petitioner.

Ms. Ranjana Shahi, Senior Panel Counsel,
for the respondent-UOI.

ARUN MONGA, J.(ORAL)

1. The petitioner, *inter alia*, seeks issuance of a writ in the nature of certiorari to quash the punishment order dated 08.06.2007 (Annexure P-11) as upheld vide appellate order dated 07.04.2008 (Annexure P-13), whereby the petitioner was removed from service (Constable/General Duty). Further prayer has been made in the nature of mandamus directing the respondents to reinstate the petitioner in service along with consequential service benefits arising thereof.

2. Succinctly the factual matrix of the case is that the petitioner was working as Constable/GD with the respondent-Central Reserve Police Force (CRPF) since 2002. On the night of 28.11.2005, the petitioner fell asleep while on duty and was consequently suspended from service vide order dated 16.01.2006

(Annexure P-1). A charge-sheet dated 24.01.2006 (Annexure P-2) was issued to the petitioner to which he filed his reply.

3. An Enquiry was conducted to look into the charges and vide report dated 29.03.2006 (Annexure P-5), the petitioner was found guilty of being irresponsible in the performance of his duties having been found sleeping and drunk, while on duty, during the night in question.

4. Vide office order dated 29.04.2006 (Annexure P-6), respondent No.3 awarded the punishment of serving as Quarter Guard Duty for 28 days. Thereafter, the suspension of the petitioner was also revoked. However to the surprise of the petitioner, after one year of the passing of the order punishing him, a fresh notice dated 27.03.2007 (Annexure P-9) under Rule 29(6) of CRPF Rules, was issued to him by respondent No. 4 to show cause as to why punishment be not enhanced to termination from service.

5. The petitioner filed a reply to the same explaining that due to miscarriage of his wife, during the relevant time, he had been mentally disturbed and had inadvertantly committed the alleged act of delinquency. He had already been punished for the same. Without considering the reply filed by the petitioner, respondent No.4 vide impugned order dated 08.06.2007 (Annexure P-11), enhanced the punishment awarded to the petitioner from 28 days of Quarter Guard Duty to removal from service.

6. Thereafter, the petitioner filed a writ petition in this

Hon'ble Court which was withdrawn with liberty to file an appeal before the competent authority. The petitioner then filed an appeal, which was rejected by appellate authority vide impugned appellate order dated 07.04.2008 (Annexure P-13). Hence the present writ petition.

7. In their reply, the respondents have averred that the petitioner was posted at a sensitive post. Any dereliction of duty on his part would endanger not only his life but also the life of other personnel. It is also stated that the defence of having family problems which caused the petitioner to act in an irresponsible manner is an after thought as the same was only taken up for the first time in the reply filed to the show cause notice. Due to the seriousness of the negligence on the part of the petitioner respondent No.4 passed the punishment order dated 08.06.2007. It is stated that the same is a reasoned order after having considered the reply and the evidence against the petitioner.

8. Having heard the learned counsel for both the parties and after perusing the paper-book, I am of the view that the impugned orders do not stand judicial scrutiny.

9. As reflected from the written statement, concededly enhancement of the punishment was awarded vide order dated 08.06.2007 (Annexure P-11) after a period of one year of passing of the first punishment order dated 29.04.2006 (Annexure P-6).

10. In the interregnum, the petitioner had already undergone the original punishment awarded to him vide order dated 29.04.2006 (Annexure P-6). However, the Appellate

Authority in exercise of the powers conferred to him under Rule 29 (d) of CRPF Rules, 1955 enhanced the punishment disregarding the fact that the petitioner had already undergone the original punishment awarded to him.

11. Article 20 of the Constitution of India clearly prohibits two punishments for the same offence. Awarding the punishment, though by way of enhanced penalty, after a lapse of one year when the delinquent employee has already undergone punishment amounts to double jeopardy.

12. Learned counsel for the petitioner has relied upon a judgment rendered by this Court in case titled as ***Mohd. Latif. Vs. Union of India and others, 2010 (5) SLR 74.*** The relevant whereof is extracted hereinbelow:-

“Clause 2 of Article 20 clearly prohibits two punishments for the same offence. In the present case, admittedly, two punishments have been awarded to the petitioner one for imprisonment coupled with forfeiture of pay and allowances and 'packdrill' and the other the removal from service. Had the authorities enhanced the punishment prior to implementation of the first award of the punishment, it could have been justified in terms of Rule 29 (d). But the first punishment having been enforced and implemented, it was not permissible to have imposed second punishment, which is the extreme punishment when the petitioner had already undergone the imprisonment and other related punishments imposed upon him. There is another reason to quash the impugned order. The first punishment was awarded on 04.07.1984 and executed at the same time. The first show-cause notice was issued to the petitioner after 1

years and the second show-cause notice after about 2 years. No reasons have been disclosed by the respondents for such a long delay in initiating proceedings for enhancement of the punishment. This speaks of the total arbitrariness, whims and fancy of the respondents. The impugned order is not justified under any circumstances. It is stated in the writ petition that the petitioner was due, to retire on 04.05.1987. Thus, the petitioner was entitled to continue till he attained the age of superannuation.”

13. I am in respectful agreement with the observations made in the above judgment and in the entirety of the circumstances, I am of the view that enhancement of the punishment to the petitioner after a lapse of one year does not stand judicial scrutiny and is not tenable. Particularly, when he had already undergone the original punishment awarded to him by the disciplinary authority.

14. Even otherwise, I am of the opinion that awarding the punishment of removal from service is akin to economic death penalty for an employee. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury and suffers the said punishment. Assuming the delinquency attributed to petitioner to be gospel, the punishment awarded to him vide order dated 08.06.2007 (Annexure P-11) is highly disproportionate and unduly harsh.

15. Having perused the entire record including enquiry report dated 29.04.2006 (Annexure P-5) leading to awarding of the original punishment order dated 29.04.2006 (Annexure P-6), I am of the view that no enhancement in the original punishment was/is

warranted. On that ground also, the impugned orders are not sustainable and liable to be quashed.

16. In the premise, the writ petition is allowed and the impugned order passed by the competent authority dated 08.06.2007 (Annexure P-11) and order of appellate authority dated 07.04.2008 (Annexure P-13) enhancing the punishment of the petitioner is set aside. The original punishment order dated 29.04.2006 (Annexure P-6) is restored.

17. Consequently, respondents are directed to reinstate the petitioner without any back-wages for the period he remained out of service, subject to his being found medically fit after taking the requisite fitness test.

18. It is, however, made clear that in case the petitioner is not found fit for combat service, he will be adjusted in any non-combat ancillary.

19. Petition is allowed in the above terms.

(ARUN MONGA)
JUDGE

03.05.2019
vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No