

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 5693 OF 2013

M.Ramesh

.. Petitioner

- Vs -

1. The Director General of Police
Central Reserve Police Force
C.G.O. Complex, Lodhi Road
New Delhi 110 003.
 2. The Inspector General of Police
Central Reserve Police Force
C.G.O. Complex, Lodhi Road
New Delhi 110 003.
 3. The Dy. Inspector General of Police
RAF, Central Reserve Police Force
RK Puram, New Delhi 110 006.
 4. The Commandant
105, BN, RAF, Central Reserve Police Force
Vellalore, Coimbatore 641 111
Tamil Nadu.
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records having Ref. No.P.VIII.1/04-EC-3 dated 9.11.04 passed by the 3rd respondent having Ref. No.R.XIII.2/2005-Adm.-1 (MR) dated .03.2005 passed by the 2nd respondent and having Ref. No.R.XIII-182/2006-Vig (Legal) dated 17.7.12 passed by the 1st respondent and quash the same and consequently direct the respondents to pay the arrears of salary, other monetary benefits and consequential benefits including promotion for a period of 3 years from 9.11.04.

For Petitioner : Mr. N.R.R.Arun Natarajan

For Respondents: Mr. R.Veldas, CGSC

ORDER

The petitioner, while working as Constable/General Duty in CRPF, Group Centre, Chennai, went on leave from 30.3.03 to <https://hcservices.ecourts.gov.in/hcservices/>

13.4.03. While on leave, it is averred by the petitioner, that his wife committed suicide and based on the complaint lodged by his mother-in-law, the petitioner was taken into custody on 12.4.03 by the Thuckalay Police Station, Kanyakumari District. It is further averred by the petitioner that he was unable to intimate his arrest immediately to his superiors and had the report of the police was sent to the superiors only on 15.4.03. Due to the delay in intimating his arrest, action was initiated against the petitioner by the 4th respondent in exercise of powers conferred under Rule 27 (A) of the Central Reserve Police Force Rules (for short 'the Rules') and a charge memo was issued, which contains the following Articles of charge :-

"The said No.913092862, Constable (GD) M.Ramesh (under suspension) of A-Coy, 105, Bn, RAF, CRPF and while availing 15 days paternity leave from 30.03.2003 to 13.04.2003 committed gross misconduct in his capacity as a member of the Force under Section 11 (1) of CRPF Act, 1949 in that he suppressed the material information about his arrest by the State Police on 13.04.2003 and his remand to the police custody for 15 days in connection with the death of his wife Smt. R.Muthammal under mysterious circumstances on 12.04.2003 and failed to report the matter promptly to the superior officers till receipt of a report dated 15.4.2003 from Inspector of Police, Thuckalay Police Station, K.K. District, Tamil Nadu, in this office on 21.04.2004 which is prejudicial to the good order and discipline of the force."

2. After submission of detailed written statement by the petitioner on 21.7.03, enquiry was initiated against the petitioner by the 4th respondent, which ultimately culminated in the award of punishment of stoppage of one increment with cumulative effect from the date of increment accruing to the petitioner after issue of the order, vide order dated 16.12.03. It is the further case of the petitioner that though no appeal was filed against the said order of punishment, the 3rd respondent, in exercise of power conferred under Rule 2 (d), suo motu, issued a show cause notice calling upon the petitioner as to why the punishment imposed on the petitioner should not be enhanced, vide show cause notice dated 24.8.04. Since the petitioner was undergoing training during the relevant time, he could not submit his reply and the 3rd respondent, vide office order dated 9.11.04, enhanced the punishment to reduction in three lower stages of pay for three years. Aggrieved by the said enhancement in punishment, the petitioner preferred appeal to the 2nd respondent, which was rejected by the 2nd respondent vide order dated 16.12.04, which necessitated the petitioner to move this court by filing the present petition.

3. Learned counsel appearing for the petitioner submits

that the petitioner was unable to intimate his arrest immediately to the superiors as he was in police custody. It is the further submission of the learned counsel for the petitioner that though Rule 29 (d) contemplates enhancement of punishment only in the case of an appeal being preferred by the delinquent official, however, in the present case, the 3rd respondent, suo motu, had taken up the case and had enhanced the punishment, which is per se impermissible and unsustainable, as no power is vested with the 3rd respondent to conduct a suo motu enquiry. It is the further submission of the learned counsel for the petitioner that the limitation period of 30 days as prescribed under Rule 28 (e) has not been adhered to, which is a mandatory condition both for the employer as well as the employee. Learned counsel, in support of the above contention, placed reliance on the decision of the Division Bench of this Court in W.A. No.2989/04, wherein the Division Bench has held that the procedure contemplated under Rule 28 (e) relating to filing of appeal/revision within a period of 30 days, which is not only mandatory for the delinquent, but equally for the authority, who deems it necessary to issue show cause notice for enhancement. It is the further submission of the learned counsel for the petitioner that not only the law laid down by the Division Bench has been violated, but the show cause notice itself is unsustainable for the 3rd respondent has pre-judged the issue with regard to enhancement of punishment. Hence, it is prayed that the order impugned herein deserves to be interfered with by allowing the petition.

4. Per contra, learned Central Government Standing counsel appearing for the respondents submitted that no limitation has been prescribed under the Rules insofar as suo motu action on the part of the 3rd respondent. It is the submission of the learned counsel for the respondents that power is vested with the 3rd respondent by virtue of Rule 29 (d), which has been rightly invoked by the 3rd respondent to enhance the punishment and, therefore, no interference is called for with the impugned order.

5. This Court bestowed its best attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record and also the decisions to which this Court's attention was drawn.

6. A perusal of Rule 29 (d) on which much emphasis has been laid down by the learned counsel for the petitioner reveals that the procedures contemplated under Rule 29 relates to appeal/revisions which are filed at the behest of the delinquent. In case of any appeal/revision is filed by the delinquent against the orders of punishment, the appellate authority is clothed with power to issue show cause notice for enhancement of punishment.

7. The Division Bench of this Court, in W.A. No.2989/04, on

which reliance has been placed by the petitioner, has categorically held that though the revisional authority is clothed with suo motu powers of revision to call for the records relating to any punishment imposed, however, a rider has been attached thereto relating to the period of limitation that is to be adhered to in passing such an order. There is no quarrel with the said proposition of law laid down by this Court. This Court is in respectful agreement with the said proposition laid down in the judgment supra.

8. A careful perusal of the said judgment, squarely covers the issue in the present case and it comes to the aid of the petitioner with regard to the period of limitation in passing the said order. The disciplinary authority, viz., the 4th respondent, has, vide order dated 16.12.03, imposed the punishment on the petitioner, and the show cause notice has been issued by the 3rd respondent, appellate authority, suo motu on 29.8.04 and, thereafter, the order of enhancement of punishment has been inflicted on the petitioner. It is unambiguously clear that the show cause notice has been issued beyond the period of limitation of thirty days. Further, no reasons whatsoever has also been given by the 3rd respondent to over shoot the period of limitation, which is a mandatory condition. The order of enhancement of punishment has been passed only on 9.11.04, almost after a period of one year from the date of infliction of initial punishment by the disciplinary authority. The issuance of show cause notice is clearly beyond the period of limitation prescribed under the Rules, which is wholly impermissible and unsustainable and, therefore, on this ground, the petition deserves to be allowed.

9. Accordingly, for the reasons aforesaid, this writ petition is allowed setting aside the impugned order passed by the 3rd respondent enhancing the punishment and restoring the order of punishment awarded by the 4th respondent. The petitioner would be entitled to the consequential benefits to which he would be entitled on restoration of the order of punishment awarded by the 4th respondent. In the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

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Central Reserve Police Force
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New Delhi 110 003.
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RSV(CO)
GN(31/07/2020)



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