

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3023 of 2014

Khuman Singh Thakur S/o Shri Kedar Singh Thakur Aged About 37 Years
Constable No. 13, R/o Police Line Kawardha, P.S. Kawardha, District
Kawardham, Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh, Through The Secretary Department Of Home, Mahanadi Bhawan, Mantralaya, New Raipur, P.S. Rakhi, Tehsil and District Raipur, Chhattisgarh
2. The Director General Of Police Chhattisgarh Police Headquarter, Raipur, P.S Civil Lines Tahsil And District Raipur, Chhattisgarh
3. The Inspector General Of Police Durg. Range, 32 Bangla Bhilai P.S. Durg, District Durg. Chhattisgarh
4. The Superintendent Of Police Kabirdham P.S. Kabirdham Tahsil And District Kabirdham, Chhattisgarh
5. Reserve Inspector Reserve Police Centre Kabirdham P.S Kabirdham Tahsil And District Kabirdham Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Abhishek Pandey, Advocate with Ms. Laxmeen Kashyap, Advocate
For State	:	Mr. Shakti Singh Thakur, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/04/2021

1. Aggrieved by the order Annexure P/1 dated 04.09.2013, passed by the Director General of Police modifying the punishment imposed upon the petitioner, the present writ petition has been filed.
2. The brief facts relevant for the disposal of the present writ petition is that the petitioner herein was working as a Constable under the respondents. The petitioner a Constable along with an Assistant Sub Inspector namely Dularu Ram Bhandekar was subjected to a disciplinary proceeding vide charge-sheet dated 05.09.2011. The two officers were subjected to a joint departmental enquiry. After the

conclusion of the departmental enquiry, the petitioner who was working on the post of Constable was imposed with a punishment of withholding of one increment without cumulative effect for a period of one year, whereas the Assistant Sub Inspector Dularu Ram Bhandekar was imposed with a punishment of reversion to the post of Head Constable for a period of one year.

3. The petitioner did not prefer any appeal against the order of punishment dated 26.12.2012. Mr. Dularu Ram Bhandekar, the A.S.I., who was prosecuted along with the petitioner in the disciplinary proceedings, however preferred an appeal to the Director General of Police. The appeal of the said Dularu Ram Bhandekar however stood rejected and his order of punishment was affirmed. However, the Director General of Police found the punishment of the petitioner to be disproportionate to the nature of misconduct and therefore exercising the revisional powers issued a notice on 10.07.2013 seeking explanation of the petitioner as to why the punishment should not be modified or enhanced.
4. The petitioner gave a reply to the said notice on 23.07.2013 and thereafter the impugned order Annexure P/1 has been passed by the Director General of Police modifying the punishment of the petitioner that of withholding of one increment without cumulative effect for a period of one year. It has been modified by the petitioner being brought to the lowest of the scale of pay of Constable for a period of one year. It is this order which is under challenge in the present writ petition.

5. The solitary ground raised by the petitioner assailing the impugned order is that beyond a period of 6 months, the Revisional Authority is denuded of his power to revise the punishment imposed by the Disciplinary Authority. According to the petitioner, since the order of punishment was imposed on 26.12.2012, even if the Revisional Authority intended to revise the order of punishment being not satisfied with the punishment imposed, he could have revised only within a period of 6 months i.e. by 25.06.2013 and not beyond that. The counsel for the petitioner referred to the provisions of **Rule 29(1) (iii) of the Civil Services (Classification, Control & Appeal) Rules, 1966** (in short “**Rules of 1966**”), which provides for a specific period within which the Revisional Authority can exercise the revisional powers and modify the punishment.
6. The counsel for the petitioner further submitted that even the Chhattisgarh Police Regulations provide for the Revisional Authority to exercise the revisional powers under Regulation 270 and though there is no specific period of limitation prescribed under the regulations, but for the purpose of counting the limitation, it shall be the provisions of the aforementioned Rules of 1966 that which is provided under Rule 29(1)(iii) which will have to be followed. The petitioner relied upon the judgment of this Court on similar set of facts decided on 11.10.2018 in WPS No. 1391 of 2012 in support of his contentions and sought for the quashment of the order of punishment.
7. Per contra, the learned State counsel opposing the petition submits that since the provision of Regulation 270 of the Chhattisgarh Police Regulations provides for the Revisional Authorities power to revise

the order of punishment imposed by the Disciplinary Authority and that since the regulation does not provide for a period of limitation, more particularly when Regulation 270 specifically excludes Rule 263 of being applicable, the period of limitation would not come in the way of the Revisional Authority to modify a punishment imposed by the Disciplinary Authority.

8. Having heard the contentions put forth on either side and on perusal of record, the admitted factual position of the case is that the joint inquiry was conducted against the petitioner along with an Assistant Sub Inspector. A charge-sheet was issued on 05.09.2011. A punishment was imposed on the two officers on 26.12.2012. The petitioner did not prefer any appeal against the said order of punishment. Period of 6 months from the date of order of punishment expires on 25.06.2013. The Revisional Authority exercising the revisional powers issued a notice calling upon the explanation of the petitioner on 10.07.2013, to which the petitioner gave his reply and thereafter the modified order of punishment by the Revisional Authority was passed on 04.09.2013 (Annexure P/1). Admittedly, the notice by the Revisional Authority dated 10.07.2013 also was issued beyond a period of 6 months. The punishment order (Annexure P/1) by the Revisional Authority was passed after a period of more than 8 months.
9. The question now to be considered in the present case is as to whether the order of the Revisional Authority beyond a period of 6 months would be valid, justified, legal or not. For better understanding of the facts, it would be relevant at this juncture to take note of the Rule position as it stands. The Rules of 1966

provide for the procedure to be followed before imposition of a punishment and the subsequent procedure of preferring an appeal or a review or a mercy appeal. Rule 29 of the said Rules of 1966 deals with the power of review. For ready reference Rule 29(1)(i) to (iii) is reproduced as under:-

“29. (1) Notwithstanding anything contained in these rules except Rule 11–

(i) the Governor; or

(ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or

(iii) the appellate authority, within six months of the date of order proposed to be reviewed, or

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose, any of penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14[X X X] and except after consultation with the Commission where such consultation is necessary:”

10. The plain perusal of the Clause (iii) or Sub-rule (1) of Rule 29 clearly stipulates that the Appellate Authority or the Revisional Authority has got a power to revise an order within a period of 6 months from the date of the order proposed to be reviewed. In the instant case, the order proposed to be reviewed was one which was issued on 26.12.2012. The period of 6 months gets completed on 25.06.2013. In between the 6 months, no action or notice was issued by the Appellate Authority or by the Revisional Authority. The notice for the first time was issued on 10.07.2013 i.e. beyond a period of 6 months.

11. As regards the contention of the learned counsel for the State that the Regulation 270 does not provide for a period of limitation, it would be also appropriate at this juncture to quote Regulation 270 also:-

“270. (1) Every order punishment of exoneration whether original or appellate shall be liable to revision suo-motu by any authority superior to the authority making the order.

(2) Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority on application made in that behalf by the person against whom the order has been passed.

Explanation:- For the purpose of of this clause the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.

(3) The provisions of Regulation 266, 267, 268 and 271 shall be as nearly as may be apply to an application for revision.

(4) The revising authority may for reason to be recorded in writing exonerate or may remit vary or enhance the punishment imposed or may order a fresh enquiry of the taking of further evidence in the case:

Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard.”

12. The Madhya Pradesh High Court in a similar set of facts in the case of **“Angad Singh Rathore v. State of M.P. and others”, 2010 (1) MPLJ 171** dealing with the issue has clearly held that since the Police Regulations do not provide for a period of limitation, therefore for the purpose of taking suo motu revision, it would be the provisions under Rule 29(1)(iii), which would get attracted and thereby the period of limitation for a Revisional Authority also would stand extended only for a period of 6 months and not beyond that. For ready reference paragraphs No. 9 & 10 of the judgment passed in the case of **“Angad Singh Rathore”** (supra) are reproduced hereinunder:

“9. It is not disputed that in view of Regulation 262 of the Regulations against the penalty order dt. 15-5-2006 passed by the third respondent Inspector General of Police, Ujjain the

appellate authority would be is the second respondent Director General of Police. Regulation 270 empowers any authority superior to the authority making the order of penalty to review the order suo motu. This being the position and the Director General of Police being the superior authority as well as appellate authority against the order of penalty sought to be reviewed the provisions contained in Rule 29 Sub Clause (iii) of the Rules would get attracted. Rule 29(iii) provides that the appellate authority may review the order proposed to be reviewed within six months. In the present case the second respondent appellate authority sought to review the order after more than eight months. In the circumstances the action to take the order of penalty in review having been taken after six months is barred by limitation.

10. The contention of learned Government Advocate that the second respondent being the Head of the department no period of limitation is provided for taking the matter in suo motu revision is misconceived. Police Regulation 270 provides that the review shall be made by any authority superior to the authority making order. In view of Regulation 262 the appellate authority against the order of penalty passed by the Inspector General of Police, Ujjain is Director General of Police being the authority superior to the authority making the order. In the circumstances proposed action of review by the Director General of Police is in the capacity of the appellate authority and therefore the suo motu powers could not have been exercised by him after the prescribed period of limitation of six months in view of Rule 29(iii) of the Rules, 1966.”

13. In the recent past, this High Court also had an occasion of dealing with a similar issue i.e. in the case of **“Harish Chandra Dahariya v. State of Chhattisgarh & others” WPS No. 1391/2012**, which was decided on 11.10.2018 and where this Court had specifically held that the period for a Revisional Authority or for the Appellate Authority to revise an order of punishment exercising suo motu powers would be only 6 months from the date of the order, which in the instant case is 26.12.2012. The said writ petition was allowed following a judgment of the Hon'ble Supreme Court rendered in the case of **“Union of India and others v. Vikrambhai Maganbhai Chaudhari”, 2011 (7) SCC 321**. For ready reference paragraphs No. 10 to 12 of the said judgment is reproduced herein under:-

“10. As rightly observed by the Tribunal, the above sub-Rule (1) of Rule 29 indicates 6 categories of revisional authorities. If we go further it shows that while no period is mentioned in subclauses (i) to (iv), sub-Clause (v) refers to a

period of six months from the date of order proposed to be revised. Since order was passed by exercising power under sub-Clause (vi), we have to see whether in the Notification specifying an authority a time limit has been mentioned or even in the absence of the same, the outer limit can be availed by exercising power under sub-Clause (v). According to learned ASG, there is no need to specify the period in the Notification authorizing concerned authority to call for the record for any enquiry and revise any order made under the Rules. We are unable to accept the said claim for the following reasons.

11. It is to be noted that in cases where the appellate authority seeks to review the order of the disciplinary authority, the period fixed for the purpose is six months of the date of the order proposed to be revised. This is clear from sub-Clause (v) of sub-Rule 1 of Rule 29. On the other hand, Clause (vi) confers similar powers on such other authorities which may be specified in that behalf by the President by a general or special order and the said authority has to commence the proceedings within the time prescribed therein. Even though Rule 29(1)(vi) provides that such order shall also specify the time within which the power should be exercised, the fact remains that no time limit has been prescribed in the Notification.

12. We have already pointed out that no period has been mentioned in the Notification. The argument that even in the absence of specific period in the Notification in view of Clause (v), the other authority can also exercise such power cannot be accepted. To put it clear, sub-Clause (v) applies to appellate authority and Clause (vi) to any other authority specified by the President by a general or special order for exercising power by the said authority under sub-Clause (vi). There must be specified period and the power can be exercised only within the period so prescribed.”

14. Taking into consideration the aforesaid two decisions, which are based upon the judgment of the Hon'ble Supreme Court in the case of **“Union of India and others v. Vikrambhai Maganbhai Chaudhari”** if the facts of the present writ petition is taken note of, it would clearly reflect that both the notice calling for an explanation from the petitioner issued on 10.07.2013 and the subsequent modified order of punishment dated 04.09.2013, both were much beyond the period of 6 months period from the date the original order of punishment dated 26.12.2012 was passed.
15. In view of the same, this Court has no hesitation in reaching to the conclusion that the order of Appellate Authority (Annexure P/1) was

one which has been issued beyond the prescribed period provided under the Rules, within which the authorities could have exercised the appellate/revisional powers and the same would therefore not be sustainable and the same deserves to be and is accordingly set-aside/quashed with consequences to follow.

16. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved