

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3758 of 2004

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Ghan Shyam Sammad @ Ghan Shyam Son of Sri Ram Prasad Sammad
resident of Village Golukhari, P.O. Toriniya, P.S. Ichwar, District- Sehare
(Madhya Pradesh).

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, North Block, New Delhi
2. The Director General of Police, C.R.P.F., North Block, New Delhi.
3. The I.G. C.R.P.F., Bihar Sectry, Patna.
4. The D.I.G. C.R.P.F., Patna.
5. The Commandant, 133 Battallian, C.R.P.F., Moinul Haque Stadium Rajendra Nagar, Patna.
6. The Commandant, Directorate, C.R.P.F. no. 1, Personnel – 3 Central Office Compound, Lodhi Road, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate
For the U.O.I.	:	Mr. Dr. K.N. Singh, ASG
		Mr. Manoj Kr. Singh, CGC
		Mr. Sriram Krishna, JC to ASG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 06-09-2022

Mr. Sheo Prakash Upadheya, D.I.G. (Admn.) is

present in the Court.

2. In the instant petition, petitioner has prayed for

following relief(s):-

**“That this is an application
for issuance of appropriate writ, order or
direction to quash the order of commandant
(Annexure-3) and order of removal of the
petitioner from service passed by D.I.G.,
C.R.P.F., Patna dated 6.11.1999 (Annexure-
4) I.G., C.R.P.F., Patna (Annexure-5) order
of D.G. of Police, C.R.P.F. (Annexure-6) and
for grant of all consequential benefits.”**

3. The petitioner was subjected to disciplinary



proceedings and charges were framed on 02.02.1998 while invoking Rule 27 of the Central Reserve Police Force Rules, 1955 (for short "Rules 1955"). Petitioner submitted his reply. It was not satisfied by the disciplinary authority and proceeded to hold enquiry. The inquiring officers submitted report. Based on the report of the inquiring authority, disciplinary authority proceeded to impose penalty of withholding of two increments with cumulative effect on 27.02.1999. *Suo motu* review was undertaken by the official respondent while passing order of removal from service on 06.11.1999. Against the order of removal from service, an appeal was preferred and it was allowed in favour of the petitioner on 12.09.2000 by which order of removal was set aside. While doing so *De novo* inquiry has been ordered.

4. In the result once again charge memo was issued on 20.01.2001. Petitioner submitted his reply and other formalities have been completed till imposition of penalty of removal from service on 10.11.2001. Appeal was filed and further revision was filed. Revision was rejected on 09.12.2002. Further he had submitted representation and it was also rejected on 24.07.2003. In this backdrop, the petitioner has presented this petition.

5. Learned counsel for the petitioner submitted that question of ordering *de novo* enquiry vide order dated



12.09.2000 is not permissible under Rule 29 of Rules, 1955. At the best, competent authority who has passed the order on 12.09.2000 can order re- investigation.

6. Per Contra, learned counsel for the respondents resisted the aforesaid contentions and submitted that *de novo* inquiry is permissible in the light of Rule 102 of Rules, 1955 read with Rule 29(d) of Central Civil Service (Classification, Control & Appeal) Rules, 1965.

7. Heard learned counsels for the respective parties.

8. The petitioner was subjected to inquiry in framing article of charge dated 02.02.1998. It was concluded in imposition of penalty of withholding of two increments with cumulative effect w.e.f. 27.02.1999. Thereafter, competent authority *suo moto* taken up the matter and proceeded to enhance the aforesaid penalty to that of removal on 06.11.1999. Feeling aggrieved and dissatisfied with the order of removal petitioner preferred appeal and it was allowed on 12.09.2000. Removal order was set aside by the appellate authority and further *de novo* inquiry has been ordered in the very same order. Thereafter, once again petitioner was subjected to charge memo till imposition of penalty of removal from service and further rejection of revision and representation on 09.12.2002 and 24.07.2003.



9. Short question for consideration in the present petition is whether appellate authority while setting aside the order of removal from service on 12.09.2000 is empowered to order for *de novo* inquiry under rule 29 of Rules 1955 or not? Further is he empowered to invoke Rule 29(d) of Rules, 1965 read with rule 102 of Rules, 1955 or not? It is to be noted that petitioner was subjected to disciplinary proceedings in framing article of charges under Rule 27 of Rules, 1955. Once the disciplinary proceedings have been launched against the petitioner under a particular set of rules and in the present case, CRPF Rules, 1955, ultimately, the conclusion must be only under Rules, 1955. Impugned order in so far as ordering *de novo* enquiry dated 12.09.2000 does not reveal under which provision of law. In the present case, concerned respondent tried to interpret that Rule 27(d) of Rules 1965 has been invoked for the purpose of ordering *de novo* enquiry for the reasons that Rule 29 of Rules 1955 do not permit for ordering *de novo* enquiry other than re-investigation.

Rule 102 of Rules, 1955 reads as under:

“102. Other conditions of service. - The conditions of service of members of the Force in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of India of corresponding status.”

The aforesaid Rule could be invoked if the



C.R.P.F. employees are not governed by disciplinary rules in entirety. On the other hand, rule 27 of Rules, 1955 provides for procedure for award of punishment. Further Rule 28 provides for appeal and Rule 29 for revision. Once the official respondent have entertained revision under Rule 29 of Rules, 1955, in that event, the official respondent cannot take shelter under Rule 102 and resort and proceed to say that rule 29(d) of CCA rules, 1965 would come into the aid of ordering *de novo* inquiry on 12.09.2000. In other words, official respondent cannot use pick and choose Rules in respect of initiation of inquiry and completion of inquiry. In fact, initiation of inquiry against the petitioner and till filing of revision, is under Rules, 1955 whereas to sustain the word of *de novo* inquiry in the order dated 12.09.2000, the official respondent cannot take shelter under Rule 102 read with Rule 29(d) of CCA Rules, 1965.

10. In the light of these facts and circumstances, in so far as ordering *de novo* enquiry under order dated 12.09.2000 till rejection of revision dated 09.12.2002 read with rejection of representation dated 24.07.2003 stands vitiated. However, reserving liberty to the revisional authority to issue corrigendum order. In respect of implementation of Rule 29 of Rules 1955, such a corrigendum order shall be passed within a period of three months from the date of receipt of this order.



11. In the meanwhile, the disciplinary authority is directed to take a decision as to whether the petitioner be placed under suspension or he shall be taken back to duty and further passing of corrigendum. Assuming that in the corrigendum the competent authority takes a decision that matter is required to be re-investigated. In such circumstances, necessary proceeding shall be completed within a period of 6 months from the date of receipt of this order.

12. The disciplinary authority is hereby directed to take note of Apex Court's decision rendered in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in (1993) 4 SCC 727 read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.*** reported in (2011) 5 SCC 142 para 46 to 50 reads as under:

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment or arrears of salary till date. Shri Bandhopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put



under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in *R. Thiruvirkolam V. Presiding Officer, Punjab Dairy Development Corpn. Ltd. V. Kala Singh and Graphite India Ltd. V. Durgapur Projects Ltd.*

48. In *ECIL V. B. Karunakar and Union of India V. Y.S. Sadhu*, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a



rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC V. Mitthu Singh, Akola Taluka Education Society V. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. V. Kashinath Ganapati Kambale.)

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

Further a latest decision of the Apex Court in so far as reiterating the principle laid down in *Managing Director, ECIL V. B. Karunakar* case reported in *2022 Live Law (SC) 736* in the case of *The State of Uttar Pradesh & Ors. Vs. Prabhat Kumar* be taken into consideration for the purpose of regulating the intervening period from the date of removal from service till



passing of fresh order in a departmental inquiry, if any. The aforesaid period is required to be regulated in accordance with law after giving an opportunity of show cause to the petitioner. The above exercise shall be completed with a period of two months from the date of completion of re-investigation, if any.

13. Accordingly, “De-novo enquiry” word in the order dated 12.09.2000 is set aside and impugned orders dated 10.11.2001, 31.05.2002, 09.12.2002 and 24.07.2002 as contained in Annexures- 3, 4, 5 and 6 stands set aside. The present writ petition stands allowed.

(P. B. Bajanthri, J)

rakhi/Shoaib

AFR/NAFR	
CAV DATE	
Uploading Date	14.09.2022
Transmission Date	

