

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4053 of 2009

Shesh Nath Pandey
Vs.
Union of India & Ors.

Mr. Akash Dutta
... For the petitioner.

Mr. Moyukh Mukherjee
... For Union of India

The petitioner has challenged the revisional order dated January 9, 2009 of the Inspector General of Police, Eastern Sector, CRPF, Calcutta in this writ petition.

The petitioner while performing his duty as a constable (General Duty) was charged for committing disobedience of orders/neglect of duty/remissness in discharge of duty/an act of misconduct or misbehavior in his capacity as a Member of the force and he was also charged for using filthy/abusive languages against senior officers and supervisory staff of the unit. A departmental enquiry was conducted against the petitioner and upon completion of the departmental enquiry the disciplinary authority inflicted a punishment of compulsory retirement from service with effect from September 10, 2007 by an order dated September 8, 2007.

Being aggrieved against the said order of the disciplinary authority the writ petitioner preferred an appeal which stood rejected by the appellate authority by an order dated February 9, 2008. The petitioner has challenged the appellate order dated February 9, 2008 by filing a writ petition being WP No. 22128 (W) of 2008 before this Hon'ble Court. A coordinate Bench of this Court by order dated September, 11, 2008 granted liberty to the petitioner to submit an application for review of the order of the appellate authority as per Rule 29 of the Central Reserved Police Force Act, 1955 (for short 1955 Rules). Pursuant to the said order, the writ petitioner submitted a petition for review of the appellate order which stood rejected by the order dated January 9, 2009 of the revisional authority. The petitioner has challenged the order passed by the revisional authority by this writ petition.

The learned advocate appearing for the petitioner submits that revisional authority while rejecting the petition for revision failed to appreciate that the charges leveled against the petitioner has not been proved and the punishment awarded to the petitioner is disproportionate to the charges. He relied upon the decision of the Hon'ble Supreme Court in the case of **S.K. Giri Vs. Home Secretary, Ministry of Home Affairs & Ors.** reported in 1995 Supp (3) SCC 519 and a

coordinate Bench decision of this Court in the case of **Bhabatosh Chandra Das Vs. United Bank of India & Ors.** reported at (2011) 1 CHN 612 .

The learned advocate appearing for the Union of India submits that the scope of judicial review against the order passed by the revisional authority is very limited and considering the gravity of the charges it cannot be said that the punishment inflicted upon the petitioner is disproportionate to the charges proved. He placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of **Union of India & Anr. Vs. G. Ganayutham** judgment passed on 27th August, 1997 in support of his contention that this court can only go into the matter, as a secondary reviewing Court to find out if the executive in their primary roles have arrived at a reasonable decision and the Court cannot substitute its own views on the reasonableness of punishment.

Heard the learned advocates for the parties and perused the materials placed.

After going through the order of the revisional authority order dated January 9, 2009 this Court finds that such authority after taking into consideration the grounds taken in the revision petition arrived at a finding that the punishment awarded to the petitioner cannot be said to be disproportionate. It was further observed by the revisional authority that the disciplinary

authority after considering all materials on record and also taking into account his long service awarded the punishment of compulsory retirement from service with admissible pensionary benefits which is commensurate with the gravity of offence in order to keep discipline in the force.

Hon'ble Supreme Court in the Case of **G. Ganayutham (Supra)** held that the role of the Court is purely secondary and while applying the Wednesbury principle to test the validity of executive action or administrative action taken in exercise of statutory powers the Courts can only go into the matter as a secondary reviewing court to find out if the executive in their primary roles have arrived at the reasonable decision on the material before them in the light of Wednesbury test. It was further held therein that the choice of the options available is for the authority and the court cannot substitute its view as to what is reasonable.

The revisional authority took into consideration the materials on record and assigned cogent reasons in support of the conclusion. The punishment to be inflicted falls within the exclusive domain of the authority and this Court cannot substitute its views on the nature of punishment as held in **G. Ganayutham (Supra)**.

This Court, therefore, holds that the decision of the revisional authority does not suffer from infirmity warranting interference under Article 226 of the Constitution of India.

The Hon'ble Supreme Court in **S.K. Giri (supra)** took into consideration the fact that the appellant therein had gone to convey the message to the higher authorities and to make a report of the incident which led to a short period of absence. The Honble Supreme Court after taking note of the reasons for such short period of absence held that the penalty of removal from service was severe and disproportionate to the charge proved and the punishment awarded was accordingly set aside by the Hon'ble Supreme Court. The said decision has no manner of application to the facts of the case on hand.

In **Bhabatosh Chandra Das (Supra)** the coordinate Bench substituted the penalty of removal from service with that of compulsory retirement. In the case on hand the petitioner was awarded the penalty of compulsory retirement and not removal from service and for such reason the decision in the case of **Bhabatosh Chandra Das (Supra)** is of no assistance to the petitioner in this case.

For all the reasons as aforesaid, this Court is not

inclined to interfere with the order of the revisional authority dated January 9, 2009.

Accordingly, the writ petition stands disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for.

(Hiranmay Bhattacharyya, J.)