

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Hiranmay Bhattacharyya.

WPA 1235 of 2009

**RAJJAK ALI
Vs.
UNION OF INDIA & ORS.**

For the Petitioner	:	Mr. K.B.S. Mahapatra
For the Respondents	:	Mr. Tarun Jyoti Tiwari
Heard on	:	14.11.2024
Judgment on	:	14.11.2024

Hiranmay Bhattacharyya, J:

1. The petitioner has challenged the final order dated 28/29th April, 2008 passed by the disciplinary authority, the suo motu review order dated August 7, 2008 and the order dated December 26, 2008 passed by 3rd respondent in an appeal against the order dated 7.8.2008 in this writ petition.
2. While the petitioner was posted at CISF Unit, Eastern Coalfield Limited, a memorandum of charge dated November

03, 2007 was issued alleging that the petitioner has failed to prevent the theft of diesel from a crane.

3. The enquiry officer after completing the enquiry submitted the report.

4. The disciplinary authority passed the final order on 28/29th April, 2008 imposing the punishment that the pay of the petitioner be reduced by four stages from Rs.3800/- to Rs.3,500/- in the time scale of pay for a period of two years.

It was further directed that the petitioner will not earn increments of pay during the period of reduction and that on expiry of the period the reduction will have the effect of postponing his future increments of pay.

5. The petitioner claims to have preferred an appeal against the final order of the disciplinary authority dated 29th April, 2008.

6. However, in the meantime a show cause notice dated June 23, 2008 was issued by the Deputy Inspector General, being the 4th respondent, calling upon the petitioner to show cause as to why the penalty inflicted by the disciplinary authority in his final order of punishment should not be enhanced. The petitioner claims to have replied against the said show cause notice. The 4th respondent passed an order on 7th August, 2008 which is stated to be an order on suo motu review. The petitioner filed an appeal against the order dated August 07,

2008 which was dismissed by the Inspector General, being the 3rd respondent, by an order dated December 26, 2008.

7. The learned Advocate appearing for the petitioner submits that as per the Central Industrial Security Force Rules, 2001 (for short, the 2001 Rules), the Deputy Inspector General, being the 4th respondent is the appellate authority. He submits that as per Section 9 of the Central Industrial Security Force Act, 1968 (for short, the 1968 Act), a revision lies only against an order passed in an appeal under Section 9(1) of the said Act. He submits that the 4th respondent, being the appellate authority, is not vested with the power to revise an order passed by the disciplinary authority.

8. The learned Advocate appearing for the respondents submits that the 4th respondent is an officer superior in rank than the disciplinary authority. He submits that Rule 54 of the 2001 Rules empowers an authority superior to the authority passing the final order of punishment to revise such an order. By referring to sub-rule (2) of Rule 54 he submits that the said order passed in revision is appellable in view of Rule 52 of the 2001 Rules.

9. Heard the learned Advocates for the parties and perused the materials placed.

10. The Commandant, Central Industrial Security Force, being the 5th respondent being the disciplinary authority of the petitioner passed the final order of punishment.

11. It appears from the record that the 4th respondent issued a show cause notice and passed an order on suo motu review dated August 07, 2008.

12. No authority has an inherent right to review an order passed by it. Such a right has to be conferred by statute. The learned Advocate for the respondent could not place any provision in the 1968 Act conferring the power of suo motu review and that too by a superior authority.

13. The learned Advocate appearing for the respondents would submit that though the 4th respondent exercised the powers of revision but the caption of such order was inadvertently mentioned as suo motu review instead of suo motu revision.

14. In the light of the aforesaid submission of Mr. Tiwari, the court shall proceed to decide whether the 4th respondent, who is the appellate authority, could have exercised the power of revision and for such purpose, certain provisions of the 1968 Act and the 2001 Rules are to be considered.

15. Section 9 of the 1968 Act, Rule 52 of the 2001 Rules and Rule 54 of the 2001 Rules are extracted hereinafter:

“Section 9. Appeal and revision – (1) Any [enrolled member] of the Force aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to

such authority as may be prescribed, and [subject to the provisions of sub-section (2A), sub-section (2B) and sub-section (3)] the decision of the said authority thereon shall be final :

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) In disposing of an appeal, the prescribed authority shall follow such procedure as may be prescribed.

[(2A) Any enrolled member of the Force aggrieved by an order passed in appeal under sub-section (1) may, within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.

(2B) The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an enrolled member of the force or *suo moto*, may call for, within a prescribed period, the records of any proceeding under Section 8 or sub-section (2) or sub-section (2A) and such authority may, after making inquiry in the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit.]

(3) The Central Government may call for and examine the record of any proceeding [under Section 8, sub-section (2), sub-section (2A) or sub-section (2B) of this section 9 and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit :

Provided that no order imposing an enhanced penalty under sub-section (2) or sub-section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

“Rule 52. Consideration of appeals – (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of [rule33] and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against the order imposing any of the penalties specified in rule 34, or enhancing any penalty imposed under the said rules, the appellate authority shall consider—

- (a) Whether the procedure laid down in these rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) Whether the findings of the disciplinary authority are warranted on the basis of the evidence on the record; and
- (c) Whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and pass orders –
 - (i) Confirming, enhancing, reducing or setting aside the penalty; or
 - (ii) Remitting the case to the authority which imposed or enhanced the penalty, or to any other authority with such directions it may deem fit in the circumstances of the case;
 - (iii) No order imposing enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 37, of making a representation against such enhanced penalty.]

Provided that –

- (i) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of rule 34 and an inquiry under rule 36 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 39, itself hold such an inquiry or direct that such inquiry be held in accordance with rule 36 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit; and
- (ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of rule 34 and an inquiry under rule 36 has already been held in the case, the appellate authority shall make such orders as it may deem fit.

Rule 54. Revision – (1) Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any

inquiry and revise any order made under these rules, and may –

- (a) confirm, modify or set aside the order or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such order as it may deem fit, within six months of the date of communication of the order proposed to be revised :

Provided that no order imposing or enhancing any penalty shall be made by any revisioning authority unless the enrolled member of the Force concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (i) to (v) of rule 34 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any, inquiry under rule 36 of Central Industrial Security Force Rules, 2001 has not already been held in the case no such penalty shall be imposed except after an enquiry in the manner laid down in the aforesaid rules.

(2) The provisions of rule 52 relating to appeals shall apply so far as may be to such orders in revision.

(3) Orders and instructions issued by the Central Government on this subject from time to time shall be applicable *mutatis mutandis* as applicable under Central Civil Services (Classification, Control and Appeal) Rules, 1965.]”

16. Section 8 of the 1968 Act lays down the nature of punishments that may be inflicted upon the members of the Force. Section 9 deals with appeal and revision.

17. Section 9(1) states that any enrolled member of the Force aggrieved by an order made under Section 8 may prefer an appeal against the order to such authority as may be prescribed.

18. Section 22(1) of the 1968 Act provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Clauses (a) to (i) of Sub-Section 2 of Section specifies the matters which may be provided for in the rules.

19. Clause (g) states that the rules may provide for regulating the punishments and prescribing authorities to whom appeals shall be preferred from order or punishments, or remission of fines or other punishments, and the procedure to be followed for the disposal of such appeals.

20. Clause (gggg) provides for prescribing authority under Sub-Section (2A) of Section 9 and the procedure to be followed by such authority in disposing of the revision petition.

21. Clause (ggggg) provides for prescribing authority under Sub-Section (2B) of Section 9, the period within which such authority may call for the records and the manner in which such authority may make inquiry.

22. Section 2(g) defines the word 'Prescribed' to mean prescribed by rules made under this Act.

23. Sub-Section (2A) of Section 9 gives a right to any enrolled member of the Force aggrieved by an order passed in appeal under Sub-Section (1) of Section 9 to prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow the procedure as may be prescribed.

24. Sub-Section (2B) empowers the prescribed authority to call for the records of any proceeding under Section 8 or Sub-Section (2) or Sub-Section (2A) on a revision petition preferred by an aggrieved enrolled member of the Force or suo moto.

25. Sub-Section (2A) of section 9 gives right to an enrolled member of the Force aggrieved against an appellate order to prefer a revision petition. Sub-Section (2B) empowers the prescribed authority to call for the records of the proceedings either on a revision petition preferred by an aggrieved enrolled member of the Force or suo moto.

26. Though Section 9(2B) recognises the power of the prescribed authority to call for the records of the proceeding even suo moto irrespective of a revision petition filed by an aggrieved enrolled member of the Force against an order passed in appeal under Section 9(1), the question is at what stage such suo moto power under section 9(2B) can be exercised.

27. Mr. Tiwari would contend that any authority superior to the disciplinary authority passing the final order or punishment can revise such order suo moto.

28. It is well settled that Courts should not interpret a particular provision in a statute in such a manner so as to defeat another. The Courts should also keep in mind that apparent conflicting provisions of a statute are to be construed in a manner so as to harmonize them.

29. Keeping the aforesaid proposition in mind, if the aforesaid argument of Mr. Tiwari is accepted, the provisions laid down under Section 9(1) shall be rendered otiose. Such an interpretation would ultimately amount to conferring wide powers upon the prescribed authority to curtail the right of appeal conferred under Section 9(1) to an aggrieved enrolled member of the Force against an order passed under Section 8 which is impermissible in law as right of appeal is a creature of statute.

30. Upon a harmonious reading of Sub-Sections (1), (2), (2A) and (2B) of Section 9, this Court is of the considered view that the prescribed authority can exercise the suo moto power to call for the records of the proceeding only after an order is passed in appeal under Section 9(1).

31. The 2001 Rules have been framed by the Central Government in exercise of the powers conferred by Section 22

of the 1968 Act. Chapter XI of the said Rules deals with appeals, revisions and petitions. Rules 44 to 53 deal with appeals as well as implementation of orders in appeal. Rule 54 deals with revisions.

32. To the mind of this Court, the expression "Any authority" used in Rule 54 shall mean any authority superior to the authority making the order under Section 9(1). Sub-Section (2) of Rule 54 only states that the provisions of Rule 52 relating to appeals shall apply so far as may be to such orders in revision. Rule 54 does not confer any power of revision in addition to that conferred under Section 9(2A) or 9(2B).

33. It is well settled that the statute can only vest the right of appeal, revision or review and the Rules can prescribe the manner in which such right can be exercised.

34. This court is, therefore, not inclined to accept the submission of the learned Advocate for the respondents that Rule 54 of the 2001 Rules gives power to the appellate authority to exercise the power of revision.

35. In view thereof, this court holds that the Deputy Inspector General, being the 4th respondent could not have exercised the suo motu power of revision/review. The order of the 4th respondent dated August 07, 2008 is, therefore, without jurisdiction and the same is liable to be set aside and

quashed. That apart the said authority also could not have taken away the right of the petitioner to avail the statutory appellate remedy in the guise of exercising the suo motu power of revision.

36. Accordingly, the said order dated August 07, 2008 is set aside and quashed. Since the order dated August 07, 2008 has been set aside, consequently the order dated December 26, 2008 passed by the 3rd respondent on an appeal from an order dated August 07, 2008 is also set aside.

37. Since the petitioner has preferred an appeal against the final order of the 5th respondent dated April 28/29, 2008, the appellate authority is directed to dispose of the same as expeditiously as possible but preferably within a period of eight weeks from the date of receipt of a server copy of this order.

38. It is, however, made clear that the observations made hereinbefore are only for the purpose of supporting the ultimate conclusion in this writ petition and the same shall not prejudice the parties in the appeal which is pending before the appellate authority against the final order of punishment dated April 28/29, 2008.

39. With the above observations and directions, the writ petition stands allowed.

40. There will be no order as to costs.

41. After this order is dictated, the learned Advocate appearing for the respondents prays for stay of the order.
42. The prayer for stay is opposed by the learned Advocate for the petitioner.
43. The prayer for stay is considered and rejected.
44. Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)

GD
Assistant Registrar (Court)