



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 8707 OF 2018

Pradhuman Singh S/o. Sh.Jagdambi
Singh
Occupation: No.850780791, CT (GD)
Constable, CRPF, New Delhi
presently Aged about 56 years,
R/o.Village and P.O.Agrahan,
P.S.Hawli Kharagpur, Munger, Bihar
and presently posted at CRPF, Delhi

.. Petitioner

Versus

1. The Union of India
through the Secretary, Ministry of
Home Affairs North Block, Central
Secretariat, New Delhi – 110001
2. The Director General
Directorate General, Central Reserve
Police Force, CGO Complex Block
no.1, Lodhi Road, New Delhi-110003
3. The Deputy Inspector General,
CRPF Group Centre, CRPF, Nagpur,
Maharashtra – 440019
4. The Commandant, 113 Bn, CRPF,
Gadchiroli, Maharashtra

.. Respondents

Mr. Mohd. Sajid, Advocate for petitioner.

Mr. S.A.Chaudhari, Advocate for respondents.

CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.

DATED : FEBRUARY 8, 2024

ORAL JUDGMENT (PER COURT : NITIN W. SAMBRE J.)

Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned counsel appearing for the parties.

(2) After having overstayed as a Constable while discharging duty with the respondent CRPF, the petitioner suffered an order dated 23/12/2013, which was passed in compliance with the Division Bench order of the Guwahati High Court in Writ Appeal No.56 of 2005 delivered on 28/03/2011.

(3) The petitioner has invited our attention to the observations in Clause [vi] of the said order passed by the Deputy Inspector General of Police (DIG), CRPF whereby relying on the provisions of Rule 54-B of the Fundamental Rules of Chapter VIII, which deals with dismissal, removal and suspension, ordered that the period from 18/05/1995 [FN] to 30/06/2011[AN] i.e. a period for which the petitioner overstayed from the date of dismissal from service to the date of reporting back, to be treated as period not spent on duty.

(4) Rule 54-B of Fundamental Rules reads thus :-

"F.R. 54-B (1) *When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make specific order-*

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly attributable to the Government servant it may, after giving him an opportunity to make his representation [within 60 days from the date on which the communication in this regard is served in him] and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such [amount (not being the whole)] of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall subject to the provisions of sub- rules (8) and (9) be paid such [amount (not being the whole) of the full pay and allowances] to which he would have

been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub- rule (3) or sub-rule (5) as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note. The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of

(a) extraordinary leave in excess of three months in the case of temporary Government servants; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 53."

(5) According to the learned counsel for the petitioner, the qualifying criteria for applicability of the said Rule is, in case if the government servant like the petitioner after suspension is reinstated, which is not the case in hand. The learned counsel for the petitioner would urge that the petitioner was dismissed from service. Pursuant to the order of the Division Bench passed by the Guwahati High Court referred above, the petitioner was reinstated in service. He would then invited attention of this Court to Rule 54 of the Fundamental Rules, which reads as under :-

"F.R. 54. (1) *When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal review or would have been so re-instated [but for his retirement on superannuation, while under suspension or not], the authority competent to order re-instatement shall consider and make a specific order:-*

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the

termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representations [within 60 days from the date on which the communication in this regard is served on him] and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount [not being the whole] of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be shall be treated as a period spent on duty for all purposes.

(4) In the cases other than those covered by sub-rule (2) including the cases where the order of dismissal, removal or compulsory retirement from service is set aside by the Appellate or Reviewing Authority solely on the ground of non-compliance with the requirements of Clause (2) of Article 311 of the Constitution and no further enquiry is proposed to be held, the Government servant shall subject to the provision of sub-rules (6) and (7), be paid such [amount (not being the whole) of the pay and allowances] to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the notice has been served] as may be specified in the notice:

[Provided that any payment under this sub-rule to a Government servant {other than a Government servant who is governed by the provisions of the Payment of Wages Act 1936 (4) of 1936} shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the Appellate Authority or Reviewing Authority, of immediately

preceding the date of retirement on superannuation of such Government servant, as the case may be.]

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Note.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary to the grant of-

(a) extraordinary leave in excess of three months in the case of temporary Government servant, and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) [The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his re-instatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of re-instatement. Where the emoluments admissible under the rule are equal to or less than the emoluments earned during the employment elsewhere, nothing shall be paid to the Government servant."

(6) Based on the above, the contentions of the learned counsel for the petitioner are – the entire disciplinary proceedings against the petitioner was quashed as is apparent from the order of the Division Bench. In such an eventuality, his contentions are – once the DIG vide order dated 23/12/2013 has quashed the departmental proceedings against the petitioner, the net result should have been the relief to be granted pursuant to the aforesaid Rule.

(7) As against above, the contentions of Mr.Chaudhari, learned counsel appearing for the respondents are – in the facts and circumstances of the case, it has to be inferred that the case of the petitioner is covered by Rule 54-A of the Fundamental Rules, which reads thus :-

"F.R. 54-A - (1) *Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is re-instated without holding any further enquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowance in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.*

[(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of the clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall subject to the provision of sub-rule (7) of rule 54, be paid such [amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal, or compulsory retirement, as the case may be, as the competent authority may determine,

after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period, [which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice:

Provided that any payment under this sub-rule to a Government servant other than a Government servant who is governed by the provisions of Payment of Wages Act, 1936 (4 of 1936) shall be restricted to a period of three years immediately preceding the date on which the judgement of the court was passed or the date of retirement on superannuation of such Government servant, as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be and the date of judgement of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 54.]

(3) If the dismissal, removal, or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of re-instatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his re-instatement shall be subject to adjustment of the amount if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of re-instatement. Where

the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."

(8) So as to substantiate his contentions, Mr. Chaudhari, learned counsel appearing for the respondents would urge that it is by virtue of the intervention of the Court viz. the Division Bench order of the Guwahati High Court, referred above, the proceedings against the petitioner was quashed by the order of DIG. In such an eventuality, he would claim that the order of the DIG which is impugned in the proceeding is quite justified.

(9) We have appreciated the aforesaid submissions.

(10) The fact remains that the Commandant 113 BN, CRPF i.e. respondent herein vide order dated 20/12/2011 and amended order dated 12/03/2012 was pleased to award punishment of stoppage of increment for one year without cumulative effect with further directions to revoke the suspension w.e.f. 20/12/2011[FN]. The Commandant was pleased to further direct that the period of suspension w.e.f. 01/07/2011 till the date of passing of order is to be treated as period on duty for all purpose. The Commandant further observed that in view of Rule 54-B referred above, the period from the date of dismissal from service till the date of reporting back into service i.e. from 18/05/1995[FN] to 30/06/2011[AN] be treated as period not

spent on duty. However, the interruption in the service was condoned for counting the pre-interruption service for all purposes of pensionary benefits.

(11) The aforesaid order was subject matter of challenge in an appeal before the respondent DIG who, in turn pass the following order which reads thus :-

"[i] No.850780791 CT/GD Pradhuman Singh was tried by CJM-cum-Commandant 113 Bn for the offence U/S 10[m] of CRPF Act, 1949 and was awarded punishment of 30 days simple imprisonment. [Court Order].

[ii] No.850780791 CT/GD Pradhuman Singh of 113 Bn was tried by CJM-cum-Commandant 113 Bn for the offence U/S 10[m] of CRPF Act, 1949 and was awarded punishment of 30 days simple imprisonment. [Court Order] to Quarter Guard, which is commensurate with the offence as the gravity of the offence is in minor nature.

[iii] The Hon'ble High Court of Assam at Agartala Bench passed order dated 29/07/2005 in C.R. 128/1996, Commandant 113 Bn should give less punishment to no. 850780791 CT/GD Pradhuman Singh of 113 Bn other than dismissal, removal or termination from service [Court did not amended the judgement of CJM-Cum-Commandant 113 Bn]. Hence, it reflects from the above judgement that the punishment of 30 days simple imprisonment to Quarter Guard should have been enhanced instead of initiation of DE. Therefore, in order to comply the Court Order, one hour pack drill for 30 days is hereby imposed against him.

[iv] D.E. initiated against No.850780791 CT/GD Pradhuman Singh of 113 Bn and punishment awarded to him found dual punishment for a single offence, which is not in order. But, the Commandant. 113 Bn framed the same charges for which accused No.850780791 CT/GD Pradhuman Singh of 113 Bn was already punished by CJM-cum-Commandant 113 Bn vide his

judgement dated 08/05/1995, which was bad in law and leads to double jeopardy. Hence, the entire proceedings of DE drawn by Commandant 113 Bn vide Memorandum No.P.VIII.7/11-113-EC-II dated 02/08/2011 are hereby quashed.

[v] The suspension period w.e.f. 01/07/2011 to 20/02/2011 is hereby regularized as spent on duty and entitled for full pay and allowances under the existing rules.

[vi] The intervening period in r/o No.850780791 CT/GD Pradhuman Singh of 113 Bn from the date of 'Dismissal from Service' to date of reporting back into service in 113 Bn CRPF i.e. from 18/05/1995[FN] to 30/06/2011[AN] is treated as 'period not spent on duty' for all purposes under the provision of FR-54[B]. The resultant interruption in service is condoned for counting his pre-interruption service for all purposes of pensionary benefits as per the provision contained in GOI decision No.1 below Rule 28 of CCS[Pension] Rules and he will not be entitled for any back wages."

(12) The petitioner is aggrieved only to the extent of the applicability of the Rule referred above. The petitioner has claimed that Rule 54-B has no applicability in the facts and circumstances of the present case, particularly, when the respondent appellate Authority in clause [iv] has specifically observed that since the petitioner is already punished for the very same cause by the Judgment dated 08/05/1995, which was already passed by the Commandant in Criminal proceedings, he cannot be punished twice and as such quashed the departmental proceedings.

(13) In such an eventuality, if we consider the qualifying wordings of Rule 54-B, rightly so pointed out by the learned counsel for the petitioner that Rule 54-B will be attracted when the government

servant who has been suspended and is reinstated or who would have been so reinstated, but for his retirement on superannuation while under suspension, the Authority competent to reinstate shall consider and make a specific order. Same does not appears to be the facts of the case in hand.

(14) In our opinion, though the learned counsel for the respondents has claimed that the case ought to have been considered under Rule 54-B, the fact remains that Rule 54-B for the aforesaid reasons and the facts and circumstances of the case are not at all attracted. This takes us to the submissions of learned counsel for the petitioner that the case of the petitioner is covered and governed by Rule 54-A.

(15) Rule 54-A sub rule (1) contemplates that in case of dismissal, removal or compulsory retirement of a government servant is set aside by the Court of law and such government servant is reinstated without holding any further enquiry, the period of absence from duty has to be regularized and the government servant is entitled to pay and allowances in accordance with the provisions of sub rule (2) or (3), subject to the directions, if any from the Court.

(16) If we perused the order of the Division Bench of the Guwahati High Court, delivered in the Writ Appeal No.56 of 2005, the

Division Bench has made following observations :-

"In the result, and for the foregoing reasons, this writ appeal partly succeeds. While the impugned judgment and order, to the extent that the same interfere with the dismissal of writ petitioner-respondent, is not hereby interfered with, the direction for reinstatement without back wages shall accordingly stand set aside and the proceeding is hereby remanded to the appellant No.5 for determination of two 'questions, namely, as to whether the absence without leave for the said period of 28 days was without any sufficient cause and if so, what shall be, for such a period of absence as aforesaid, the punishment imposable on the writ petitioner-respondent and, depending upon what conclusions the appellant No.5 reaches in respect of the said questions, the appellant No.5 may pass such further order (s) as may be permissible in law.

With the direction, we have so passed, the writ petitioner-respondent shall be deemed to stand reinstated in service, but he shall be kept, for the purpose of completion of the proceeding drawn under Rule 27 of the CRPF Rules, under suspension until the time necessary order(s), in terms of the directions given hereinbefore, is/are passed by the appellant No.5.

As far as the question of back wages of the writ petitioner-respondent is concerned, it is made clear that the same would be subject to the ultimate decision, which may be taken by the appellant No.5.

The writ appeal shall stand disposed of in terms of the above observations and directions."

(17) The Division Bench has not interfered or commented on the issue of reinstatement, but has remanded the matter back to the Authority, who has imposed the punishment, for reconsideration. It is pursuant to this order, the DIG has quashed the departmental proceedings against the petitioner and not quashed by virtue of the

orders of the Division Bench passed in aforesaid writ appeal. That being so, having regard to the language of sub-rule (1) of Rule 54, it has to be held that the case of the petitioner is covered by Rule 54 of the Fundamental Rules referred above.

(18) That being so, we won't hesitate to accept the case of the petitioner, thereby declaring that he is entitled for relief under Rule 54(1) of the Fundamental Rules referred above and not under Rule 54-B.

(19) As such, we direct the respondent DIG to pass consequential order in accordance with Rule 54(1) within a period of **six weeks** from today, thereby conferring all consequential benefits in a time bound manner.

(20) The Writ Petition stands allowed in above terms.

(21) Since Mr.Chaudhari learned counsel appearing for the respondents, the order of waiving of service of notice by the Assistant Government Pleader is recalled by consent.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]

KOLHE