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W.P.No.14747 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.14747 of 2011

and

M.P.No.1 of 2012

R.Sekar

... Petitioner

Vs.

1.The Union of India

Represented by its Secretary to the Government,
Department of Home Affairs,
New Delhi.

2.The Director General,

Central Reserve Police Force,
CRPF Head Quarters,
No.13, C.G.O.Complex,
Lodhi Road, New Delhi-11 003

3.Deputy Inspector of Police,

Central Reserve Police Force,
Pallipuram, Tiruvanandapuram – 694 316.

4.The Deputy Inspector of Police,

Central Reserve Police Force,
Group Centre, Avadi,
Chennai – 600 065.

5.The Commandant,

Central Reserve Police Force,
143 Battalion
Imphal, (Manipur).

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the record relating to the order passed by the 3rd respondent dated 19.05.2011 in his Office Order NO.R.XIII.9/11.EC.III confirming the order of the 5th respondent in his order dated 23.02.2011 in his office Order No.P.VIII.2/2010-EC-II 143) and to quash the same and to direct the respondents and to take the petitioner into the strength of CRPF as Head Constable GD and to pay all monetary benefits.

For Petitioner : Mr.S.Mujibur Rahman

For R1 to R5 : Mr.P.G.Santhosh Kumar

ORDER

While the petitioner was working as Head Constable(GD), the departmental enquiry was ordered against the petitioner on the following charge:

“That the said No.830762815 HC/GD R.Sekhar of 143 Bn CRPF while functioning as a Head Constable (GD) committed an offence/misconduct in his capacity as a member of the Force U/S 11 (1) of CRPF Act, 1945 in that, on 29/6/2010, CT/GD Fomin Mohan and CT/GD Deep Raj consumed liquor in his presence and after consuming liquor, these Constables physically assaulted Unit BHM. However, he failed to exercise effective control and supervision on these personnel under his charge and did not submit any report against those personnel who committed misconduct, which is prejudicial to the good order and discipline of the Force and un-becoming of a member of the Force.”

2. The said disciplinary proceedings were initiated jointly in respect



of several Constables by issuing a charge memo dated 25.10.2010.

Thereafter, an enquiry officer was appointed. After conducting an enquiry into the said charge and after following due procedure, the punishment of compulsory retirement was imposed on the petitioner through proceedings dated 23.02.2011 passed by the 5th respondent disciplinary authority. Aggrieved by the said order dated 23.02.2011, the petitioner filed an appeal before the respondent No.3, and the said appeal was rejected by the respondent No.3 by an order dated 19.05.2011. It is aggrieved by the said order dated 23.02.2011 passed by the respondent No.5 imposing the punishment of compulsory retirement from service, and the order dated 19.05.2011 passed by the respondent No.3 confirming the said punishment of compulsory retirement, the petitioner approached this Court by filing the present writ petition.

3. For appropriate appreciation of the matter, it is necessary to refer to certain background facts that lead to issuance of the charge memo dated 25.10.2010. Basing upon the very same charge, when the petitioner was confronted, and the petitioner admitted his guilt, resulting in imposing the punishment of 'severe censure' by the respondent No.5. However, the said punishment of 'severe censure', dated 30.06.2010, imposed on the petitioner



was reviewed by the Deputy Inspector General of Police CRPF, Imphal range and further, directed to review the punishment imposed on the petitioner. Thereafter, the Deputy Inspector General of Police, CRPF, Imphal range through Signal No.P.VIII.12/2010-143-EC.II dated 14.10.2010 suspended the petitioner. Thereafter, a charge memo was issued to the petitioner containing the single charge as noted above. It is pursuant to the orders said to have been passed by the Deputy Inspector General of Police, the impugned enquiry was conducted against the petitioner resulting him imposing the punishment of compulsory retirement.

4. In the light of the above facts, in the considered view of this Court, the questions that would arise for consideration in this writ petition are as under:

- (i) Whether the Deputy Inspector General of Police, CRPF, Imphal (hereinafter referred as 'DIGP') is competent to order for review of the punishment imposed on the petitioner or not?
- (ii) Even if the DIGP is held to be competent to order the said review, whether the respondent No.5 is competent to issue a fresh charge memo in a matter that was already concluded by imposing the punishment of 'severe censure' or not?



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5. The power of review that was exercised by the DIGP is stated to be under Rule 29 of Central Reserve Police Force Rules, 1955 (in short 'CRPF Rules, 1955'). The relevant Rule namely Clause (d) of Rule 29 is extracted herein for better appreciation of the matter:

“29. Revision – (a)....

(b)

(c)

(d) [The Director-General or [Special Director-General or the Additional Director-General heading the Zone] or the Inspector-General] or the Deputy Inspector-General may call for the records of award of any punishment and confirm, enhance, modify or annul the same, or make or direct further investigation to be made before passing such orders:

***Provided that in a case in which it is proposed to enhance punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced.*”**

6. From a perusal of Clause (d) of Rule 29 of CRPF Rules, 1955, it is evident that the DIGP is empowered to call for the records of award of any punishment and confirm, enhance, modify or annul the same, or make or direct further investigation to be made before passing the said orders. Thus, it is evident that, in case, if the DIGP, in exercise of his power under clause (d) of Rule 29, intends to review the punishment either by confirming, enhancing, modifying or annulling the same, he can pass such an order by following the



requirement of proviso thereto by affording an opportunity to the accused/delinquent employee. He is also competent to make further investigation into the matter before passing any such orders or direct further investigation into the matter by some other officer or authority. But the power to pass any orders under Clause (d) of Rule 29 is specifically conferred on the DIGP alone either without conducting any further investigation or after conducting any such further investigation by himself or through some other officer or authority. The Rule is very clear that, any such order reviewing the punishment already imposed by the disciplinary authority can be reviewed by the reviewing authority himself in exercise of power under clause (d) of Rule 29 of CRPF Rules, 1955. But under no circumstances, it can be construed that the reviewing authority is competent to remit the matter back to the disciplinary authority, for conducting *de novo* enquiry.

7. Mr.P.G.Santhosh Kumar, learned counsel appearing for the respondents though placed reliance on decision of the Hon'ble Apex Court in Civil Appeal No.2683 of 2024 dated 20.02.2024, in the considered view of this Court, the said decision has no application to the case on hand. In the



said case, the reviewing authority, while exercising power under Clause (d) of Rule 29, though directed for review of the punishment, has in fact passed an order by itself under Clause (d) of Rule 29. But in the instant case, it is the respondent No.5, who was the original disciplinary authority passed the orders of compulsory retirement. Thus, the said decision has no application to the case on hand.

8. In the instant case, it is not the case of the respondents that the punishment of 'severe censure' that was imposed on the petitioner on 30.06.2010 was set aside and the matter was remitted back to the respondent No.5 for *de novo* enquiry. Whatever the charge that was alleged against the petitioner basing upon the incidents that took place on 29.06.2010 was admitted by the petitioner resulting in imposing the punishment of severe censure on 30.06.2010 itself. In the instance case, even if the DIGP is said to have exercised his power under Clause (d) of Rule 29, under no circumstances that would entitle or empower the respondent No.5 to initiate the proceedings *de novo* by issuing a fresh charge. Therefore, the respondent No.5, who passed an order imposing the punishment of severe censure on the petitioner as early as on 30.06.2010, become *functus officio* and under no circumstances, he can be said to be entitled or empowered to conduct *de novo*



enquiry by issuing a fresh charge.

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9. No doubt, the petitioner, having received a fresh charge memo dated 25.10.2010, participated in the enquiry, which resulted in passing of the impugned orders. But, merely because of the petitioner, being a personnel belonging to a uniformed service, participated in the enquiry, does not have the effect of conferring any such power on respondent No.5 to pass orders and to pass an order of punishment once again while allowing the original punishment of 'severe censure' to stand. Therefore, the order dated 23.02.2011 passed by the respondent No.5 imposing the punishment of compulsory retirement on the petitioner cannot be said to be the one passed with competency. On this ground alone, the impugned order dated 23.02.2011 passed by the respondent No.5 is liable to be set aside. So also the order passed by the respondent No.3 is also liable to be set aside, as the original order itself was found to be without any competency.

10. Then, the next question that would arise for consideration is as to for what relief the petitioner is entitled to. The petitioner who was aged 50 years as on the date of imposing of the impugned punishment of compulsory retirement is now aged 64 years and has already attained the age of



superannuation. Hence, the question of reinstatement of the petitioner into service does not arise. In the normal course, this Court, having found fault with the action of the respondents in initiating *de novo* proceedings against the petitioner and taking into consideration the scope of clause (d) of Rule 29 of CRPF Rules, 1955, ought to have remanded the matter back to the DIGP, who exercised the power of review for passing appropriate orders in terms of Clause (d) of Rule 29 of the Rules, 1955. But considering the fact that the petitioner has already attained the age of superannuation and is aged 64 years by now, and also long lapse of time of about more than 13 years since the date of impugned punishment, this Court is not inclined to remit the matter back to the respondents for passing appropriate orders under Clause (d) of Rule 29 of the CRPF Rules, 1955. Instead, this Court is of the considered view that it is a fit case, where appropriate orders can be passed instead of remanding the matter back to the respondents.

11. In this connection, it would be relevant to note that the charge against the petitioner is that, he being in the capacity as a member of CRPF failed to exercise effective control and supervision on Fomin Mohan and and CT/GD Deep Raj, who consumed liquor in the presence of the petitioner, and also failed to submit a report against those personnel who committed



misconduct by assaulting Unit BHM physically. It is brought on record that one of the said Constables who said to have assaulted the Unit BHM under intoxication was also subjected to disciplinary proceedings along with the petitioner under the impugned disciplinary proceedings and the said Deep Raj was finally imposed with the punishment of stoppage of one increment for two years with cumulative effect, while confining to quarter guard for 7 days in Orderly room by the Commandant disciplinary authority, by the order of the Inspector General of Police, Kerala & Karnataka Sector, Bangalore, through proceedings No.R. XIII-15/13-Admn.I dated May 2013.

12. Taking into consideration the said fact that the person who committed misconduct by assaulting an higher official was only imposed with a punishment of stoppage of one increment for two years with cumulative effect, in the considered view of this Court, the petitioner who alleged to have failed to supervise against such official cannot be imposed with the punishment more than the punishment that was imposed on the person who actually committed such misconduct of assault on higher official. Further, it is the specific defence of the petitioner that he was not present



when such an incident took place on 29.06.2010. From the perusal of the report of the enquiry officer placed on record, it is evident that there is no direct evidence to say that the petitioner was present when the incident took place, but vaguely it is stated by one of the witnesses.

13. In the light of the above, this Court is of the considered view that the impugned order dated 19.05.2011 imposing the punishment of compulsory retirement on the petitioner cannot be sustained for want of competency and jurisdiction. Accordingly, the said order dated 19.05.2011 and the order passed by the appellate authority dated 23.02.2011 are hereby quashed. As this Court is not inclined to remit the matter back to the respondents for passing appropriate orders under Clause (d) of Rule 29 of the CRPF Rules, 1955, and considering the fact that the petitioner admitted his guilt as early as on 30.06.2010, resulting in imposing the punishment of 'severe censure', which was found to be disproportionate to the admitted guilt of the petitioner by the revisional authority, this Court is inclined to modify the punishment of 'severe censure' to that of stoppage of increment for a period of two years with cumulative effect on the petitioner. Accordingly, the petitioner shall be deemed to have continued in service till the date of attaining the age of superannuation, and entitled to all the consequential



benefits. All such benefits shall be paid as expeditiously as possible, at any rate, within a period of three (3) months from the date of receipt of a copy of this order. However, it is made clear that the petitioner is entitled only for 50% of the back wages, as the petitioner has not actually worked from the date of imposition of the punishment of compulsory retirement till the date of attaining the age of superannuation.

14. Accordingly, this writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

21.12.2024

dpa

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1.The Secretary to the Government,
Union of India
Department of Home Affairs,
New Delhi.

2.The Director General,
Central Reserve Police Force,



W.P.No.14747 of

CRPF Head Quarters,
No.13, C.G.O.Complex,
Lodhi Road, New Delhi-11 003

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MUMMINENI SUDHEER KUMAR, J.

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