



W.P.No.5229 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.02.2024
Pronounced on	25.03.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.5229 of 2020

and

WMP.No.6175 of 2020

H.Johnson Devakumar,
ASI (GD), Central Reserve Police Force,
25, Ram Nagar, Near Railway Goods Shed,
Pollachi 642001,
Coimbatore District.

...

Petitioner

Vs.

1. The Deputy Inspector General of Police,
Range Head Quarters,
C.R.P.F., Avadi,
Chennai 600 065.

2. The Inspector General of Police,
Central Reserve Police Force,
Southern Sector, Gayathri Hills,
Hyderabad 500 033.

...

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 records of the 2nd Respondent in respect of the Order in Ref. No.R.13-



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16/2018-SS-Prasha-7 dated 09.12.2019, modifying / enhancing the punishment of the Petitioner to that of dismissal from service, quash the same and consequently direct the Respondents to re- instate the Petitioner in service with all attendant benefits, continuity of service by dropping all further departmental enquiry proceedings against the Petitioner.

For Petitioner : Dr.R.Maheswari

For Respondents : Mr.K.Srinivasamurthy,SPCGSC

ORDER

Heard Dr.R.Maheswari, learned Counsel for the petitioner and Mr.K.Srinivasamurthy, learned Senior Panel Counsel Central Government for the respondents and perused the materials available on records.

2.A Writ of Certiorarified Mandamus has been filed by challenging the impugned order of the 2nd Respondent in Ref. No.R.13-16/2018-SS-Prasha-7 dated 09.12.2019, modifying / enhancing the punishment of the Petitioner to that of dismissal from service and to direct the Respondents to re-instate the Petitioner in service with all attendant benefits, continuity of service by dropping all further departmental enquiry proceedings against the Petitioner.



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WEB COPY 3. The petitioner has been charged with the allegations of the acceptance of bribe; a Commandant was appointed as Enquiry Officer and he concluded after finishing the enquiry that the charges were not proved. However, the enquiry report was not accepted by the 1st respondent, who proceeded to punish the petitioner with the following punishment:

"1. Reduction to a lower stage in the time scale of pay for a period of two years" to No.880953656 ASI(GD) H.Jhonson Devakumar of 142 Bn (ie the undersigned has decided that No. 880953656 ASI(GD) H. Jhonson Devakumar of 142 Bn should be reduced to pay of Rs.39200/- to Rs.38,100/- for a period of two years w.e.f. the date of issue of this order i.e 22/6/2018).

2. This penalty of reduction of pay in the time scale will have the effect of postponing his future increments for two years."

4. The petitioner was kept under suspension during the month of



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August 2018 and the suspension order was revoked on 15.11.2018. For the same charges, the petitioner was issued the show cause notice by contemplating the punishment of removal from service. The petitioner sent a reply. The petitioner's reply was received and an order has been passed on 26.12.2018 by holding that the punishment of removal should not be imposed and the show cause notice issued on 09.08.2018 was set aside. However, subsequently on 09.12.2019, another officer had grabbed the matter and he had chosen to impose the punishment of removing the petitioner from service. Without any rhyme or reason, the punishment has been modified.

5.Dr.R.Maheswari, learned Counsel for the petitioner placed reliance on the Judgment reported in AIR 2010 SC 1613 in Angad Das Vs. Union of India (UOI) and Ors, where the Hon'ble Supreme Court held how an adverse order should not be passed by indiscreet exercise of power. It is worthwhile to extract the relevant part of the judgment below:

"6. Respondent No. 4 would have been fully justified in either accepting or declining the appellant's request for re-



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employment, but astonishingly, on 8th October, 1996, the request letter of the appellant for re-employment was treated as an appeal by the DIG Police, CRPF, Avadi, Madras and the punishment of "compulsory retirement" as awarded by the Commandant, 51 BN, CRPF, was enhanced to that of "removal from service" we.f. 31.5.1996. No provision of law permits him to treat a letter of request for re-employment as an appeal. The DIG (Police) has no power or authority to enhance the sentence of the appellant. We fail to comprehend how such an innocuous and polite letter of request seeking re-employment on compassionate ground can ever receive such an unwarranted and arrogant reaction. The order is wholly arbitrary and illegal."

6. Dr.R.Maheswari cited on another Judgement held in ***Sushil Kumar Tripathy Vs. the Union of India through Ministry of Home Affairs, New Delhi & Ors*** reported in ***2013 SCC Online Pat 1190*** wherein the Hon'ble Supreme Court has observed the following on the same line of improper orders for enhancing the punishment. It is held as under:

"8. After having heard the parties and on consideration of the materials available on record, this Court is of the



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opinion that the entire matter requires reconsideration by the authority concerned. From the conclusions arrived at by the enquiry officer, which has been reproduced above, it is apparent that the charge of misconduct was found to have been not proved, yet the enquiry officer has concluded that it was partially proved. The disciplinary authority, namely, respondent-Dy. Inspector General of Police, CRPF on the basis of the enquiry report inflicted punishment of stoppage of increment for one year without cumulative effect vide order dated 25.11.2002. If the respondent Inspector General of Police CRPF was not satisfied with the quantum of punishment imposed proceeding. The mandate of Rule 29(d) of the Rules has not been strictly followed in its true sense and in its letter and spirit. This Court is also of the considered opinion that in view of the nature of findings recorded by the enquiry officer with respect to article of charge against the petitioner, there is little scope for enhancement of quantum of punishment against the petitioner in terms of Rule 29(d) of the Rules. The appellate and the revisional authorities have failed to apply their independent mind to the facts and materials of the present case, and have mechanically affirmed the impugned order of enhanced



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punishment.

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7. The petitioner was convicted by the trial court in the criminal case and he has filed an appeal. Rule 29 (d) of the Central Reserve Police Force Rules / Regulations /Scheme, 1955 is not applicable to the case of the petitioner because the petitioner has not filed any revision as contemplated under Rule 29(c) or 29 (d) of the Central Reserve Police Force Rules / Regulations /Scheme, 1955. The department has not challenged the order of lowering the punishment by filing any appeal.

8. Mr.K.Srinivasamurthy, learned Senior Panel Counsel Central Government for the respondents submitted that even if the disciplinary authority has imposed the lower punishment, the revisional authority has got *suo moto* power to enhance the punishment by giving show cause notice to the delinquent. The Show cause notice has been given by the Revisional Authority only in terms of Rule 29(d) of the Central Reserve Police Force Rules / Regulations /Scheme, 1955 and that cannot be construed as the second show cause notice for the same charges and the order dated 26.12.2018 has been set aside, since the same was issued by



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the disciplinary authority who is not superior. Hence, a fresh show cause notice has been given on 15.11.2018. It is submitted by the petitioner that show cause need not be always written and it can also be an oral. However, the petitioner was given an opportunity to make his submission. The petitioner was punished for the proved charges of bribe and was convicted by the criminal Court. The revisional authority though thought it fit to enhance the punishment of reduction to a lower stage in the time scale of pay, the removal of service has been done only in accordance with the rule.

9.It is learnt that the petitioner had preferred an appeal against the judgment of the criminal court which ended in conviction against him. Even though the earlier disciplinary proceedings for the same charges got concluded and the petitioner was imposed with a punishment other than removal of service. The 1st respondent had given the show cause on 09.08.2018, stating that there is a proposal for imposing a punishment for removal from service and called for his representation if any. The petitioner submitted his representation on 20.11.2018. However, on 26.11.2018 the 2nd respondent issued an order by cancelling the earlier



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show cause notice issued by the 1st respondent on 09.08.2018 and by issuing a fresh show cause notice. Subsequently an order has been passed on 09.12.2019 after considering the representation and proceeded to dismiss the petitioner from service.

10. So far as the argument with regard to the issuance of two show cause notices is concerned, it is only superfluous. Since the 1st respondent is a disciplinary authority, he has himself issued a show cause notice in respect of enhancement of punishment, the appropriate appellate authority who is the 2nd respondent has cancelled the same and issued a fresh show cause notice in respect of enhancement. Hence, there is no two show cause notices issued as stated by the petitioner.

11. The very reason for issuing the show cause notice in view of the result of criminal proceedings which ended in acquittal. Had it been an acquittal, the authority would have chosen either not to initiate any further proceedings or to initiate further proceedings only in accordance with Rules 27 C (iii) by obtaining proper prior sanction from the competent authority. But again the respondents have submitted that the



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show cause notice for enhancing the punishment has been issued under Rule 29(d).

12. Rule 28 is a provision for an appeal. But Rule 29 (d) gives power to the Director General or the Additional Director General or the Inspector General or the Deputy Inspector General to call for the records of award of any punishment and confirm, enhance, modify or annul the same or make or direct further investigation provided an opportunity to show cause is issued if the punishment is proposed to be enhanced.

13. But it is surprising to see that the rules have given such a power to an authority during the proceedings of revision filed by a member of the armed forces and not in any proceedings brought up by the department. In fact, the appeal and revision provisions would only indicate the appeal or revision filed by the members of the force. This is an anomalous situation, where an authority assumes power through a proceedings of appeal or revision initiated by a member of the force for having aggrieved due to a punishment imposed on him. In the present case, the petitioner has not filed any revision neither had he filed any



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appeal. Nowhere in the rules, it has been stated that any authority can seize power to *suo moto* recall the earlier punishment and impose an enhanced punishment even when there is no appeal or revision being filed.

14. Had the knowledge of the punishment itself not been brought to the knowledge of the competent authority by a member of armed force, no occasion appears to pass an order enhancing the punishment. The rules are in such a manner that the aggrieved party on his own accord invited the attention of his superiors to enhance the punishment while preferring an appeal or a revision. Anyone who prefers appeal or revision would have the intention of reducing/cancelling the punishment already imposed on him. If the authority is given with the power to enhance the punishment on the revision or appeal filed by the individual, no one would prefer to file an appeal or a revision and that would certainly defeat the interest of justice. However in the present case, the rules are not under challenge. But the order of enhancing the punishment of removal from service has been challenged.



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15. Initially the petitioner was issued with a charge on the same set of allegations which was the subject matter of the criminal proceedings and he was imposed with some punishment other than removal from service, at the end of the enquiry. The disciplinary proceedings got completed before the criminal proceedings ended. So there is no question of reopening a disciplinary proceedings that has already been concluded and in which a punishment has also been awarded.

16. However, convicted by a criminal court itself can be a charge for disciplinary action, immaterial of the charges for which the conviction was imposed in the criminal case. The charge for the disciplinary action could be unbecoming conduct on the part of a member of the force, as his conviction might bring disrespect to the force and lower the image of the force. These facts would constitute a fresh charge to initiate a disciplinary action independent of the allegations involved in the criminal case. Without resorting to such a procedure the 1st and 2nd respondents have by invoking Rule 29(d) and issued the show cause notices and then ordered removal from service.



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17. On the side of the petitioner, it is submitted that the order of removal from service is a second punishment for the same charge and hence the petitioner is affected by double jeopardy. In this context, it is relevant to refer the Full bench judgment of the Hon'ble Supreme Court held in *Union of India Vs. P.D.Yadav, reported in 2002 (1) SCC 405..* The contentious point raised in the said case is whether forfeiture of pension in addition to the punishment imposed under Section 71 of the Army Act would amount to double jeopardy. The Hon'ble Supreme Court held that granting or forfeiting a pension would rely to satisfactory service and the other punishment is for misconduct. Hence forfeiting pension of a person who had already suffered a punishment for the charge of misconduct cannot be construed as double punishment and hence, it would not amount to double jeopardy. It is worthwhile to extract the relevant paragraph in *Union of India case (cited supra)* for better appreciation:

25. A contention, though feebly, was advanced on behalf of some of the respondents that forfeiture of pension in addition to the punishment imposed under [Section 71](#) of the Army Act amounted to double jeopardy. In our view, this contention has



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no force. There is no question of prosecuting and punishing a person twice for the same offence. Punishment is imposed under [Section 71](#) of the Army Act after trial by Court Martial. Passing an order under [Regulation 16\(a\)](#) in the matter of grant or forfeiture of pension comes thereafter and it is related to satisfactory service. There is no merit in the contention that the said Regulation is bad on the ground that it authorized imposition of a double penalty; may be in a given case, penalty of cashiering or dismissal from service and the consequential forfeiture of pension may be harsh and may cause great hardship but that is an aspect which is for the President to consider while exercising his discretion under the said Regulation. May be in his discretion, the President may hold that the punishment of cashiering or dismissal or removal from service was sufficient having regard to circumstances of the case and that a person need not be deprived of his right to pension. A crime is a legal wrong for which an offender is liable to be prosecuted and punished but only once for such a crime. In other words, an offender cannot be punished twice for the same offence. This is demand of justice and public policy supports it. This principle is embodied in the well-known maxim "Nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa" meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian



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Constitution, provisions are made relating to personal liberty of citizens and others. [Article 20\(2\)](#) expressly provides that "No one shall be prosecuted and punished for the same offence more than once." Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise for prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law. In the proceedings before General Court Martial, a person is tried for an offence of misconduct and whereas in passing order under [Regulation 16\(a\)](#) for forfeiting pension, a person is not tried for the same offence of misconduct after the punishment is imposed for a proved misconduct by General Court Martial resulting in cashiering, dismissing or removing from service. Only further action is taken under [Regulation 16\(a\)](#) in relation to forfeiture of pension. Thus, punishing a person under [Section 71](#) of the Army Act and making order under [Regulation 16\(a\)](#) are entirely different. Hence, there is no question of applying principle of double jeopardy to the present cases. "

19. If the punishment for removal of service was imposed on a different charge on the basis of a conviction in a criminal case, it would have been a different matter. But the authorities concerned, had recalled the earlier punishment by invoking the powers under Rule 29(d) even in



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the absence of any appeal or revision filed by the petitioner. Such an order is illegal, as it is not in accordance with law. Once the disciplinary proceedings have been initiated on certain charges and it ended in certain punishment, no question of reopening the punishment once again would arise in the absence of any further proceedings taken in the absence of any revision or appeal filed by the department.

20. As stated already the rules of CRPF would only speak about the appeal or revision filed by the member of the force and not by the department and the rules do not have any independent provision which would be given any authority to recall the earlier punishment *suo moto* for enhancing the same. So the order of removal from service by exercising the power under Rule 29 (d) for the situation that has arisen in this case is neither proper nor legal.

21. It is reliably learnt that the petitioner had preferred an appeal on the judgment of conviction, he received from the criminal court and in which the punishment of imprisonment has already also been stated. So under such circumstances and as of now there is no necessity to initiate



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any fresh proceedings even on the basis of order of conviction issued by the criminal court. However that will not preclude the authorities concerned to issue a fresh show cause for initiating a fresh disciplinary proceedings in the event of the appeal filed by the petitioner challenging the order of criminal court is dismissed and again that would only take the procedure of issuing fresh show cause and fresh charge memo and the enquiry and not a short cut procedure of recalling the earlier order of punishment for enhancing the same into a punishment of removal from service.

22. In view of the above stated reasons, this Writ Petition is **allowed** and the impugned order passed by the 2nd Respondent in respect of the Order in Ref. No.R.13-16/2018-SS-Prasha-7 dated 09.12.2019, is set aside. The respondents are directed to reinstate the petitioner within a period two weeks from the date of receipt of copy of this order with all other attendant benefits. However, the respondents are at liberty to issue a fresh show cause notice and to initiate a fresh disciplinary proceedings if it is so decided in the event of the criminal



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appeal filed by the petitioner becomes unsuccessful. No costs.
consequently connected miscellaneous petition is closed.

25.03.2024

Index : Yes
Internet : Yes
Speaking
Neutral Citation : Yes

jrs



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To1. The Deputy Inspector General of Police,
Range Head Quarters,
C.R.P.F., Avadi,
Chennai 600 065.

2. The Inspector General of Police,
Central Reserve Police Force,
Southern Sector, Gayathri Hills,
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R.N.MANJULA, J.

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