

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-2146-2017 (O&M)
Date of Decision: 13.05.2024.

...Appellants

Vs.

...Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Ms. Shewata Sanghi, Advocate for the respondent.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The appellants have assailed the order dated 22.09.2017, passed by the learned Single Bench, in CWP-1782-1998, whereby the punishment order dated 08.02.1995, appellate authority's order dated 01.07.1995 and reviewing authority's order dated 19.02.1997, have been set aside.

2. Learned counsel for the appellants submits that the order passed by the disciplinary authority which was modified by the appellate authority did not warrant any interference and submits that since the penalty of compulsory retirement awarded by the disciplinary authority could not have been passed as the respondent had not completed 25 years of service, the appellate authority converted the punishment from compulsory retirement to that of removal from service. Learned counsel submits that the punishment was, therefore, appropriate and correct, moreover, as the Inquiry Officer has reached to the conclusion that the respondent had committed the delinquency.



It is submitted that a charge sheet was served upon the respondent for remaining willfully absent from duty from 23.04.1989 to 03.02.1994. Another charge levelled was of non-obeying the orders of posting on the post of Assistant Manager (Cash). Learned counsel submits that while the order of 20.03.1989, challenged by the respondent was not disturbed by the learned Single Bench and it had also reached to the conclusion that the respondent had committed serious misdeeds by remaining willfully absent from duty from 23.04.1989 to 03.02.1994. The consequences drawn have resulted in acquitting the respondent from charges and the punishments have been set aside, which could not have been done.

3. Learned counsel for the respondent has supported the findings returned by the learned Single Judge and submits that the learned Single Judge has found that the disciplinary authority did not take into consideration the respondent's contention with regard to inquiry report and without making any reference to the respondent's plea with respect to the inquiry report proceeded to pass the order of compulsory retirement, and therefore, the punishment order has rightly been set aside by the learned single Bench. She further submits that so far as the order passed by the Appellate Authority of enhancing the punishment from compulsory retirement to that of removal from service is concerned, the same has been passed without giving any opportunity of hearing and the order, therefore, has rightly been set aside. The reviewing authority order dated 19.02.1997, is laconic and does not give reasons, hence, it has also been rightly set aside.

4. Learned counsel for the respondent has invited the attention of this Court to the provisions of the State Bank of India Officer's Service Rules, 1992 and specifically to Rule 68 (7)(ii) to submit that before a penalty



is awarded, (hereinafter referred to as 'the Rules 1992') opportunity of hearing is necessary and since the rule was in force, the violation thereof, has been correctly noticed by the learned Single Bench, and therefore, the order of punishment has rightly been set aside.

5. Learned counsel relies upon the judgment passed in the case of State Bank of India vs. R.K. Chakraborty and another 2009 (3) SCT 405, in support of her contentions.

6. Learned counsel for the appellants on the other hand relies on the subsequent judgment passed by Hon'ble the Supreme Court in State Bank of India and others vs. B.R. Saini 2018 (11) SCC 83, to submit that the judgment in R.K. Chokraborty's case (supra) was explained to mean that the only requirement is of giving another opportunity of hearing and since the inquiry report was provided and the respondent has submitted representation, the necessary requirement of hearing has been complied with.

7. We have considered the submissions and find that so far as the inquiry report and findings arrived at by the Enquiry Officer are concerned, the learned Single Bench has not disturbed the said findings. Thus, the charges have been held to be proved against the respondent. The question examined by the learned Single Bench is only with reference to the order of compulsory retirement passed by the disciplinary authority that is the appointing authority also and the order passed by the appellate authority as well as the reviewing authority. It would be apposite to quote rule 68 (1)(i) and Rule 68(7)(ii) of the Rules, 1992, which provide as to how action has to be initiated and procedure for disciplinary action to be followed, as under:-

“68(1) (ii) The Disciplinary Authority or any Authority higher than it may impose any of the penalties in rule 67 on an officer.



Provided that where the Disciplinary Authority is lower in rank than the Appointing Authority in respect of the category of officers to which the officer belongs, no order imposing any of the penalties specified in clause (e), (f), (g), (h), (i) & (j) of rule 67 shall be made except by the Appointing Authority or any authority higher than it on the recommendations of the Disciplinary Authority.

68(7)(ii) Without prejudice to what is stated in clause (i) above and notwithstanding anything contained in sub-rules (2), (3) and (4), the Disciplinary Authority or the Appointing Authority, as the case may be, may impose any of the penalties specified in rule 67, if the officer has been convicted of a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. Provided that before a penalty is imposed in terms of this clause, the officer employee may be given an opportunity of making representation on the penalty to be imposed, before any order is made.

8. As per rule 67 of the Rules, 1992, following major penalties have been provided :-

“Major Penalties:-

(f) save as provided for in (e) above reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the officer will earn increments to pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;



(g) reduction to a lower grade or post;

(h) compulsory retirement;

(i) removal from service;

(j) dismissal.”

9. The compulsory retirement is one of the major penalties while removal from service is separate penalty which is at a higher pedestal with dismissal being the most severe penalty provided therein. We are in agreement that the learned Single Bench so far as the enhancement of penalty by the appellate authority is concerned, the same could not have been enhanced without following the provisions contained in Rule 69(2)(ii), which provide that before such penalty is enhanced, an opportunity of hearing is to be provided. The contention of learned counsel for the appellants that because the compulsory retirement could only be on completion of 25 years of service and therefore, the appellate authority resorted to passing orders of removal from service is concerned, we are not satisfied with the contentions. Persons can seek voluntary retirement on completion of 20 years of service. So far as compulsory retirement in normal course is concerned, a person can attain superannuation and would be entitled to full pension on completion of 25 years of service. However, compulsory retirement under the discipline rules is a punishment which is to be independently understood. Thus, any person may be awarded punishment of compulsory retirement depending upon the delinquency committed and if such a person is compulsory retired, he may or may not be entitled to full pension depending upon the number of years of service which he has rendered and may get proportionate pension. However, the fact of not getting full pension on compulsory retirement, would not prevent a disciplinary authority from passing an order of



punishment under rule 67(j) as it is a separate punishment altogether, as has been held by Hon'ble the Supreme Court recently in Union of India and others vs. Santosh Kumar Tiwari, 2024 INSC 392 and held as under:-

“28. As regards Section 11 being exhaustive of the minor punishments which could be imposed, the intention of the legislature appears to the contrary. Section 11 expressly uses the phrase “subject to any rules made under this Act” before “award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments”. Importantly, while prescribing punishment for “more heinous offences” and “less heinous offences” in Sections 9 and 10 respectively, the phrase “subject to any rules made under this Act” is not used. The expression “subject to” conveys the idea of a provision yielding place to another provision or other provisions subject to which it is made.

30. In light of the discussion above, we are of the view that while enacting the CRPF Act the legislative intent was not to declare that only those minor punishments could be imposed as are specified in Section 11 of the CRPF Act. Rather, it was left open for the Central Government to frame rules to carry out the purposes of the Act and the punishments imposable were subject to the rules framed under the Act.

32. From above, it is clear that ‘control’ is a word of wide amplitude and includes disciplinary control. Therefore, in our view, if the CRPF Act envisages vesting of control over the Force in the Central Government and the various punishments imposable under Section 11 are subject to the rules made under the Act, the Central Government in exercise of its general rule-making power, to ensure full and effective control over the Force, can prescribe punishments other than those specified in that section, including the punishment of compulsory retirement.



33. It cannot be gainsaid that compulsory retirement is a well-accepted method of removing dead wood from the cadre without affecting his entitlement for retirement benefits, if otherwise payable. It is another form of terminating the service without affecting retirement benefits. Ordinarily, compulsory retirement is not considered a punishment. But if the service rules permit it to be imposed by way of a punishment, subject to an enquiry, so be it. To keep the Force efficient, weeding out undesirable elements therefrom is essential and is a facet of control over the Force, which the Central Government has over the Force by virtue of Section 8 of the CRPF Act. Thus, to ensure effective control over the Force, if rules are framed, in exercise of general rule-making power, prescribing the punishment of compulsory retirement, the same cannot be said to be ultra vires Section 11 of the CRPF Act, particularly when sub-section (1) of Section 11 clearly mentions that the power exercisable therein is subject to any rules made under the Act. We, therefore, hold that the punishment of compulsory retirement prescribed by Rule 27 is intra vires the CRPF Act and is one of the punishments imposable. Issues (i) and (ii) are decided in the above terms.”

10. In view of the above, the appellate authority's order has been rightly set aside and we endorse the same. As regards the setting aside the order passed by the disciplinary authority dated 08.02.1995 awarding compulsory retirement to the petitioner is concerned, we are not in agreement with the view taken by the learned Single Bench and find that the punishment awarded to the respondent is based on the inquiry report and conclusions whereof have not been disturbed by the learned Single Bench. Once the conclusion drawn by the Inquiry Officer have been affirmed by the disciplinary authority and it passed a punishment order, there is no reason for this Court to interfere with such punishment order. Law is well settled in the



case of Union of India vs. P. Gunasekaran 2015 (2) SCC 610, relating to the scope of interference by this Court as affirmed by Hon’ble the Supreme Court again in Central Industrial Security Force and others vs. Abrar Ali (2017) 4 SCC 507.

11. We also find that so far as the R.K. Chakraborty’s case (supra) is concerned, the same was explained in the judgment of R.K. Saini’s (supra).

12. In view of the above, the order passed by the learned Single Bench to the extent whereby it set aside the punishment order dated 08.02.1995 is found to be erroneous and is accordingly set aside. The order, therefore, is modified as under:-

The appellate authority’s order dated 01.07.1995 and the reviewing authority’s order dated 19.02.1997 are set aside. The original punishment order dated 08.02.1995 is restored. The respondent shall be treated as compulsory retired with effect from the date, the order was passed. The consequential benefits of compulsory retirement shall follow accordingly.

13. The appeal is partly allowed in the aforesaid terms.

14. No costs.

15. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

13.05.2024.
rajesh

- | | | |
|-------------------------------|---|--------|
| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |