

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

**Before:**

**The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 14345 of 2019**

**With**

**CAN 1 of 2024**

**Subrata Mallik**

**VS.**

**Union of India & Ors.**

For the petitioner

: Mr. Arabinda Chatterjee, Sr. Advocate  
Mr. Arkadipta Sengupta

..... advocates

For the Respondents

: Mr. Ajit Kr. Chaubey,  
Mr. Sourav Mandal,  
Mr. Vinayak Chaubey,  
Mr. Ritika Pipalwa

..... advocates

Reserved on

: 06.02.2025

Judgment on

: 06.05.2025

**Hiranmay Bhattacharyya, J.:-**

1. Petitioner has prayed for issuance of a writ in the nature of Mandamus commanding the respondents to quash the Memorandum of charges issued by the 5<sup>th</sup> respondent vide office order dated July 10, 2019, the letter dated June 11, 2018 as well as the findings of the Preliminary Enquiry.
2. Petitioner is serving as Sub-Inspector (M) in the Central Reserve Police Force (for short "CRPF"). The Annual Performance Appraisal Reports (for short "APAR") for the periods 01.04.2015 to 02.11.2015 and 03.11.15 to 09.02.2016 were communicated to the petitioner. Petitioner claims to have submitted a representation dated October 18, 2016 against the adverse remarks and grading given by the Reporting Officer/Reviewing Officer in the APAR for the aforesaid periods. Petitioner also submitted a representation

dated March 5, 2018 protesting against the adverse remarks in the APAR. Inspector General Central Zone, Headquarter, Kolkata, rejected the representation of the petitioner dated March 5, 2018 by an order dated June 11, 2018 on the ground that the same was time barred. After receiving the order dated 11.06.2018, petitioner submitted a further representation dated October 3, 2018. Petitioner claims to have been censured and/or cautioned by a letter dated January 4, 2019. Thereafter, the respondent authorities started preliminary enquiries against the petitioner. Subsequently, the Memorandum of charges vide Office Memorandum dated July 10, 2019 was served upon the petitioner.

3. Being aggrieved by the issuance of the Memorandum of Charges and the preliminary enquiries, the petitioner filed this writ petition.
4. The respondents contested the writ petition by filing an affidavit-in-opposition denying the material allegations contained in the writ petition. It was specifically denied that the petitioner was issued “censure” by the Commandant 157 Battalion for using disrespectful/deragatory language against the Higher/Senior officials. It was stated therein that the petitioner was only “warned” by the Commandant. Thereafter, the Additional D.G., Central Zone by a letter dated January 29, 2019 requested initiation of disciplinary action against the petitioners. Accordingly, the Disciplinary Authority directed preliminary enquiries to be conducted. Enquiry Officers appointed to conduct the preliminary enquiries found prima facie proof of the allegations levelled against the petitioner. On the basis of the Preliminary Enquiry Report, the Commandant 157 Battalion recommended for initiating a disciplinary action against the petitioner. Pursuant thereto the Memorandum of charge was served upon the petitioner.
5. Mr. Chatterjee, learned Senior Advocate appearing in support of the writ petition placed reliance upon Clause 14.12 of Standing Order No. 04/2015 and contended that the authorities ought to have withheld the representation of the petitioner against adverse remarks in APAR if, according to them, the same contained any disrespectful or improper

language. Thus, according to Mr. Chatterjee, no punitive action could have been taken against the petitioner in view of Clause 14.12. By referring to the letter dated January 04, 2019, Mr. Chatterjee contended that the petitioner was censured by the Commandant, 157 Battalion for using certain unacceptable language in the letter dated October 03, 2018. He contended that the petitioner accepted the order of censure without demur and, therefore, subsequent initiation of preliminary enquiries suffers from blatant violation of statutory provisions along with Standing Order. Mr. Chatterjee contended that Rule 29(a) of the CRPF Rules, 1955 stipulates that a member of the Force, whose appeal has been rejected by the competent authority can prefer a revision petition. According to Mr. Chatterjee the question of invocation of Rule 29 cannot arise in the case on hand as the petitioner has accepted the punishment inflicted upon him vide letter dated January 4, 2019 and has not preferred any appeal against such decision/order. Mr. Chatterjee submitted that Rule 29(d) can be invoked only to challenge the order passed under Rule 29(c) of the Central Reserve Police Force Rules, 1955.

6. Mr. Chaubey, learned Advocate representing the respondents seriously disputed the contentions raised by Mr. Chatterjee. He submitted that the representation dated 18.10.2016 claimed to have been submitted by the petitioner was never received by the competent authority. He contended that the 1<sup>st</sup> representation dated 05.03.2018 was rejected by an order dated 11.06.2018 on the ground that it was time barred. Petitioner submitted another representation dated 03.10.2018 wherein he repeated allegations against senior officers and used disrespectful and derogatory language. Mr. Chaubey further contended that a warning letter was issued on 04.01.2019 which is not a punishment as per Rule 2(iii) of Office Memorandum of Ministry of Personnel, Public Grievances and Pension. He submitted that the DIG (Range Ajmer) on 15.03.2019 directed that a preliminary inquiry be conducted against the representation dated 03.10.2018. He contended that as the warning letter does not commensurate with the gravity of the

misconduct committed by the petitioner, the DIG (Range, Ajmer) invoked his power under Rule 29(d) of the 1955 Rules.

7. In reply, Mr. Chatterjee, learned Senior Advocate placed reliance upon a decision of the Hon'ble Single Bench of the Madras High Court in **W.P. No. 5229 of 2020 & WMP No. 6175 of 2020** in the case of **H. Johnson Devakumar, ASI(GD), Central Reserve Police Force vs. The Deputy Inspector General of Police & Another** reported at **2024 MHC 1481** in support of his contention that invocation of the powers under Rule 29(d) in the absence of any appeal or revision filed by the petitioner is illegal and not in accordance with law. Mr. Chatterjee further contended that even the Hon'ble Single Judge of the High Court of Jammu & Kashmir and Ladakh in **SWP No. 2532/2002**, in the case of **Madan Gopal Singh vs. Union of India & Ors.** passed an order on 06.10.2023 holding that a person cannot be subjected to another enquiry and another punishment in respect of the same facts and allegations. Mr. Chatterjee placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Afcons Infrastructure Limited and Another vs. Cherian Varkey Construction Company Private Limited and Ors.** reported at **(2010) 8 SCC 24** in support of his contention that the Courts may have to even modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.
8. Heard the learned advocates for the parties and perused the materials placed.
9. Admittedly, the APARs for the period 01.04.2015 to 02.11.2015 and 03.11.2015 to 09.02.2016 which were sent to the petitioner vide letters dated 20.09.2016 and 23.09.2016 were received by the petitioner on 07.10.2016. Petitioner claims to have submitted a representation dated 18.10.2016 against the adverse entries in the said APARs. Petitioner submitted another representation on March 05.2018 as, according to the petitioner, the earlier representation dated 18.10.2016 was not disposed of.

10. Standing Order No. 04/2015 deals with preparation and maintenance of APAR of officers. Para 13 deals with communication of APAR. Sub-para (iv) of Para 13 states that the concerned Officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR.
11. The Inspector General, Central Zone, Headquarter, Kolkata took note of the reply of the Commandant vide letter dated 02.05.2018 that there is no record available in the Unit/Battalion regarding receipt/submission of the representation dated 18.10.2016 from the petitioner and observed that the representation dated March 05, 2018 was submitted after a lapse of considerable time limit i.e., 1 year and 6 months.
12. The Inspector General, Central Zone, Headquarter, Kolkata in his order dated June 11, 2018 returned a finding that the claim of the petitioner that he submitted the representation dated 18.10.2016 is false and the representation dated 03.05.2018 cannot be admitted being time barred and the same was rejected.
13. After receipt of the order dated 11.06.2018, the petitioner submitted another representation dated October 03, 2018.
14. The Commandant 157 Battalion CRPF issued a letter dated 04.01.2019 wherein it was stated that in the letter of the petitioner dated 03.10.2018 which was addressed to the Special Director General, Central Zone, certain unacceptable language has been used against the Higher Establishment which is against the provisions as contained in para 14.10 of S.O. 04/2015. By the said letter petitioner was cautioned.
15. Mr. Chatterjee would contend that the petitioner was inflicted with the punishment of "Censure" by issuing the letter dated 04.01.2019. According to him, no further enquiries and/or disciplinary proceedings could have been initiated on the basis of statements contained in the letter dated 03.10.2018 as the petitioner accepted the order of "Censure" without demur.

16. At this stage it would be relevant to take note of the Rule 29 of the CRPF Rules, 1955 for which the same is extracted hereinafter.

*"29. Revision.—*

*(a) A member of the Force whose appeal has been rejected by a competent authority may prefer petition for revision to the next Superior Authority. The power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed.*

*(b) The procedure prescribed for appeals under sub-rules (c) to (g) of rule 28 shall apply mutatis mutandis to petitions for revision.*

*(c) The next superior authority while passing orders on a revision petition may at its discretion enhance punishment: Provided that before enhancing the punishment the accused shall be given an opportunity to show cause why his punishment should not be enhanced: Provided further that an order enhancing the punishment shall, for the purpose of appeal, be treated as an original order except when the same has been passed by the Government in which case no further appeal shall lie, and an appeal against such an order shall lie—*

*(i) to the Inspector General, if the same has been passed by the Deputy Inspector General; and*

*(ii) to the Director General if the same has been passed by the Inspector General; and*

*(iii) to the Central Government, if the same has been passed by the Director General.*

*(d) The Director General or Additional Director General 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."*

17. Rule 29 deals with the power of revision.
18. Rule 29(a) enables a member of the Force whose Appeal has been rejected to prefer petition for revision before the next superior authority. Such power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed.
19. Clause (c) states that the next superior authority while passing orders on a revision may at its discretion enhance punishment. However, before enhancing the punishment the accused shall have to be given an opportunity to show cause as to why his punishment should not be enhanced.
20. Second proviso to Clause(c) provides for a right of appeal against an order enhancing the punishment.
21. Upon a conjoint reading of Clauses (a), (b) and (c) of Rule 29, this Court is of the considered view that if a member of the Force, whose appeal has been rejected by a competent authority, prefers a revision petition to the next superior authority, such authority may in its discretion enhance the punishment after giving an opportunity to the accused to show cause as to why his punishment should not be enhanced.
22. The petitioner has not preferred any appeal against any order. Therefore, the question of filing a revision petition by the petitioner under Clause (a) of Rule 29 does not arise.
23. The question that falls for consideration in the case on hand is whether the authorities have the power to enhance the punishment or direct further investigation when the accused has not preferred any petition for revision.

24. Clause (d) of Rule 29 empowers the Director General or Additional Director General or the Inspector General or the Deputy Inspector General to call for the records of award of any punishment or make or direct further investigation to be made before passing such order.
25. Power of revision under Clause (d) of Rule 29 has been vested upon some specified high ranking authorities. Such authorities have been vested with the power to call for the records of award of punishment and confirm, enhance, modify or annul the same. Such authorities have also been vested with the power to make or direct further investigation to be made before passing order. Proviso to Clause (d) mandates that an opportunity to show cause either orally or in writing should be given to the accused as to why his punishment should not be enhanced.
26. Clause (a) of Rule 29 of the 1955 Rules enables a member of the Force to prefer a revision petition. Clause (c) empowers the next superior authority to enhance punishment while passing an order on a revision petition. The expression “on a revision petition” used in Clause (c) is of utmost relevance. Thus, the power to enhance punishment under Clause (c) can be exercised only while passing orders on a revision petition. The order enhancing the punishment under Clause (c) is an appealable one in view of the proviso appearing after Clause (c) of Rule 29.
27. Clause (d) vests powers upon certain specified high ranking officers, the power of revision. Clause (d) empowers only such specified authorities to call for the records of award of any punishment and confirm, enhance, modify or annual the same or make or direct further investigation to be made before passing such order.
28. A revision petition at the instance of the Member of the Force is a prerequisite for exercising the power of enhancement of punishment under Clause (c) of Rule 29. The expression “while passing orders on a revision petition” is absent in Clause (d) of Rule 29. This Court holds that the power

under Clause (d) can be exercised in the absence of a revision petition being filed by a member of the Force.

29. Clause (d) confers very wide powers of revision and may be for such reason that such power has been vested upon specified high ranking officers whereas the power of revision at the instance of a member of the Force has been vested upon the next superior authority and the orders passed under Clause(c) has been made appealable whereas there is no provision for any appeal against an order passed under Clause (d).
30. For all the reasons as aforesaid, this Court holds that the power of revision under Clause (d) is neither controlled nor subject to Clauses (a), (b) and (c) of Rule 29 and Clause (d) is independent of Clauses (a), (b) and (c) and operates in a completely different field.
31. The Hon'ble Supreme Court in ***Afcons Infrastructure Ltd.*** (supra) reiterated its observations in ***Shri Mandir Sit Ramji vs. Lt. Governor of Delhi*** reported at **(1975) 4 SCC 298** wherein it was held that when a procedure is prescribed by the legislature, it is not for the Court to substitute a different one according to its notion of justice.
32. If Rule 29 more particularly Clause (d) thereof is to be interpreted in the manner as argued by Mr. Chatterjee, it would amount to substituting a different procedure in place of the procedure prescribed by the legislature which is impermissible.
33. The decision in the case of ***Madan Gopal Singh*** (supra), supports the view taken by this Court.
34. In ***H. Johnson Devakumar*** (supra) initially the Memorandum of Charges on the same set of allegations which was the subject matter of criminal proceedings was served and some punishment other than removal from service was imposed at the disciplinary enquiry which was completed before the criminal proceedings ended. Subsequently, the petitioner therein was convicted by the criminal court. Instead of initiating a disciplinary action on

a fresh charge, Rule 29(d) was invoked. On such facts it was held that invocation of Rule 29(d) was neither legal nor proper. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

35. Turning back to the facts of the case on hand this Court finds that the authorities noted that the petitioner in his representation dated 03.10.2018 used disrespectful/derogatory languages against his senior functionaries. It was also observed that the petitioner made false complaint/allegations against Sri. D. Ghosh, Deputy Commandant of Central Zone, Headquarter about his being enlisted in CRPF on fake date of birth/education certificate and sent such complaints to Hon'ble Prime Minister of India, Hon'ble Home Minister, DG, CRPF and other higher dignitaries directly bypassing the prescribed channel.
36. It appears from the letter dated 29.01.2019 issued by Additional Director General, Central Zone that the said authority noted that in spite of directions being given to take disciplinary action against the petitioner vide letter dated 14.11.2018, only a "warning letter" has been issued to the petitioner by the Commandant 157 Battalion. The said authority in the letter dated 29.01.20019 opined that warning letter is not commensurate with the gravity of misconduct committed by the petitioner since the case relates to an act and conduct unbecoming of a Government Servant in which he used disrespectful and derogatory languages against his senior functionaries in the department.
37. Pursuant to the direction of the Deputy Inspector General Range, Ajmer, Preliminary Enquiries were conducted. Memorandum of charges vide Memo dated 10.07.2019 was served upon the petitioner containing two articles of charges.
38. The first charge against the petitioner was that in the representation dated 03.10.20108 he used disrespectful and derogatory languages against the then Inspector General, Central Zone, CRPF, Kolkata, the then Deputy Inspector General, CRPF, Kolkata, the then Assistant Commandant and the

then Subedar Major and such act done by the petitioner is unbecoming and a serious disciplinary matter.

39. The second charge against the petitioner is that he had disobeyed the directions of his superiors, neglect of his duty and he has raised certain allegations against D. Ghosh, Assistant Commandant without any evidence and are false and baseless in nature and such letter dated 03.10.2018 was sent bypassing the prescribed channel.
40. The Memorandum of Charges was issued by the Deputy Inspector General, Ajmer Range, CRPF. This Court finds that the authority issuing the Memorandum of Charges is an authority specified under Clause (d) of Rule 29 of 1955 Rules. This Court holds that power to make or direct further investigation by specified authorities is preserved under Rule 29(d) even if no revision petition is filed by the member of the Force.
41. Accordingly the issue is answered in the affirmative and against the writ petitioner.
42. To the mind of this Court, mere acceptance of the Caution letter/warning letter by the petitioner without demur cannot denude the authorities specified under Clause (d) of Rule 29 of its power to make or direct further investigation.
43. For all the reasons as aforesaid, this Court is not inclined to accept the contention of Mr. Chatterjee that invocation of Rule 29(d) in the case on hand, is illegal and not in accordance with law in the absence of any appeal or revision petition filed by the petitioner.
44. In view of the discussions made hereinbefore, to the mind of this Court, the direction to conduct preliminary enquiries as well as the preliminary enquiries and the issuance of the Memorandum of Charges was in accordance with the provisions of the relevant statute and the 1955 Rules framed thereunder.

45. This Court is, therefore, not inclined to interfere with the action taken by the respondent authorities.
46. Accordingly, the writ petition stands dismissed. There shall be, however, no order as to costs.
47. Accordingly, CAN 1 of 2024 stands disposed of.
48. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

**(HIRANMAY BHATTACHARYYA, J.)**

**Later:**

**Date: 06.05.2025**

After this judgment is pronounced, Mr. Chatterjee, learned Senior Advocate submits that during the pendency of this writ petition there was an interim order in favour of the petitioner. Mr. Chatterjee further submits that in view of this order the authorities may pass a final order in the disciplinary enquiry proceedings. He prays for a limited stay of the effect of the inquiry proceedings.

Such prayer is opposed by the learned advocate for the respondents.

However, considering the fact that the issue relates to interpretation of a Rule of the CRPF Rules, 1955, there shall be an order of stay restraining the respondent authorities from passing any final order in the pending disciplinary proceedings for a period of 30 days from the date of receipt of the server copy of this order.

**(HIRANMAY BHATTACHARYYA, J.)**