HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

…

WP(C) No. 2799/2019

Reserved on : 20.03.2025
Pronounced on: 03 .04.2025

HC/GD Harish Chander 45 Bn CRPF No. 913112122 son of Adan resident of village Tesgora Post Palatwada Thana Sangori District Chindwara M.P

……. Petitioner(s)

Through: Mr. Manik Gupta Advocate

Versus

UOI and others ……Respondent(s)

Through: Mr. R.S.Jamwal CGSC.

CORAM:HON'BLE MR JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, through the medium of the present petition, has challenged order dated 07.03.2019 issued by respondent No.3, whereby the punishment of compulsory retirement from service has been imposed upon him and order dated 09.02.2018 issued by respondent No.4, reinstating the petitioner in service, has been set aside.

2 According to the petitioner, he had joined the service in CRPF on 01.04.1991 as a Havaldar/GD and was posted in 45th Battalion at Sumbal, District Bandipora, Kashmir. The petitioner proceeded for five days leave on 09.05.2016 and was to resume his duties on 14.05.2016. However, due to compelling circumstances, he could not resume his duties. It has been submitted that the petitioner fell ill, as a result of which, he left his registered original residential

house in Chindwara, Madhya Pradesh, and went to reside in the city area for his treatment which falls in Ward No.3 Ambara, District Chindwara, which is approximately 80 kms away from his original registered residence. It has been further submitted that during his illness, the petitioner was dismissed from service by the Commandant, 45th Battalion CRPF, vide his order dated 04.04.2017.The said order came to be challenged by the petitioner in an appeal before respondent No.4, who, vide order dated 09.02.2018, modified the order of the Commandant and reinstated the petitioner back in service, while imposing a penalty of stoppage of annual increments for two years from the date of accrual of next increment i.e from 01.07.2018 to 30.06.2020.

3 The aforesaid order of respondent No.4 was kept in abeyance by respondent No.3 in terms of his order dated 21.02.2018 and was ultimately set aside by the said respondent in terms of order dated 12th July, 2018 and order dated 04.04.2017 regarding dismissal of the petitioner from service as imposed by the Commandant was upheld.

4 Against the aforesaid order passed by respondent No.3, the petitioner is stated to have made a representation before respondent No.2. Vide order dated 26.12.2018, respondent No.2 quashed order dated 12.07.2018 passed by respondent No.3 and remanded the case to him with a direction to issue a show cause notice to the petitioner as per the relevant rules and to decide the case on merits by passing a reasoned and speaking order. Pursuant to the

aforesaid order of respondent No.2, respondent No.3 issued a show cause notice to the petitioner which was responded to by him in terms of his representation dated 07.03.2019. Respondent No.3, after considering the representation of the petitioner, issued the impugned order whereby punishment of compulsory retirement from service was imposed upon the petitioner and order of his reinstatement in service was set aside.

5 The petitioner is aggrieved of the impugned order passed by respondent No.3 on the ground that the same is based on a unilateral departmental inquiry, as no notice regarding the same was ever served upon the petitioner. It has been contended that the punishment imposed upon the petitioner is grossly disproportionate to the gravity of offence committed by him. It has also been contended that respondent No.4, while reinstating the petitioner in service, had considered the medical record produced by the petitioner and, therefore, it was not open to respondent No.3- the Revisional Authority to re-appreciate the material on record.

6 It has been further contended that respondent No.3 does not have *suo moto* power of revision and the said authority can excise revisional power only if an application is made by a delinquent official. It has also been contended that while enhancing punishment of the petitioner, respondent No.3 did not follow the procedure prescribed under CRPF Rules. It has been further contended that the offence committed by the petitioner falls in the category of less heinous offences as reflected in Section 10 of the CRPF Act, as such,

it was not open to respondent No.3 to impose a punishment of compulsory retirement upon the petitioner.

7 The respondents have contested the writ petition by filing reply thereto in which they have submitted that the petitioner was transferred to 45th Bn CRPF, where he reported for duty on 23.12.2015. He proceeded on five days leave w.e.f 09.05.2016 and he was to report for duty on 14.05.2016. It has been submitted that the petitioner failed to report for duty and vide communication dated 02.06.2016 addressed to the petitioner, he was asked to report for duty and that despite this, the petitioner did not report for duty, thereby disobeying the lawful orders of the competent authority. According to the respondents, the petitioner committed the offence of disobedience, neglect of duty or remissness in discharge of his duties in terms of Section 10(m) of the CRPF Act read with Rule 27 of the CRPF Rules. Consequently, on 22.06.2016, a warrant of arrest was issued to SSP, District Chindwara, Madhya Pradesh for apprehension of the petitioner, but he could not be apprehended, nor did he report for duty.

8 It has been further submitted that vide order dated 23.07.2016, a Board of Officers was detailed to conduct a Court of Inquiry in order to find out the circumstances under which the petitioner had overstayed the leave without prior intimation/permission of the competent authority, whereafter, the petitioner was declared as a 'deserter' vide order dated 24.08.2016. A departmental inquiry was ordered against the petitioner in terms of Section 11(1) of the CRPF Act. The memorandum of charges dated

06.09.2016 along with articles of charge and other connected documents were sent to the petitioner through registered post vide communication dated 06.09.2016 and he was given 10 days' time to respond. However, the petitioner did not respond and did not make any correspondence with the respondents. Vide office order dated 18.09.2016, Sh. Y.K. Rahangdale, 2-I/C of 45th Battalion CRPF was appointed as an Inquiry Officer, and Sh. A.S.M Nadaf of Hqr/45 Bn CRPF was appointed as the Presenting Officer. Vide memo dated 16.10.2016, the petitioner was asked to appear before the Inquiry Oficer on 28.10.2016 at 1000 hours but he failed to appear before the I.O, as a result whereof, an ex parte departmental inquiry was initiated.

9 It has been submitted by the respondents that the Inquiry Officer recorded the statements of departmental witnesses and, after doing so, copies of these statements along with exhibited documents were sent to the petitioner at his home address through registered post and he was directed to submit his defence evidence/documents vide memo dated 01.11.2016. Vide office order dated 30.11.2016, a new Inquiry Officer, Sh. Sushil Kumar Thakur, was appointed because of transfer of the earlier Inquiry Officer, and this was also conveyed to the petitioner. After holding the inquiry, the Inquiry Officer, vide his communication dated 22.01.2017, sent a copy of the inquiry report to the petitioner and submitted his report to the Disciplinary Authority. The petitioner did not submit any representation against the inquiry report within the stipulated 15 days' period. As per the report of the

Inquiry Officer, the charges leveled against the petitioner were found established and, on the basis of the report of Inquiry Officer, the Commandant, vide his order dated 04.04.2017, imposed the punishment of dismissal from service upon the petitioner.

10 The respondents have admitted the facts narrated by the petitioner as regards the order passed by the appellate authority, i.e respondent No.4, on 09.02.2018 whereby the petitioner's punishment was reduced to stoppage of two annual increments with cumulative effect. It has also been admitted that the said order was revised by respondent No.3, in the exercise of suo moto powers under Section 29 (d) of CRPF Rules, 1955 and order dated 12.07.2018 came to be passed by the said authority whereby order of dismissal from service passed against the petitioner was upheld and the order of the Appellate Authority whereby he was re-instated in service was set aside. It is also admitted by the respondents that against the aforesaid order, the petitioner filed a representation before respondent No.2, who, vide order dated 26.12.2018, set aside the order of respondent No.3 and remanded the case to the said authority for issuing a show cause notice to the petitioner asking him as to why his punishment should not be enhanced, with a further direction to pass a reasoned and speaking order. It has also been admitted by the respondents that, after considering the representation of the petitioner, the impugned order came to be passed.

11 According to the respondents, the impugned order of compulsory retirement from service imposed upon the petitioner has

been implemented, and all pension and gratuity benefits would be paid to the petitioner as per the Rules. It has been contended by the respondents that all the procedural requirements have been adhered to by them while passing the impugned order against the petitioner.

12 I have heard learned counsel for the parties and perused record of the case, including the record relating to the inquiry, as well as the record of the appellate/revisional authority.

13 Learned counsel for the petitioner has vehemently argued that respondent No.3 did not have the power to enhance the punishment imposed upon the petitioner, that too, by exercising the revisional power *suo moto*. According to the learned counsel, as per the provisions contained in Rule 29 of CRPF Rules, the revisional powers can be exercised only if a member of the Force, whose appeal has been rejected by a competent authority, prefers a petition for revision to the next superior Authority and that there is no *suo moto* power with the revisional authority to enhance the punishment imposed upon a member of the Force.

14 In the above context, the provisions contained in Rule 29 of CRPF Rules are required to be noticed. The same read as under:

> **"***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

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

(d)The Director-General or Additional Director-Genera or the Inspector-General or the Deputy Inspector-General may 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 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".

15 From a perusal of the aforesaid provisions, it is clear that as per clause (a), revisional power can be exercised by a superior authority only at the instance of a member of Force whose appeal has been rejected. As per clause (b), the procedure prescribed for appeals under sub-rules (c) to (g) of Rule 28 would apply to such revision petitions as well. As per clause (c), the revisional authority is vested with the power to enhance the punishment imposed upon a member of

the Force who has invoked revisonal jurisdiction, but before doing so, such member has to be given an opportunity to show cause as to why his punishment should not be enhanced. It further provides that when the punishment has been enhanced by the revisional authority, it has to be treated as an original order except in a case where the revisional order has been passed by the Government and an appeal would lie against such an order of enhancement of punishment to the next superior officer i.e to the Inspector-General, if revisional power has been exercised by the Deputy Inspector-General; to the Director-General if the said power has been exercised by the Inspector General; and to the Central Government, if such revisional power has been exercised by the Director-General.

16 Sub-rule (d) of Rule 29 vests power with 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 and confirm, enhance, modify or annul the same, or make or direct further investigation to be made before passing such order and if the penalty is proposed to be enhanced, the delinquent member of the Force has to be given an opportunity to show cause as to why his punishment should not be enhanced. Thus, the power conferred under sub-rule (d) of Rule 29 upon the Director General or Additional Director General or the Inspector general of Police or Deputy Inspector General is independent of the power of revision which is exercisable by the said authorities at the instance of a member of the Force whose appeal has been rejected.

17 This Court, in the case of **Madan Gopal Singh vs. UOI and ors** (SWP No. 2532/2002, decided on 06.10.2023), had an occasion to interpret the provisions contained in Rule 29(d) of the CRPF Rules. After noticing the provisions contained in Rule 29, this Court interpreted sub-rule (d) of the said Rule in the following manner:

> *13. From a perusal of clause (d) of the afore quoted provision, it is clear that Director General or Additional Director General or the Inspector General or the Deputy Inspector General has power to call for the records of the award of any punishment and confirm, enhance, modify or annul the same. The respondent No. 3 is an officer of the rank of Inspector General of Police, therefore, he is vested with the power under Rule 29 (d) of the CRPF Rules, quoted above.*
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> *14. The question arises as to how this power is to be exercised by the competent authority. It has been contended by the learned Senior Counsel for the petitioner that unless a petition for revision is filed by the person against whom a punishment has been imposed, the power of revision cannot be exercised by the competent authority. I am afraid the contention of the learned Senior Counsel for the petitioner is not tenable. A reading of clause (d) of Rule 29 shows that the power conferred by this clause is distinct from the independent power of revision conferred by clauses, (a), (b) and (c) of Rule 29 of the CRPF Rules. Though words suo moto have not been mentioned in clause(d) but it can be inferred from the language of said clause that a suo moto power of revision has been vested on the officers of the rank mentioned in the said clause and this*

power is not controlled by or subject to the limitations found in the clauses (a) to (c) of Rule 29 of the CRPF Rules. The power of suo moto revision is independent of the right of the revision conferred on the delinquent employee. Such a power can be used by the competent authority, to enhance or modify the punishment awarded to an employee and it can also be used to reduce or annul the punishment imposed upon the employee, if it is not warranted.

15. However, there is another aspect of the matter which is discernible from the language of clause (d) of Rule 29 of the CRPF Rules. While the competent authority has power to call for the records of the award of any punishment and confirm, enhance, modify or annul the same, it can also make or direct further investigation to be made before passing such order. This means that the competent authority can pass an order of confirmation of sentence imposed upon an employee, it can enhance it, it can modify it which would mean reduce it or it can annul the punishment all together.

16. The later part of clause (d) provides that before passing such an order of confirmation, enhancement, modification or annulment of punishment, the competent authority can direct further investigation to be made meaning thereby that the power of further investigation can be exercised by the competent authority under clause (d) only prior to exercising its option of confirmation/enhancement etc of the punishment imposed upon the employee and not after passing of such order. The purpose behind vesting of power with the competent authority to direct further investigation is to allow the said authority to have full facts before it prior to taking a decision with regard to confirmation,

> *enhancement, modification etc of the punishment imposed on an employee. Once the competent authority takes a decision as regards the confirmation or enhancement etc. of punishment, it cannot direct further investigation, as the purpose of further investigation would be futile once the authority has taken a decision with regard to the quantum of punishment to be imposed upon the employee"*

18 From the foregoing analysis of law on the subject, it is absolutely clear that the provisions contained in Rule 29 (d) of the CRPF Rules, vest *suo moto* and independent power upon the authorities mentioned therein to exercise revisional jurisdiction with a view to confirm, enhance, modify or annul the punishment imposed upon a member of the Force.

19 Learned counsel for the petitioner has contended that the provisions contained in sub-rule (d) of Rule 29 have to take colour from the sub-rules (a), (b) and (c) of the said Rule. According to the learned counsel, if we read sub-rule (d) in conjunction with the preceding sub-rules of Rule 29, the only conclusion that can be drawn is that the revisional power cannot be exercised by an authority without there being an application from a member of the Force who is aggrieved against order passed in the appeal. I am afraid such an interpretation cannot be given to the provisions contained in sub-rule (d) of Rule 29. If the intention of the rule-making authority was to vest revisional powers on the superior authorities only on an application by a member of the Force, then there was no need for incorporating sub-rule (d) as the superior authorities have been vested

with the power of revision at the instance of a member of the Force whose appeal has been rejected in terms of sub-rule (a) of Rule 29.

20 Apart from the above, it does not make any sense to vest the revisional authority with the power to impose enhanced punishment against a member of the Force, only if the said member comes up with a revision petition. There is no provision in the Rules which permits the Department to file a revision petition or representation seeking enhancement of punishment. It is because of absence of such a mechanism that the rule-making authority has vested *suo moto* revisional powers to examine the records of the subordinate officers for testing the legality and adequacy of the punishment awarded by the said authorities, without there being any application from either of the parties. If it is taken that only at the behest of the accused, revisional powers can be exercised, then in a case where a subordinate authority has imposed a grossly inadequate punishment upon a member of the Force, the Department despite feeling aggrieved of the same, would be left remediless. This could not have been the intention of the rule-making authority. Therefore, the contention of the learned counsel for the petitioner is without any merit.

21 That takes us to the merits of the case. The main contention that has been urged by learned counsel for the petitioner for impugning the order dated 07.03.2019 issued by respondent No.3 is that the same is based upon an *ex parte* inquiry and that the petitioner has not been provided an opportunity of hearing. It has been

contended that the petitioner had shifted his residence from the registered address on account of his ailment and, as such, he did not receive any communication from the respondents as well as from the Inquiry Officer.

22 If we have a look at the record of inquiry produced by the respondents, it is revealed that the respondents have sent through registered post the communication asking the petitioner to join his duties. The same has been sent to his address at village Thesgora, Post Palatwara, Polcie Station, Singoori, District Chindwara, MP. Another communication dated 06.09.2016 was addressed to the petitioner, asking him to appear before the Commandant within 10 days. Thereafter, another communication was sent to the petitioner at his registered address whereby charge-sheet along with the relevant documents were sent to him through registered post, but the same was received back undelivered with the report that the petitioner was not residing at the given address. Another communication dated 18.09.2016 was addressed by the Inquiry Officer to the petitioner, informing him about his appointment as the Inquiry Officer and asking him to participate in the inquiry. However, the same was also received back undelivered as the petitioner had left the address.Yet another communication dated 20.09.2016 was addressed by the Inquiry Officer to the petitioner seeking objections from him regarding his appointment. Since the petitioner did not respond, as such, communication dated 16.10.2016 was issued by the Inquiry officer, warning him that in case he does not appear, the inquiry

would proceed *ex parte*. Vide communication dated 01.11.2016, copies of statements of witnesses recorded during the inquiry proceedings were sent to the petitioner through registered post.

23 The record further shows that, vide communication dated 30.11.2016, the new Inquiry Officer informed the petitioner about his appointment as an Inquiry Officer. Vide commutation dated 07.01.2017, the Inquiry Officer informed the petitioner that the departmental evidence has been completed and he was given an opportunity to lead evidence in defence. Vide communication dated 24.01.2017, a copy of the Inquiry report was sent to the petitioner at his registered address. However, all these communications were returned undelivered with the report that the petitioner had left the address. All these facts, which are borne out from the record, clearly go on to indicate that the respondents have adhered to the provisions contained in the CRPF Rules, particularly Rule 27, which provides for procedure for conducting a departmental enquiry.

24 The contention of the petitioner is that because of medical emergency, he had to shift his residence from the registered address to a nearby town which was 80 kms away from his registered residence. However, he has not whispered even once in his petition that he has, at any time, informed the respondents about his new address. Admittedly, he has not addressed any communication to the respondents, informing them about the shifting of his registered address, nor has the petitioner even pleaded that he had even orally or verbally informed any of his colleagues or officers in the Battalion

about his new address. The claim of the petitioner that he was unwell and, therefore, could not do so, cannot be accepted, in the facts and circumstances of the case because, as per the medical certificates which the petitioner produced before the appellate authority, he was advised rest by the Doctors from time to time. The petitioner has not placed on record any document to show that his illness was so severe that he was unable to even communicate with his employer through telephone or in writing. In fact, the record shows that the petitioner was treated as an outpatient and was never hospitalized which clearly shows that his ailment was not serious enough to prevent him from approaching his employer.

25 As already indicated, the record clearly shows that the respondents have meticulously adhered to the procedure under Rule 27(c) of the CRPF Rules which governs the procedure for conducting departmental enquiry. Because the petitioner had left his Battalion without informing the authorities about his fresh residential address, it was not possible for the respondents to send communications to his new residential address. An employer is not expected to launch a manhunt for an absconding employee in the whole world. It is enough if an employer sends the communications to an absconding employee at his residential address. This is what has been done by the respondents as well as the Inquiry Officer in the present case. Therefore, it cannot be stated that the Inquiry Officer has not followed either the procedure prescribed under the CRPF Rules, or the principles of natural justice.

26 Next, it has been contended that it was not open to the Revisional Authority to re-appreciate the material on record and sit over the findings of fact recorded by the appellate authority as regards the nature of ailment of the petitioner. The argument of the learned counsel for the petitioner is without any substance because sub-rule(d) of Rule 27 not only vests the Revisional Authority with revisional powers, but it also vests power with it to direct further investigation before passing an order. Thus, in the present case, it was open to the Revisional Authority to direct an investigation into the matter relating to aliment of the petitioner before taking a final call in the case and to arrive at its own conclusion on the basis of the investigation.

27 It has further been contended by the petitioner that the punishment imposed upon him is disproportionate to the charge that has been established against him. In this regard, it is to be noted that the petitioner has been found absent from duty for a period of 326 days, w.e.f 14.05.2016. Admittedly, he had neither sought any permission for overstaying his leave, nor had he communicated with his employer during all these days till such time the order of dismissal was passed against him by the Commandant. It has been contended by the learned counsel for the petitioner that the appellate authority had acknowledged the petitioner's illness and his inability to attend the office. Thus, even if the petitioner had remained absent from duty, he had a reasonable cause for doing so.

28 It is true that appellate authority has observed that it is possible that the petitioner may not have received the communications

from the Inquiry Officer and the respondents, because he had shifted his residence in connection with treatment of his ailment. It is also a fact that the appellate authority has observed that the documents produced by the petitioner show that he was under treatment in the Community Health Centre w.e.f 10.05.2016 to 12.09.2017, but the appellate authority has not set aside the finding of the Inquiry officer that the petitioner had remained absent from duty w.e.f 14.05.2016 without permission. The Appellate authority has also observed that the petitioner was given sufficient opportunities during the inquiry, but the said authority, keeping in view the fact that he had put in 25 years of service, took a lenient view of the matter and imposed a lighter punishment of stoppage of two increments with cumulative effect. So, it is not a case where the appellate authority had exonerated the petitioner of the charges which were found established against him by the Inquiry officer, but it is a case where the appellate authority has taken a lenient view of the matter and imposed a lighter punishment upon the petitioner.

29 The question that poses itself before this Court is as to whether this Court, in the exercise of writ jurisdiction, can substitute its own view in the matter of imposition of punishment upon the petitioner over the view taken by the revisional authority. The Supreme Court, in the case of **Union of India vs KG Soni, (2006) 6 SCC 794**, has laid down the scope of a writ Court in interfering with the quantum of punishment imposed upon an employee in a departmental inquiry in the following manner:

> *'14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision".*

30 Again the Supreme Court in the case of **State of Meghalaya vs. Mecken Singh N. Marak, (2008) 7 SCC 580** has held that the discretion vests with the Disciplinary Authority to impose punishment commensurate with the nature of offence proved and the same cannot be interfered with by the Court. It is only in rare and exceptional cases that the Court may substitute its own view as to the quantum of punishment by assigning cogent reasons.

31 In the present case, it has been proved against the petitioner that he remained unauthorisedly absent from duty for 326 days. The petitioner has served the Force for about 24 years, and, therefore, he was well aware that even if he had fallen ill, it was his duty to inform his employer about his ailment and also about his present address. He failed to do so and instead approached the respondents only when the order of dismissal from service was passed by the Commandant against him. It has also come on record that the petitioner was previously punished for overstaying his leave on as many as 08 occasions. Keeping these facts in view and having regard to the fact that the petitioner belongs to a disciplined Force like CRPF,

any leniency in imposing punishment upon him for the nature of the charge which has been proved against him, would be detrimental to the discipline of the Force. Therefore, it cannot be stated that the impugned order of punishment passed by the revisonal authority against the petitioner is, in any manner, disproportionate to the charge established again him.

32 For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. The record be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

Jammu
.03.04.2025

Whether order is reportable:Yes/No