

(2015) 08 AP CK 0026
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4173 of 2005

Balbir Singh

APPELLANT

Vs

The Director General of Police and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Citation : (2015) 6 ALD 725

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : M. Jeevan Reddy, for the Appellant; Raghavender, Learned Counsel Representing B. Narayana Reddy, Learned Assistant Solicitor General for India, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kumar, J—The petitioner, a Constable in the Central Reserve Police Force (CRPF), was subjected to disciplinary proceedings in connection with an accident which occurred while he was driving a vehicle on 28.10.1992. He was imposed with the punishment of removal from service under order dated 10.08.1993. Aggrieved thereby, he preferred an appeal to the Deputy Inspector General of Police, CRPF. The appellate authority allowed the appeal by order dated 10.12.1993, directing reinstatement of the petitioner in service but ordering that he should be placed under suspension after such reinstatement till completion of a fresh departmental enquiry for misconduct.

2. Thereupon, a fresh departmental enquiry was instituted and pursuant thereto, final order dated 21.11.1994 was passed by the Commandant, 83 Battalion, CRPF, imposing upon the petitioner the punishment of stoppage of an annual increment for a period of one year with cumulative effect. The disciplinary authority further directed that the cost of repair charges of the affected vehicle amounting to Rs. 487/- should be recovered from his pay and allowances. His suspension period was also directed to be regularized. The petitioner accepted this punishment without demur and it was duly implemented.

3. While so, the Special Director General, Southern Sector, CRPF, issued show-cause notice dated 24.04.1997 invoking Rule 29(d) of the Central Reserve Police Force Rules, 1955 (for brevity, the Rules of 1955) proposing to enhance the punishment imposed upon the petitioner to removal from service. The petitioner submitted his reply thereto pointing out that the proposed exercise of power under the said Rule was with a delay of more than two and half years and the fact that he had already undergone the punishment imposed under the order dated 21.11.1994. By order dated 29.10.1997, the Special Director General, Southern Sector, CRPF, declared that after careful consideration of the whole case, the punishment imposed upon the petitioner was enhanced to removal from service. Aggrieved thereby, the petitioner preferred an appeal to the Director General of Police, CRPF. The appeal was rejected by order dated 14.05.1998.

4. The petitioner thereupon approached the High Court of Himachal Pradesh at Simla by way of Civil Writ Petition No. 746 of 1998 challenging his removal from service. The writ petition was dismissed by the Himachal Pradesh High Court by order dated 12.11.2003 on the ground that it had no territorial jurisdiction as the departmental enquiry against the petitioner was held at Hyderabad. The petitioner therefore approached this Court by way of this writ petition assailing the order dated 29.10.1997 passed by the Special Director General, Southern Sector, CRPF, and the order dated 14.05.1998 of the Director General, CRPF, confirming the same.

5. Heard Sri M. Jeevan Reddy, learned counsel for the petitioner, and Sri Raghavender, learned counsel representing the learned Assistant Solicitor General for India, for the respondents.

6. Sri Raghavender, learned counsel, would contend that the delay on the part of the petitioner in approaching this Court would disentitle him from seeking relief. The facts on record reflect that after passing of the order dated 14.05.1998 by the Director General, CRPF, the petitioner lost no time in approaching the Himachal Pradesh High Court by way of Civil Writ Petition No. 746 of 1998. However, the said writ petition was dismissed on the ground of territorial jurisdiction in August, 2003, and the petitioner approached this Court thereafter in February, 2005. The delay on his part, if at all, would be between these two dates. No doubt, the petitioner did not put forth any reason to explain his failure in approaching this Court immediately after dismissal of his writ petition by the Himachal Pradesh High Court, but this Court is of the opinion that the delay on his part, which would perhaps be about a year, is not sufficient to disentitle him from claiming relief. Given the fact that the Special Director General, Southern Sector, CRPF, chose to exercise suo motu power after a lapse of nearly three years, it is not open to the respondents to make much of this one year delay on the part of the petitioner in approaching this Court. The so called delay on the part of the petitioner is therefore not fatal to his case.

7. In so far as the merits of the case are concerned, two issues fall for

consideration:

"(1) Whether the Special Director General, Southern Sector, CRPF, had jurisdiction to exercise powers under Rule 29(d) of the Rules of 1955?

and;

(2) if so, whether such powers were exercised within a reasonable time?"

8. The petitioner specifically raised a contention in para 12(g) of his writ affidavit that the Special Director General, Southern Sector, CRPF, did not have the authority to exercise power under Rule 29(d) of the Rules of 1955. The counter-affidavit filed by the Additional Deputy Inspector General of Police, CRPF, Hyderabad, however did not advert to this ground specifically and skirted the issue in para 15 as follows:

"In reply to Ground (g) in Para-12 of the Affidavit, it is submitted that contents (sic contention) of Petitioner in this Para is not acceptable. As already quoted in the preceding paras, the post of Inspector General of Police, Southern Sector, CRPF, Hyderabad was upgraded to that of Special Director General and he was vested with all the powers of the IGP."

9. Though reference was made to upgradation of the post of Inspector General of Police, Southern Sector, CRPF, to that of Special Director General, no material has been placed before this Court in that regard or to justify the exercise of power by the Special Director General, Southern Sector, CRPF, in the instant case. The first issue would therefore turn on whether Rule 29(d) of the Rules of 1955 as it stood in April, 1997, authorized the Special Director General, Southern Sector, CRPF, to exercise power thereunder. This Rule reads as under:

"29(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:

It is clear from a bare reading of the above Rule that the words Special Director General were inserted therein only with effect from 21.02.2012. Prior to the insertion of these words, the power exercisable under Rule 29(d) of the Rules of 1955 was only by the Director General or the Additional Director General or the Inspector General or the Deputy Inspector General. Thus, at the point of time the show-cause notice was issued in April, 1997 by the Special Director General, Southern Sector, CRPF, he was not vested with power under Rule 29(d) of the Rules of 1955. Though the counter-affidavit states that the post of Inspector General of Police, Southern Sector, CRPF, was upgraded to that of Special Director General, the specific insertion of the words Special Director General in the Rule only in the year 2012 manifests that the rule-making authority deemed it necessary to include the said officer separately only at that stage and there can be no implied vesting of such power in a Special Director General before the

said date. The alleged upgradation of the post of Inspector General to that of Special Director General is therefore of no avail. Had it been so, it would not have been necessary to amend the Rule in 2012 and include the words Special Director General."

10. In the light of the aforesaid amendment and given the fact that the respondents have no answer to this ground of attack by the petitioner, this Court necessarily has to hold that at the time the Special Director General, Southern Sector, CRPF, exercised power under this Rule and issued a show-cause notice to the petitioner in April, 1997 and thereafter enhanced the punishment imposed on him in October, 1997, he had no power to do so. The writ petition therefore deserves to be allowed on this ground but as arguments were also advanced on the second issue with regard to delay, this Court deems it appropriate to deal with the same.

11. The admitted facts reflect that the petitioner suffered the punishment imposed upon him by the Commandant, 83 Battalion, CRPF, under order dated 21.11.1994 and the said punishment was duly implemented. The show-cause notice seeking to suo motu enhance the said punishment was issued nearly two and half years thereafter and acting thereupon, the punishment was enhanced nearly three years later. The question that arises is whether such exercise can be said to be within a reasonable time.

12. This Court had occasion to consider an identical issue in *V. JAYARAM v. FOOD CORPORATION OF INDIA* W.P. No. 26172 of 2001 dated 08.11.2012. A copy of the order passed by this Court in the said case is placed on record. That was also a case where the punishment was enhanced by exercise of suo motu power more than four years later. Such exercise was under Regulation 74 of the Food Corporation of India (Staff) Regulations, 1971. Dealing with the issue, this Court stated as under:

"It is no doubt true that the regulation states to the effect that the Board may at any time, either on its own motion or otherwise, review any order made under the regulations. The power in this regard, having been delegated to the Zonal Manager under Regulation 74(4), had to be exercised within a reasonable time notwithstanding the fact that no embargo was stipulated in the regulation as to any temporal restrictions. Trite to state, even if no limitation is prescribed for exercise of a power vested in an authority, such power can be exercised only within a reasonable time depending on the facts of the case. (*The State of Gujarat Vs. Patil Raghav Natha and Others*, AIR 1969 SC 1297 : (1969) 2 SCC 187 : (1970) 1 SCR 335 , *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*, (1997) 6 SCC 71 , *State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd.*, (2007) 217 ELT 325 : (2007) 12 JT 314 : (2007) 12 SCALE 135 : (2007) 11 SCC 363 : (2007) 11 SCR 14 : (2007) 10 VST 173 , and *Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others*, (2009) 13 JT 69 : (2009) 12 SCALE 278 : (2009) 9 SCC 352 : (2009) 14 SCR 1173 : (2009) 9 UJ 4126). Though these cases pertained to

exercise of revisional power, the ratio laid down therein is equally applicable to exercise of review power. In the present case, the punishment order dated 03.04.1996 had been acted upon and there is no explanation for the 4 years delay in exercise of suo motu review power. The matter stood settled by then, as the petitioner abided by the order dated 03.04.1996 and did not even choose to challenge it. The exercise of suo motu review powers by the Zonal Manager (South), FCI, Chennai, therefore suffers incurably on the ground of unreasonable delay."

13. In the present case, enhancement of the punishment imposed upon the petitioner was nearly three years after passing of the initial order imposing a lesser punishment. The petitioner had not only accepted the lesser punishment without protest but, in the meanwhile, the authorities had also implemented the same. Generally, an employee would be lawfully entitled to assume that a punishment imposed upon him and duly implemented by the authorities has attained finality. Exercise of suo motu power to enhance such punishment must therefore be within a reasonable time so as not to impinge upon the aforesaid right of the employee.

14. Sri Raghavender, learned counsel, relied on *BIJAY KUMAR SHARMA v. THE INSPECTOR GENERAL OF POLICE, C.R.P.F., Bijay Kumar Sharma Vs. The Inspector General of Police, C.R.P.F. and Another*, (1996) 3 ALT 887 . However, perusal of the said decision reflects that the punishment imposed in that case was on 09.05.1989 and enhancement thereof was sought to be effected by issuing a show-cause notice on 05.07.1990. In such circumstances, this Court held that exercise of suo motu power to enhance the punishment was within a reasonable time. The case on hand is altogether different on facts as the petitioner had suffered the punishment of removal from service in the first instance in August, 1993, which order was set aside in appeal and upon remand and a fresh disciplinary enquiry, he was visited with a lesser punishment under order dated 21.11.1994. Enhancement of the said punishment nearly three years thereafter can hardly be said to be within a reasonable time!

15. On the above analysis, this Court holds that the petitioner must succeed on both grounds. To begin with, the Special Director General, Southern Sector, CRPF, Hyderabad, had no jurisdiction to exercise power under Rule 29(d) of the Rules of 1955 in the year 1997, and therefore, his action in issuing a show-cause notice and thereafter enhancing the punishment imposed upon the petitioner was without legal sanction. Further, even if the said exercise of power is assumed to be valid for any reason, the same was not within a reasonable time and such belated exercise of suo motu power cannot be sustained on facts and in law.

16. The writ petition is therefore allowed setting aside the order dated 29.10.1997 passed by the Special Director General, Southern Sector, CRPF, Hyderabad, and the order dated 14.05.1998 of the Director General of Police, CRPF, New Delhi, confirming the same in appeal. The petitioner shall be reinstated in service but as he remained out of uniformed service for all these

years, he would be entitled to continuity of service only with notional attendant benefits. He shall not be entitled to any monetary benefits for the period that he remained out of service. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. There shall be no order as to costs.