
(1996) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14437 of 1990

Bijay Kumar Sharma

APPELLANT

Vs

The Inspector General of Police, C.R.P.F. and Another

RESPONDENT

Date of Decision : 25-03-1996

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 29

Citation : (1996) 3 ALT 887

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : K.L.N. Rao, for the Appellant; D. Krishna Murthy, Addl. S.C. for Central Govt., for the Respondent

Final Decision : Dismissed

Judgement

C.V.N. Sastri, J.—The Petitioner was a Constable-Carpenter in the Central Reserve Police Force. On a charge that he collected a sum of Rs. 7,200/- as bribe from one Promod Kumar Chourassia for securing a job for him in N.S.G. the petitioner was subjected to a disciplinary enquiry. He was found guilty of the said charge in fee enquiry. The second respondent, who is the disciplinary authority, by order dt. 9-5-1989 imposed fine of one month pay and allowances on the petitioner as punishment for the said charge. The petitioner accepted the said punishment imposed on him and he did not question the said order by filing any appeal or revision and the fine amount was recovered from him and he was continued in service. The first respondent while carrying out the annual inspection of the unit from 15-12-1989 to 16-12-1989 came across me papers relating to the case of the petitioner and called for the said file and reviewed the whole matter under the provisions of Rule 29(d) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as "the Rules"). Considering the gravity of the offence committed by the petitioner, the first respondent came to the conclusion that the petitioner was not a fit person to be retained in service. Accordingly, the first respondent issued a show cause notice dt. 12-4-1990 to the

petitioner calling upon him to submit his representation if any which he may wish to make against the proposed enhancement of penalty within 15 days from the date of receipt of the show cause notice. The petitioner submitted his representation to the show cause notice on 19-5-1990 through the Commandant of the Battalion. After considering the reply to the show cause notice submitted by the petitioner, the first respondent passed the impugned order dt. 5-7-90 dismissing the petitioner from service. Assailing this order, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has raised the following contentions:

(1) The first respondent has no jurisdiction to reopen the case and enhance the punishment inflicted on the petitioner by the second respondent in the absence of any appeal or revision preferred by the petitioner.

(2) Rule 29(d) of the Rules does not confer suo motu powers of revision and it applies to a revision filed by the aggrieved employee, whose appeal has been rejected.

(3) Even assuming that Clause (d) confers suo motu powers of revision, the said power can be exercised only in rare and exceptional cases. There are no circumstances in the present case warranting exercise of such power.

(4) The power under Clause (d) of Rule 29 is not greater than the power of revision under Clause (a) and it is subject to the same limitations as the revisional power under Clause (a). In the instant case, there are no valid grounds warranting the exercise of revisional powers for enhancement of the punishment.

(5) Show cause notice dt. 12-4-1990 does not indicate any valid grounds for exercise of suo motu powers of revision. No fraud or misrepresentation has been committed by the petitioner and no material irregularity has been committed by the disciplinary authority resulting in miscarriage of justice. In proper exercise of its discretionary power the original authority imposed fine. Merely because the revisional authority has a different view or opinion regarding the punishment, it is not a valid ground for interference.

(6) Finally, the power under Clause (d) of Rule 29 of the Rules cannot be exercised beyond the period of limitation of one month provided for filing of appeal or revision by the aggrieved employee. The order is therefore barred by limitation.

In support of the above contentions raised by him, the learned counsel for the petitioner has placed reliance on the following decisions in *Devki Nandan v. Union of India* (Delhi) 1981 (1) SLR 798, *K.R. Raghavan v. Union of India* (Delhi) 1979 (2) SLR 478 , AIR 1937 27 (Privy Council) , *R.K. Gupta v. Union of India* (Delhi) 1981 (1) SLR 752, and *Sachindra Nath v. State of West Bengal* (Calcutta) 1971 (1) SLR 816.

3. On the other hand the learned counsel appearing for the respondents has

submitted that the charge levelled against the petitioner is a very grave charge, that the charge has been proved and the petitioner has also accepted his guilt. So the finding of guilt has become final and conclusive. Having regard to the grave nature of the charge, the first respondent was perfectly justified in enhancing the punishment in exercise of suo motu powers of revision conferred on him by Rule 29(d) of the Rules. The learned counsel for the respondents has further submitted that no period of limitation is prescribed for exercise of suo motu powers of revision and in the instant case that power was exercised within a reasonable time without any undue delay and the order passed by the first respondent is perfectly valid and does not call for any interference under Article 226 of the Constitution of India. In support of his contentions, the learned counsel for the respondents has placed reliance on the following decisions: Kannaiah Naidu v. Commissioner of Survey and Settlement 1978 (2) An.W.R. 128, Venkata Reddy v. Director of Settlements 1975 (2) An.W.R. 43, State of Punjab and Others Vs. Ram Singh Ex. Constable, , Y. Sitaramaiah v. M.Ch. Subba Rao 1990 (2) An.W.R. 128.

4. On these respective contentions, the main question which falls for consideration is whether Clause (d) of Rule 29 of the Rules confers suo motu powers of revision on the first respondent to enhance the punishment awarded to the petitioner and if so, within what time and on what grounds the said power can be exercised.

5. It is not in dispute that the petitioner is governed by the provisions of the Central Reserve Police Force Act, 1949 (hereinafter referred to as "the Act") and the Rules framed thereunder which are entitled Central Reserve Police Force Rules, 1955. Sections 9, 10 and 11 of the Act prescribe the various penalties and punishments which may be inflicted on any member of the force who is found guilty of commission of any offence or misconduct. Whereas Section 9 deals with the punishment for more heinous offences, Section 10 deals with less heinous offences and Section 11 deals with minor punishments which may be awarded. Section 11(1) provides that the Commandant or any other authority or officer as may be prescribed may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal, any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remission in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,-

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;.....

Section 18 of the Act empowers the Central Government to make rules for carrying out the purposes of the Act. In exercise of the said rule making power, the Central Government issued the Central Reserve Police Force Rules, 1955.

6. Rule 27 of the Rules prescribes the procedure for the award of punishments on the officers and men of the various ranks of the Central Reserve Police Force. The

said rule indicates the various punishments which may be inflicted and the authorities who are competent to inflict the punishments. Rule 28 provides for filing of an appeal by the aggrieved employee against any punishment imposed on him. Clause (e) of Rule 28 lays down that every appeal under the said rule shall be filed within thirty days from the date of original order exclusive of the time taken to obtain a copy of order or record. It is however provided that the appellate authority may entertain time barred appeal if deemed fit. Rule 29 of the Rules deals with revision. Clause (a) of Rule 29 provides that 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. Clause (b) of the said rule provides that the procedure prescribed for appeals under Sub-rules (c) to (g) of Rule 28 shall apply mutatis mutandis to petitions for revision. It is therefore clear from this Clause that the period of limitation for filing revision by the delinquent employee is thirty days from the date of the appellate order exclusive of the time taken to obtain a copy of the order or record. Clause (c) of Rule 29 lays down that 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 to the Inspector General, if the same has been passed by the Deputy Inspector General, and to the Director General or the Additional Director General if the same has been passed by the Inspector General and to the Central Government if the same has been passed by the Director General or the Additional Director General. Clause (d) of Rule 29 with which we are concerned in the present case provides that the 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.

7. The Inspector General of Police, C.R.P.F. Southern, Hyderabad, first respondent herein, has passed the impugned order dt. 5-7-1990 in the purported exercise of power conferred by Clause (d) of Rule 29 of the Rules. A reading-of Clause (d) of Rule 29 clearly shows that the power conferred by this Clause (d) is separate from and independent of the powers of revision conferred by Clauses (a), (b) and (c). Though the word "suo motu" is not employed in Clause (d), it is clear that the power conferred by this Clause is a suo motu power of revision and this power is not controlled by or subject to the limitations found in Clauses (a)

to (c) of Rules 29. No period of limitation is prescribed for the exercise of the said power conferred by Clause (d) of Rule 29. In the face of the plain language employed in the said rule, it is difficult to accept the submission of the learned counsel for the petitioner that Clause (d) of Rule 29 does not confer suo motu powers of revision and that Clause (d) is applicable only to cases where the accused employee has preferred revision and that in the absence of any appeal or revision filed by the accused employee, it is not open to the first respondent to enhance the punishment of fine imposed on the petitioner by the original authority. The conferment of suo motu powers of revision independent of the right of revision conferred on the accused is intended to correct manifest errors and illegalities and to prevent miscarriage of justice. Such a power can be used not only to enhance or modify the punishment awarded to an employee, but also to reduce or to annul altogether the punishment where it is not warranted. The conferment of such power is therefore beneficial to the accused also sometimes. I am therefore, of the considered opinion that Clause (d) of Rule 29 confers suo motu powers of revision on the concerned authority independent of the right of revision conferred on the accused under Clause (a) of Rule 29, and that the said power of suo motu revision is not subject to the limitations which govern a revision filed by the accused. No period of limitation is prescribed for the exercise of the suo motu power of revision under Clause (d) of Rule 29. It has, therefore, to be exercised in a reasonable time. What is reasonable time will depend on the facts and circumstances of each case. In *Y. Sitaramaiah v. M.Ch. Subba Rao* (9 supra), this Court had occasion to consider the scope of revisional power conferred by Section 77 of the A .P. Co-operative Societies Act 1964. It has been held therein that the suo motu exercise of power of revision by the revisional authority under the said Section is independent of the exercise of revisional power on application and that the one does not control the other. It was also held therein that suo motu power of revision can be exercised even where an application for revision is filed and withdrawn or where no application is made and that no period of limitation is prescribed for the exercise of suo motu power of revision.

8. In *Venkata Reddy v. Director of Settlements* (7 supra) it was held that it was open to the Director of Settlements acting u/s 5(2) of the A.P. (Andhra Area) Abolition and Conversion into Ryotwari Act (XXVI of 1948) to exercise the power of revision suo motu even after a lapse of 7 years from the date of the grant of the pattas. On the facts of that case, it was held that the exercise of such power after a lapse of 7 years from the date of the grant of pattas to the appellants, cannot be said to be unreasonable. In *Mirza Muzamdar Hussain Vs. Dodla Bhaskara Reddy and Others*, , a Division Bench of this Court following earlier judgments of the Supreme Court held that it is well settled that even though no period of limitation is prescribed for exercising the power of revision suo motu, it has to be exercised within a reasonable time. What is reasonable time is a question pf fact to be answered in the given facts and circumstances of each case. No hard and fast rule can be. enunciated in that behalf.

9. In view of the above judgments of this Court and the Supreme Court, I am afraid it is not possible to agree with the view taken by the Calcutta High Court in *Sachindra Nath v. State of West Bengal (Calcutta)* dissented (5 supra) wherein it was held that the suo motu power of revision under Regulation 884 of the Police Regulations should be normally exercised within the time limit prescribed for filing a revision petition by the delinquent-servant under Regulation 883 unless the delay for commencing the proceeding at a later date is unavoidable and sufficiently explained by the revisional authority. In the instant case, the original authority imposed the punishment of fine on the petitioner on 9-5-1989. This came to the notice of the revisional authority in course of the annual inspection made on 15-12-1989 and 16-12-1989. The revisional authority exercised its power under Clause (d) of Rule 29 by issuing a show-cause-notice to the petitioner on 12-4-1990 and passed the impugned order on 5-7-1990. It cannot, therefore, be said that there is any undue or unreasonable delay in the exercise of suo motu power of revision.

10. It is, no doubt, true that the suo motu power of revision should be exercised only in exceptional cases to correct manifest illegality or injustice and that it should not be mechanically exercised in a routine fashion. In the instant case having regard to the grave nature of the charge against the petitioner, it cannot be said that the first respondent was not justified in invoking the said power. It must be borne in mind that the petitioner is a member of the CRPF, where discipline and integrity are of utmost importance. In *State of Punjab v. Ram Singh* (8 supra), the Supreme Court held that even a single act of grave misconduct is enough to award the punishment of dismissal under Rule 16.2(1) of Punjab Police Manual. Relying on the decision of the Delhi High Court *K.R. Raghavan v. Union of India (Delhi)* (2 supra) the learned counsel for the petitioner sought to draw a distinction between purely administrative action which is reviewable and administrative decisions which cannot be reviewed in the absence of any special circumstances. He has also placed reliance on *R.K. Gupta v. Union of India (Delhi)* (4 supra) to contend that in the absence of any fraud played by the petitioner, the order imposing punishment of fine cannot be reviewed. He has also placed reliance on a decision of the Privy Council in *Rangachari v. Secretary of State* (3 supra) wherein it was held that an order granting pension passed by the competent authority which was also acted upon cannot be later changed or reviewed by the officer succeeding that authority. I am afraid these decisions have no application to the instant case where we are concerned with the exercise of suo motu power of revision specifically conferred by the rules on the revisional authority.

11. For all the foregoing reasons, I do not find any infirmity in the impugned order dated 5-7-1990 passed by the first respondent or any valid grounds to interfere with the same under Article 226 of the Constitution. Accordingly the writ petition is dismissed.

12. No order as to costs.