
(2017) 02 AHC CK 0175
In the Allahabad High Court
Case No : Writ A No. 42833 Of 2000

Brijesh Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 29(d)
Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADJ 154

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : M. M. Khan, K.J. Khare, Krishan Ji Khare and M. Ahmad, Advocates, for the Petitioner; S.S.C., B.N. Singh, Bajrangimisra, Rakesh Kr. Srivastava, S.C., S.N. Srivastava, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—Heard Sri Krishnaji Khare, learned counsel for the petitioner and Sri Shashi Kant Upadhyay, learned counsel appearing for the contesting respondents.

2. This writ petition has come to be placed for final disposal pursuant to an order of remand made by a Division Bench of the Court while disposing of Special Appeal Defective No. 71 of 2016. It appears that the writ petition initially came to be allowed by a learned Single Judge proceeding on the premise that a minor penalty had come to be imposed upon the petitioner and during the subsistence thereof enquiry proceedings were taken afresh and a major penalty inflicted upon him. The Division Bench while disposing of the special appeal noted the specific contention of the respondents that the initial order inflicting minor punishment of thirty days confinement had been reviewed by the Inspector General of Police IGP C/S, Central Reserve Police Force CRPF Lucknow by exercising powers conferred by Rule 29(d) of the Central Reserve Police Force Rules, 1955 1955 Rules. By his order dated 8 September 1998, the IGP had disagreed with the

imposition of minor penalty and had observed that appropriate proceedings should be initiated against the petitioner and stern disciplinary action be taken. In this view of the matter, the Division Bench found that the premise on which the learned Single Judge had proceeded was factually incorrect and consequently set aside the judgment with the following operative directions:

"In our view, the matter can be looked into from two perspectives. Firstly, if as the respondent contends, he had already undergone the minor penalty which was imposed under Section 11 and the setting aside of the minor penalty would not obliterate the factual position, in that event, the major penalty would be in addition to what had already been undergone by the respondent. This is permissible under Section 11. The principle of "double jeopardy" under Article 20 has no application, as the learned Single Judge seemed to indicate. There was no conviction of an offence. Alternatively, if the order dated 8 September 1998 setting aside the minor penalty is treated as an order by which the order of minor penalty is effaced and obliterated, in that case, under Section 11, the authorities had the jurisdiction to proceed by way of a major penalty in any event. We clarify that, at this stage, we leave open all the contentions which the respondent may have on the merits of his challenge to the order of major penalty since they have not been gone into by the learned Single Judge. We leave it open to be urged before the learned Single Judge. The only ground which weighed with the learned Single Judge was that the minor penalty had not been set aside, which is contrary to the record.

In this view of the matter, we allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 8 September 2015. Writ A No. 42833 of 2000 is restored to the file of the learned Single Judge for disposal afresh."

3. It is in this light that the matter stood remitted back to the board of the Single Judge. Post remand, the petitioner has chosen to amend the writ petition and has added various paragraphs in the writ petition and has also amended the relief clause by raising a challenge to the orders dated 8 September 1998 and 9 September 1998 seeking a declaration that these orders be declared as null and void. The respondents were granted and have availed the opportunity of filing a counter affidavit to the said amendment application. Pleadings having since been completed, the writ petition was taken up for final disposal.

The facts on which there is not much dispute and which stand duly noticed even in the judgment of the Division Bench are as follows. An incident is stated to have taken place in the B/8th Battalion on 4 August 1998 in which a few constables attempted to assault the Commanding Officer. The charge against the petitioner was that he raised a false alarm in the company lines to the effect that the Commanding Officer had assaulted his own men. He is further charged to have used provocative language and instigated the Company personnel. Taking the aforesaid conduct of the petitioner into consideration, the Commanding Officer on 6 August 1998 inflicted a minor penalty on the petitioner of thirty

days" confinement to lines with forfeitures of all pay and allowances coupled with pack drill for two hours in the morning and two hours in the evening. This order appears to have been reviewed by the IGP, who set aside the same and remitted the matter back to the Disciplinary Authority for taking stern action. The order dated 8 September 1998 which admittedly was made in purported exercise of powers conferred by Rule 29(d) is in the following terms:

"U/C. (.) Incident dated 4/8(.) Offence committed by No. 871180872 CT/GD Brijesh Kumar of B/8 by instigating the Coy personnel and awarding him 30 days confinement to lines does not commensurate with the gravity of the offence (.) The said punishment has been quashed by Polcent (.) Take stern disciplinary action against him under CRPF Act & Rules (.) DIG RPR only (.) This also refers his telephonic conversance///"

4. On the basis of the said order, disciplinary proceedings were initiated afresh and a charge sheet came to be issued against the petitioner on 18 September 1999. In the reconvened disciplinary proceedings, the charges as levelled against the petitioner were found to be proved. After obtaining his reply to a show cause notice, an order of dismissal came to be passed against the petitioner. The order of dismissal passed on 15 September 1999 was affirmed by the appellate authority by an order dated 7 December 1999 as well as the revisional authority by his order dated 25 May 2000. These orders form subject matter of challenge in the instant writ petition.

5. Appearing for the petitioner, Sri Khare, learned counsel submits that the IGP had clearly exercised jurisdiction not vested in him in setting aside the order of minor punishment and directing the initiation of fresh proceedings for taking stern action. Sri Khare submits that a bare perusal of Rule 29(d) would indicate that the IGP had the option to either confirm, enhance, modify or annul the punishment imposed. In his submission, this power vested in IGP did not extend to setting aside of the order of minor punishment and directing the disciplinary authority to take stern action afresh. He further submits, referring to the averments taken in paragraph 20 of the affidavit filed in support of the amendment application, that neither a show cause notice was issued to the petitioner nor was the petitioner granted any opportunity to establish before the IGP that no occasion or circumstance existed warranting the setting aside of the order imposing minor punishment. It is his submission that if the IGP chose not to exercise any one of the four options provisioned for in Rule 29 (d), he become functus officio and therefore, all consequential proceedings must also fall on this ground.

6. Sri Upadhyay, learned counsel appearing for the contesting respondents has however, submitted that the order dated 8 September 1998 is not an "order" in the strict sense of the term and is merely a "message/communication" of the IGP directing the Disciplinary Authority to proceed in the matter afresh. Sri Upadhyay further contends that the order dated 8 September 1998 itself is not an order of punishment and therefore, no interference is warranted by this Court. In addition

to the above, Sri Upadhyay contends that the subsequent disciplinary proceedings which were initiated against the petitioner were conducted with full opportunity being provided to him and therefore, no interference is warranted with the order of dismissal ultimately passed on 15 September 1999.

7. Before proceeding further, this Court also takes note of the two preliminary objections, which have been urged by Sri Upadhyay. Sri Upadhyay firstly referring to the language in which relief (vi) stands framed in the writ petition, contends that since no writ of certiorari has been prayed for, this Court must hold that there is no challenge to the order dated 8 September 1998. With reference to the submission of Sri Khare that no opportunity of hearing was provided to the petitioner before passing of the order dated 8 September 1998, Sri Upadhyay submits that unless the actual record is produced before this Court, it would not be clear whether opportunity was in fact afforded to the petitioner or not.

8. Dealing with the first objection of Sri Upadhyay, this Court notes that relief (vi) in terms of the language in which it is couched seeks the issuance of a writ of mandamus declaring the order dated 8 September 1998 to be null and void and being without jurisdiction. Similar is the challenge to the order dated 9 September 1998 initiating fresh departmental proceedings against the petitioner. This Court holds that the submission so advanced is hyper technical and does not countenance acceptance. The intent of the relief is not only clear but manifestly evident that a declaration is being sought by the petitioner in respect of the orders dated 8 September 1998 and 9 September 1998 to the effect that they be held to be null and void and without jurisdiction. While exercising powers conferred by Article 226 of the Constitution, this Court finds itself unable to accept the submission of Sri Upadhyay and holds that such an overly technical or pedantic view need not be taken when the intent of the relief is fairly evident. The declaration as sought clearly establishes the intent of the petitioner to seek the setting aside of the two orders dated 8 September 1998 and 9 September 1998. Viewed from whatever angle, it cannot be said that relief (vi) does not embody a challenge to the orders aforementioned. Insofar as the second preliminary submission is concerned, this Court notices that in paragraph 20 of the affidavit filed in support of the amendment application, it was categorically averred by the petitioner that no show cause notice or opportunity was afforded to him before the making of the said order. To this affidavit, the respondents were granted and have availed the right of filing a counter affidavit and the assertions made in paragraph 20 have been duly replied to in paragraph 12. It becomes pertinent to note here that in paragraph 12, the respondents neither aver nor bring on record any material or evidence to indicate that a show cause notice was in fact given to the petitioner. As the narration of the facts would indicate the submission of Sri Khare with respect to the violation of the principles of natural justice is not one which can be said to have taken the respondents by surprise. This averment as noted above was categorically made in paragraph 20 and nothing prevented the respondents from controverting the same or bringing on record relevant evidence to indicate that a show cause notice had in fact been

issued to the petitioner before the IGP exercised powers under Rule 29 (d).

9. Having duly noticed and considered the preliminary objections of Sri Upadhyay, this Court now proceeds to consider the contentions on the merits of the matter as advanced on behalf of the contesting parties.

10. At the outset, it must be noted that the respondents admit that the order dated 8 September 1998 had been made by the IGP by resort to powers conferred upon him by Rule 29(d). They have not sought to sustain this order with reference to any other provision of the 1955 Rules. On repeated queries, Sri Upadhyay maintained that the order was referable to Rule 29 (d) only and submitted that the IGP had in fact acted pursuant to this statutory power alone. The validity or otherwise of the order must therefore, be tested on the language of Rule 29 (d) alone. Rule 29(d) is in the following terms:

"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:

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."

11. As is evident from a bare perusal of the said rule, the same confers powers akin to a revisional jurisdiction upon the IGP. In terms of the provisions of this Rule, the IGP is empowered to call for the records of award of any punishment and either confirm, enhance, modify or annul the same. The proviso to the said rule further mandates that in case the revisional authority proposes to enhance the punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why the same should not be enhanced. The said rule confers a further additional power on the revisional authority when it provides that he would be entitled to direct a further investigation before passing an order of enhancement, modification or annulment of the punishment.

12. The submission of Sri Upadhyay that the order dated 8 September 1998 made in purported exercise of powers conferred by Rule 29(d) is not an order but merely a message/communication is wholly untenable. As is evident from a perusal of the said rule, the same confers a revisional power or to put in other words, a power of superintendence upon the Director General, Special Director General, Additional Director General, Inspector General or the Deputy Inspector General. This statutory power which stands conferred upon the authorities aforementioned cannot be given or conferred the character of a mere message/communication. At least this is neither the intent nor the scope of the said provision. This power of superintendence and the power to revise an order of punishment imposed is a salutary power conferred upon the superior authorities. It enables them to scrutinize the punishment imposed by the concerned

disciplinary authorities even on their own motion and to consider whether the facts and circumstances justify enhancement, modification or annulment of the same. To contend therefore, that this rule confers a power on the IGP to set aside an order of punishment by issuance of a mere message is wholly unsustainable. The power conferred by this rule as important as it is for the superior authorities must necessarily be read subject to sufficient safeguards being provided therein for protection of the rights of a delinquent employee also. That the rights of the delinquent employee have been duly taken note of and safeguarded under this rule is evident from the proviso thereto which clearly mandates that no order of enhancement of punishment shall be passed unless the employee has been granted an opportunity to show cause. The proviso quite far from excluding the principles of natural justice and fair play in fact makes the exercise of power by the superior authority subject to adherence to the same. The power thus is clearly quasi judicial and confers powers upon the superior authorities to interfere with an order of punishment imposed upon an employee and either enhance, modify or annul the same. This power clearly effects valuable rights of the employee. It cannot therefore be said that the power, though exercisable even suo moto, is entitled to be exercised by the concerned authority without due notice to the employee or without affording to him an opportunity to represent his case. The power once exercised, especially in a case where the superior authority seeks to enhance or modify the punishment would adversely effect the rights of an employee. It is not therefore a power which the superior authority can possibly exercise in closeted confines or a sequestered tower. To say, therefore that this power could have been exercised by the IGP by way of a simple "message/communication", as Sri Upadhyaya chose to describe the impugned order, is wholly untenable.

The submission of Sri Upadhyaya that the order dated 8 September 1998 is not an "order" far from advancing the case of the respondents, in the considered opinion of this Court, places it at even a lower pedestal. The power conferred by Rule 29 (d) envisages an application of mind by the superior authority, the formation of an opinion and the entering of a decision. All these facets clearly mandate the making of an order and not a "message/communication". The word "order" in legal parlance is synonymous with a determination, formal expression of a decision, an authoritative pronouncement. The submission that Rule 29 (d) envisages a mere unilateral communication is not worthy of acceptance and is consequently rejected.

13. Proceeding further this Court notes that from a bare perusal of paragraph 20 of the affidavit filed in support of the amendment application, it is apparent that the petitioner asserts that he was granted no opportunity before the IGP set aside the order of minor punishment and directed the Disciplinary Authority to take stern action. The respondents in reply to the said plea, have in paragraph 12 averred as follows:

"12. That the contents of paragraph Nos. 18, 19, 20, 21 & 22 of the affidavit filed

in support of amendment application are wrong hence denied in reply thereto it is submitted here that the Section I.G.P. Of C.R.P.F. Is competent to enhance, modify or annul the punishment under the authority of rule 29 (d) of C.R.P.F. Rules, 1955. Accordingly, the punishment of 30 days confinement to lines awarded to the petitioner was reviewed by the I.G.P., Central Sector, C.R.P.F., Lucknow and found the punishment was not commensurate with the gravity of the offence committed by the petitioner. Therefore, the I.G.P., C/S vide his office sig. no. I.X.8 (11)/ 1998CSECIVth dated 08.09.1998 passed the order to the disciplinary authority to cancel the punishment of 30 days confinement to lines and initiate appropriate/stern disciplinary action against the petitioner. Accordingly, the above punishment awarded by the OC, B/8 Bn. To the petitioner in the Orderly Room was cancelled by the disciplinary authority i.e. Commandant 8th Bn. Vide 8 Bn. C.R.P.F. Office Order No. P.VIII14/ 988ECII dated 09.09.1998. Subsequently a departmental enquiry was ordered and conducted against the petitioner under Section 11(1) of C.R.P.F. 8, 1949 vide 8 Bn. C.R.P.F. Office memorandum P VIII 14/988ECII dated 18.09.1998. After going through the enquiry proceeding and rules, the disciplinary authority has awarded the punishment dismissal from service w.e.f. 15.09.1999 to the petitioner vide 8 Bn., C.R.P.F. Office Order No. P. VIII14/ 988ECII dated 15.09.1999. Moreover, the petitioner was aware of all above happening/facts for the offence he committed and initiating of departmental enquiry after quashed Orderly Room punishment passed by Office commanding of the Company."

14. As is evident from the above extract, the respondents have not traversed the averments made on behalf of the petitioner nor have they brought on record any material or evidence to establish that the IGP had put the petitioner to notice before annulling the order of minor punishment. In view of the above, this Court arrives at the unescapable conclusion that the order dated 8 September 1998 came to be passed in stark violation of the rudimentary principles of natural justice and fair play and is therefore, rendered unsustainable.

15. More fundamentally however, this Court is constrained to note the following aspect of the matter. The power conferred by Rule 29(d) is not a power under which the IGP sits in appeal over an order of punishment made by a Disciplinary Authority. While conferring revisional jurisdiction and the power of superintendence upon the IGP, the power so conferred is liable to be exercised by him individually. The power to enhance, modify or annul the order of punishment is one which stands conferred upon the IGP himself. The decision, therefore, to confirm enhance, modify or annul an order of punishment is liable to be taken by him alone. As is evident from the order dated 8 September 1998, the IGP has clearly failed to exercise this statutory power which stood conferred upon him. He has by the order dated 8 September 1998 set aside the order of punishment imposed upon the petitioner on the ground that it was not commensurate with the gravity of the offence. If that were so, it was open to the IGP to proceed in the matter and consider whether the facts and circumstances warranted enhancement or modification of the punishment imposed upon the petitioner. The

power to set aside the order of punishment imposed by the Disciplinary Authority and to remit the matter for fresh consideration does not appear to flow from the language of Rule 29(d). The power conferred by this rule upon the IGP to direct further investigation also cannot be read disjunctive of the words "before passing such orders". This also indicates that a direction for further investigation is directly connected with and attached to the power of the IGP himself to confirm, enhance, modify, or annul an order of punishment. In view of the above, this Court is of the considered view that not only is the order dated 8 September 1998 ultra vires the provisions of Rule 29(d), it clearly amounted to the IGP abdicating a statutory function and jurisdiction which stood vested in him.

16. The subsequent proceedings which had come to be initiated and concluded against the petitioner are admittedly dependent upon the validity of the order dated 8 September 1998. It is not in dispute that the initiation of fresh proceedings by the order dated 9 September 1998 was based solely upon the direction of the IGP as embodied in the order dated 8 September 1998. Since the Court for the reasons noted above, has found the order dated 8 September 1998 to be invalid, all consequential orders must necessarily fall. This on the settled legal maxim *Sublato fundamento, cadit opus* [The foundation being removed, the structure falls.] But for the order dated 8 September 1998, there would have been no fresh initiation of an enquiry against the petitioner. It would not have led to the drawing up of fresh proceedings by the Disciplinary Authority and the imposition of a substituted punishment. The Disciplinary Authority had closed the chapter with the imposition of a minor penalty only. The substituted punishment could not have been imposed by him but for the order dated 8 September 1998 having conferred authority upon him to proceed afresh. The Court, therefore, finds itself unable to sustain the subsequent proceedings also.

17. Accordingly and for the reasons noted above, this writ petition shall stand allowed. The orders dated 8 September 1998 passed by the second respondent as also the consequential order dated 9 September 1998 passed by the fourth respondent are hereby quashed. Since the foundation upon which the orders dated 15 September 1999, 7 December 1999 and 25 May 2000 rest is the order dated 8 September 1998 only, they must also necessarily fall and are accordingly set aside. The matter shall now be placed before the second respondent for reconsideration and for passing of a further orders in light of the observations made herein above.

18. Although, the order of dismissal dated 15 September 1999 has been set aside, the grant of consequential benefits and reinstatement shall be subject to and abide by the further orders that the IGP shall now proceed to take with reference to the powers conferred upon him under Rule 29(d) of the 1955 Rules. The IGP bearing in mind that the matter is fairly old, shall proceed in the matter with expedition but with due notice to the petitioner. He shall endeavour to conclude proceedings in terms of this order preferably within a period of four months from the date of presentation of a certified copy of this order. Though

needless to state it is hereby clarified that no observation in this judgment is liable to be read as an expression of opinion by this Court on the merits of the charges levelled against the petitioner or to fetter the authority and jurisdiction of the IGP to exercise the powers conferred by Rule 29 (d).