

(2009) 01 MAD CK 0100
In the Madras High Court
Case No : W.A. No. 2989 of 2004

Commandant 110 Battalion, Central Reserve Police Force,
Poonamallee, Commandant 110 Battalion, Central Reserve
Police Force, Kohima, Deputy Inspector General of Police,
Central Reserve Police Force and Inspector General of Police,
S/Sector, Central Reserve Police Force

APPELLANT

Vs

Harisingh

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 27, 28, 29
Court Fees Act, 1870 — Section 6
Stamp Act, 1899 — Article 24

Citation : (2009) 4 MLJ 60

Hon'ble Judges : M. Sathyanarayanan, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Maheswari, SCGSC, for the Appellant; V. Gangatharan, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—This writ appeal is at the instance of the official respondents in the writ petition. The respondent was enlisted in the

Central Reserve Police Force on 7.12.1969 as a Constable. He was promoted as Head Constable on 16.8.96. While he was working in 110

Battalion, C.R.P.F., Kohima, Nagaland, a verification was made as to his date of birth. After verification, a charge sheet dated 25.4.96 was issued

stating that he was found to have altered his date of birth in the educational certificate as 3.5.1950 instead of 3.5.1953 with intent to get himself

enlisted. After the receipt of the explanation, a departmental enquiry was conducted and as the charge had been found to be proved, he was

imposed a penalty of withholding of one increment for a period of one year by the orders dated 16.8.96. The said penalty was effected and

thereafter the respondent was also transferred to Poonamallee. While he was serving in Poonamallee, he was issued with the show cause notice

dated 2.7.99 from the Deputy Inspector General of Police, C.R.P.F., Bangalore, the third appellant purportedly in exercise of the power under

Rule 29(b) of the Central Reserve Police Force Rules, 1955 (for short, "the Rules"). By that show cause notice, a tentative conclusion was arrived

at for reviewing the penalty imposed on the respondent and for the proposed enhancement of penalty into one of removal from service. A reply

dated 26.7.99 was filed by the respondent, but the same was not accepted by the order dated 31.8.99 and the penalty of withholding of one

increment for a period of one year imposed on 16.8.96 was modified into one of removal from service.

2. As against the said order, the respondent preferred an appeal before the Inspector General of Police, C.R.P.F., Hyderabad, the fourth appellant

and the same was rejected by the order dated 16.2.2000. Aggrieved by the above orders, the respondent approached this Court by way of the

writ petition and by the order under appeal, the writ petition was allowed on the ground that there is no power of revisionary jurisdiction beyond a

period of 30 days. The learned Judge, however, taking into consideration that the respondent had been found guilty and he had also not rendered

any duty from the date of removal from service, has held that the respondent would not be entitled to any arrears of salary and he should be

reinstated forthwith and would be entitled to future salary on reinstatement. This proposition is put in issue in this appeal.

3. Mrs. R. Maheswari, learned Senior Central Government Standing Counsel for the appellants has submitted that inasmuch as the provision of

Rule 29(d) of the Rules stipulates 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, the power of revision is vested in the authority and therefore, it cannot be held that the authority has no revisionary jurisdiction. The only

condition for exercise of the said power is that before any enhancement of punishment is proposed, the delinquent officer should be given an

opportunity to show cause either orally or in writing as to why the punishment should not be enhanced. Inasmuch as the respondent was given

opportunity to show cause for the proposed enhancement of punishment, the proviso has been complied with and therefore, the learned Judge had

erred in holding that the revisionary jurisdiction cannot be exercised beyond a period of 30 days, as contemplated under Rule 28(e) of the said

Rules. She has not advanced any arguments on merit, except by drawing our attention to paragraph-14 of the counter affidavit, where it has been

stated that for the proved misconduct of alteration of the date of birth, the punishment of removal or dismissal from service must alone be imposed.

She would also submit that as the charge is proved, the learned Judge ought not to have interfered with the order of the revisional authority and

accordingly, the order under appeal is liable to be set aside.

4. Per contra, Mr. V. Gangatharan, learned Counsel for the respondent has submitted that inasmuch as there is no power for the revisional

authority to enhance the punishment beyond a period of 30 days, the order questioned in the writ petition is liable to be set aside, which has been

rightly done by the learned Judge. In fact the learned Judge had taken note of the fact that inasmuch as the charge is proved, he has denied the

benefit of backwages and has only directed reinstatement. Such an order requires no interference.

5. We have considered the rival contentions carefully. For disposal of the rival contentions, Rules 28 & 29 are required to be extracted and they

read thus:

28. Appeal.--(a) Every subordinate officer or every officer of any other rank below him including an enrolled follower against whom an order

under serial numbers 1 to 7 of the table in Rule 27 or under Clauses (d) and (e) of Section 13 is passed is entitled to prefer one appeal against

such order to the Inspector General; if the original order was passed by Deputy Inspector General and to the Deputy Inspector General; if the

original order was passed by the Commandant.

(b) No appeal shall lie against an order by the competent authority inflicting any of the punishments mentioned in:

(1) Serial Nos. 8 to 11 of the Table in Rule 27;

(2) Clauses (a), (b) and (c) of Section 13;

(3) Against an order discharging recruit before the termination of his period of training.

(c) Every appeal preferred under these rules shall contain all material statements and arguments relied upon by the person preferring the appeal. It

shall contain no disrespectful or improper language or irrelevant allegations and it shall be complete in itself. Petitions or appeals filed by members

of the Force are not chargeable with stamp duty. Copies of other documents filed with the appeal shall be stamped u/s 6 of the Court Fees Act,

1870, unless they have to be stamped under Article 24 of Schedule 1 of the Indian Stamp Act, 1899.

(d) Every appeal, whether the appellant is still in the Force or not, shall be preferred through the Commandant and shall not be sent direct to the

appellate authority.

(e) An appeal which is not filed within 30 days of the date of the original order, exclusive of the time taken to obtain a copy of the order or record,

shall be barred by limitation:

Provided the appellant authority may entertain time barred appeal if deemed fit.

(f) The Commandant may withhold an appeal to the Inspector General or to the Deputy Inspector General in cases:

(1) Where under these rules does no appeal lies.

(2) Where the appeal does not comply with the provisions of Sub-rules (c), (d) or (e) above.

(3) Where it is a further appeal presented after a final decision has been given by the competent appellate authority and no new facts have been

brought out necessitating reconsideration of the case:

Provided that in every case in which an appeal is withheld the person preferring the appeal shall be informed of the fact together with brief reasons

there for;

(g) No appeal shall lie against an order withholding of an appeal by a competent authority:

Provided that in cases of failure to comply with the conditions stated in Sub-rule (c) or (d) above, the appeal shall not be withheld if it is preferred

again in the prescribed form in conformity with the rules and is not time barred.

(h) A quarterly statement of all appeals withheld with brief reasons in respect of

each appeal shall be furnished by the Commandant to the Deputy Inspector General.

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 or the Additional 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 or the Additional Director General.

(d) 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.

6. It is true that as and when an order of punishment is imposed, an appeal could be preferred to the competent authority in terms of Rule 28(a) &

(b) of the Rules. However, in terms of Rule 28(e), such an appeal shall be barred by limitation if not filed within 30 days of the date of the original

order, exclusive of the time taken to obtain a copy of the order or record. By virtue of the proviso to the said Rule, an appeal filed beyond a period of 30 days also could be entertained by the appellate authority. By the said Rule, of course, an officer who is aggrieved by an order of punishment is entitled to prefer appeal within a period of 30 days and in case if the appeal could not be preferred within a period of 30 days, the officer is entitled to satisfy the appellate authority seeking for condonation of delay in such case with sufficient cause. If the appellate authority is satisfied with the sufficient cause, he can entertain such an appeal. The question whether the said provision is also applicable to a revisional authority while he exercises the power under Rule 29(d) of the Rules should be considered. By the said Rule, the procedure prescribed for appeals under Sub-rules (c) to (g) shall apply mutatis mutandis to petitions for revision.

7. It is argued by the learned Counsel for the appellants that though Rule 29 refers to the procedure enumerated under Sub-rules (c) to (g) of Rule 28 should be followed for revisions, the same shall not be applicable in view of the specific provision of Rule 29(d), which does not prohibit the revisional authority to exercise the suo motu power to revise the order. We are not convinced with the said reason. A plain reading of Rule 29(b) would show that the procedure contemplated under Rule 28(e) relating to the filing of the appeal within a period of 30 days is also applicable for revisions, as the said Rule refers to "petitions for revision." The said Rule cannot be restricted only for a petition filed for revision by the person aggrieved of the orders in the appeal, and it has to be extended to the power of the Director General or the Inspector General, as the case may be, under Rule 29(d) of the Rules as well. Of course, under Rule 29(d), a power is conferred on the authority to suo motu call for the records of award of any punishment and confirm, modify or annul the same including to enhance such punishment, but it cannot be without any limitation, as such an interpretation would not be in conformity with the service jurisprudence. When the Rules prescribe a specific limitation for the delinquent officer, who has been found guilty, either to prefer appeal or the consequent revision, the unfettered power on the authorities to revise an order of punishment and also the enhancement of punishment cannot be without a restricted period.

8. It is also argued that even under Rule 28(e), in the event the appellate authority is satisfied he may entertain the appeal beyond a period of 30

days and therefore the revisional authority is also entitled to exercise the power beyond the period of 30 days. It is true that the revisional authority

could suo motu revise an order of punishment in exercise of the power under Rule 29(d), if he is satisfied that it could not be exercised within 30

days for sufficient reasons. Nevertheless, the exercise of such power cannot be arbitrary and cannot be without any limitation as to the period.

Therefore, while holding that the revisional authority has the power under Rule 29(d) of the Rules to revise an order of the subordinate officer and

enhance the punishment taking into consideration that the punishment was disproportionate to the charges levelled and proved, nevertheless, he has

to apply his mind to the fact as to why such exercise of power under Rule 29(d) could not be made within a reasonable period. In the absence of

such application of mind and sufficient cause, an order passed in exercise of the revisional power cannot be sustained, as it would give an

unfettered power to the revisional authority to revise an order at any point of time as he may like. The intention of the legislature cannot be such to

defeat the very purpose of the power conferred on either the appellate authority or the revisional authority.

9. In this context, we may usefully refer to the judgment of the Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, . In the

said judgment, the Supreme Court considered the power of the Commissioner to revise an order made u/s 65 of the Bombay Land Revenue

Code, 1879 in respect of the conversion of the agricultural land and had observed in paragraphs-11 & 12 as follows:

11. The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation

prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be

determined by the facts of the case and the nature of the order which is being revised.

12. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act u/s 211. u/s 65 of the

Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for

shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind

and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and

65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is

reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building

operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on

12.10.1961 i.e. more than a year after the order, and it seems to us that this order was passed too late.

10. The aforesaid judgment was quoted with approval in the subsequent judgment in Pune Municipal Corporation Vs. State of Maharashtra and

Others, . In paragraph-31 of the judgment, the Supreme Court had observed that ""the revisional authority was duty bound to take into account the

length of delay, intervening circumstances and subsequent events and to consider whether the power should have been exercised or not."" The

Supreme Court further found that ""in the event such exercise had not been undertaken, the order suffers from legal infirmity and must be quashed.

11. On the facts of this case, the original authority passed the order imposing punishment of withholding of one increment for a period of one year

on 16.8.96. The revisional authority had issued the show cause notice only on 2.7.99. In view of the order dated 16.8.96 imposing a penalty of

withholding of one increment for a period of one year, the respondent had suffered the said punishment and in fact he has not even chosen to

question the said order. The order of the revisional authority does not indicate the application of mind as to why the revisional power has not been

invoked or exercised at least for a period of nearly three years i.e., between 16.8.96 and 2.7.99. In the absence of any application of mind as to

the duty of the revisional authority to take into consideration of the length of delay and the intervening circumstances, in our opinion, the order of

the revisional authority suffers from legal infirmity and consequently is liable to be set aside. In that view of the matter, we find no grounds to

interfere with the order of the learned single Judge.

12. It is also argued by the learned Counsel for the appellants that once the charge is proved, in the wake of the directions of the Government of India dated 19.5.93 published in C.R.P.F. Gazette No. 69/93, the punishment of removal or dismissal could alone be imposed in case of proved misconduct of alteration of the date of birth and therefore the learned Judge ought not to have directed for reinstatement. We are not inclined to go into the merits of the punishment as such in view of the fact that exercise of the power of revision after nearly a period of three years cannot be approved, in the absence of any explanation by the revisional authority showing the application of mind to the said aspect, particularly, as to the intervening circumstance, namely, that the respondent had suffered the punishment without questioning the same. While we approve the power of the revisional authority to suo motu revise the orders of the original authority in exercise of the power under Rule 29(d) of the Rules, we hold that such power should be exercised within a reasonable period and even in case such power is exercised beyond a period of 30 days, the proper reason for exercise of the power should be indicated in the order and failure of the revisional authority to indicate such reasons would by itself be a ground to set aside the said order, as the order suffers from legal infirmity.

13. For the foregoing reasons, the writ appeal is dismissed. It is seen that the order in the writ petition has been stayed by this Court on 7.10.2004 and by virtue of the stay order, the respondent has not been reinstated into service. In the meanwhile, the respondent had also attained the age of superannuation. Hence the question of reinstatement does not arise. However, in view of our order, the respondent is entitled to the arrears of his salary for the period from the date of the order in the writ petition worked out on the basis of last drawn wages and the period of service shall be taken into consideration for the purpose of pension. Consequently, W.A.M.P. No. 5552 of 2004 is closed. No costs.