

(2015) 01 DEL CK 0366
In the Delhi High Court
Case No : W.P.(C) 7607 of 2014

Naresh Kumar Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 341

Citation : (2015) 4 SCT 42

Hon'ble Judges : Pradeep Nandrajog and Pratibha Rani, JJ.

Bench : Division Bench

Advocate : Ankur Chhibber, Advocate, for the Appellant; Arun Bhardwaj, CGSC and Rishi Kapoor, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Since January 23, 2015 was declared a holiday, the matter has been listed today. Heard learned counsel for the parties.

2. Admitted position is that a charge memo dated April 30, 2009 was issued alleging against the petitioner that while seeking employment in CRPF he suppressed the relevant fact concerning his being involved in a criminal case and thus did an act prejudicial to good order and discipline of the force and that the petitioner suppressed he being released on bail by the Court.

3. Pleading not guilty to the charge, requiring the Disciplinary Authority to appoint an Inquiry Officer to record evidence and submit a report, the proceedings terminated when on November 07, 2009 penalty of stoppage of three increments for three years without cumulative effect was levied upon the petitioner.

4. The punishment was given effect to. The increment which the petitioner had to earn in January 2010, January 2011 and January 2012 were not granted. In January 2013, since the penalty was without cumulative effect, four increments were granted to the petitioner.

5. After three years and five months, on May 07, 2013 the Competent Authority CRPF, exercising power under Rule 29(d) of the CRPF Rules, 1955, issued a show cause notice to the petitioner requiring him to respond as to why the penalty of stoppage of increment be not enhanced to one of either dismissal or removal from service. Responding to the show cause notice on May 24, 2013, the petitioner informed that he had already undergone the punishment and that vide decision dated February 27, 2012 the Criminal Court, though had sustained the indictment against the petitioner of having committed offences punishable under Section 323/341 IPC, gave benefit of the Probation of Offenders Act, 1950. The petitioner pointed out that the said decision would show that there was a fight between the neighbours.

6. Vide order dated July 01, 2013 the Competent Authority enhanced the punishment to one of removal from service against which appeal filed by the petitioner was rejected on December 23, 2013.

7. The only issue which arises for consideration before us is whether in the facts and circumstances of the instant case the Competent Authority could enhance the penalty exercising power under Rule 29(d) of the CRPF Rules, 1955 which 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:

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."

8. No period is prescribed within which power has to be exercised under Rule 29(d), but it is settled law that where a power is vested it must be exercised in a reasonable manner and within a reasonable time.

9. What would be the measure of the reasonable time?

10. As a thumb rule, the reasonable time would be within the period of the earlier penalty being in force. The reason being, if a penalty which is levied is allowed to run its period, awarding a higher penalty for the same wrong would amount to levying two penalties.

11. The respondents have not explained as to why it took the Competent Authority over three years and five months to issue a show cause notice to enhance the penalty.

12. In our opinion, the facts of the instant case require us to hold that the Competent Authority has wrongly exercised the power under Rule 29(d) ignoring that for the wrong in question the petitioner had been levied a penalty, duration

whereof was three years. The petitioner had suffered the said penalty for three years.

13. We dispose of the writ petition quashing the impugned order dated July 01, 2013 as also the order dated July 02, 2014. The petitioner is reinstated in service with all consequential benefits which would include arrears of pay and continuity in service for purposes of pension and other benefits. Seniority shall also be retained. No costs.