

(1996) 05 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 875 of 1989

Pabhakaran

APPELLANT

Vs

Director General, C.I.S.F. and Others

RESPONDENT

Date of Decision : 31-05-1996

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 34, 47, 47(2), 49

Citation : (1996) 05 KL CK 0012

Hon'ble Judges : K. Sreedharan, Acting C.J.; C.S. Rajan, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; George C.P. Tharakan, Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sreedharan, Actg. C.J.

1. Petitioner in O.P. 9011/1985 is the Appellant. He was working as a Security Guard in the Central Industrial Security Force under the third Respondent. He was charge-sheeted for misconduct of misbehaviour under the influence of liquor and beat his colleagues who were Security Guards. He was served with memo of charges accompanied by statement of allegations. He was called upon to submit his explanation. The explanation submitted by him was unacceptable to the disciplinary authority. Consequently, a full-fledged enquiry was held into the misconduct. Enquiry officer found the Petitioner guilty of the misconduct. Thereupon the Commandant of C.I.S.F. Unit imposed punishment of reducing his pay from Rs. 296 to Rs. 260, i.e. to the minimum in the time scale of pay for a period of three years with cumulative effect. Aggrieved by the said punishment, Petitioner filed Exhibit P-4 memorandum of appeal before the Deputy Inspector General, C.I.S.F., Madras, invoking Rule 47 of the Central Industrial Security Force Rules, 1969, hereinafter referred to as "the Rules." While the appeal was pending, the appellate authority, namely the second Respondent, issued Exhibit P-6 notice calling upon the Petitioner to show cause why the punishment should

not be enhanced to that of removal from service. Petitioner submitted his explanation. After considering the explanation, appellate authority issued Exhibit P-8 order dated 24th February 1984 imposing the punishment of removing the Petitioner from service with effect from the date of receipt of the order. That order was challenged before this Court in the Original Petition on the ground that the second Respondent while exercising the appellate power under Rule 47 should not have invoked the powers under Rule 49 to revise the order suo motu and imposed the punishment. It was contended that the appellate authority passed Exhibit P-8 order while keeping Exhibit P-4 appeal still on its file. It was improper and so Exhibit P-8 order was, it was argued, illegal. Learned Single Judge did not find favour with the said contention. Consequently the Original Petition was dismissed. Hence this appeal.

2. The fact that disciplinary proceedings were initiated against the Appellant for misconduct is not in dispute. So also it is agreed that a proper enquiry was conducted into the misconduct alleged, in conformity with the principles of natural justice. Enquiry officer found the Petitioner guilty of the charges. Disciplinary authority, the Commandant, imposed the punishment of reducing the salary to the minimum in the time scale of pay for a period of three years with cumulative effect. Exhibit P-4 appeal against that was filed invoking Rule 47 of the Rules. That rule enables the appellate authority to pass orders setting aside, reducing, confirming or enhancing the penalty imposed by the disciplinary authority. Second Respondent was the authority which was to dispose of the appeal Exhibit P-4. That authority was superior to the disciplinary authority, entitled to revise the order of the disciplinary authority suo motu.

3. As stated earlier, Rule 47(2)(c)(i) empowers the appellate authority to enhance the penalty imposed by the disciplinary authority. This power of the appellate authority is controlled by the proviso to Clause (c) of Rule 47(2). As per the proviso, appellate authority shall not impose any enhanced penalty which that authority is not competent to impose. So, the question is whether the punishment now imposed by the appellate authority is one which can be imposed by the second Respondent in exercise of the powers under the Rules. The power of the second Respondent to impose the punishment of removal from service as per the rules is not in controversy. The further restriction that is imposed by Clause (2) of the proviso is that before imposing the enhanced punishment the Appellant, the delinquent officer, should be given an opportunity of making his representation against the enhancement. It is conceded before us that the second Respondent did issue notice calling upon the Appellant to show cause why the punishment imposed by the disciplinary authority should not be enhanced to one of removal from service. pursuant to that notice, it is conceded that the Appellant filed detailed representation. Another restriction that is imposed by Clause (iii) of the proviso to Rule 47(2)(c) on the appellate authority is that the punishment which is sought to be imposed could have been imposed only after a proper enquiry as contemplated by Rule 34 is held. In the instant case, the punishment imposed is one which should have been preceded by an enquiry

under Rule 34. A proper enquiry in conformity with the principles of natural justice and in conformity with Rule 34 was conducted. On the basis of the evidence recorded in the enquiry, enquiry officer found the Appellant guilty of the misconduct. These circumstances show that the appellate authority complied with the terms contained in the three clauses of the proviso to Rule 47(2)(c), before imposing the punishment of removal from service.

4. Rule 47(2)(c), as stated above, empowers the appellate authority to enhance the penalty. In the instant case, the appellate authority issued a show cause notice to the Appellant to give reason why the punishment imposed by the disciplinary authority should not be enhanced to one of removal from service. Appellant's explanation against the proposed enhancement was considered. It was thereafter the punishment was imposed. The imposition of that punishment is under challenge on the ground that the notice to show cause why the enhanced punishment should not be imposed was issued invoking the powers under Rule 49 of the Rules. The argument is that while the appeal was pending before the second Respondent, second Respondent should not have invoked his suo motu power of revision under Rule 49.

5. As per Rule 49, any superior authority to the authority imposing the punishment or the appellate order passed by the appellate authority can revise the same within a period of one year from the date of the order. While exercising the said power of revision, the superior authority may remit the matter to the lower authority or vary/enhance the punishment imposed or the revisional authority may order fresh enquiry into the matter. The procedure to be followed by the revisional authority are those contained in Rule 47 relating to appeals. A combined reading of Rules 47 and 49 would show that the procedure to be followed by authority exercising the power should follow the procedure provided in Rule 47 of the Rules. Rule 47(2)(c) together with its provisos provide the procedure to be followed by the superior authority exercising the suo motu power of revision.

6. While issuing Exhibit P-6 show cause notice the appellate authority, viz., the second Respondent, invoked the powers conferred by Rule 49 of the Rules to propose the enhanced penalty of removal from service. The legal position that second Respondent could enhance the punishment to removal from service invoking the powers under Rule 47(2)(c) is not in dispute. So also it is not disputed that the second Respondent could have suo moto revised the order passed by the disciplinary authority and imposed the punishment of removal from service. In such a situation when the power of second Respondent is beyond controversy, reference to Rule 49 of the Rules will not in any way go to invalidate his action. The punishment imposed by the appellate authority, namely removal from service, was one which could have been imposed by the disciplinary authority, namely the Commandant. Since the primary authority was competent to impose the enhanced punishment, the appellate authority was justified in imposing that punishment.

7. Learned Counsel representing the Appellant brought to our notice decision rendered by a learned Single Judge of this Court in O.P. Nos. 76 and 80 of 1982. That decision related. to personnel belonging to Railway Protection Force. Disciplinary authority imposed punishment on Senior Rakshaks. They challenged the imposition of punishment before the appellate authority. While appeal was pending before appellate authority, an officer superior to the appellate authority exercised his suo motu revisional power and enhanced the punishment imposed on the Rakshaks. Consequent on the order passed by the superior authority exercising the revisional power, the appeal which was pending before his subordinate officer became infructuous. In such a situation, this Court took the view that the revisional power must be so exercised as not to curb or depreciate the appellate remedy. The said observation cannot apply to the facts of this case, because the appellate authority himself was the revisional authority. The appellate authority was entitled to enhance the punishment while dealing with the appeal. In such a situation, the order passed by the appellate authority enhancing the punishment cannot be considered to be a step to curb or depreciate the appellate remedy. The order passed by the appellate authority must be taken as one passed in the appeal itself.

In view of what has been stated above, we find no merit in this appeal. It is accordingly dismissed.