

(2024) 08 GAU CK 1108
In the Gauhati High Court
Case No : WP(C) Of 8867 Of 2019

Pranjal Das

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 27-08-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 376, 457, 511
Central Reserve Police Force Act, 1949 — Rule 28, 29

Citation : (2024) 08 GAU CK 1108

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : B. Sinha, D.C. Borah

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. The enhancement of the penalty in a disciplinary proceeding vide an order dated 15.01.2008 is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India. The challenge is based on the grounds of lack of jurisdiction as well as violation of the principles of natural justice.

2. As per the facts projected, the petitioner was serving at the relevant point of time as a Constable G.D. in the Central Reserve Police Force (CRPF). While he was posted at the Khatkhathi Range in the district of Karbi Anglong, a departmental proceeding was initiated against him. The same was based on an FIR lodged against him which was registered as Jorhat P.S. Case No. 167/2007 under sections 457/376/511 of the Indian Penal Code. It is however the case of the petitioner that the said FIR was lodged due to some misconception and the same was resolved by a statement of the alleged victim whereby the petitioner was absolved of the allegations. The aforesaid police case had culminated in submission of a Final Report which was accepted by the learned Court. However, the departmental proceeding was initiated against the petitioner which had

culminated in an order dated 03.09.2007 whereby he was imposed the penalty of reduction to a lower stage in the time scale of pay for two years with a further direction that he will not earn increments during the period of reduction which will have the effect of postponing future increments. It is the case of the petitioner that the aforesaid penalty was not challenged by him and had attained finality. However, vide the impugned order dated 15.01.2008, the penalty was enhanced by increasing the period of reduction from two years to five years.

3. I have heard Shri B. Sinha learned counsel for the petitioner. I have also heard Shri D.C. Borah, learned C.G.C. The materials available on record have also been carefully examined.

4. Shri Sinha, the learned counsel for the petitioner has submitted that the original order of penalty was never served upon him and the impugned order dated 15.01.2008 was passed without any jurisdiction. He has also submitted that the petitioner was never given any scope or opportunity of hearing before the enhancement of the penalty was imposed.

5. By drawing the attention of this Court to the provisions of the CRPF Act, 1949 and the Rules of 1955, the learned counsel for the petitioner has submitted that Rule 28 provides for an appeal and Rule 29 provides for revision. It is submitted that when there was no appeal preferred by the petitioner, there was no scope for exercising powers of revision whereby an adverse action has been taken against the petitioner. He has emphasized that when the Final Report in the police case was submitted and accepted by the Court on 15.11.2017, there was no occasion even to proceed further with the disciplinary proceeding inasmuch as the charge was the same. It is also submitted that extraneous factors have been taken into consideration like media and newspaper reports which were never produced in the enquiry. He has also submitted that the penalty is shockingly disproportionate to the gravity of the allegation.

6. The learned counsel for the petitioner has relied upon the following case laws:

(i) G.M. Tank vs. State of Gujarat & Ors. reported in (2006) 5 SCC 446.

(ii) State of Punjab vs. Prem Sagar and Ors. reported in (2008) 7 SCC 550

(iii) Union of India and Ors. vs. Const Sunil Kumar [Civil Appeal No. 219 of 2023 { @ SLP(C) No. 7645 of 2018 }].

7. In the case of G.M. Tank (supra), the interference with an order of dismissal from service was made as there was no evidence against the employee and the criminal proceeding was based on the same set of facts in which the employee was honourably acquitted. The case of Prem Sagar (supra) pertains to the aspect of penology in a criminal case. The decision in the case of Sunil Kumar (supra) is on the aspect of proportionality of a penalty in a disciplinary proceeding.

8. Per contra, Shri Borah, the learned CGC has submitted that the allegations against the petitioner were serious in nature. He submits that the petitioner was

on Guard duty on the relevant date, i.e., 21.03.2007 from 1800 hrs to 22.03.2007 1800 hrs and in between on 21.03.2007 he had visited a civilian house at 2030 hrs, that too when the male member of that house was not present. It is submitted that even though the allegation made in the police case of attempted rape was not substantiated that will not absolve the petitioner of his other liability and charge of leaving the post while on duty and visiting a civilian house in absence of the male member. It is submitted that the image of the organization is of prominent importance and the conduct of the petitioner had brought a bad reputation to the organization and accordingly the punishment imposed is commensurate.

9. The learned CGC has submitted that both the grounds of challenge are not sustainable inasmuch as under Rule 29 while exercising the powers of revision, there is a power to enhance the penalty suo moto even and in this case the learned CGC has referred to the affidavit-in-opposition filed on 24.10.2020. In the said affidavit-in-opposition it has been clearly stated that a show cause notice was issued on 06.11.2007 as to why the penalty should not be enhanced and the petitioner had in fact replied to the same on 28.11.2007. He therefore submits that the allegation that the petitioner was not given any opportunity is belied and amounts to misleading this Court.

10. The learned CGC has also submitted that in the disciplinary proceeding there was a clear admission by the petitioner regarding the allegation and he had given an undertaking not to commit any such misdeeds in the future. He reiterates that the allegation is of serious nature where the petitioner had left the guard post without any permission. He has also submitted that there is no illegality at all in either the proceedings or the impugned order. In support of his submissions, the learned counsel for the respondents has relied upon an order dated 11.11.2021 of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Ex-Constable Ram Karan [Civil Appeal No(s). 6723 of 2021]

11. The rivals contentions have been duly considered.

12. The fulcrum upon which the challenge is based is on two counts. Firstly, the jurisdiction of the authority has been questioned by submitting that in absence of any appeal being preferred, the powers of revision under Rule 29 could not have been exercised. The second leg of argument is that the petitioner was not given any opportunity before the impugned order was passed with the further submission that even the original order of penalty was not served upon him. However, a perusal of the records including the affidavit-in- opposition filed on 24.10.2020 would reveal otherwise. The departmental proceeding was instituted on 19.04.2007 and with regard to the powers of revision, this Court has noticed that under Rule 29 (d), there is a power to enhance the penalty. For ready reference, Rule 29 (d) is extracted herein below:

"29 (d) The Director General or Additional 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."

13. It is clear that such powers can be suo moto exercised and in terms of the proviso, a show cause notice was issued to the petitioner on 06.11.2007 which was also replied to by the petitioner on 28.11.2007. That being so, it will not lie upon the petitioner to submit that he was not aware as to how the penalty was enhanced vide the order dated 15.01.2008. The aforesaid Rule makes it clear that it is not a condition precedent that to exercise powers of revision, an appeal has to be preferred initially.

14. This Court is also of the opinion that submission of the final report and acceptance vide order dated 15.11.2017 in the police case would not automatically lead to exonerating the petitioner in the disciplinary proceeding. It is seen that there is a remarkable difference of the charges in the criminal case and the charges in the disciplinary proceeding. The main allegation in the disciplinary proceeding was not on the attempted rape but for leaving the guard post while on duty and visiting a civilian house in the absence of a male member. The aforesaid allegation is not only established but also admitted by the petitioner as he himself has relied upon the acceptance of the Final Report in the police case wherein he was absolved of the criminal charge of attempted rape.

15. Though an argument was also advanced on the aspect of proportionality, this Court is of the opinion that taking into account the nature of the allegations which are serious, the impugned penalty is not disproportionate and does not warrant any interference in this regard.

16. The reliance upon the case of G.M. Tank (supra) would not come to the aid of the petitioner in as much as in the said case, the charges in the criminal case and in the disciplinary proceeding were the same and in the criminal case, the petitioner was honourably acquitted. However, in the instant case the charges are not only different but those are also admitted by the petitioner. The records placed before this Court would also indicate that the petitioner, apart from admitting the charges had also given an undertaking not to commit any such activities.

17. The reliance on the case of Prem Sagar (supra) by the petitioner is of no consequence as the same is on the aspect of penology in a criminal case. Reliance upon the case of Sunil Kumar (Supra) would also not help the petitioner

18. In the case of Ram Karan (supra), the Hon'ble Supreme Court had reiterated the need of strict discipline in the CRPF and had made the following observation:

"29. The scheme of the Act 1949 of which reference has been made was completely overlooked by the High Court of Delhi and while keeping in mind the

standards of examining the misconduct of a civil servant, interference has been made in the quantum of punishment which may not apply to member of the discipline force and, in our considered view, the interference made by the High Court in substituting punishment in the instant case is unsustainable and deserves to be set aside.”

19. This Court finds force in the submission of the learned CGC, who has contended that the allegations are of serious nature wherein the image of a disciplined force is tarnished. The CRPF and any other paramilitary force strive on the trust of the general people and any activities of the present nature would not only tarnish the image but would also create a dent in the trust of the people upon such organization.

20. This Court is of the considered opinion that the exercise of suo moto powers of revision which is available under Section 29(d) in the instant case does not appear to be unreasonable and the enhancement of the penalty appears to be justified.

21. In view of the above discussions, this Court is of the opinion that no case for interference is made out and accordingly the writ petition is dismissed.