
(1993) 08 KL CK 0064
In the High Court Of Kerala
Case No : O.P. No. 5708 of 1989

S. Ansari

APPELLANT

Vs

D.I.G.C.I.S.F. and another

RESPONDENT

Date of Decision : 02-08-1993

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 8, 9

Citation : (1993) 2 KLJ 469

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : Babu Thomas K, for the Appellant; T.K. Venugoplan (Addl. C.G.S.C.), for the Respondent

Final Decision : Allowed

Judgement

K.J. Joseph, J.—The petitioner in this Original Petition is a Head Constable in the Central Industrial Security Force now working in the Udyogamandal Unit. He challenges the validity of Ext. P10 communication issued by the second respondent wherein the petitioner was informed that the appeal submitted by him had been withheld in terms of Rule 45 of the Central Industrial security Force Rules, 1969. He also prays for a writ of mandamus or other appropriate writ, direction or order directing the 2nd respondent to transmit the appeal filed by him evidenced by Ext. P8 to the first respondent and a further direction to the first respondent to hear and dispose of the appeal on merits within a particular period prescribed by this Court. While working as a Head Constable, disciplinary proceedings were taken against the petitioner for unauthorised absence from duty and disobedience of the order issued by superior officers. The petitioner submitted a written statement of defence denying the charges. An enquiry was conducted in respect of the charges framed against him, which ultimately ended in imposing an order of punishment on the petitioner evidenced by Ext. P6 dated 22-5-1987. Ext. P6 order was duly served on the petitioner. In Ext. P6, the petitioner was informed that if he is aggrieved by the said order, he may prefer

an appeal to the first respondent within 30 days of the date of issue of the said order.

2. Admittedly, the said order was served on the petitioner. But according to him, copy of the enquiry report was not given to him along with Ext. P6 order of punishment and therefore, as per Ext. P7 letter dated 12-4-1989, the petitioner requested the 2nd respondent to furnish him the copy of the enquiry report along with a copy of the written statement of the defence filed by him in respect of the memo of charges, which according to him had been irrecoverably lost from him. He had also informed the second respondent that with out the enquiry report, the petitioner is not in a position to file an appeal against the Ext. P6 order of punishment. He, therefore, requested the second respondent to issue necessary orders to furnish him a copy of the enquiry report and the written statement of defence along with the other documents relied on by the department to find him guilty of the charges. Thereafter the petitioner submitted an appeal. Ext. P8 is the copy the above memorandum of appeal submitted by the petitioner. The same is addressed to the first respondent but submitted through the second respondent as required under the Rules for transmitting the same to the 1st respondent. But the second respondent did not forward the appeal to the first respondent and thereafter issued Ext. P10 memorandum dated 18-5-89 wherein the petitioner was informed that the appeal filed by him had been examined by second respondent and he withheld the same in terms of Rule 45 of the Central Industrial Security Force Rules 1969, since the appeal had not been submitted within the time specified in Section 9 of the Central Industrial Security Force Act, 1968 and therefore the same is time barred. He has also stated in Ext. P10 communication that the reasons for not filing the appeal by the petitioner is not satisfactory. The petitioner, on receipt of Ext. P10 communication filed this Original Petition before this Court and prayed for the reliefs stated earlier in this judgment.

3. A detailed counter affidavit is filed by the second respondent. According to the counter affidavit filed by the second respondent, the reasons given by the petitioner in Ext. P8 appeal and Ext. P9 representation had been considered by the second respondent and according to the second respondent those grounds are not sufficient for forwarding the appeal to the appellate authority under Rule 45 of the Central Industrial Security Force Rules 1969.

4. Therefore, the only question to be considered in this Original Petition is, whether the second respondent has any authority under the Rules to withhold Ext. P8 appeal and whether he was justified in withholding the appeal submitted by the petitioner.

5. Section 9 of the Central Industrial Security Force Act, 1968 gives a right to any "enrolled" member of the Force aggrieved by an order made u/s 8 of the Act imposing penalty on him to file an appeal to such authority as may be prescribed within 30 days from the date on which the order appealed against is communicated to him. Section 9 further provides that the authority so prescribed

may entertain the appeal after the expiry of the said period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Rule 42-A of the Central Industrial Security Force Rules, 1969 also prescribes a period of one month from the date on which the appellant received a copy of the order appealed against to file an appeal to the appellate authority. The proviso to this Rule also enables the appellate authority to entertain the appeal filed after the expiry of the said period of one month, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time. Power of withholding the appeal is provided under Rule 45 of the above Rules. Under Rule 45 the authority which made the order appealed against, may withhold the appeal if it is not submitted within the period specified in the Act and no cause is shown for the delay.. The second respondent relies on the above proviso in Rule 45 of the Rules for withholding the appeal submitted by the petitioner.

6. A reading of Rule 45 of the Rules would clearly show that the authority who made the order can withhold the appeal only if the appeal is not submitted within the time prescribed in Act and no cause is shown for the delay (emphasis supplied). Admittedly, the petitioner had shown some cause for not filing the appeal in time. According to him a copy of the enquiry report and other documents were not furnished to him along with the punishment order and therefore he had requested for copy of the enquiry report and the other documents for filing the appeal. He has also stated that without those documents it was not possible for him to file the appeal. Whether the above cause or reasons stated by the petitioner are sufficient or not, is not for the authority which made the order appealed against to decide. Rule 45 of the Rules did not give any such power on that authority. Section 9 of the Act read with Rule 42-A of the Rules states that the appellate authority may entertain the appeal filed after the expiry of the statutory period of 30 days and consider whether the cause shown for not filing the appeal in time is sufficient or not. Such a power is specifically conferred only on the appellate authority and not on the authority constituted under Rule 45 of the Rules. The appellate authority may entertain the appeal filed after the expiry of the statutory period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. If such a power is conferred on the authority under Rule 45, there would be no chance even for the appellate authority to entertain an appeal filed after the expiry of the statutory period and exercise its powers u/s 9 of the Act or Rule 42 (A) of the Rules. Such is not the purport of the above Rule. A reading of the above statutory provisions would give a right only on the appellate authority to consider whether the cause shown by the appellant is sufficient or not, and not with the authority who imposed punishment. The sufficiency of otherwise of cause for the delay is a matter to be decided by the appellate authority and not by the authority which made the order under appeal. Rule 45, under such circumstances, would not give any such power on the authority which made the order appealed against.

7. Ext. P10 communication issued by the second respondent in this case is therefore not warranted under Rule 45 of the Rules. The appellant had shown some causes for not filing the appeal in time. Sufficiency or otherwise of those grounds can be considered only by the appellate authority. In the above circumstances, there is no justification in issuing Ext. P10 communication withholding the appeal filed by the appellant. Ext P10 issued by the second respondent is therefore, without any authority of law and hence the same is set aside. The second respondent is directed to forward Ext. P8 appeal to the first respondent along with his comments and remarks as contemplated in the Rules and transmit the appeal to the first respondent for his considerations. The first respondent is further directed to consider the maintainability of the appeal and the prayer to condone the delay in filing the appeal on merits. If the first respondent is satisfied that there are grounds for condoning the delay in filing the appeal, the first respondent should further consider the appeal on merits and pass appropriate orders on the same. The second respondent is directed to transmit Ext. P8 appeal to the first respondent within the period of one month from today and the first respondent is further directed to consider the petition to condone the delay within a further period of six months thereafter. Needless to say that if the 1st respondent is satisfied that there are sufficient grounds, for the petitioner for not filing the appeal in time the appeal should be considered on merits and orders passed thereon without any further delay.

The Original petition is allowed as indicated above, but in the circumstances there will be no order as to costs.