R.N.R.

Before Permod Kohli, J.

MOHD. LATIF,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

CWP No. 5729 of 1989 &
C.M. No. 8976 of 2010

20th November, 2009/
7th September, 2010

Constitution of India, 1950—Arts. 20 and 226—Central Reserve Police Force Rules, 1955—Rl. 29(d)—Certain charges against a constable of CRPF—Punishment of imprisonment and forfeiture of one increment as also 'packdrill'—Sentence awarded to petitioner stood executed—After about 1-½ years of implementation of order, DIG issuing show cause notice proposing to award punishment of stoppage of increment for one year—Petitioner submitting his reply—DIG issuing another show cause notice proposing penalty of removal from service—Petitioner again submitting his reply—DIG not satisfied with reply of petitioner ordering removal from service—Rl.29(d) empowers IG or DIG to suo motu call for records or award of any punishment inflicted and pass any order to confirm, enhance, modify, annul or even order for further investigation—Such power could be exercised before sentence awarded is executed—No reasons justifying enhancement of

punishment recorded—Punishment awarded to petitioner already stands executed, therefore, award of another punishment amounts to imposing two punishments—Not permissible—Petition allowed, order imposing punishment of removal from service quashed and petitioner held entiled to all consequential benefits.

Held, that clause 2 of Article 20 of the Constitution of India clearly prohibits two punishments for the same offence. Admittedly, two punishments have been awarded to the petitioner one for imprisonment coupled with forfeiture of pay and allowances and "packdrill" and the other removal from service. Had the authorities enhanced the punishment prior to implementation of the first award of the punishment, it could have been justified in terms of Rule 29(d) of the Armed Forces-Central Reserve Police Force Rules. But the first punishment having been enforced and implemented, it was not permissible to have imposed second punishment, which is the extreme punishment when the petitioner had already undergone the imprisonment and other related punishments imposed upon him. There is another reason to quash the impugned order. The first punishment was awarded on 4th July, 1984 and executed at the same time. The first show cause notice was issued to the petitioner after 1½ years and the second show cause notice after about 2½ years. No reasons have been disclosed by the respondents for such a long delay in initiating proceedings for enhancement of the punishment. This speaks for the total arbitrariness, whims and fancy of the respondents. The impugned order is not justified under any circumstances.

(Para 12)

H.S. Grewal, Advocate.

Jagjit Singh, Advocate for C.M. Sharma, Advocate.

PERMOD KOHLI J, (ORAL)

(1) Petitioner was enrolled as a Constable in the CRPF in August, 1975. While being posted in Gandhi Nagar, Gujarat a departmental inquiry was conducted against him relating to certain charges and he was awarded punishment of 12 days of imprisonment in quarter-guard from 4th July, 1984 to 15th July, 1984 and all pay and allowances for the said period were forfeited. He was also sentenced to 'packdrill' These sentences were executed in July itself.

(2) After suffering the aforesaid punishment petitioner was served with a show cause notice dated 27th January, 1986 by respondent no. 3 proposing to award the punishment of stoppage of increment for a period of one year in the time scale of his pay without future effect in addition to the punishment already awarded to the petitioner *vide* order dated 4th July, 1984. Petitioner was asked to show cause against the proposed enhancement of punishment and also provided an opportunity to make a representation against the proposed penalty. The petitioner submitted his reply. However, respondent no. 3 issued another show cause notice dated 1st December, 1986 proposing to further enhance the punishment and penalty of removal from service was proposed to be imposed upon the petitioner. Petitioner was again provided opportunity of making representation. Petitioner again submitted his detailed reply, copy whereof has been placed on record as Annexure P-4.

(3) Respondent no. 3 *vide* his order dated 4th May, 1987, however, ordered removal of the petitioner from service while imposing punishment *vide* the aforesaid order. Respondent no. 3 has stated that charge no. 2 proved against the petitioner. Respondent no. 3 has observed that the petitioner could not give any single cogent reason against the proposed show cause notice and accordingly the punishment of removal from service has been ordered.

(4) Petitioner challenged the punishment imposed upon him in the High Court of Jammu & Kashmir, he being a resident of the State of Jammu & Kashmir. A copy of the writ petition filed in the High Court of Jammu & Kashmir has been placed on record as Annexure P-6. This writ petition was, however, disposed of by the said High Court as not maintainable, order impugned having been passed beyond the territorial jurisdiction of the aforesaid High Court and petitioner was given liberty to approach the competent court vide order dated 29th March, 1989. It appears that the petitioner preferred an appeal before the Inspector General, C.R.P.F. A copy of the memorandum of appeal has been placed on record as Annexure P-8.

(5) The petitioner has now filed the present petition challenging the order of his removal from service. The petitioner has challenged this order primarily on the ground that he was already awarded the punishment of

imprisonment and forfeiture of one increment as also the 'packdrill'. The said punishments having been inflicted upon the petitioner and sentence executed, respondents were not entitled to enhance the punishment or impose any other punishment upon the petitioner.

(6) The respondents in their reply filed before this Court have defended the impugned order (Annexure P-5) on the basis of the power allegedly exercised under Rule 29(d) of the Armed Forces-Central Reserve Police Force Rules, 1955. It is contended that at the time of inspection of Group Centre CRPF, Gandhi Nagar, Gujarat, Inspector General C.R.P.F. observed in his inspection note that the punishment awarded to the petitioner was very lenient and ordered the case to be reviewed by the Deputy Inspector General, C.R.P.F. and accordingly in exercise of his power of review under Rule 29(d) of the said rules a show cause notice was issued to the petitioner for enhancement of the punishment i.e. stoppage of increment for a period of one year in addition to the punishment already awarded to the petitioner by the Commandant, Group Centre, C.R.P.F. in Gandhi Nagar. It is further stated that since the aforesaid punishment was also found not to be commensurate with the gravity of the offence committed by the petitioner, another show cause notice dated 1st December, 1986 was issued proposing to impose the penalty of removal from service. After considering the representation of the petitioner the punishment of removal stands awarded to the petitioner, who could not give single cogent reason against the proposed punishment.

(7) The only question which has been urged and argued during the course of hearing is whether the authorities could impose additional punishment by way of enhancement in exercise of the alleged power of review under Rule 29 of the CRPF Rules when the sentence awarded stood executed.

(8) Admittedly, the Commandant was the competent authority to impose the punishment. The punishment of 12 days of imprisonment in quarter-guard coupled with forfeiture of pay and allowances for the period of quarter-guard i.e. 4th July, 1984 to 15th July, 1984 as also the sentence of 'packdrill' was awarded to the petitioner by the Commandant on conclusion of inquiry, accepting the inquiry report. This sentence was imposed,—*vide* order dated 4th July, 1984 and sentence executed on the same day. The respondents issued the show cause notice for enhancement of the punishment

on 27th January, 1986 i.e. after a period of more than 1½ years proposing to impose further punishment of stoppage of increment for a period of one year. However, this additional punishment was never imposed and after a lapse of about one year thereafter another show cause notice dated 1st December, 1986 was issued to further enhance the punishment proposed therein i.e. the removal from service. Rules governing appeal and revision i.e. extracts of Rules 28 and 29 are reproduced hereunder :–

"28. Appeals-(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 4 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 the Deputy Inspector General and to the Deputy Inspector General if the original order was passed by the Commandant.

(c) 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 of record, shall be barred by limitation.

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 mis-carriage 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 petition for revision.

(c) An appellate 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 be treated as an original order for the purpose of appeal, except when such an order has been passed by the Government in

which case no further appeal shall lie. Against such an order passed by the Deputy Inspector General appeal shall lie to the Inspector General and by the Inspector General to the Central Government.

(d) The Inspector General or the Deputy Inspector General may call for the records or awards 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."

(9) A personnel of CRPF, who is awarded punishment has a right of appeal under Rule 28 of the CRPF Rules. Only the subordinate officer or an enrolled officer, who is awarded punishment in terms of Rule 27 is entitled to prefer an appeal to the Inspector General, if the original order was passed by the Deputy Inspector General and to the Deputy Inspector General if the original order was passed by the Commandant. In the present case the punishment was awarded by the Commandant and thus, Deputy Inspector General was the Appellate Authority, Rule 29 of the aforesaid rules further make provision for revision. Under Rule 29(a) a member of the force whose appeal has been rejected is entitled to prefer a petition for revision to the next superior authority. However, under clause (d) of the aforesaid rules the Inspector General or Deputy Inspector General have also been conferred with the power to call for the records of award of any punishment and confirm, enhance, modify or annul the same or direct further investigation to be made before passing any such order.

(10) As noticed herein above, it is only the delinquent official, who has been awarded the punishment is entitled to prefer an appeal, if, any of the punishments indicated from serial Nos. 1 to 4 of the table of rule 27(d) (c) of section 13 of the Armed Forces-Central Reserve Police Force Act, 1949 is passed against any such officer. The punishment imposed upon the petitioner does fall under section 13(d) of the Act. The petitioner did not prefer any appeal. Under Rule 29-A an officer, whose appeal is rejected has further right to prefer a petition for revision to the next superior authority.

However, admittedly the petitioner did not prefer any appeal against the award of punishment. Clause (d) of Rule 29 confers the power upon the Inspector General or the Deputy Inspector General to *suo motu* call for the record of any punishment awarded and pass any order to confirm, enhance, modify, annul or even order for further investigation. Under proviso to clause (d) in case the competent authority proposes to enhance punishment the accused is to be given an opportunity to show cause against the proposed punishment. It is this provision of law which has been invoked by the respondents to enhance the punishment in case of the petitioner. No doubt two show cause notices were issued to the petitioner after the original punishment was awarded by the Commandant. *Vide* his first show cause notice dated 27th January, 1986 additional punishment of forfeiture of one annual increment was proposed in addition to the punishment already awarded. No action was taken on this show cause notice and after expiry of almost one year another show cause notice dated 1st December, 1986 was issued proposing to impose the punishment of removal from service. After receiving the reply the punishment of removal from service stands inflicted *vide* the impugned order dated 4th May, 1987.

(11) From the reading of sub clause (d) of Rule 29.1 it appears that the Inspector General or the Deputy Inspector General has the power to call for the records of award of any punishment and deal with the same. This power could be exercised *suo motu* as well. The only embargo upon the exercise of power to impose the punishment is issuance of a show cause notice to provide opportunity of being heard to the delinquent official, where the authority proposes to enhance the punishment. In the present case the authority proposed enhancement of punishment. It is specific case of the respondents that it was only during the inspection conducted by the Inspector General during the month of November, 1984 that the Inspector General observed that the punishment awarded to the petitioner was too light and he decided to impose a deterrent punishment. It appears that the Inspector General prompted the Deputy Inspector General to impose a harsher punishment. The Deputy Inspector General in his wisdom issued the show cause notice dated 27th January, 1986 (Annexure P-1) in exercise of power under Rule 29(d) proposing to impose additional punishment of stoppage of increment for a period of one year which proposal was never carried out. After expiry of about one year another show cause notice was issued

by the same authority further proposing to impose the penalty of removal from service. In both the show cause notices it is stated that the punishment awarded to the petitioner is too lenient and not commensurate to the offence. The petitioner submitted his detailed reply and pleaded that he has already been imposed a punishment and sentence stands executed and thus second punishment is not permissible and is violative of the constitutional right of the petitioner, guranteed under Article 20 of the Constitution. While passing the impugned order respondent No. 3 has not dealt with the pleas raised by the petitioner and the only ground for rejection of the reply is that there is no cogent reason. As a matter of fact respondent No. 3 was under obligation to record reasons for enhancement rather than rejecting the reply with a non-speaking, unreasoned expression referred to above. It was the duty of the authority to have recorded valid reasons for enhancement of the punishment. The impugned order does not disclose any such reason muchless a legal, plausible and valid reason justifying the enhancement. Even though, the power to *suo motu* revise the punishment including enhancement, has to be considered by the Inspector General or the Deputy Inspector General in terms of Rule 29(d), however, such power cannot be allowed to be exercised in the arbitrary manner as has been done in the present case. Such power could be exercised before the sentence awarded is executed. In the present case the sentence awarded by the Commandant, who was the competent authority had been executed and the petitioner had undergone the imprisonment as also suffered the forfeiture of the pay and allowances and had also undergone 'packdrill'. Thereafter, the decision to impose the further penalty is not the enhancement of the penalty but another penalty. The first show cause notice dated 27th January, 1986 clearly refers to additional punishment. A distinction has to be drawn between enhancement and additional punishment. In case of enhancement of the punishment, the original is to be replaced and substituted by a harsher punishment, whereas proposal to award another punishment, where one punishment already stands awarded and executed amounts to imposing two punishments and thus comes within the mischief of double jeopardy. Article 20 of the Constitution of India provides certain protection even to the convicts. The said article is reproduced hereunder :—

> "20. Protection in respect of conviction for offences-(1) No person shall be convicted of any offence except for violation of the law

in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."

(12) Clause 2 of Article 20 clearly prohibits two punishments for the same offence. In the present case, admittedly, two punishments have been awarded to the petitioner one for imprisonment coupled with forfeiture of pay and allowances and 'packdrill' and the other the removal from service. Had the authorities enhanced the punishment prior to implementation of the first award of the punishment, it could have been justified in terms of Rule 29(d). But the first punishment having been enforced and implemented, it was not permissible to have imposed second punishment, which is the extreme punishment when the petitioner had already undergone the imprisonment and other related punishments imposed upon him. There is another reason to quash the impugned order. The first punishment was awarded on 4th July, 1984 and executed at the same time. The first show cause notice was issued to the petitioner after 1½ years and the second show cause notice after about 2½ years. No reasons have been disclosed by the respondents for such a long delay in initiating proceedings for enhancement of the punishment. This speaks of the total arbitrariness, whims and fancy of the respondents. The impugned order is not justified under any circumstances. It is stated in the writ petition that the petitioner was due to retire on 4th May, 1987. Thus, the petitioner was entitled to continue till he attained the age of superannuation.

(13) This petition is accordingly allowed. The impugned order is hereby quashed. The petitioner shall be entitled to all the consequential benefits.

R.N.R.