IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 29th OF SEPTEMBER, 2022

WRIT PETITION No. 3640 of 2007

BETWEEN:-

MAHESH SINGH SIKARWAR S/O S/O SHRI SARNAM SINGH , AGED 42 YEARS, OCCUPATION: HEAD CONSTABLE NO. 860340347, 48'TH BATALIAN, CENTRAL RESERVE POLICE FORCE, NEEMUCH, M.P. (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ALOK KATARE - ADVOCATE)

AND

1. **UNION OF INDIA THROUGH SECRETARY, HOME DEPARTMENT, NORTH BLOCK, NEW DELHI**
2. **DIRECTORATE GENERAL, CENTRAL RESERVE POLICE FORCE, C.G.O COMPLEX, BLOCK-1 LODHI ROAD, NEW DELHI 110 003**
3. **DEPUTY INSPECTOR GENERAL, CENTRAL RESERVE POLICE FORCE NEEMUCH M.P.**

.....RESPONDENTS

(BY SHRI PRAVEEN NEWASKAR – ASSISTANT SOLICITOR GENERAL OF INDIA)

This petition coming on for hearing this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed seeking following reliefs.:-

> "The humble petitioner most respectfully prays that the present petition may kindly be allowed with costs by issuing a Writ, Order or Direction to the respondents, quashing the order of punishment of removal from service, Annexure P/1, dated 17 July, 2007, issued by respondent No.3.
>
> Any other relief, which this Hon'ble Court deems fit in the facts of the case, may also kindly be granted including the costs of the petition in favour of the petitioner in the interest of justice."

It is the case of the petitioner that charge-sheet was issued on four different charges. A departmental enquiry was conducted. The charges No. 1, 2 and 4 were not found to be proved, whereas, charge No. 3 was found to be partially proved. Accordingly, a show

cause notice was issued along with enquiry report and the Commandant/Disciplinary Authority vide order dated 29.7.2006 imposed the punishment of censure. Thereafter, a show-cause notice was issued by the DIG, CRPF, Neemuch dated 07.05.2007 to the effect that the charge No. 1 was in fact supported by the evidence of the complainant and Manzoor Alam and was duly proved and therefore, he does not agree with the punishment of censure and in exercise of power contained under Rule 29 (2)(D) of CRPF Rules, 1955, the petitioner was called upon to show-cause as to why he may not be removed from service. The petitioner submitted his reply and refuted the allegations.

By impugned order dated 17.07.2007, the DIG CRPF Neemuch has cancelled the order dated 29.07.2006 issued by the disciplinary authority and imposed the punishment of removal from his services.

Challenging the impugned order dated 17.07.2007 it is submitted by the Counsel for the petitioner that the power exercised by the authority was barred by limitation. It is further submitted that the entire exercise was conducted by the revisional authority under the orders of his superior authorities and thus it cannot be said that the revisional authority had applied his own independent mind to exercise the discretion vested in him. It is submitted that although

no period of limitation is provided under the CRPF Rules, 1955, but in the light of the judgment passed by the Hon'ble Supreme Court in the case of **Union Of India & Ors vs Vikrambhai Maganbhai Chaudhari** reported in **(2011) 7 SCC 321** the power of revision should have been exercised within a period of six months from the date of the passing of the order by the disciplinary authority. In the present case, the disciplinary authority had issued the order of punishment on 29.07.2006 whereas the show cause notice for enhancement of punishment was issued on 07.05.2007 i.e. after ten months and therefore it was beyond the period of six months. It is further submitted by the Counsel for the petitioner that in the show cause notice dated 07.05.2007 itself it was mentioned by the revisional authority that his senior officers have directed him to review the quantum of sentence awarded to the petitioner and thus the mention of the proposed punishment i.e. removal from service was nothing but it indicates the predetermined mind of the authority. In support of his contention, learned counsel for the petitioner has relied upon judgment passed by the Supreme Court in the case of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others Vs. Director General of Civil Aviation and others** reported in **(2011) 5 SCC 435**. It is further submitted that pre-decisional hearing should have been

awarded to the petitioner and to buttress his contention the counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case of **Shekhar Ghosh Vs. Union of India and Another** reported in **(2007) 1 SCC 331**.

Per contra, the petition has vehemently opposed by the Counsel for respondents and it is submitted that the question of limitation has not been raised by the petitioner in the present petition, therefore, he cannot be permitted to raise the same for first time before this Court. So far as the predetermined action of the revisional authority is concerned it is submitted that it is based on enquiry report. The enquiry officer had completely ignored the evidence of complainant as well as the evidence of Manjur Alam and without considering the effect of their evidence, it was held that the charge No. 1 is not found to be proved. Accordingly it is submitted that there was no predetermined action on the part of the revisional authority.

Heard the learned counsel for the parties.

So far as the question of limitation is concerned, the same has not been raised by the petitioner in his writ petition. Furthermore, Rule 29(b) of CRPF Rules, 1955 provides that the procedure prescribed for appeals under Sub-rules C to G of Rule 28(a) of Rules, 1955 shall apply *mutatis mutandis* for revision. Rule 28(e) of

Rules 1955 provides that an appeal which is not filed within 30 days from the date of the original order, exclusive of time taken to obtain a copy of the order or the record shall be barred by limitation. Provided the appellate Authority may entertain time barred appeal if deemed fit. Thus, it is clear that the appellate authority has a power to condone the delay in filing an appeal. Since this provision of appeal has been made applicable to the revision also, therefore, it is clear that revisional authority has power to condone the delay in filing revision preferred by the delinquent officer or by the Department. So far as the *suo moto* action by the revisional authority is concerned in the light of the fact that the revisional authority has a jurisdiction to condone the delay therefore, it is clear that the power of revision should be exercised within a reasonable period. In the present case, the orders of censure was passed by the disciplinary authority on 29.07.2006, whereas the show cause notice against the proposed punishment was issued on 07.05.2007.

It is submitted by the counsel for the petitioner that the Supreme court has laid down that in absence of any provision for limitation, the power should be exercised within a period of six months. In the case of **Vikrambhai Maganbhai Chaudhari (Supra),** it has been held as under:-

"10. As rightly observed by the Tribunal, the above sub-Rule (1) of Rule 29 indicates 6 categories of revisional authorities. If we go further it shows that while no period is mentioned in sub-clauses (i) to (iv), sub-Clause (v) refers to a period of six months from the date of order proposed to be revised. Since order was passed by exercising power under sub-Clause (vi), we have to see whether in the Notification specifying an authority a time limit has been mentioned or even in the absence of the same, the outer limit can be availed by exercising power under sub-Clause (v). According to learned ASG, there is no need to specify the period in the Notification authorizing concerned authority to call for the record for any enquiry and revise any order made under the Rules. We are unable to accept the said claim for the following reasons.

11. It is to be noted that in cases where the appellate authority seeks to review the order of the disciplinary authority, the period fixed for the purpose is six months of the date of the order proposed to be revised. This is clear from sub-Clause (v) of sub-Rule 1 of Rule 29. On the other hand, Clause (vi) confers similar powers on such other authorities which may be specified in that behalf by the President by a general or special order and the said authority has to commence the proceedings within the time prescribed therein. Even though Rule 29(1)(vi) provides that such order shall also specify the time within which the power should be exercised, the fact remains that no time limit has been prescribed in the Notification.

12. We have already pointed out that no period has been mentioned in the Notification. The argument that even in the absence of specific period in the Notification in view of Clause (v), the other authority can also exercise such power cannot be accepted. To put it clear, sub-Clause (v) applies to appellate authority and Clause (vi) to any other authority specified by the President by a general or special order for exercising power by the said authority under sub-Clause (vi). There must be specified period and

> the power can be exercised only within the period so prescribed.
>
> 13. Inasmuch as the Notification dated 29.05.2001 has not specified any time limit within which power under Rule 29(1)(vi) is exercisable by the authority specified, we are of the view that such Notification is not in terms with Rule 29 and the Tribunal is fully justified in quashing the same. The High Court has also rightly confirmed the said conclusion by dismissing the Special Application of the appellants and quashing the Notification on the ground that it did not specify the time limit. Consequently, the appeal fails and the same is dismissed. No order as to costs.

Thus, if the submission made by the counsel for the petitioner that the power of revision should have been exercised within a period of six months is considered, then this Court cannot lose sight of the fact that revisional authority also has a jurisdiction to condone the delay. Since in the present case as the power of revision was exercised within a period of 10 months i.e. 4 months after the period of limitation of 6 months, it cannot be said that the power was exercised after unreasonable period. Furthermore, as the petitioner has not raised any ground with regard to the period of limitation, therefore, this Court is of the considered opinion that the show-cause notice dated 07.05.2007 issued by the revision authority cannot be quashed on the ground of limitation.

So far as the question of show-cause notice dated 05.07.2007, on merits is concerned, the petitioner has specifically taken a stand

that the said exercise was done by the revisional authority at the behest of the higher authorities.

Relevant part of show-cause notice dated 05.07.2007 reads as under":-

> ''अनुशासनिक प्राधिकारी द्वारा दी गई घोर परिनिन्दा की सजा को रिव्यू करने हेतु उच्च कार्यालयों द्वारा अद्योहस्ताक्षरी को निर्देशित किया गया है तदानुसार 48 बटालियन से प्राप्त विभागीय जांच फाइल में संलग्न अभियोजन पक्ष के गवाहों के बयानों एवं दस्तावेजों का गहनता से अध्ययन किया गया।''

From the relevant paragraph 3 of the show-cause notice 07.05.2007, it is clear that the revisional authority has specifically clarified that the power of revision is being exercised at the behest of the senior officers who have instructed him to review the question of sentence.

Now, the question is whether the power of revision has been exercised by the revisional authority merely on the instructions of the senior officers or the findings given by him have some substance.

Rule 29(d) of CRPF Rules, 1955 read as under:-

> 29(d) The Director General 2[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 annual the same, or make or direct further investigation to be made before passing such orders:

Thus, it is clear that 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 annual the same or make or direct further investigation to be made before passing such orders. Thus, if any officer superior to DIG CRPF had instructed the revisional authority to exercise his power, then it cannot be said that it was completely beyond their jurisdiction to issue such instruction.

But the question is as to whether the revisonal authority had applied its own mind or had taken up the proceedings in a predetermined manner. Two situations would arise to be adjudicated in the present case which are as follows:-

(i) Whether the findings of fact recorded by the DIG CRPF is borne out from the record or not.

(ii) Whether the punishment imposed by the DIG was a per-determined punishment or it was imposed after independently considering the allegations made against the petitioner.

(i) Whether the findings of fact recorded by the DIG CRPF is borne out from the record or not.

Shri Praveen Nevaskar has produced the attested copy of the original copy of the record of the departmental enquiry. This Court has gone through the record of the departmental enquiry, the Charge No.1 alleged against the petitioner reads as under:-

"आरोप मद – 1

यह कि उक्त बल सं0 860340347 हव/जीडी महेश सिंह सिकरवार ए/48 बटालियन जो कि ग्रुप केन्द्र केरिपुबल ग्वालियर में रिक्रूटों की बेसिक प्रशिक्षण के लिए दिनांक 30.03.2004 से 10.05.2005 तक अटैचमैन्ट पर था। अटैचमैन्ट के दौरान इसने केरिपुबल अधिनियम 1949 की धारा 11(1) के अधीन बल का सदस्य होने की हैसियत से आदेशों की अवज्ञा/कर्तव्यों के प्रति उपेक्षा का कार्य/व्यवहार किया है, जिसके अन्तर्गत दिनांक 27.04.2005 को बल संख्या 680050716 सूबेदार मेजर वी.एन. सिंह से दुर्व्यवहार किया और धमकी दी कि बाहर चलो मैं तुझे देख लूंगा। उक्त कार्मिक का यह कृत्य केरिपुबल अधिनियम 1949 की धारा 11(1) के अन्तर्गत बल के आदेशों के प्रतिकूल होकर एक संगीन अपराध है और कार्मिक केरिपुबल नियमावली 1955 के नियम 27 के अन्तर्गत् प्रकाशित दण्ड पाने का अपराध किया है।"

Thus, Charge No.1 against the petitioner was that on 27.04.2005 he had not only disobeyed the orders/duties but had also misbehaved with his senior officer Subedar Major B.N. Singh had also extended a threat to see him outside the premises and

accordingly it was alleged that conduct of the petitioner is contrary to Section 11(1) of CRPF Act,1949 and is a serious misconduct inviting punishment under Rule 27 rule 1955.

The evidence of Subedar Major B.N. Singh was recorded. In his evidence, he had specifically stated that the DIG Gwalior Range, had inquired from this witness about the whereabouts of the petitioner and accordingly, he instructed Hawaldar Vl B.L. Siroha to communicate to the petitioner that DIG is asking for him and accordingly, he should go to his office. Thereafter he went to the STD booth where the petitioner came and started scolding as to why he is after him, why he is always making complaint against him. When Subedar Major B.N. Singh replied that he has not made any complaint against him and the DIG has called him on his own then, the petitioner started abusing him and also extended a threat that he would see him. Thereafter, he came back to his office where the petitioner also followed him and continued to give threatening and also used abusive language. This Court has gone through the enquiry report submitted by the enquiry officer. There is completely no whisper about the evidence of Subedar Major B.N. Singh/complainant. The enquiry officer has merely stated that some of the other witnesses have not stated about the threat or abusive language and therefore, the Charge No.1 was held to be not proved.

Whereas the revisional authority was of the view that in the light of the evidence of Subedar Major B.N. Singh the Charge No.1 was duly proved. This opinion formed by the revisional authority cannot be said to be contrary to record or perverse. It is well established principle of law that this Court cannot substitute its own findings. Once the revisional authority has given certain findings which are not perverse and are based on some evidence then it cannot be substituted by the opinion of this Court as this Court cannot act as an appellate court/ authority.

Accordingly, the findings given by the revisional authority that the Charge No.1 was also proved is hereby affirmed.

(ii) Whether the punishment imposed by the DIG was a per-determined punishment or it was imposed after independently considering the allegations made against the petitioner

From the relevant part of the show cause notice dated 07.05.2007 which has already been reproduced in previous paragraphs, it is clear that there was a direction by the senior officer to review the punishment. It is the submission of the counsel for the petitioner that since the proposed punishment of removal from service was already mentioned in the show-cause notice and the same punishment has been imposed therefore, it was the per-determined decision. It is further submitted that the basic purpose of

show-cause notice after the enquiry report is submitted is to give an opportunity to the delinquent officer to represent against the proposed punishment. It is further submitted that removal from service is not the only major penalty but major penalty includes a lot of other penalties also and once the senior officers have taken away the discretion of the revisional authority to impose any other major penalty then the said action of the revisional authority would be bad in law and even the senior officers cannot take away his discretion. The Supreme Court in the case of **Director General of Civil Aviation (Supra)** has held as under:-

> 28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.

The petitioner has taken a specific ground with regard to the exercise of revisional power on the orders of the higher officials in the writ petition which reads as under:-

> "That, while reviewing the order of punishment the respondent No. 3 has done the same at the strength of higher official and under influence of the higher official he reviewed and recalled the order of punishment, which is wholly illegal and contrary to law and violative of principle of natural justice."

The respondents have filed their return and their reply to ground (e) is as under:

> "6.5 Reply of ground (E) is that the averments of the petitioner are totally vague and baseless, hence denied. The appellant authority has issue show cause notice and observed the principles of natural justice. Thereafter, for the misconduct proved against the petitioner, the punishment of removal from service was imposed."

Thus, the respondents have not denied or disputed the contention of the petitioner that the question of sentence was predetermined at the behest of the seniors officers.

Table appended in Rule 27 CRPF Rules, 1955 read as under:-

Sr. No.	**Punishment**	**Subedar (Inspector)**	**Sub Inspector**	**Others except Const & enrolled followers**	**Consts & enrolled followers**	**Remarks**
1	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry.
2	Reduction to a lower time-scale of pay, grade, post or service.	DIGP	DIGP	Comdt.	Comdt.	
3	Reduction to a lower stage	DIGP	DIGP	Comdt.	Comdt.	

	in the tim-scale of pay for a specified period.					
4	Compulsory retirement	DIGP	DIGP	Comdt.	Comdt.	
5	Fine of any amount not exceeding one month's pay and allowances.	DIGP	DIGP	Comdt.	Comdt.	
6	Confinement in the Quarter Guard exceeding seven days but not more than twenty-eight days with or without punishment drill or extra guard fatigue or other duty.				Comdt.	To be inflicted after formal departmental enquiry.
7	Stoppage of increment	DIGP	DIGP	Comdt.	Comdt.	
8	Removal from any office of distinction or special emolument in the Force.	DIGP	DIGP	Comdt.	Comdt.	May be inflicted without a formal departmental enquiry.

9	Censure	Comdt.	Comdt	Asstt. Comdt. or Coy Comdr.	Asstt. Comdt. or Coy Comdr.	
10	Confinement to Quarter Guard for not more than seven days with or without punishment or extra guard fatigue or other duty.	--	--	--	Comdt.	
11	Confinement to quarters lines, camp, punishment drill, fatigue duties *etc*. for a term not exceeding one month.	--	--	--	Comdt.	

Thus, it is clear that dismissal or removal from the force is the maximum penalty which can be imposed but there are certain major penalties also which can be imposed by the disciplinary authority or revisional authority. If the discretion of the revisional authority to impose a lesser major penalty was already taken away by the senior officers, then the punishment of removal from service

cannot be said to be in accordance with law. Thus, it is clear that the punishment of removal from service which has been imposed on the petitioner is not a product of free and independent application of mind by the revisional authority but it has been passed under the dictations of the senior officers and thus, the said action of the revisional authority cannot be approved. Accordingly, the punishment of removal from service is hereby **quashed**.

The matter is remanded back to the revisional authority to decide the question of sentence afresh under the facts and circumstances of the case. The revisional authority is directed to take the decision on its own without getting any instructions as well as without getting influenced or prejudiced by the direction given by the superior authorities as mentioned in Para 3 of the show cause notice dated 07.05.2007.

Let the entire exercise be completed within a period of three moths from the date of production of certified copy of this order.

Since there is charge of misbehavior with the senior officer, therefore, it is directed that if the petitioner is awarded any less major penalty, then the petitioner shall not be entitled for arrears of back wages in the principle of "No work no pay."

With aforesaid observations, the petition succeeds and is

allowed to the extent mentioned above.

(G.S. AHLUWALIA)
JUDGE

LJ*