IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2683 OF 2024
[Arising out of SLP (C) No.21917/2019]

JIWACHH PASWAN **APPELLANT(S)**

VERSUS

UNION OF INDIA & ORS. **RESPONDENT(S)**

O R D E R

1. Leave granted.

2. The appellant, a member of the Central Reserve Police Force ('the Force', hereafter) was removed from service by an order dated 23rd September, 2015 of the Deputy Inspector General of Police ('the DIG', hereafter) following an inquiry. The order of removal specifically mentioned that the appellant could avail the remedy of appeal, within thirty days from date of receipt of the order, by presenting an appeal before the Inspector General of Police ('the IG of Police', hereafter). Incidentally, the appellant was charged with embezzlement of 40 pieces of ground sheets from the Government store and was found guilty by the Enquiry Officer with whose report the DIG concurred.

3. Instead of availing the appellate remedy available under second proviso to clause (c) of rule 29 of the Central

Reserve Police Force Rules (‘the Rules’, hereafter), the appellant invoked the writ jurisdiction of the High Court. A learned Judge dismissed the writ petition on 11th April, 2018. A writ appeal carried from such order of dismissal met the same fate vide the judgment and order dated 15th May, 2019 of an Hon’ble Division Bench, which has been impugned in this appeal.

4. Having heard learned counsel for the parties, we are not convinced to hold that any gross error vitiated the procedure that the respondents followed in removing the appellant from service. True it is, the appellant initially suffered a minor penalty of ‘censure’ pursuant to an inquiry into his conduct ordered by his disciplinary authority. This penalty was accepted by the appellant, meaning thereby he accepted the finding of guilt. It is also true that no appeal is provided against an order imposing minor penalty but if indeed the appellant were aggrieved by the order of censure, he could have challenged the same in a writ petition. Having escaped with a minor penalty although a major penalty was called for having regard to the nature of the charge found to be proved against him, the appellant rested content and did not challenge the order. On his part, the DIG (being the revisional authority) viewed the matter with seriousness and formed an opinion that the minor penalty

imposed on the appellant was not commensurate with the gravity of the misconduct committed by him. The DIG, thus, *suo motu* invoked revisional powers under rule 29 of the Rules. Instead of issuing a notice calling upon the appellant to show cause why the penalty of censure should not be enhanced, which is the course of action rule 29(c) ordains, the DIG directed a fresh inquiry in which the appellant participated without any demur. If rule 29(c) were followed literally, there was no necessity to conduct inquiry twice over. At the same time, nothing also prevented the DIG from enhancing the punishment upon consideration of the cause shown without a further inquiry. The second inquiry opened up an opportunity for the appellant to retract the admission made in course of the first inquiry, which he did. The appellant did not allege malice on the part of the DIG in ordering a fresh inquiry. Hence, on the peculiar facts presented before us, there is little reason to hold that the appellant was prejudiced in any manner by reason of the fresh inquiry that was conducted in terms of the order of the DIG. On the contrary, it appears that the appellant was afforded a fair opportunity to defend himself which he duly availed. The second round of inquiry was neither challenged on the ground of breach of natural justice nor on any other invalidating factor. The objections that the appellant raised were to the effect that the 40 pieces of ground sheets in question having been found within

the precincts of the Group Centre, there was no question of embezzlement; that the DIG should not have ordered a fresh inquiry without issuing a show cause notice proposing to enhance the punishment; and that the DIG having passed the final order of removal, the appellant was left without an appellate remedy. These objections are without substance and, hence, we decline the prayer for reinstatement of the appellant in service.

5. Be that as it may, we cannot also be oblivious of the fact that the appellant, prior to the order of removal from service, had put in twenty-seven years of service. It is not disputed that the appellant had not indulged in any misconduct earlier. Also, ultimately, the alleged misconduct of which the appellant was found guilty did not result in any loss to the public exchequer since the attempt of the appellant was thwarted at the right moment. Viewed from such angle, only the penalty of removal from service seems to us to be a bit harsh.

6. However, it is not for the Court to substitute its own view as to the quantum of punishment in place and lieu of the punishment awarded by the competent authority. It is only in very rare cases that the Court might – to shorten litigation – think of substituting its own view. We may profitably refer to the decision of this Court in Union of India vs. G. Ganayutham[1] in this regard.

---

1 (1997) 7 SCC 463

7. This is not such a rare case where we should think of substituting our view for the view taken by the DIG on the aspect of penalty. We find from rule 27 under Chapter VI of the Rules titled 'Discipline' that the same provides the whole range of punishments that can legitimately be imposed upon delinquent members of the Force depending upon the nature of charge(s) proved. Amongst these, dismissal/removal from service figures at the top meaning thereby that the same, if imposed, constitute the harshest punishment. Having regard to the appellant's clean sheet prior to removal coupled with the fact that the appellant, despite having the liberty of presenting a departmental appeal before the IG of Police had not chosen to pursue such remedy labouring under a misconception that no appeal lay against the order of the revisional authority [although such order had to be treated as the original order in terms of the second proviso to rule 29 (c) of the Rules], as well as bearing in mind the need to maintain discipline and control over members of the Force, we are of the considered view that without disturbing the order of removal that has since been upheld by the High Court, interest of justice would be sufficiently served if a limited liberty is granted to the appellant to carry the order of removal in appeal before the IG of Police within thirty days from this date but confined to the quantum of penalty. It is ordered accordingly.

8. If the appellant appeals within the aforesaid period, the appellate authority may consider whether the appellant, in the light of the facts and circumstances noted above, could be visited with any other major penalty commensurate with the gravity of his misconduct but without depriving him of his retiral benefits including pension, if admissible in law. In rendering a decision on the appeal, the appellate authority shall proceed without being influenced by any observation made by the High Court in the impugned judgment and order.

9. With the aforesaid modification of the impugned judgment and order, the appeal stands disposed of. Parties shall bear their own costs.

10. Needless to observe, the appeal (if filed) shall be decided expeditiously.

……J.
[DIPANKAR DATTA]

……J.
[K.V. VISWANATHAN]

……J.
[SANDEEP MEHTA]

NEW DELHI;
FEBRUARY 20,2024

ITEM NO.12 COURT NO.4 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No. 21917/2019
(Arising out of impugned final judgment and order dated 15-05-2019 in LPA No. 656/2018 in Civil Writ Jurisdiction Case No. 14403 of 2015 passed by the High Court of Judicature at Patna)

JIWACHH PASWAN Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(IA No. 20559/2022 - APPLICATION FOR PERMISSION, IA No. 18952/2020 - EXEMPTION FROM FILING O.T., IA No. 139638/2019 - EXEMPTION FROM FILING O.T. AND IA No. 139637/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 20-02-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. V.N. Sinha, Sr. Adv.
Mr. Puran Mal Saini, Adv.
Mr. Ranbir Singh Yadav, AOR
Mr. Prateek Yadav, Adv.
Mr. Sanjay Kumar Mishra, Adv.
Mr. Harsh Gupta, Adv.

For Respondent(s) Mr. Vikramjeet Banerjee, A.S.G.
Mr. Saransh Kumar, Adv.
Mr. Shubhendu Anand, Adv.
Mr. Amit Sharma Ii, Adv.
Mr. B K Satija, Adv.
Mr. Piyush Beriwal, Adv.
Mr. Veer Vikrant Singh, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

Appeal stands disposed of in terms of signed order.

Pending application(s) shall stand disposed of.

(RAJNI MUKHI) (PREETHI T.C.)
COURT MASTER (SH) COURT MASTER (NSH)
(Signed order is placed on the file)