PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
BINOD BIHARI BEHERA

DATE OF JUDGMENT14/11/1995

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
VENKATASWAMI K. (J)

CITATION:
1995 SCC Supl. (4) 728 JT 1995 (8) 223
1995 SCALE (6)454

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

J.S. VERMA, J. :

Leave granted.

This appeal by special leave is against the Judgment dated 30th March, 1992 of the Division Bench of the High Court of Orissa, by which the writ petition (OJC No. 543 of 1988) filed by the respondent has been allowed.

The respondent was a Sub-Inspector in the Central Industrial Security Force (for short 'the Force'). He vendered his resignation, which was accepted by the Deputy Inspector-General (D.I.G.) of the Force on 17/10/1984. The respondent then, on 4/12/1984 applied to withdraw his resignation and in the alternative prayed for re-enlistment in the Force. Both these prayers were rejected. The respondent, then filed the writ petition under Article 226 of the Constitution in the High Court, which has been allowed by the impugned judgment. Hence this appeal by special leave.

Two grounds were urged in the High Court in support of the writ petition. The first ground was that the D.I.G. was not the competent authority under the relevant rules to accept the resignation on account of which there was no valid acceptance of the resignation before its withdrawal on 4/12/1984. The other contention was that the rejection of the prayer for re-enlistment as a member of the Force after acceptance of the resignation was an arbitrary exercise of the discretionary power conferred by the relevant rules. The High Court has accepted both the contentions. However, in view of the acceptance of the First contention the High Court has directed reinstatement of the respondent on the payment of one-third arrears of salary together with the other service benefits.

The first question before us relates to the competence of the D.I.G. of the Force to accept the resignation of the respondent. The relevant provisions with reference to which

the point has to be decided are Section 5 of the Central Industrial Security Force Act, 1968 (for Short 'the Act') and Rule 11 of the Rules framed under the Act. Section 5 reads as under :-

> "5. Appointment of members of the Force. - The appointment of the enrolled members of the Force shall rest with the Director-General who shall exercise that power in accordance with rules made under this Act.
> Provided that the power of appointment under this section may also be exercised by such other supervisory officer as the Central Government may be order specify in this behalf."

Section 22 of the Act confers the rule making power on the Central Government for carrying out the purposes of this Act. The Central Industrial Security Force Rules, 1969 (for short 'the Rules') have been made by the Central Government in exercise of this power. Rule 3-1 relates to composition of the Force comprising of 'supervisory officers' and 'members of the Force', wherein, Deputy Inspector-General is named as a supervisory officer while Inspector and Sub-Inspector, etc., are specified as the members of the Force. Chapter IV of the Rules relates to 'Recruitment to the Force' and therein Rule 11 is as under :-

> "11. Powers of appointment.- Subject to the provisions of the Act and these rules, appointments to the posts of Inspector, shall be made by the Deputy Inspector-General concerned and to the ranks of Sub-Inspector, Assistant Sub-Inspector, Head Security Guard, Senior Security Guard, Security Guard and Followers shall be made by the Commandant."

Obviously, the first point has to be decided with reference to Section 5 of the Act and Rule 11 as quoted above. Section 5 prescribes for appointment of the enrolled members of the Force by Director General, who shall exercise that power in accordance with the rules made under the Act. The manner of exercise of power of appointment conferred on the Director General is regulated by the aforesaid Rules framed under Section 22 of the Act. The proviso to Section 5 permits the Central Government by order to specify in this behalf such other supervisory office as may be specified to exercise the power of appointment under the Section. In other words, Section 5 confers the power of appointment of the enrolled members of the Force on the Director General and permits the Central Government by an order made in this behalf to specify any other supervisory officer also to exercise that power of appointment of the enrolled members of the Force. Thus there can be no doubt that if tho deputy Inspector-General of the Force was so empowered by the Central Government in accordance with the proviso to Section 5 then he was the competent authority to appoint a Inspector or Sub-Inspector of the Force and, therefore, was the competent authority to accept his resignation. The fact that the respondent was an enrolled member of the Force and the D.I.G. of the Force is supervisory officer, is clear from rule 3-A and is not disputed.

Rule 11 quoted above relates to the 'powers of appointment' in Chapter IV relating to the 'recruitment to the Force'. Rule 11 clearly empowers the Deputy Inspector-General to make appointments to the post of Inspector by

virtue of which the Deputy Inspector-General was competent to make the appointment of the respondent end, therefore, was also competent to accept his resignation. The opening words of Rule 11 merely say that this power is "subject to the provisions of the Act and these rules" so that if there be an contrary provision in the Act and these Rules, that has to be taken note of. There is no contrary or inconsistent provision in the Act, wherein the proviso in Section 5 clearly permits the conferment of this power on a supervisory officer and there is no inconsistent provision in the Rules. Ordinarily this discussion should be sufficient to dispose of this point. However, the High Court has taken a different view and, therefore, a consideration of the reason given by the High Court for a different view requires consideration.

The High Court has referred to certain propositions of law to which no exception can be taken but the error committed is in application of those principles. According to the High Court, the proviso to Section 5 requires conferment of this power on a supervisory officer by an order made by the Central Government and Rule 11 framed in exercise of its power under Section 22 of the Act does not satisfy this requirement.

In our opinion, there is a clear fallacy in the view taken by the High Court. The status of a rule framed by the Central Government in exercise of the power conferred by Section 22 of the Act for carrying out purposes of the Act, which in particular and without prejudice to the generality of that power enables to provide by rules for regulating the conditions of service of members of the Force, cannot have lesser efficacy in law or be treated as not satisfying the requirement of an order of the Central Government contemplated by the proviso in Section 5. The fallacy in the view taken by the High Court is that it has assumed that the mode described by the proviso in Section 5 of conferment of this power on a supervisory officer by the Central Government is not satisfied by Rule 11 framed in exercise of the rule making power of the Central Government under Section 22 of the Act or that a mere executive order sans the power conferred on the Central Government by Section 22 of the Act is a different and the only manner of exercise of this power given by the proviso in Section 5 of the Act. It is this fallacy which has led to an erroneous application of the principles mentioned in the impugned judgment to the facts of this case.

We have no doubt that Rule 11 of the Central Industrial Security Force Rules, 1969 framed by the Central Government in exercise of the rule making power conferred on the Central Government by Section 22 of the Act fully satisfies the requirement of the proviso in Section 5 of the Act; the D.I.G. of the Force was duly empowered in the manner prescribed by law to exercise the power of appointment of Inspector in the Force; and, therefore, the D.I.G. of the Force was competent to accept the resignation submitted by the respondent. Accordingly, acceptance of respondent's resignation by the D.i.g. on 17/10/1984 was valid and it could not be withdrawn by the respondent subsequently on 4/12/1984. The attempt made by the respondent to withdraw his resignation after it has been duly accepted by the D.I.G., was ineffective. The first contention of the respondent was, therefore, erroneously accepted by the High Court.

The other contention of the respondent was also wrongly accepted by the High Court. Rule 58 of the Central Industrial Security Force Rules, 1969 is as under :-

"58. Re-enlistment.- A member of the Force who has been dismissed therefrom shall not be re-enlisted. However, a member of the Force who has resigned may be re-enlisted with the sanction of the Deputy Inspector-General."

The respondent having resigned as a member of the Force may have been re-enlisted with the sanction of the Deputy Inspector General. The contention of the respondent which found acceptance by the High Court is that the refusal of the sanction for re-enlistment by the D.I.G. was arbitrary. Obviously, the reason assigned to support refusal of sanction for reinstatement was that the service record of the respondent was not satisfactory. It was also pointed out that this prayer of the respondent had been considered twice earlier and rejected after which the respondent had not put forth any fresh ground requiring a change of the opinion. The High Court perused the relevant files and has referred to the notes therein. According to a note made by the D.I.G. on 24/6/1985 the respondent had made some false statements in his application. All this is mentioned in the impugned judgment itself. Assuming this course was permissible, in view of the earlier unsatisfactory conduct of the respondent being a ground for rejection of the same prayer twice earlier and there being no fresh ground put forth for reconsideration, this note of the D.I.G. on 24/6/1985 also contained a relevant fact to justify refusal of the sanction for re-enlistment. However, the High Court, in our opinion erroneously, was not satisfied and it embarked upon a further inquiry into the correctness of those notes by enquiring into the fallacies of the statements made by the respondent. The High Court has then said that it is not satisfied about the due application of mind by the D.I.G. in rejecting a prayer for re-enlistment. It has, accordingly, come to the conclusion that the exercise of the discretion by the D.I.G. is arbitrary. In our opinion, the view taken by the High Court is not justified.

The only judicial scrutiny required for deciding whether refusal of the sanction for re-enlistment of the respondent as a member of the Force was arbitrary, was to see whether the record disclosed existence of relevant facts to support the rejection of sanction. The above facts disclosed from the record which the High Court examined, are undoubtedly relevant factors to support refusal of the sanction by the D.I.G.. None of these factors could be called extraneous or nonexistent. Moreover, the prayer for re-enlistment was a reiteration of the same prayer which had been rejected twice earlier without putting forth any fresh ground to justify the reconsideration. It is difficult to appreciate how the exercise of the discretion by the D.I.G. under Rule 58 could be termed as arbitrary, on these facts. The Other contention of the respondent is equally devoid of any merit. There was thus no ground on which the respondent could be granted any relief in his writ petition.

For the aforesaid reasons, the appeal is allowed. The impugned judgment of the High Court is set aside resulting in the dismissal of the respondent’s writ petition filed in the High Court. No costs.