HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(SB : SHEEL NAGU, J.)

Writ Petition No.5357/2010

Virendra Kumar Sharma

Vs.

State of M.P. and others

For Petitioner
Shri MPS Raghuvasnhi Advocate

For Respondents
Shri RBS Tomar Govt. Advocate

Whether approved for reporting: Yes/No.

O R D E R

(Delivered on 19th of August, 2016)

1. This case is taken up from final hearing list under the category of 'less than 30 minutes'

2. Counsel for the rival parties are heard.

3. The challenge in this writ petition under Article 226 of Constitution of India is to the order of penalty of compulsory retirement dated 15.2. 2003 Annexure P-3 imposed after conduction of disciplinary proceedings. The challenge is further laid to the appellate order dated 11.6.2003 Annexure P-4 and also to the orders (vide P-5) dated 4.7. 2008 & 27.4.2010 (vide P-6) rejecting the revision petition and representation respectively.

UNDISPUTED FACTS.

4. The petitioner being constable in the Special Armed Forces was issued with the charge-sheet on 19.6. 2006 vide P-1 alleging two charges as follows:-

लगाये गए दोषारोप–

01– दिनॉंक 7.09.2002 को शराब का सेवन कर वाहिनी परिसर में उत्पात मचाकर विसबल की छवि धूमिल करना तथा घोर अनुशासनहीनता एवं कदाचरण का परिचय देना।

02– पूर्व में वरिष्ठ अधिकारियों के आदेशों की अवहेलना करने तथा शराब का सेवन कर अनुशासनहीनता करने पर दो बार सेवा से पृथक किया गया तथा अंतिम बार सुधार का अवसर दिये जाने के उपरांत भी अपने आचरण में कोई सुधार न लाकर अपने आपके विसबल की सेवा के अयोग्य प्रदर्शित करना।

4.1 Reply to charge-sheet was filed on 2.10. 2015 (vide P-2). The enquiry officer after conducting enquiry prepared enquiry report dated 23.12. 2002 finding the first charge to be partially proved to the extent of consuming alcohol on duty whereas the second part of charge no. 1 of causing disturbance in the battalion campus was found not established. As regards the charge no. 2 the same was found to be fully proved that the petitioner failed to improve upon the earlier mistakes despite grant of repeated opportunities.

4.2 On receipt of the findings of the enquiry officer show cause notice dated 7.1. 2003 was issued by the disciplinary authority concurring with the findings of the enquiry officer proposing penalty of compulsory retirement which was failed to be responded to by petitioner despite grant of various opportunities.

4.3 Consequently, the disciplinary authority concurring with the findings of enquiry officer of charge no. 1 being partially established and the charge no. 2 being fully established, imposed penalty of compulsory retirement by order dated 15.2. 2003.

4.4 The appeal and revision filed did not meet with any success and were dismissed vide order dated 11.6. 2003 (vide P-4) and 4.6. 2008 (vide P-5) respectively.

4.5 From the record it further appears that representation made by the petitioner to the State Government was also rejected vide order dated 27.4. 2010 (vide P-6).

5. SUBMISSION OF PETITIONER-

Learned counsel for the petitioner primarily contends that order of penalty was passed despite total absence of any cogent evidence to

support the charges. It is submitted that the enquiry officer has rightly held as not proved that part of charge no. 1 that alleges petitioner to cause disturbance in the battalion campus on 7.9. 2003. However learned counsel submits that despite there being no evidence of the petitioner having consumed alcohol and being under the influence of Alcohol the enquiry officer and the disciplinary authority had no material to hold that the first part of charge no. 1 of petitioner coming to duty after consuming alcohol on 7.9.2002 is proved. It is further submitted that charge no. 2 in regard to failure of the petitioner to improve himself despite grant of various opportunities also was wrongly found proved.

6. SUBMISSION OF RESPONDENTS-

On the other hand State counsel by referring to the para wise reply submits, that in a disciplined force consumption of alcohol while coming on duty should be viewed very seriously as it spoils the discipline which is the heart and soul of police force. It is further submitted that the petitioner had earlier been punished on more than one occasion and had been even taken back in service after recalling the penalty of removal on humanitarian ground and instead imposing minor penalty. Since the petitioner has not improved, it is submitted that he deserves a severe punishment which was rightly imposed and upheld by the impugned orders.

7. FINDINGS-

This court is aware of it's limits while exercising writ jurisdiction against administrative orders of penalty passed after conduction of disciplinary proceedings especially when there is no allegation of breach of principles of natural justice. It is trite in service jurisprudence that an order of penalty based upon evidence collected and marshaled on the anvil of principle of preponderance of probability can be interfered with only when a case of no evidence is shown to exist or where the quantum of penalty is so grave vis-a-vis charges found proved that it shocks the conscience of the court.

7.1. Learned counsel has primarily submitted that the present is a case of no evidence and therefore this court embarks upon the exercise of adjudication on the said ground raised.

7.2. At the very outset the first part of the charge no. 1 pertaining to coming on duty after consuming alcohol on 7.9.2002 is required to be taken up for consideration.

7.2.1 The service conditions of the petitioner including the aspect of discipline are governed by the M.P. Police Regulations. However M.P. Police Regulations do not categorize or define any particular misconduct or misdemeanor for which any of the penalties prescribed in Regulations can be imposed.

7.2.2. In the absence of any specific provision defining a particular misconduct in the Police Regulations, recourse to the M.P. Civil Service (conduct) Rules 1965 (for brevity Conduct Rules), is taken in view of the application clause contained in Rule 1 of the Conduct Rules which is reproduced for convenience and ready reference:-

> *"Short title, commencement and application-(1) These rules may be called the Madhya Pradesh Civil Services (Conduct) Rules, 1965.*
>
> *(2) They shall come into force at once.*
>
> *(3) Save as otherwise provided in these rules they shall apply to all persons appointed in civil services and posts in connection with the affairs of the State of Madhya Pradesh:*
>
> *Provided that nothing in these Rules shall apply to government servants who are-*
>
> *(a) members of the All India Service;*
>
> *(b) holders of any posts in respect of which the Governor may, by general or special order, declare that these rules shall not apply":*

7.2.3. The petitioner undoubtedly was holder of a post in connection with the affairs of State of MP and was neither a member of All India Service nor was holder of such post in respect of which the Governor by general or special orders has declared the Conduct Rules to be inapplicable. Moreso the Police Regulations being silent on the aspect of specifying any particular misconduct, allows this court to resort to the Conduct Rules which are of

general application in the absence of Police Regulations providing to the contrary. Thus the Conduct Rules are being applied in the case of the petitioner to adjudicate the controversy.

7.2.4. Rule 23 of the Conduct Rules relates to consumption of intoxicating drinks and drugs and is worded in the following manner:-

> *23. Consumption of intoxicating drinks and drugs- A Government servant shall:-*
>
> *(a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;*
>
> *(b) take due care that the performance of his duties is not affected in any way by the influence of any intoxicating drink or drug;*
>
> *(c) not appear in a public place in a state of intoxication; and*
>
> *(d) not habitually use any intoxicating drink or drug in excess.*

7.2.5. Thus it is evident that Rule 23 places four kinds of restrictions upon a government servant while consuming intoxicating drinks and drugs. The first being that the government servant shall abide by the law relating to intoxicating drinks in force in the area in which he happens to be. In the instant case no law has been brought to the notice of this court by the State in it's reply or orally whereby any restriction or prohibition was placed on consumption of intoxicating drinks at the place where the petitioner was posted at the relevant point of time ie. 7.9. 2002. The second restriction is that government servant shall ensure that discharge of his duties is not adversely affecting in any way by influence of intoxicating drinks.

7.2.6. In the case at hand the evidence brought on record is to the effect that the petitioner had consumed intoxicating drink as per statement of Dr. Avneesh Maheshwari recorded on 11.12.2002 to the effect that on examination the petitioner was found smelling of alcohol which lead the Doctor to opine that petitioner had consumed liquor. The said Doctor further stated/opined that however the petitioner was not in a state of

intoxication. The entire statement of the said Doctor is reproduced below for convenience and ready reference.

> डॉ. श्री अवनीश महेश्वरी जिला हॉस्पीटल मुरैना ने बताया कि दिनांक 7.9.02 को मेरे द्वारा आर. 250 वीरेन्द्र कुमार शर्मा का मेडीकल परीक्षण किया गया था जिसमें मेंने पाया कि शराब पिये था क्योंकि शांस में शराब की बदबू आ रही थी परन्तु मदहोश नहीं था मेरे द्वारा दि. 7.9.02 को दिये गये मेडीकल परीक्षण प्रमाण पत्र पर मेरे हस्था. है जिसकी में पुष्टि करता हूँ पढ़ कर हस्था. किये।

7.2.7. Apart from this there is no other evidence in regard to the said aspect of charge.

7.2.8. Among the other two restrictions prescribed under Rule 23 of the Conduct Rules are that the government servant should not come in a public place in a state of intoxication and that he should not habitually use any intoxicating material in excess.

7.2.9. The question in the given facts and circumstances as regards charge no. 1 which arises before this court to be consumed is as to whether the petitioner was in such a state of intoxication on 7.9.2002 that it adversely affected discharge of his duty.

7.2.10. It is further pertinent to point out by plain reading of Rule 23 of the Conduct Rules that mere consumption of alcohol per se is not a misconduct unless the consumption is in such a quantity that discharge of duties by the government servant is adversely affected by the influence that the liquor has no him.

7.2.11. To ascertain whether misconduct is made out or not when a government servant discharges his official duties after consuming any intoxicating drink the all important and crucial but subtle difference between the expression "consumption of intoxicating drinks" on one hand and "being under the influence of intoxicating drinks" on the other hand needs to be understood. To elaborate further, The Major Law Lexicon 4th Edition 2010 deserves to be resorted to to understand the real import of the term "being under influence of alcohol or intoxicating drink":-

> *"In the expression 'whilst under the influence of intoxicating liquor', the word 'influence' means such*

influence as disturbs the balance of man's mind or the quiet and equable exercise of the intellectual faculties. Mair v. Railway Passengers' Assurance Co., (1877) 37 LT 356.

"Under the influence of intoxicating liquor" in an exempting proviso in an insurance policy meant such influence which will disturb the quiet, calm and intelligent exercise of faculties (Louden v. British Merchants Insurance Co. [1961] 1 WLR 798) "

It is further elaborated in Chambers 21st Century Dictionary as follows:-

"***under the influence-*** *affected by alcohol; drunk"*

The Oxford Hindi English Dictionary describes the expression "मदहोश " as follows:-

मदहोश mad'hos [A. madhus], adj. Intoxicated; carried away (as by rapture) besotted.

Moreso the Andhra Pradesh High Court in the case of **Connabatula Satya Rao** v. **State** reported in **AIR 1954 Andhra 4 (Vol. 41, C.N. 3)** while interpreting Sec. 4-A of Madras Prohibition Act held thus:-

It is thus seen that the intoxication implies excessive drinking bringing about drunkenness.

(5) To constitute an offence of being found in a State of intoxication it is not sufficient to show that a person smelt liquor. Something more is necessary and that is that he was in a State of drunkenness, as a result of excessive drinking. For this reason. I must hold that an offence under S. 4-A of the Prohibition Act has not been committed by the petitioner and he is therefore entitled to an acquittal.

7.2.12 Accordingly, based upon the above elaboration and being mindful of the provision of Rule 23 of Conduct Rules, it is crystal clear that mere consumption of alcohol while discharging duty cannot by itself lead to misconduct unless the government servant concerned is under the influence of alcohol to the extent that it adversely affects discharge of his duties.

7.2.13. In the instant case the report of Dr. Avneesh Maheshwari dated

11.12. 2002 is categorical and unequivocal that the petitioner was not under the influence of alcohol (– – परन्तु मदहोश नहीं था – –) In the absence of any evidence to the contrary and also the fact that mere consumption of alcohol, which was the proven part of charge no. 1, is not a misconduct, this court has no hesitation to hold that mere consumption of alcohol by petitioner on 7.9. 2002 with no further evidence that he was under the influence of alcohol is insufficient to attract any penalty prescribed in the Regulations. To this extent the order of the disciplinary authority and subsequent orders of higher authorities are unlawful.

7.3. Coming to the charge no. 2 which alleges that petitioner despite grant of various opportunities has not improved himself and has repeated similar misconduct, it is seen that this charge has been found to be fully proved.

7.3.1. However the question is as to whether Charge no. 2 can stand on it's own legs without the assistance of charge no. 1. If charge no. 2 can independently stand and attract penalty it is only then that need arises for discussing tenability and legality of the findings recorded in support thereof.

7.3.2. A bare perusal of charge no. 2 reveals that it alleges the petitioner to have failed to show any improvement despite grant of two opportunities earlier in regard to misconduct of similar nature and that petitioner has not shown any improvement in his conduct by yet again committing misconduct as alleged in Charge no. 1.

7.3.3. The above charge discloses the mind of the Competent Authority alleging misconduct to the extent that the earlier two misconducts of similar nature had been condoned by the employer and because of the petitioner committing the same misconduct the 3rd time on 7.9. 2002 as alleged in the Charge no. 1, the Petitioner has been found unfit to be retained in service for having failed to improve despite grant of earlier two opportunities. Apparently the question of the petitioner failing to improve arose only when he was found to be involved in a similar kind of misconduct the 3rd time ie. on 7.9.2002 as per Charge no. 1. It was only thereafter that the competent authority was compelled to allege that the petitioner has failed to

improve upon his earlier mistakes. Meaning thereby that if the 3rd incident dated 7.9.2002 had not occurred or is not found proved then the eventuality of the employer alleging failure to improve on the part of the petitioner, would not arise.

7.3.4. In view of the above, it is crystal clear that Charge no. 2 is not an independent Charge, but is consequential, ancillary and incidental to Charge no.1. Thus in the absence of charge no. 1, it is not possible for Charge no. 2 to be even alleged much less proved.

7.4. As held earlier since Charge no. 1 has wrongly been found to be partly proved and that no misconduct as alleged in Charge no. 1 arises, the supplementary/ancillary/consequential Charge no. 2 automatically falls. Consequently the charge no. 2 could not have been found to be proved without the first establishing Charge no. 1. In other words the employer having failed to establish any misconduct as alleged in Charge no. 1 that the petitioner was under the influence of alcohol while on duty on 7.9.2002, there cannot arise any occasion or contingency to allege and much less prove that the petitioner failed to improve despite grant of earlier two opportunities.

8. Accordingly, the impugned orders Annexure , P-3, P-4 and P-5 are vitiated in law as being perverse.

9. As regards the question of grant of relief, it is seen that the petitioner was a member of disciplined force and has a tainted past where two similar incidents of consuming alcohol on duty were found proved but were condoned and petitioner was taken back by showing mercy. Admittedly the petitioner never assailed these orders where he was reinstated by imposing minor punishment and therefore the factum of earlier misconducts is not denied by petitioner. Thus, looking to the tainted past of the petitioner and the fact that he belongs to disciplined force, this court declines grant of backwages to the petitioner.

10. Accordingly, this petition is allowed to the extent indicated below:-

1. Impugned orders P-3, P-4 and P-5 passed by Additional Superintendent of Police, Gwalior and Inspector General of Police, Gwalior and the State Government imposing penalty of

compulsorily retirement upon the petitioner are set aside.

2. The petitioner is directed to be reinstated in service on the post of constable with immediate effect along with continuity in service but without any backwages for reasons mentioned supra.

3. The above said order be complied with forthwith on production of copy of this order.

4. There shall be no order as to costs.

(SHEEL NAGU)
Judge
19/08/2016

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