

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SINGLE BENCH:

(Vivek Agarwal, J.)

Writ Petition No.2375/2012

.....Petitioner : Naval Singh Yadav

Versus

.....Respondents : State of M.P. & Ors.

Shri D.P.Singh, learned counsel for the petitioner.
Shri Harish Dixit, learned Govt. Advocate for the respondents
/State.

ORDER
(20/6/2017)

Petitioner has filed this writ petition challenging the order dated 14.7.2008 and 30th October, 2008 passed respectively by respondents No.4 and 3 i.e. Deputy Inspector General of Police, Gwalior Range, Gwalior, and Inspector General of Police, Gwalior Range, Gwalior, inflicting penalty of fixation of pay on the petitioner to the minimum of pay scale for a period of two years with cumulative effect which was modified in the appeal by order of stopping one increment for a period of one year with cumulative effect.

2. It is petitioner's case that he was working as Assistant Sub-Inspector in the police department and was posted at Bahodapur when a criminal case was registered at Crime No.449/2007 against the accused persons, namely Bhagwan Singh and Amar Singh on the complaint of Dr. Shafiq Ahmed Qureshi under Sections 451, 323, 294 and 506 of IPC. It was alleged that petitioner demanded illegal gratification of Rs.5,000/- for releasing the accused persons, and therefore, misused his office.

3. Petitioner's main limb of challenge to the disciplinary

proceeding and consequent orders of punishment passed by the authority and order passed in the appeal is that in case of the petitioner, charge-sheet was issued by the Superintendent of Police, whereas the disciplinary authority of the petitioner was Deputy Inspector General of police, therefore, issuance of charge-sheet by the Superintendent of Police itself is bad in law and on this ground the entire enquiry is vitiated. It is also submitted that there was no material on record to connect the petitioner with the case. In support of the arguments, learned counsel for the petitioner placed reliance on the Division Bench decision of this Court in the case of **Arun Prakash Yadav Vs. State of M.P. & Ors.** as reported in **2013(3) M.P.L.J. 508** and submitted that in case of the petitioner since punishment order has been passed by the DIG whereas charge-sheet was issued by the Superintendent of Police, therefore, his case is on the same footing as that of Arun Prakash Yadav.

4. During the course of arguments, this Court had observed that judgment in the case of **Arun Prakash Yadav (supra)** needs to be referred to a Larger Bench for consideration in view of the fact that Division Bench of this Court had not taken into consideration the provisions contained in Police Regulations 222 and also the fact that there exists another judgment of the Division Bench in the matter of **Ramswaroop Pandre Vs. State of M.P. & Ors.** as reported in **2015(3) M.P.L.J. 453** on the issue wherein another Division Bench headed by the then Chief Justice had taken a view that Inspector General of police is head for administrative purposes of concerning range and being a superior officer than Superintendent of Police, he would be competent to exercise power of appointing enquiry officer to conduct departmental enquiry and accordingly it was observed that there is no infirmity in the order issued by the Inspector General of police to appoint enquiry officer and in the case of **Arun Prakash Yadav (supra)** Division Bench of this Court held that in the light of Police Regulations 228 only Superintendent of Police can

initiate departmental enquiry in relation to a police inspector and initiation of disciplinary proceeding/issuance of charge-sheet by DIG or any other authority except SP runs counter to the provisions of Police Regulations 228. However, while perusing the record, it has come to the notice of this Court that petitioner's case is neither covered by **Arun Prakash Yadav (supra)** nor **Ramswaroop Pandre (supra)** inasmuch as in the case of the petitioner charge-sheet was issued by the Superintendent of Police and his contention is that his disciplinary authority being DIG, Superintendent of Police has no authority to issue a charge-sheet. The Division Bench of this Court in the case of **Ramswaroop Pandre (supra)** held that even superior authority can initiate departmental enquiry, but in the present case, the issue in hand is about competence of Superintendent of police in issuing charge-sheet to the petitioner who was holding the post of ASI.

5. As per M.P. Police Regulations 214, kinds of punishments have been defined and Police Regulations 214 (iii) reads as under :-

“(iii) Reduction to a lower post or time scale or reduction to a lower stage in the time scale of pay for a specified period with further direction as to whether or not the member of the Subordinate Police Service will earn increments of pay or the stagnation allowance, as the case may be, during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance;

Note.- The expression “reduction to a lower stage in the time scale of pay” shall also include reduction of pay from the stage of pay drawn by a member of the Subordinate Police Service on account of grant of stagnation allowance if any.”

Police Regulations 221 deals with powers of Senior Superintendent of Police and Superintendent of Police and it provides in clause (c) that SP has power to reduce the pay of Sub-Inspector and an Assistant Sub-Inspector. Therefore, it is

apparent that since SP has power to inflict punishment of reduction of pay of Sub-Inspector and Assistant Sub-Inspector, therefore, in terms of the provisions contained in the Police Regulations 228, the Superintendent of Police is entitled to initiate department enquiry which culminates with issuance of a show-cause notice/ charge-sheet, therefore, in the opinion of this Court, there is no illegality in the impugned action of the Superintendent of Police in initiating a departmental enquiry against the petitioner who was holding the post of ASI. In fact, the Division Bench decision of this Court in the case of **State of M.P. and others Vs. Mahesh Kumar Bhargava and others** as reported in **2017(2) M.P.L.J. 334** is squarely applicable in the present case. Before the Division Bench challenge was made by the State to the decision of learned Single Judge, whereby learned Single Judge in view of judgment in the case of *Naresh Kumar Suryavanshi Vs. State of M.P. and others* passed in W.P.No.6816/12 on 22.11.12 has set aside the charge-sheet granting liberty to the disciplinary authority to issue a fresh charge-sheet in case need so arises in future, in the light of decision in the case of **Arun Prakash Yadav (supra)**. The Division Bench holding that no other authority except Superintendent of Police is empowered under Police Regulations to institute disciplinary proceeding/ issue charge-sheet to an Inspector of Police, dismissed the appeal.

6. Petitioner has placed reliance on the judgment of Supreme Court in the case of **Sher Bahadur Vs. Union of India and others** as reported in **(2002) 7 SCC 142** wherein it has been held that evidence must link the charged officer with the alleged misconduct, otherwise it would be no evidence in law. It is held that merely stating in the enquiry report that in view of oral, documentary and circumstantial evidence as adduced in the enquiry is not sufficient and such finding of the enquiry officer to prove the charges will be erroneous and without any evidence to link the appellant with the alleged misconduct. Therefore, it has been held that there should be sufficient evidence to connect the

petitioner with the alleged misconduct. In the present case, perusal of the enquiry report and the statements reveal that in the preliminary enquiry Amar Singh son of Bhagwan Singh and Pokhan Singh son of Jaisingh had admitted their statements given to CSP Raisingh Narwariya in preliminary enquiry and had admitted their signatures on Ex.P/2 and Ex.P/11 wherein they had given statements about demand of money by the petitioner. Later on though they retracted from their statements, but there was sufficient material on record which has been discussed in the enquiry report to show that Raisingh Narwariya on the complaint of sufferers had reached police Station and helped in release of such complainant party on bail which substantiates the allegation against the charged officer i.e. the petitioner. In view of such findings by the enquiry officer and appreciation of material, it cannot be said that there was no material to connect the petitioner with the alleged charges. In view of such facts and also the fact that Superintendent of police under Police Regulations 221 is competent to inflict the penalty with which petitioner has been visited and also under Police Regulations 228 is competent to initiate the departmental enquiry, he has not committed any irregularity in initiating departmental enquiry by issuance of charge-sheet and further there is no breach of principles of natural justice or the law laid down by the Supreme Court in conduct of departmental enquiry calling for interference in the order of punishment, so also the orders passed by the appellate authority. Thus, the petition fails and is dismissed.

(Vivek Agarwal)
Judge

ms/-