IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 3264 of 2013

BETWEEN:-

SANTOSH SHARMA S/O RAMSAHAY PANDA, AGED ABOUT 45 YEARS, OCCUPATION: CONSTABLE NO.311 PRES.POSTED AS DIST.CRIME BR. O/O SUPERINTENDENT OF POLICE DATIA DIST.DATIA M.P. (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ARUN KATARE - ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY HOME DEPARTMENT GOVT. OF M.P. VALLABH BHAWAN BHOPAL M.P. (MADHYA PRADESH)
2. THE DIRECTOR GENERAL OF POLICE, PHQ BHOPAL
3. THE SUPERINTENDENT OF POLICE, DISTRICT DATIA (M.P.)

.....RESPONDENTS

(BY SHRI RAVINDRA DIXIT – GOVT. ADVOCATE)

Reserved on : 04-03-2024
Delivered on : 06-03-2024

This petition having been heard and reserved for orders coming on for pronouncement this day, delivered the following:-

ORDER

With consent heard finally.

1. The present petition is preferred by petitioner under Article 226 of the Constitution seeking following reliefs:-

> "(i) That, the Hon'ble Court may kindly be pleased to allow this Writ petition;
>
> (ii) That, the charge-sheet Annexure P/1 dated 1.11.2000 issued by the respondent No.3 to the petitioner may kindly be directed to be quashed.
>
> (iii) That, the order of punishment dated 22.01.2002 Annexure P/2 issued by the respondent No.3 may kindly be directed to be quashed.
>
> (iv) That, the order Annexure P/3 dated 22.08.2007 issued by the respondent No.3 may kindly be directed to be quashed.
>
> (v) That, the order dated 7.8.2002 Annexure P/4 may kindly be directed to be quashed.
>
> (vi) That, the order dated 9.12.2010 Annexure P/5 passed by Inspector General of Police, Chambal Zone, Gwalior may kindly be directed to be quashed.
>
> (vii) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner."

2. Precisely stated facts of the case are that petitioner was initially appointed on the post of Constable on 18.03.1992 and he was performing his duties at the relevant point of time as Police Constable. On 8.6.2000, the petitioner was posted at Police Station Seondha, District Datia and he faced the allegations that one Manoj Kumar Dubey after attending his date in the trial Court when passed nearby the Police Station Seondha around 4:00 PM then at the instance of Sub Inspector Anar Singh Sikarwar, A.S.I. B.N. Chaturvedi, petitioner caught hold of him and abused him

and caused marpeet. They took him to the Police Station Seondha and confined him in custody till 10.06.2000 without any reason and thereafter released him.

3. On the complaint made against the petitioner and other persons, investigation carried out and enquiry was made by the Superintendent of Police, Datia and charge sheet was issued by him vide charge sheet dated 01.11.2000.

4. The departmental enquiry was conducted by Additional SP Datia Shri Rajendra Prasad and allegations were found proved. Therefore, petitioner was inflicted with punishment of stoppage of one increment for one year with cumulative effect vide order dated 22.01.2002.

5. It appears that an appeal was preferred by petitioner before the Inspector General of Police, Chambal Zone, Gwalior. Appellate authority considered the appeal and rejected the same vide order dated 7.8.2002. Thereafter, after more than five years of appellate order, an amended order has been passed by SP Datia on 22.08.2007 (Annexure P/3) and deleted the word "**one year"** from the punishment order. It means the stoppage of one increment was inflicted with cumulative effect and punishment was not confined to one year only. It had ever lasting effect impliedly.

6. It appears that when petitioner suffered before the appellate authority vide order dated 22.01.2002 preferred a mercy petition before the IGP Chambal Zone, Gwalior, then said mercy petition/revision got dismissed. Therefore, this petition has been preferred.

7. It is the submission of learned counsel for petitioner that authorities did not consider the case in correct perspective and passed illegal and arbitrary orders. According to him, order dated 22.08.2007 passed by SP Datia (respondent No.3 herein) is clear violation of Regulation 270 (4) of Police Regulations, where it has been held that the revising authority may reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed over the delinquent, provided a notice has been served and opportunity is given for being heard. Here, no such opportunity was given.

8. Learned counsel for petitioner further refers the fact that in departmental enquiry no presenting officer was appointed and enquiry officer acted as Presenting Officer. Therefore, enquiry officer vitiated the enquiry. He also referred the Police Regulation 226 to submit that penalty appears to be excessive in nature and it is contrary to Police Regulation 226 (iv).

9. It is the submission of learned counsel for petitioner that petitioner was Police Constable at the relevant point of time and departmental enquiry was held along with Sub Inspector Anar Singh Sikarwar and ASI B.N. Chaturvedi and when three officers of different posts were enquired then as per Rule 18 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred as "the CCA Rules") permission from the empowered authority/competent authority was required to be taken. Same has not been done. Therefore, petition deserves to be allowed. He relied upon judgments in **Mahesh Kumar Shrikishan Tiwari Vs. State of M.P. and others, 1985 MPLJ**

516, Navin Kumar v. State of M.P. and Ors., (1989 MPLJ 514), S.N. Singh Vs. State of M.P. and others, 2005(2) MPLJ 18, Jagdish Rathi vs. State of M.P. and ors., 2009(II) MPWN 98, Ramesh Chand Rathore vs. State of M.P. and ors., 2010 (2) MPLJ 245.

10. Learned counsel for respondents opposed the prayer and on the basis of return the allegations were rebutted. According to State counsel, joint enquiry was held and after recording evidence the enquiry officer submitted his report which is filed as Annexure R/1 and after considering the report punishment has been inflicted.

11. Heard the learned counsel for the parties and perused the documents appended thereto.

12. This is a case where petitioner who was working as Police Constable at the relevant point of time in year 2000 was subjected to departmental enquiry along with two of his colleagues namely SI Anar Singh Sikarwar and ASI B.N. Chaturvedi.

13. A peculiar fact surfaced in the present case is that after institution of departmental enquiry, the enquiry was conducted by enquiry officer (without any presenting officer) and enquiry report was submitted vide Annexure R/1 in the month of December 2001. On 22.01.2002 SP Datia after considering the enquiry report and soliciting reply found them guilty of misconduct and given punishment of stoppage of one increment for one year with cumulative effect. In punishment order, stoppage of one year was mentioned, therefore, it appears that intention was to stop increment for one year which was effectively non-cumulative in

nature. Against the said order dated 22.01.2002 petitioner preferred appeal which was dismissed by I.G. Chambal Zone, vide order dated 7.8.2002. When this appeal was dismissed and impugned order dated 22.01.2002 attained finality then SP Datia had no occasion to amend or revise the order dated 22.01.2002 by passing an amended order dated 22.08.2007 (Annexure P/3).

14. Petitioner stands right when he contends that if any order of revision is being passed by the authority concerned then he should have been given an opportunity of hearing. Profitable reliance can be placed over Police Regulation 270.

15. Regulation 270 of Madhya Pradesh Police Regulations discusses such exigency. Same is reproduced for ready reference:-

> **270.** (1) Every order of punishment or exoneration, whether original or appellate shall be liable to revision suo-motu by any authority superior to the authority making the order.
>
> (2) Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority on application made in that behalf by the person against whom the order has been passed."
>
> **Explanation**:- For the purpose of of this clause, the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.
>
> (3) The provisions of Regulation 266, 267, 268 and 271 shall be as nearly as may be apply to any application for revision.
> (4) The revising authority may for reason to be recorded in writing exonerate or may remit vary of enhance the punishment imposed or may order a fresh enquiry of the taking of further evidence in the case:

> Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard.

16. From Perusal of Regulation 270, it is gathered that powers of revision are available to any authority superior to the authority making the original order or appellate order as the case may be. Here when SP Datia passed the original order dated 22.01.2002 and inflicted punishment and same got affirmed by appellate authority vide order dated 7.8.2002 then SP Datia had no authority to revise the order that too after 5 years on 22.08.2007. By the said order dated 22.08.2007 word – **"one year"** was deleted and remaining contents of the order remained intact, then it appears that removal of one year made the case of punishment as punishment with cumulative effect. Then certainly Regulation 226 may enter into the realm of discussion because Police Regulation 226 deals in respect of the punishments to be given for any particular offence. Police Regulation 226 is reproduced for ready reference as under:

> **"226. Punishments- Offences for which given**.- The following rules should be observed in determining what penalty should be awarded for any particular offence:-
>
> (i) (a) Dismissal is the last resource and should, ordinarily not be inflicted until all other means of corrections have failed.
>
> (b) If dismissal is considered too severe a punishment for sub-Inspector he should be removed from the service (This does not amount to dismissal.)
>
> **Note**- Dismissal order would be effected on the same date when it is passed or on the same day when the

dismissed person relieved and shifted from the service.

(ii) xxxxx

(iii) xxxxx

(iv) With holding of increment either temporary or permanent (or grade reduction in the case of head Constables) is a suitable punishment for all cases of serious dereliction of duty. It may also be inflicted for culpable ignorance of police procedure, laziness or apathy in conducting the work of the police station, and the like. Fair warning should be given in every instance and opportunity for amendment afforded before the punishment is awarded.

In the case of a Constable the period of deprivation shall not exceed a year nor is it advisable that a constable should be deprived of more than or Increment at a time. If After a departmental enquiry for a subsequent offence it is found advisable to inflict. This punishment on a constable already under reduction the proper order to pass is one extending the reduction by a period not exceeding one year.

Note- When an officer in a graded posts is reduced permanently his place in the grade or to which he is reduced must be determined at the time of passing the order if reduction with due regard to the amount of punishment deserved.

(v) An increment which has fallen due may be withheld for a definite period for inefficiency or unsatisfactory service. In the case of a Constable, it shall not be withheld for more than one year in the first instance. If a subsequent offence Justifies extension of this period, a departmental enquiry is necessary.

Note:-In all case where orders are passed withdrawing or withholding an increment, it must be clearly stated whether subsequent increments are to be postponed or not. In the cases of Constables they should not be postponed."

17. Therefore, order dated 22.08.2007 in fact goes contrary to

the spirit of Police Regulation 226 in substance because Regulation 226 prescribes infliction of punishment in moderate manner and understandably so because police constable stands at the bottom of the pyramid in hierarchy of police employees. Consideration of the offence and infliction of punishment appears to be graded as one climbs up in the hierarchy and apparently that aspect has been referred in Regulation 226. When the impugned proceedings ignore **Spirit of Regulation 226** and ignores the **Procedure prescribed in Regulation 270**, then the case of respondent faulters for such punishment and manner of infliction.

18. Another aspect deserves consideration is that joint enquiry conducted in the case. Petitioner is Constable whereas two other delinquents were Sub Inspector and Assistant Sub Inspector. No mechanism as such is being provided in Police Regulations in situation, when any joint enquiry of different officers/employees is to be conducted. For that purpose provisions of the CCA Rules are to be borrowed. Therefore, Rule 18 comes into play in the present case. Rule 18 of CCA Rules contemplates common proceedings. For ready reference, the said Rule is quoted below:-

> **18. Common Proceedings.- (1)** Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings.
>
> Provided that the powers conferred on the Governor under this rule shall in case of Judicial officers, be exercised by the chief justice.

> Note.- If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.
>
> (2) Subject to the provisions of sub-rule (3) of rule 12, any such order shall specify:-
>
> (i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;
>
> (ii) the penalties specified in rule 10 which such disciplinary authority shall be competent to impose; and
>
> (iii) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding.

19. A constant view has been taken by this Court on the point that if petitioner is Constable and his joint enquiry if is held along with other employees (SI and ASI) without permission from the competent authority then enquiry is vitiated. **(SEE: Mahesh Kumar Shrikishan Tiwari Vs. State of M.P. and others, 1985 MPLJ 516, Navin Kumar v. State of M.P. and Ors., (1989 MPLJ 514), S.N. Singh Vs. State of M.P. and others [2005(2) MPLJ 18], Jagdish Rathi vs. State of M.P. and ors., 2009(II) MPWN 98, Ramesh Chand Rathore vs. State of M.P. and ors., 2010 (2) MPLJ 245).**

20. Therefore, in the given facts and circumstances of the case, it appears that respondents caused illegality in pursuing the

departmental enquiry against petitioner. Order dated 22.08.2007 by S.P. Datia, could not have been passed at such belated stage when appellate authority (I.G.P. Chambal Region) also dismissed the appeal. Similarly, permission was required to be taken from the competent authority before proceeding for common enquiry.

21. Resultantly, petition stands allowed and impugned orders dated 1.11.2000, 22.01.2002, 22.08.2007, 7.8.2002 and 9.12.2010 are hereby set aside. Since matter was pending for the last almost 23-24 years therefore, matter is not remanded back. By this time petitioner must have learnt the lesson hard way and hopefully would work sincerely, honestly and diligently. Salary amount, if any, withheld in pursuance to punishment orders be paid to him.

22. Petition stands **allowed and disposed of** in above terms.

(ANAND PATHAK)
JUDGE

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