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WP-3480-2014

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 3480 of 2014*ARJUN SINGH RATHORE**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri M P S Raghuwanshi -Senior Advocate with Shri Manish Gurjar -
Advocate for petitioner.

Shri K S Tomar - GA for respondent/State.

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Reserved on : 22/07/2025

Pronounced on : 01/08/2025

ORDER

This petition under Article 226 of the Constitution of India has been filed by the petitioner being aggrieved the order dated 19.07.2013 passed by respondent No.4 whereby services of the petitioner were terminated after conducting departmental enquiry.

2. The petitioner is further aggrieved by the order dated 03.10.2013 passed by respondent No.3 whereby the appeal preferred by the petitioner against the said order was rejected. The petitioner is also aggrieved by the order dated 03.05.2014 passed by respondent No.2 whereby the second appeal preferred by the petitioner was also rejected.

3. In brief, the facts of the case are that initially the petitioner was appointed as constable on 19-07-2002 and he was posted in 18th Batalian,



SAF, Shivpuri (M.P.). After appointment, the petitioner with due sincerity and honesty had discharged his duties in accordance with the directions issued by the superior Authorities. Considering the same during his service tenure the petitioner had received 42 rewards and 2 minor punishments. In May 2012, the petitioner was posted at Itarsi Railway Station. On 11-05-2012, a criminal case bearing crime no. 403/2013 under section 376, 507, 576 of IPC was registered against him at Police Station Madhavnagar District Ujjain and he was taken into the police custody. The information to that effect was communicated by the Superintendent of Police Ujjain, to the commandant 18th Battalion Shivpuri. Consequently, the petitioner was placed under suspension vide order dated 14-05-2012. The aforesaid suspension order was revoked vide order dated. 10-08-2012. Thereafter, respondent had issued a letter dated 07-07-2012 directing the petitioner to appear on duty. After obtaining bail in the aforesaid case, the petitioner gave his joining at the respondent Head Quarter on 24-07-2012 and after conducting the preliminary enquiry, Shri S.K. Tiwari Asstt. Commandant submitted his preliminary enquiry report dated 05-07-2012. The disciplinary authority thereafter issued show cause notice to the petitioner and called reply, being unsatisfied, on the basis of aforesaid inquiry framed two charges against him, the details thereof are reproduced herein-below:-

A. That, the petitioner at the time of posting at GRP Police Station Itarsi after contacting a woman on phone had absconded from his duty to meet her at Ujjain where a disputed situation arose, on its basis, a criminal case at crime no. 403/2012 under section 376, 507 of IPC was registered and he was taken into police custody on 11-05-2012, hence the petitioner degraded the police reputation and had acted contrary to para 64 (4) and (5) of police regulation.



B. That, the petitioner without any prior intimation remained unauthorizedly absent from 11-05-2012 up till 27-07-2012 and therefore by absconding for 75 days, he has committed gross negligence against his duties.

4. In the departmental enquiry, the prosecution examined 12 witnesses whereon the petitioner was given an opportunity of cross-examination. During departmental enquiry, the criminal trial was also proceeded simultaneously before the Learned Session Judge, Ujjain, in which, on the basis of evidence put forth by the prosecution, the learned trial Court vide order dated 10-10-2012 acquitted the petitioner in session case no. 357/2012 instituted on the basis of crime no. 403/2012. The enquiring officer submitted his enquiry report dated 29-04-2013 wherein he had found the charges against the petitioner to be proved. The aforesaid enquiry report was communicated to the petitioner vide letter dated 03-06-2013. The petitioner submitted his detailed reply against the aforesaid enquiry report and refuted the charges levied against him but the respondent did not consider the facts and grounds mentioned in the reply to the enquiry report and passed the order dated 19-07-2013 by which the petitioner was terminated from the service. Aggrieved by the said order dated 19-07-2013, the present petition has been filed.

5. Learned counsel for the petitioner submits that once a person is taken into a legal custody, he can only be released on obtaining bail from the competent court and the petitioner after obtaining the bail approached the headquarter and submitted his joining. In such circumstances, the absence of the petitioner from his duty could be attributed to the facts beyond his control and therefore he can not be held responsible for an unauthorized



absence of 75 days.

6. It is further submitted that he had submitted his detailed reply against the aforesaid enquiry report and refuted the charges levied against him but the respondent did not consider the facts and ground mentioned in reply to the enquiry report and in an arbitrary manner passed the order dated 19-07-2013 by which the petitioner was dismissed from the services.

7. It is further submitted that the petitioner was falsely implicated in the criminal case and his unauthorized absence due to his custody on account of false criminal case could be attributed to the conditions beyond his control, therefore, the punishment of termination is highly disproportional. Thus, it is prayed that the impugned orders dated 19.07.2013 (Annexure P/1), 03.10.2013 (Annexure P/2) and 03.05.2014 (Annexure P/3) be quashed and respondents be directed to reinstate the petitioner with all consequential benefits.

8. On the other hand, learned Government Advocate submits that the charges in the departmental enquiry were distinct and independent from the allegations in the criminal case and primarily pertained to unauthorized absence from duty which is a serious misconduct for a member of the disciplined force. The acquittal of the petitioner in criminal case was considered by the disciplinary authority, but that could not exonerate the petitioner from the charge of indiscipline and dereliction of duty. The departmental proceedings are governed by preponderance of probabilities and not strict proof as in criminal trials, thus, prayed for dismissal of present petition.



9. Heard counsel for the parties and perused the record.

10. From perusal of record, it is evident that initially the petitioner was appointed as Constable on 19-07-2002 and he was posted in 18th Batalian, SAF, Shivpuri (M.P.). On 11-05-2012, the petitioner was implicated in a criminal case bearing crime no. 403/2013 under section 376, 507, 576 of IPC registered at Police Station Madhavnagar District Ujjain and in persuance thereto he was taken into custody. He remained in custody and was placed under suspension vide order 14.05.2012 which was subsequently revoked vide order 10.08.2012. After trial, he was acquitted by the Sessions Court vide judgment dated 10.10.2012. Separately, a departmental enquiry was initiated against the petitioner on the charges of unauthorized absence from duty for a prolonged period of 75 days and his implication in aforesaid criminal case. The charge-sheet alleged that the petitioner absented himself from duty without any prior permission or subsequent justification for the period from 11.05.2012 to 24.07.2012. An Enquiry Officer was appointed, and the enquiry was conducted in accordance with the service rules. The petitioner was afforded full opportunity to participate. The charges were found proved. The disciplinary authority, after considering the enquiry report and the petitioner's reply, passed the order of dismissal which was subsequently upheld by the Appellate Authorities.

11. The charges in the departmental enquiry are independent and relate primarily to unauthorized absence and misconduct, which adversely affects the discipline and integrity expected from a Police Personnel. The law is well settled that departmental proceedings can proceed independently of criminal



proceedings and may result in a different outcome. In **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.**, (1999) 3 SCC 679, the Hon'ble Supreme Court held:

“There is no bar for the employer to initiate departmental proceedings even when criminal proceedings are pending, unless the charges are exactly identical and arise out of the same set of facts.”

12. In the case of **Union of India Vs. Bihari Lal Sindhana** reported in (1997) 4 SCC 385, the Hon'ble Apex Court had held that acquittal in criminal case does not automatically nullify the findings of a departmental enquiry unless the charges are identical and the findings in both proceedings are irreconcilable.

13. In **Deputy Inspector General of Police v. S. Samuthiram**, (2013) 1 SCC 598, the Hon'ble Apex Court has held that:-

“The standard of proof required in a departmental enquiry is not the same as in a criminal trial. Acquittal by a criminal court does not automatically entitle an employee for reinstatement.”

14 In **State of Bihar and Ors v. Phulpari Kumari**, (2020) 2 SCC 130, the Supreme Court held as under:

"6.1 It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of "no evidence". Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge."

15. The Hon'ble Apex Court in the case of **State Of Haryana And Anr. vs Rattan Singh** reported in AIR1977 SC 1512 in Para 4 has held as under:-



4. in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

16. The respondent No.4 after discussing the available and admissible evidence on the charges and considering the judgment of acquittal of petitioner dated 10.10.2012 had passed the impugned order dated 19.07.2013 (Annexure P/1), therefore, it is not at all open to this Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court.

17. In the case of **State of Uttar Pradesh v Man Mohan Nath Sinha**, (2009) 8 SCC 310, the Hon'ble Apex Court had held as under:-

'15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.'



18. In the light of the aforesaid, in the considered opinion of this Court, as the Disciplinary Authority and Appellate Authorities had taken into consideration, all the material aspects and had rightly reached to the conclusion that the order of removal from service is a fit and proper punishment to be imposed on the petitioner.

19. In view of above, no case for interference is made out. Accordingly, present petition stands **dismissed**.

(MILIND RAMESH PHADKE)
JUDGE

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