

**THE HIGH COURT OF MADHYA PRADESH  
WP 1241/2016 (S)  
RN Mishra vs. State of MP**

**Gwalior, dtd. 24/01/2019**

Shri Prashant Sharma, counsel for the petitioner.

Shri AK Nirankari, Govt. Advocate for the respondents/ State.

This petition under Article 226 of the Constitution of India has been filed against the charge sheet (Annexure P1) on the ground that the subsequent charge sheet amounts to double jeopardy, because earlier also, for the same allegations a Departmental Enquiry was conducted against the petitioner and he was exonerated of the charges.

The necessary facts for the disposal of the present petition in short are that the charge sheet was issued to the petitioner on certain allegations. A Departmental Enquiry was conducted and the Enquiry Officer i.e. Sub-Divisional Officer, Pargana Mehagaon, District Bind submitted its enquiry report dated 06/02/2014 (Annexure P3) giving a finding that the recruitment proceedings were conducted by a Committee, in which the petitioner was one of the Members apart from the In-charge Officer, Land Records and Deputy Collector. The entire recruitment proceedings were conducted by the Committee and, therefore, only one Member of the said Committee cannot be held liable. The Commissioner, Land Record and Settlement by its order dated 24/09/2014 accepted the enquiry report submitted by the Enquiry Officer and exonerated the petitioner from all the charges which were levelled against him. Thereafter, the second charge sheet was issued on the said allegations.

The respondents have filed their return and they have accepted that by order dated 24/09/2014 the petitioner was exonerated from all the charges which were levelled against him in the first enquiry. However, one complaint was also made to the Lokayukt which is pending and the notices were issued and the explanations were also called and in pursuance of direction of the Lokayukt, the respondents have issued the second charge sheet. It is mentioned in the return that since the Lokayukt is a necessary party and it has not been impleaded as a respondent, therefore, the present petition suffers from mis-joinder of necessary party.

Paragraph 5.3 and 5.3 of the return reads as under:-

**"5.2.** That, contents as mentioned in this para are matter of record. The detail reply has also been submitted hereinabove. It is respectfully submitted that on the account of illegality and complaint before Lokayukt the charge sheet has been issued and steps has been taken against the petitioner.

**5.3.** That, the averments made in this para are matter of record. However it is pertinent to mention here that in the first enquiry the enquiry officer the petitioner is found guilty whereas the in the second enquiry he has been exonerated and therefore the principle of resjudicata in case of petitioner also applicable with the equal force."

Thus, the contention of the petitioner that he was earlier exonerated of the similar charges which have been levelled against him in the second charge sheet, has not been disputed by the respondents. However, it is the contention of the respondents that the second charge sheet has been issued under the instructions of the Lokayukt.

Considered the submissions made by the counsel for the parties.

The counsel for the respondents has failed to point out any

provision of law to show that the Lokayukt had any authority/power to discard the findings recorded in a full-fledged Departmental Enquiry. The respondents could not point out any provision to show that the Lokayukt has powers of an appellate authority against the order of exoneration. The respondents have also failed to show that the powers of review as provided under Rule 29 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 [in short " CCA Rules, 1966] have been exercised. Once an order has been passed under CCA Rules, 1966, then the said order can be reviewed only in accordance with the provisions of Rule 29 of the CCA Rules, 1966. Even if the Lokayukt was of the view that the order thereby exonerating the petitioner from all the charges is not correct, but still the respondents can not issue the second charge sheet without resorting to the provision of Rule 29 of CCA Rules, 1966 which reads as under:-

"**29.**(1) Notwithstanding anything contained in these rules except Rule 11-

- (i) the Governor; or
- (ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or
- (iii) the appellate authority, within six months of the date of the order proposed to be reviewed, or
- (iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 34 from which an appeal is

allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14[X X X]and except after consultation with the Commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless:

- (i) the authority which made the order in appeal; or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

*Explanation.* I- The powers conferred on the Governor under this sub-rule shall in the case of a Class III or Class IV Government servant serving in a District Court or a Court Subordinate thereto be exercised by the Chief Justice.

[*Explanation.* II. The powers conferred on the Governor under this rule, in case of Judicial Officers be exercised by the High Court.]

(2) No proceeding for review shall be commenced until after-

- (i) the expiry of the period of limitation for an appeal, or
- (ii) the disposal of the appeal where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules."

The Supreme Court in the case of **State of Assam vs. J. N. Roy Biswas** reported in **AIR 1975 SC 2277** has held as under:-

"**3.** What is the conspectus of circumstances ? A small veterinary official, a long enquiry for mis-conduct, a final direction cancelling suspension and reinstating him, the likelihood of the man having retired (15 years have gone by) and nothing on record to substantiate any fatal infirmity in the earlier enquiry or dereliction of duty by the disciplinary authority except that a reasoned record of findings was to be forthcoming, but did not, because he had retired in the mean while. No action against the retired Director for this alleged omission was felt justified and perhaps was not warranted but with persistent litigative zeal Government has come in appeal to this Court against the petty official. Had he misappropriated Government money he should have been punished expeditiously. But having been exculpated after enquiry, the State could go at him by re-opening the proceedings only if the rules vested some such revisory power. None such has been shown to exist although one wonders why a rule vesting such a residuary power of a supervisory nature to be exercised in the event . of a subordinate disciplinary authority not having handled a delinquent adequately or rightly is brought to the attention of Government has not been made. No rule of double jeopardy bars but absence of power under a rule inhibits a second inquiry by the Disciplinary authority after the delinquent had once been absolved. The appeal must fail and is dismissed with costs. "

It is true that rule of double jeopardy does not bar second enquiry but the proceedings can be reopened only if the rule permits the Government.

The Supreme Court in the case of **Canara Bank and Others vs. Swapan Kumar Pani and Another**, reported in **(2006) 3 SCC 251** has held as under:-

"**13.** Furthermore, the charges levelled against the first respondent herein are in 2 parts; (i) that he had on 6.11.1985 removed 20 special bearer bonds pledged by the Managing Director of M/s Utkal Iron & Steel Industries from the strong

room of the bank; and (ii) out of those special bearer bonds five bearer bonds were disposed of at Calcutta for Rs. 59,500/-. Admittedly, the first part of the charge was covered by the first charge sheet dated 20.5.1987. He having been exonerated therefrom, no fresh charge sheet could have been issued in absence of any statutory power in this behalf. Only the second part of the said charge sheet, is said to be based on new materials purported to have been discovered by the Managing Director of the bank. An inquiry in the second part of the charge sheet could have been possible, if the first part thereof charge viz. the respondent had removed the said bonds pledged by M/s Utkal Iron & Steel Industries was not required to be proved. As the bank cannot be permitted to reopen the first part of the charge, it a fortiori cannot be allowed to enquire into the second part also as both the parts of the charge are interlinked with each other. In other words, proof of first part of the charge was wholly dependent upon the first part. The impugned judgment to that extent is unassailable."

The Supreme Court in the case of **Nand Kumar Verma vs. State of Jharkhand and Others**, reported in **(2012) 3 SCC 580** has held as under:-

"**26.** In our opinion, having accepted the explanations and having communicated the same to the appellant, the High Court could not have proceeded to pass the order of initiating departmental proceedings and reverting the appellant from the post of Chief Judicial Magistrate to the post of Munsif. On General Principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charges is permissible."

The Counsel for the respondents could not point out any rule thereby empowering the respondents to initiate second Departmental Enquiry on the similar allegations of which the petitioner has already

been exonerated in the earlier Departmental Enquiry. It is fairly conceded by the Counsel for the State that the respondents have not resorted to the provisions of Rule 29 of CCA Rules, 1966. Thus, it is clear that the second charge sheet issued against the petitioner is bad.

The effect and operation of the impugned charge sheet Annexure P1 was stayed by this Court by order dated 18/04/2016, therefore, it is clear that nothing has transpired in the second charge sheet.

This Court by order dated 05/07/2018 had directed the respondents to bring on record the letter issued from the Office of Commissioner, Land Record and Settlement bearing No.3493/स्था/एक/पटवारी /2009, Gwalior, dated 30/06/2015 and the respondents were also directed to examine as to whether the order dated 24/09/2014 has been recalled by the competent authority or not and if so, they were directed to bring the land record.

It is conceded by the counsel for the State that the order dated 24/09/2014 has not been recalled so far. Accordingly, the subsequent charge sheet issued to the petitioner, is hereby quashed. If the respondents are of the view that the order dated 24/09/2014 has been wrongly passed, then they would proceed further in accordance with CCA Rules, 1966.

With the aforesaid observation, the petition is finally **disposed of**.

**(G.S. Ahluwalia)**  
**Judge**