

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 7125 of 2019

BETWEEN:-

**RAJENDRA PRASAD PATHAK S/O KALYAN
PRASAD PATHAK, AGED ABOUT 33 YEARS,
OCCUPATION: SERVICE CONSTABLE NO. 37
POLICE LINE ASHOKNAGAR 319-A TULSI
VIHAR COLONY CITY CENTRE GWALIOR
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ARUN KATARE- ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY GOVT.OF MP
MANTRALAYA VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**
- 2. DIRECTOR GENERAL OF POLICE POLICE
HEADQUARTERS JAHANGIRABAD BHOPAL
(MADHYA PRADESH)**
- 3. SUPERINTENDENT OF POLICE
SUPERINTENDENT OF POLICE DISTT
ASHOKNAGAR (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI RAVINDRA DIXIT- GOVERNMENT ADVOCATE FOR
RESPONDENT/STATE)***

This petition coming on for hearing this day, the court passed the

following:

ORDER

Reserved on : 04.03.2024

Pronounced on : 06.03.2024

This petition coming on for admission this day, the court passed the following:

ORDER

1. The instant petition has been preferred by petitioner under Article 226 of the Constitution seeking following reliefs:-

(i) That, the present petition filed by the petitioner may kindly be allowed.;

(ii) That, the order dated 29.08.2017 Annexure P/1, order dated 27.11.2017 Annexure P/2 and the charge-sheet Annexure P/4 may kindly be directed to be quashed and the respondents no.3 may kindly be directed to regularize the period of absent of the petitioner from 17.7.2016 to 12.9.2016 and pay the difference of salary from that period along with interest at the rate of 12% per annum.

(iii) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Cost be also awarded in favour of the petitioner.

2. Precisely stated facts of the case are petitioner was appointed on the post of Police Constable on 25.09.2012 in District Force, Ashoknagar. It appears that because of some medical condition, petitioner remained absent from his duties for the period between 17.07.2016 to 12.09.2016 (total 58 days) unauthorizedly and therefore, a charge-sheet was issued against him with the allegations of carelessness and insubordination and thus violation of Clause 64 (2) and (4) of the Police Regulation. In departmental enquiry, S.D.O.P. Mungawali was appointed as Enquiry Officer and enquiry was conducted. Enquiry Officer found the charges as proved and placed the matter before S.P. Ashoknagar, who inflicted a punishment of stoppage of one annual increment with cumulative effect which would have adverse bearing over the pensionary and other retiral dues of the petitioner. Against the said order, petitioner preferred an appeal but same was dismissed by DIG, Gwalior Range, Gwalior. Therefore, this petition has been preferred.

3. It is the submission of learned counsel for petitioner that

respondents proceeded arbitrarily and Enquiry Officer acted as a presenting officer. He himself cross-examined the witnesses which is contrary to the law laid down by this Court in the case of **Ram Prakash Gaya Prasad Vs. State of M.P. and others, 2008 (4) M.P.L.J. 35** and the same was subsequently followed in the case of **Ramesh Chand Rathore Vs. State of M.P. and others, 2010 (II) MPWN 80**. It is further submitted that action of respondents is violation of Regulation 226 of the Police Regulations also because punishment has not been given as per the gravity of the offence. Here, harsh punishment has been given. Petitioner is serving on the lowest post i.e. Police Constable. Before passing the order of such extreme punishment, moderate punishment ought to have been given. Learned counsel for petitioner also relied upon the judgment of this Court in the case of **Ganesh Kumar Sharma Vs. State of M.P. 2013 (2) MPLJ 402** to submit that harsh punishment is punishment of last resort and therefore, suitable calibration is required to be done in the case.

4. It is further submitted by learned counsel for petitioner that grounds raised by the petitioner in appeal, preferred by him, were not considered in correct perceptive and the same is contrary to the law laid down in the case of **Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan, (2010) 9 SCC 496**.

5. Learned counsel for respondent/State opposed the prayer and

while relying on the return filed, submitted that after departmental enquiry, petitioner was inflicted with the punishment. Petitioner remained absent for 58 days and on earlier occasions also, he was found absent, therefore, such punishment was inflicted. He prayed for dismissal of the petition.

6. Heard learned counsel for parties at length and perused the documents.

7. This is a case where petitioner, who happens to be a Police Constable and remained absent from his duty for a period of 58 days, is seeking calibration of punishment primarily. In other words, on quantum of punishment, petitioner intended to crave the indulgence of this Court. It is beyond doubt that petitioner remained absent for 58 days. It is also an admitted fact that a departmental enquiry was conducted in which petitioner was found to be an aspirant of the examination for the post of Police Sub-Inspector and as per the allegations of respondents, petitioner utilized this period of absence for preparation of the said examination. Therefore, balance is to be struck whether the purpose and intention by which petitioner remained absent, commensurate with the punishment inflicted.

8. Suitable reliance can be placed over the provisions of M.P. Police Regulations. The Said regulations are framed while exercising the powers purportedly under provisions of the Indian

Police Act, 1861, therefore, having statutory force. Violation of Regulation 64 (2) and (4) is alleged to be violated by the act of petitioner. The same is reproduced herein for ready reference:-

64. General Condition of Service-*Every candidate for an appointment in the police should be made acquainted, prior to appointment, with the general conditions of police service, which are as follows:*

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1. -----
2. *He shall faithfully and honestly use his best abilities to fulfill all his duties as a police officer.*
3. -----
4. *He shall submit to discipline, observe subordination and promptly obey all lawful order*

9. These are the general conditions of the service which are to be adhered to by the any person who is the member of the Police Force. If he violates any of the conditions, then he would be liable for punishment and mechanism of punishment of different offence/violation of service conditions has been provided in Regulation 226 of the Police Regulations. This Court reiterates the same for ready reference:-

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) The vacancy of an officer dismissed should not be filled in the case of a Constable or permanently in the case of a Head Constable and above until the period of appeal has expired.

(iii) Reduction in rank is a suitable punishment for incompetence, or cases of serious dereliction of duty in which dismissal or removal is considered to be too severe a punishment.

As a general rule Sub-Inspectors who are directly recruited should not be punished by reduction to Assistant Sub- Inspector. The

reduction to Assistant Sub-Inspector or Sub Inspector who were appointed by promotion from the rank of Head Constable or Assistant Sub Inspector is permitted.

(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 one 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.

(vi) Fine is an appropriate punishment for repeated carelessness and disobedience of orders. Unpunctuality and the like. Fines should be moderate in amount; the loss of half a month's pay is the utmost that should ever be inflicted, save in very exceptional

circumstance. The fining of constables is prohibited.

(vii) In the case of head constables and constables, minor offences against discipline should be dealt with firstly, by warning, and if this proves ineffectual, by the infliction of the minor punishments specified in regulations 216 and 217(b), or by detailing the offender to a course of more irksome and unpopular duties.

(viii) The transfer of a police officer to an unhealthy or unpopular post as a punishment is strictly forbidden.

10. From perusal of Regulation 226 of the Police Regulation, it appears that it 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. Therefore, suitable precaution has to be taken while inflicting punishment in graded manner. No doubt, it is true that Police is a disciplined force and petitioner committed a type of indiscipline and insubordination, but at the same time, it is nowhere established by the respondents

that petitioner remained absent without any intimation to the department. Petitioner initially took leave for five days and thereafter on the ground of medical conditions, he remained absent further. Purpose of leave apparently was to appear in the competitive examination. Perhaps, ambition to ameliorate for better exacting in life persuaded the petitioner to take his present job lightly. Therefore, petitioner deserves some punishment but certainly not the present punishment because instant punishment is in the nature of Major Penalty. Regulation 226 advised officers to avoid infliction of such harsh penalty in routine manner.

11. Although, petitioner has tried to raise other grounds also in which he relied upon one Circular dated 25.04.2015 (Annexure P/3) issued by D.G, Police, in which it has been mentioned that if any employee remains absent for 60 days or more, then, departmental enquiry be conducted necessarily. But said circular does not help the cause of petitioner because it nowhere says that below absence of 60 days, no enquiry would be conducted at all. However, it is true that it reflects the spirit of the department wherein a bottom line of 60 days has been prescribed which appears to be a period which raises alarm bell for the department in respect of conduct of delinquent. Punishment appears to be harsh and it should be punishment of last resort, not instantly. This Court can rely profitably over the judgment of learned Division

Bench in the case of **Ganesh Kumar Sharma (supra)** in this regard.

12. Resultantly, the petition is partly allowed and impugned order dated 29.08.2017 and order dated 27.11.2017 are hereby set aside. However, matter is remanded back to the respondents to reconsider the case and inflict appropriate punishment as per the spirit of Regulation 226 of the Police Regulations.

13. Petition stands **disposed of** in above terms.

Certified copy as per rules.

(ANAND PATHAK)
JUDGE

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