

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ASHISH SHROTI**

**WRIT PETITION No. 22779 of 2021
KASHIRAM
Versus
STATE OF MP AND OTHERS**

Appearance:

Shri K.S.Tomar-GA for the respondents/State.

RESERVED ON: 11/02/2026

ORDER PASSED ON: 17/02/2026

ORDER

Petitioner has filed this writ petition being aggrieved by order dated 06.09.2019 (Annexure P/1), passed by respondent no.5, whereby, he was dismissed from service on account of misconduct found established in departmental enquiry. He has also challenged the order dated 28.09.2019 (Annexure P/2), 15.06.2020 (Annexure P/3); 03.09.2020 (Annexure P/10), whereby, his appeal, representation; mercy appeal were dismissed by the respective authorities. The petitioner has also prayed for his reinstatement in service with all consequential benefits.

2. Facts necessary for decision of this case are that the petitioner was initially appointed as Constable vide order dated 18.11.1991 and was posted in 29 th Battalion, SAF, Datia. He was then transferred to Guna. At the relevant time, he was posted at e-Company Head Office at Ashoknagar. Subsequently, he was sent on deputation to State Industrial Security Force, Rewa.

3. While he was posted at Ashoknagar, it is alleged against the

petitioner that on 09.11.2018, during PT Parade, he left the parade without permission and went to his Barak and came back in civil dress and started misbehaving with his superior. On the same day at Head Office of the Company, he, under intoxication, started misbehaving and disrupting the official work. It is further alleged that on 18.04.2019, the petitioner again indulged in the act of misbehaving with his co-employees under intoxication.

4. The preliminary enquiry was conducted and a report was submitted on 27.03.2019, wherein, the allegations were found prima-facie correct. A charge-sheet was accordingly issued to the petitioner on 15.05.2019 (Annexure P/6), whereby, following four charges were levelled against him:-

“आरोप:

1. दि०-९-११-१८ को ई कंपनी मुख्यालय में चल रहे पीटी परेड से बिना अनुमति बाहर निकल कर बैरिक में चले जाना तथा सिविल कपडे पहने कर बैरिक के गेट से परेड करवा रहे अपने वरिष्ठ अधिकारी सउनि लालता प्रसाद पर व्यावसायिक अयोग्यता का आक्षेप लगाते हुये उनके साथ अभद्रता प्रदर्शित कर म०प्र० विसबल अधि० १९६८ की धारा १७ (ई) व (च) व पुलिस रेगुलेशन के पैरा ६४ के उप-पैरा तीन एवं चार का स्पष्ट उलंघन करना।

2. दि० ९-११-१८ को ही ई कंपनी मुख्यालय में मद्यपान कर नशे में अभद्र प्रदर्शन करते हुये अकारण अश्लील गालियां देना व शासकीय कार्य में व्यवधान उत्पन्न करते हुये सिविल सेवा आचरण नियम १९६८ के नियम २३ एवं पुलिस रेगुलेशन के पैरा ६४ के उप-पैरा तीन एवं चार का स्पष्ट उलंघन करना।

3. दि० १८-४-१९ सांयकाल को पूर्व में आदेशित किये जाने के उपरान्त भी दि० १९-४-१९ को प्रातः आदेशित ड्यूटी पर न जाते हुये अपने बिस्तर पर पडे रहना तथा ड्यूटी खाना होने के बाद मद्यपान कर कैम्प में गाली-गलौज करते हुये उपद्रव मचा कर बैरिक में सभी कर्मचारियों के बिस्तर उठा कर जमिन पर पट देना व तदनुसार सिविल सेवा आचरण

नियम तीन के बिन्दु क0 2-28 (XIV), बिन्दु क0 2-28 (XVII) सिविल सेवा आचरण नियम 23, म0प्र0 विसबल अधि0 1968 की धारा 16-छ (एक) तथा मध्य प्रदेश पुलिस रेगुलेशन के पैरा 64 के उप-पैरा तीन एवं चार का स्पष्ट उलंघन करना।

4. सेवाकाल के प्रारंभ से ही लगातार उपरोक्त प्रकार के प्रकरणों की बार-2 पुनरावृत्ति करना तथा सुधार करने हेतु अनेक अवसर प्रदान किये जाने के उपरान्त भी अपनी प्रवृत्ति में कोई सुधार न करना।”

5. As per respondents, petitioner submitted reply to the charge-sheet and admitted the charges. However, the copy of reply to charge sheet is not placed on record. In furtherance of departmental enquiry, one Shri Sunderlal Khande, Inspector, SAF was appointed as enquiry officer to conduct the enquiry while Shri Amaldas Kujur, Head Constable, E-Company, SAF was appointed as Presenting Officer. The Presenting Officer examined 16 prosecution witnesses to establish the charges against the petitioner. The petitioner’s statement was also recorded. In his statement, the petitioner admitted the charges. The enquiry officer concluded the enquiry and submitted the report before respondent no.5 on 27.03.2019.

6. The respondent no.5 forwarded the copy of report to the petitioner vide memo dated 13.08.2019 and asked him to submit his explanation to the findings recorded by enquiry officer. Since, in the meantime, the petitioner was sent on deputation to State Industrial Security Force, Rewa, he sent his reply on WhatsApp which was taken on record.

7. The impugned order dated 06.09.2019 (Annexure P/1) was thereafter passed by respondent no.5, thereby, removing the petitioner from service. A perusal of this order shows that earlier also, two major punishment and 10 minor punishments were imposed on the petitioner. Being aggrieved by the aforesaid punishment order, the petitioner filed an appeal before respondent no.4, which came to be dismissed on 28.09.2019 (Annexure P/2). Representation filed against the punishment order also

suffered rejection vide order, dated 15.06.2020, (Annexure P/3). Further, the mercy appeal filed by him before respondent no.2 also suffered dismissal vide order dated 03.09.2020 (Annexure P/4). Against these orders, the petitioner has filed present writ petition.

8. The punishment orders have been challenged by the petitioner inter-alia on the ground that he was not afforded opportunity to cross-examine the prosecution witnesses; that he was examined in question-answer form in the enquiry; that the findings were recorded against him ex-parte; his defence is not properly appreciated by authorities and the report of enquiry officer is accepted without independent application of mind; that the petitioner was awarded 133 times in past which fact is ignored by authorities. It is also averred in the petition that the punishment imposed is harsh and disproportionate.

9. On the other hand, learned counsel for the respondents/State supported the impugned orders and argued that even though the petitioner admitted the charges in reply to charge sheet as also during course of enquiry, the enquiry officer has rendered the findings on appreciation of oral/documentary evidence of prosecution witnesses. He also argued that the petitioner voluntarily admitted the charges before the enquiry officer which is apparent from his statement. The learned counsel submitted that the petitioner was given due opportunity to cross-examine the prosecution witnesses, however, he did not ask anything in cross-examination which is apparent from the statements filed alongwith reply. He also submitted that there is no bar in recording petitioner's statement in question-answer form. It is his further submission that, looking to the conduct of petitioner as also his past conduct, the punishment imposed is justified and proportionate to the gravity of charges levelled against the petitioner. He also submitted that the scope of interference by this Court under Article 226 of Constitution of India is very limited and the factual findings recorded during enquiry are not open to interference. He thus submitted that no interference is

warranted in the present writ petition.

10. Considered the arguments and perused the record.

11. The Presenting Officer examined as many as 16 prosecution witnesses to establish the charges against the petitioner. These witnesses have witnessed the incidence in relation to which the charges were levelled against the petitioner. The copy of statements has been brought on record alongwith reply from page no.35 to 52. A perusal of the same shows that the opportunity to cross-examine each witness was given to the petitioner but he did not ask anything from any of the witness. The statement of each of the witness is duly signed by the petitioner. It is not his case that he was coerced to sign these statements. Thus, the allegation that he was not allowed opportunity to cross-examine the witnesses, is found to be incorrect from records and is accordingly rejected.

12. The petitioner has admitted the charges in his statement recorded during enquiry. He was asked by enquiry officer if he wants to lead evidence, oral/documentary, in defence, to which the petitioner answered in negative. He was asked as to whether he is satisfied with enquiry conducted, to which he replied in affirmative. Relevant extract of his statement in this regard is reproduced hereunder for ready reference:

“प्रश्न— आप पर जो आरोप लगाये गये हैं क्या आपको स्वीकार हैं या नहीं।

उत्तर— हाँ लगाये गये आरोप स्वीकार हैं।

प्रश्न — क्या आपको अपने बचाव में आरोपो के किसी भी संदर्भ में कोई साक्षी प्रस्तुत करना चाहते हैं।

उत्तर— नहीं ।

प्रश्न — आप अपने बचाव में कोई लेखी दस्तावेज प्रस्तुत करना चाहते है।

उत्तर— जी नहीं ।

प्रश्न — क्या आप अपने बचाव में लिखित आवेदन देना चाहते है।

उत्तर— जी हाँ । संलग्न है।

प्रश्न —क्या आपको कुछ और कहना है।

उत्तर— प्रार्थी श्रीमान सेनानी महोदय के समक्ष ओ0आर में उपस्थित होकर अपनी गुजारिश करना चाहता हूँ ।

प्रश्न — क्या आपको विभागीय जाँच की कार्यवाही से संतुष्ट है।

उत्तर— हाँ में विभागीय जाँच की कार्यवाही से संतुष्ट हूँ मुझे कोई आपत्ति नहीं है। ”

It is thus, seen that the petitioner has admitted the charges. Still the findings are recorded based upon appreciation of evidence collected during enquiry and not upon his admission. Further, the petitioner was given opportunity to cross-examine each prosecution witness, he was allowed opportunity to lead defence evidence and further he stated his satisfaction about enquiry conducted against him. Thus, the departmental enquiry conducted against the petitioner is found to be just and proper and no defect is pointed out therein.

13. The Apex Court has considered the scope of interference in disciplinary matters by this Court under Article 226 of Constitution of India in the case of *Union of India v. P. Gunasekaran*, reported in *(2015)2 SCC 610* wherein the Court held that the factual findings of departmental authorities are not open to interference so long as they are based upon some evidence. Meaning thereby, interference with such factual findings can be made when they are shown to be perverse or based on ‘no evidence.’ The petitioner has failed to make out a case of perverse finding and/or a case of no evidence. Thus, the findings recorded during enquiry needs to be accepted.

So far as punishment imposed on petitioner is concerned, the same also do not warrant any interference. It is seen that the charge levelled against the petitioner was misbehaving with co-employees and superiors and creating obstruction in work under intoxication. This is a serious misconduct that too particularly for a member of disciplined force. This Court can interfere with punishment imposed by departmental authority only when it shocks the conscience of this Court. The Apex Court in the case of *B.C. Chaturvedi vs. Union of India*, reported in *(1995)6 SCC 749*, dealt with this issue as under:

“18.A review of the above legal position would establish that

the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

14. The Apex Court has held that coming on duty under intoxication is a gross misconduct, in the case of **Govt. of T.N. vs. S. Vel Raj**, reported in **(1997)2 SCC 708**. The Court held as under:

“7... The respondent when he appeared before the PSI at 8 p.m. On 7-7-1984 was on duty. He had returned to the police station for reporting to the PSI as to what he had done regarding the directions given to him earlier. At that time he was found in a drunken condition and was in “mufti”. He had even admitted before the PSI that he had consumed “arrack” and it was for that reason that he was smelling of alcohol. In this context, it was required to be considered whether there was “good and sufficient reason” for initiating a disciplinary proceeding against him and imposing the punishment of compulsory retirement. The

police force has to be a disciplined force and a member of the police force has to behave in a disciplined manner particularly when he is on duty. The respondent even though he was sent for official work and was on duty returned to the police station in “mufti” and in a drunken condition after consuming “arrack”. He had returned to the police station to report to his superior officer as to what happened to the work which was entrusted to him. Under these circumstances, his behaviour has to be regarded as an act of gross misconduct. It is difficult to appreciate how the Tribunal could persuade itself to take a contrary view. In view of the facts and circumstances of this case it is not possible to say that the punishment which was imposed upon him was highly excessive. The appellate authority after considering his previous record and after giving him an opportunity to show cause against the proposed enhancement had passed the order of punishment. Though the Tribunal has held that the enquiry was not conducted by the appellate authority as required by the rules it has not been pointed out which requirement of the rule had not been complied with. The Tribunal was, therefore, wrong on this count also. In the result, this appeal is allowed and the order passed by the Tribunal is quashed and set aside. In view of the facts and circumstances of the case, however, there shall be no order as to costs.”

15. The charge no.4 levelled against the petitioner was with regard to his past conduct. The disciplinary authority has also taken into the factum of petitioner having punished twice with major punishment and 19 times with minor punishments. Looking to the facts and circumstances of the case, it cannot be said that the punishment imposed on petitioner is

disproportionate or harsh.

16. In view of the discussion made above, this Court does not find any ground to interfere with the action taken by the respondents. The impugned orders are accordingly upheld. Petition fails and is hereby **dismissed**.

(ASHISH SHROTI)
JUDGE

jps/-