

***IN THE HIGH COURT OF MADHYA PRADESH***

**AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE ASHISH SHROTI**

**WRIT PETITION No. 4491 of 2021**

**RAJENDRA SHARMA & OTHERS**

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

**Appearance:**

Mr. Arun Katare - Advocate for the petitioners.

Mr. Naval Kishore Gupta - GA for the respondent – State.

---

**ORDER**

**Reserved on : 09.10.2025**

**Delivered on : 15.10.2025**

---

**ORDER**

The petitioners have filed this writ petition invoking Article 226 of the Constitution of India, challenging the order dated 15.01.2021 (Annexure P/1), whereby punishment of permanently withholding 5% pension has been imposed upon each of the petitioners.

2. The facts necessary for decision of this case are that at the relevant time, petitioner no.1 was working as Deputy Superintendent of Police, AJK, District Ashoknagar while petitioner no.2 was working as Inspector, AJK,

District Ashoknagar. On 19.11.2013, the Chief Minister of the State had to visit Shahdora. The Superintendent of Police allotted duty to various police officers for managing event at Helipad. One Mr. Sudhir Agarwal, Additional Superintendent of Police was made overall in-charge of the security, while petitioner no.1 was assigned duty for security at Helipad. The petitioner no.2 and others were deployed for assisting petitioner no.1.

3. The Additional Superintendent of Police submitted a preliminary report to the Superintendent of Police reporting that at the time of arrival of the Chief Minister, both the petitioners were found missing from the Helipad. Taking cognizance of the aforesaid report, a show-cause notice was issued to petitioner no.1 on 03.12.2013 (Annexure P/3) while on 20.11.2013 to petitioner no.2. Against both the petitioners, it was alleged that at the time of visit of Chief Minister on 19.11.2013, both the petitioners appear at Helipad after departure of Chief Minister at about 1:40 pm. The petitioner no.1 submitted his reply to the show-cause notice on 07.12.2013 specifically stating that he and petitioner no.2 both remained present at Helipad right from 6:30 in the morning till the departure of the Chief Minister in the afternoon.

4. Reply given by petitioner no.1 was not found satisfactory. Accordingly, a common charge-sheet was issued to both the petitioners on 13.10.2014 (Annexure P/6), whereby following charges were leveled:

**"आरोप क. 01:** दि. 19.11.2013 को मान. श्री शिवराज सिंह चौहान मुख्यमंत्री जी के शाहीरा प्रवास के दौरान हेलीपेड व्यवस्था ड्यूटी से अनाधिकृत रूप से अनुपस्थित होकर पदीय कर्तव्यों के प्रति घोर लापरवाही एवं उदासीनतापूर्ण प्रदर्शित करना।

**आरोप क. 02:** आरोपीगण द्वारा दिये गये आदेश का पालन न कर पुलिस रेग्यूलेशन के पैरा 64 (4) एवं (5) का स्पष्ट उल्लंघन करना।"

5. The petitioners submitted a joint reply to the charge-sheet specifically stating that they were present on the Helipad since morning till 15 minutes after departure of the Chief Minister. In order to establish their presence at the Helipad, the petitioners quoted the incident that immediately before arrival of the Chief Minister, petitioner no.1 scolded one Sevendar Ram Bhagat & Baijnath Singh Yadav, in presence of Additional Superintendent of Police, on account of their leaving the Helipad site. The petitioners also contended that video recording of the event was also prepared and the same be produced which will make the picture clear.

6. In order to conduct the enquiry, Inspector General of Police, Gwalior Range, Gwalior was appointed as Enquiry Officer while Additional Superintendent of Police, Ashoknagar was appointed as Presenting Officer. The enquiry officer conducted the enquiry, wherein 3 prosecution witnesses were examined namely Mr. Sudhir Agarwal, Additional Superintendent of Police, Ashoknagar, Mr. Baijnath Singh Yadav, Sub Inspector, Police Line, Ashoknagar and Mr. Sevendar Ram Bhagat, Sub Inspector Kotwali,

Ashoknagar. On the other hand, the petitioners examined about 8 defense witnesses, in support of their claim. After the enquiry was concluded, the Enquiry Officer submitted his report on 12.09.2017 (Annexure P/8) to the Superintendent of Police, Ashoknagar.

7. The Superintendent of Police, Ashoknagar issued show-cause notice to the petitioners on 30.10.2017, whereby copy of enquiry report was forwarded to them and they were asked to submit their explanation to the findings recorded by the Enquiry Officer. The petitioner no.1 gave his explanation on 30.01.2018 while petitioner no.2 did not give his explanation. Thereafter, the impugned order dated 15.01.2021 (Annexure P/1) was passed, whereby punishment of withholding 5% pension permanently, in relation to both the petitioners, was passed.

8. Challenging the impugned order, learned counsel for the petitioners submitted that the Enquiry Officer as also the Disciplinary Authority completely failed to properly appreciate the fact that as many as 8 defense witnesses were examined by the petitioners, who categorically affirmed the petitioners' presence throughout the visit of the Chief Minister. He also submitted that the entire event was video recorded, however, despite specific demand by the petitioners, the video recording was not produced during enquiry. It is his further submission that there were number of persons present, who could have established the petitioners' presence on the Helipad.

However, intentionally, the only 3 witnesses were examined, who were personally biased against the petitioners.

9. The learned counsel further submitted that the Disciplinary Authority initially proposed the punishment of recovery of amount equal to one increment without cumulative effect from petitioner no.1 and referred the matter for concurrence to Public Service Commission. The Public Service Commission accorded its sanction to the proposed punishment. However, contrary to that, the punishment of permanently withholding 5% of pension has been imposed upon petitioner no.1, for which there is no concurrence of Public Service Commission. The learned counsel, therefore, submitted that the impugned order of punishment is bad-in-law and same deserves to be set aside.

10. On the other hand, learned counsel for the respondents supported the impugned order and submitted that the enquiry has been conducted by the Enquiry Officer and the findings recorded therein are based upon proper appreciation of evidence. Such findings are not open to interference by this Court in exercise of power of judicial review. He further submitted that 3 prosecution witnesses candidly stated during the course of enquiry that both the petitioners were missing from the event and arrived there only after the departure of Chief Minister. Thus, it cannot be said that the findings recorded by the Enquiry Officer and affirmed by the Disciplinary Authority are based

on no evidence. It is his submission that this Court would not re-appreciate the evidence. The learned counsel, therefore, submitted that the impugned order has been passed in accordance with law and does not warrant any interference.

**11.** Considered the arguments and perused the record.

**12.** It is not in dispute that the petitioner no.1 was assigning the duty of maintaining security at Helipad during the visit of Chief Minister while the petitioner no.2 was deployed, along with others, to assist petitioner no.1. The allegation leveled against both the petitioners is that they went missing from the Helipad on 19.11.2013 at the time of visit of Chief Minister and appeared only after his departure. The findings recorded during the course of enquiry are based only upon oral evidence recorded during the enquiry.

**13.** Mr. Sudhir Agarwal, Additional Superintendent of Police, Ashoknagar, Mr. Baijnath Singh Yadav, Sub Inspector, Police Line, Ashoknagar, and Mr. Sevendar Ram Bhagat, Sub Inspector Kotwali, Ashoknagar were examined as prosecution witnesses. Mr. Sevendar Ram Bhagat was examined as PW-1 who was asked specific question, during the cross-examination, that petitioner had scolded him and Mr. Baijnath Singh Yadav immediately before the arrival of Chief Minister in front of Additional Superintendent of Police, which was accepted by the said witnesses. Question & answer asked to the said witness is reproduced hereunder for ready reference:

"प्रश्न- क्या यह बात सत्य है कि, माननीय मुख्यमंत्री महोदय के आगमन से थोड़ा पूर्व आप और श्री बैजनाथ सिंह दोनों बिना बताये कहीं चले गये थे, तब आपको मैंने अपने सहायक श्री साहू को भेजकर बुलवाया था? आप लोगों ने सेफहाउस पर पानी पीने जाना बताया था। मैंने आप दोनों को अतिरिक्त पुलिस अधीक्षक के समक्ष भी डाँटा-डपटा था और समझाईश देकर किया है पुनः ड्यूटी पर मामूर कर दिया था ।

उत्तर - हाँ, यह बात सही है, हम दोनों सेफहाउस पर पानी पीने गये थे।

14. Similar question was asked to Mr. Baijnath Singh Yadav, which was denied by him. The question put to him and answer given by him is reproduced as under:

"प्रश्न- क्या यह बात सत्य है कि, माननीय मुख्यमंत्री महोदय के आगमन से थोड़ा पूर्व आप और श्री सेवेन्दर राम भगत दोनों बिना बताये कहीं चले गये थे, तब आपको मैंने अपने सहायक श्री साहू को भेजकर बुलवाया था? आप लोगों ने सेफहाउस पर पानी पीने जाना बताया था। मैंने आप दोनों को अतिरिक्त पुलिस अधीक्षक के समक्ष भी डाँटा-डपटा था और समझाईश देकर पुनः ड्यूटी पर मामूर कर दिया था।

उत्तर - नहीं यह बात सही नहीं है।"

15. Further, similar question was also asked to Mr. Sudhir Agarwal (PW-3), who has denied this fact and only stated "हो सकता है ".

16. Thus, two out of three witnesses have not disputed the petitioners' presence at Helipad immediately before arrival of Chief Minister. Mr. Baijnath Singh Yadav has denied most of the questions as he does not remember the same. If the statements given by aforesaid three prosecution witnesses are seen, the presence of petitioners immediately before arrival of Chief Minister at the Helipad is established.

17. Apart from the aforesaid, the petitioners have examined as many as 8 co-employees as defense witnesses, who were present on the Helipad. Each of them has candidly stated that “इस दौरान प्रभारी श्री राजेन्द्र शर्मा व निरीक्षक श्री साहू हेलीपेड पर ही रहकर लगातार सुरक्षा व्यवस्था में लगे रहे थे एवं कहीं भी नहीं गये थे।”. Thus, from the statement of defence witnesses also, the petitioners’ presence at the Helipad throughout the event till departure of the Chief Minister, is established.

18. The Enquiry Officer in his report has discarded the statements of the aforesaid defense witnesses by observing as under:

“यद्यपि बचाव साक्षी कं. 01-आर 0 87 रामसिंह, बचाव साक्षी कं. 02 आर 0 345 कमलेश माली, बचाव साक्षी कं. 03 सत्यनारायण शर्मा, बचाव साक्षी कं. 04 प्र 0 आर 0 352 देवेन्द्र भील, बचाव साक्षी कं. 05 प्र 0 आर 0 357 दीवान सिंह भील, बचाव साक्षी कं. 06 आर. चालक 330 अरविद रघुवंशी, बचाव साक्षी कं. 07 आर० कृपाल सिंह 2 रीं वाहिनी विसबल ग्वालियर, बचाव साक्षी कं. 08 आर 0 03 दिनेश गर्ग ने अपने कथनों में दोनों अधिकारीगण अपचारी उप पुलिस अधीक्षक राजेन्द्र शर्मा एवं सेवानिवृत्त निरीक्षक आर०सी०साहू का लगातार हेलीपेड सुरक्षा व्यवस्था ड्यूटी में उपस्थित रहना बताया गया है, तथा प्रस्तुतकर्ता अधिकारी द्वारा प्रतिपरीक्षण में पूछे गये प्रश्न के उत्तर में बचाव साक्षियों द्वारा मुख्यमंत्री महोदय के प्रस्थान के समय हेलीपेड पर काफी नेतागणों की भीड़ होना भी बताया गया है। इन सभी बचाव साक्षियों के कथनों में प्रस्तुतकर्ता अधिकारी के द्वारा परीक्षण किये जाने पर यह तथ्य भी स्पष्ट हुआ है कि हेलीपेड एवं उसके आसपास मुख्यमंत्री महोदय के आगमन एवं प्रस्थान के दौरान बहुत अधिक भीड़भाड़ थी एवं भीड़ के आने जाने एवं हेलीकॉप्टर में धूल उड़ने के कारण वे स्पष्ट रूप से यह नहीं देख सके कि मुख्यमंत्री के प्रस्थान के समय हेलीपेड सुरक्षा व्यवस्था ड्यूटी हेतु लगाये गये अपचारी उप पुलिस अधीक्षक एवं निरीक्षक वहाँ उपस्थित थे अथवा नहीं। इन सभी साक्षियों ने मुख्यमंत्री के आगमन के पूर्व एवं सभा स्थल के लिये रवाना होने के दौरान समय-समय पर अपचारीगणों द्वारा चैक करने आने का

आधार बताकर अपचारीगणों के हेलीपैड ड्यूटी पर उपस्थित होने की बात कही है। मन्त्रीय मुख्यमंत्री के सभा स्थल से वापस हेलीपैड पर लौटने पर अपचारीगण ड्यूटी पर उपस्थित नहीं दिखे थे, यह तथ्य विभागीय जाँच में आई साक्ष्य से निर्विवाद रूप से प्रमाणित होता है।"

**19.** From, the aforesaid discussion of evidence, it is evident that the presence of petitioners on Helipad is established not only on the basis of statement of defence witnesses but also on the basis of prosecution witnesses. Only on account of suspicion because of blowing of dust due to helicopter fan for some time, it could not have been held by enquiry officer that the petitioners were not present at all on Helipad and appeared there only after departure of Chief Minister. The enquiry officer also erred in recording a finding that undisputedly the petitioners were not found on Helipad on Chief Minister's returning back. Thus, the finding recorded by enquiry officer are apparently perverse and appears to have been recorded in order to somehow implicate the petitioners.

**20.** Another important aspect to be looked into in this case is that the petitioners, right from the inception, have been insisting upon the production of the video recording of the event. However, for the reasons best known to the respondents, the video recording was not produced during the enquiry. The fact that the event was video recorded is admitted by almost all the witnesses and, therefore, if the video footage was produced in the enquiry,

that would have made the picture clear. However, the best evidence was not produced during the course of enquiry for which no justification is given by respondents.

**21.** After the date of incident i.e. 19.11.2013, Mr. Sudhir Agarwal conducted a preliminary enquiry immediately on the same day by recording statement of Shri Baijnath Singh Yadav and Mr. Savender Ram Bhagat. However, the report was submitted after lapse of 62 days. Surprisingly, despite availability of several employees, he examined only two persons namely Mr. Baijnath Singh Yadav & Mr. Sevendra Ram Bhagat, who were scolded by petitioner no.1 immediately before arrival of Chief Minister and have reason to be biased against the petitioners. Thus, the genuineness of preliminary enquiry report becomes suspicious.

**22.** The learned counsel for the petitioners has raised yet another ground regarding consultation of Public Service Commission. From the impugned order, it is gathered that the Disciplinary Authority proposed the punishment for recovery of the amount equal to one increment without cumulative effect on petitioner no.1. The same was referred to Public Service Commission for its concurrence vide memo dated 28.01.2020. The Public Service Commission gave its concurrence vide memo dated 17.06.2020. However, contrary to the concurrence given by Public Service Commission, the punishment of permanently withholding 5% of pension has been imposed

upon petitioner no.1 also.

**23.** It is a settled legal position that the consultation with Public Service Commission is mandatory though its opinion is not binding on the Disciplinary Authority. Thus, the Disciplinary Authority, having inflicted punishment other than the one, for which concurrence was given by PSC, would amount to no consultation with PSC. Infact, concurrence of PSC was obtained for a minor punishment whereas a major punishment has been inflicted by Disciplinary Authority. The imposition of major punishment contrary to the opinion has thus vitiated the action of the Disciplinary Authority.

**24.** In view of the discussion made above, this Court finds that the findings of Enquiry Officer are perverse and have been recorded ignoring important piece of evidence in the shape of statement of defence witnesses and the video recording of the event. The Disciplinary Authority has completely failed to taken into account facts of the case as no discussion is found to have been made by it in the impugned order. The Disciplinary Authority has thus failed to apply its mind independently and has mechanically accepted the findings of Enquiry Officer.

**25.** In view of the discussion made above, the order dated 15.01.2021 (Annexure P/1) is set aside. In view of the fact that both the petitioners have retired long back in the year 2020, this Court do not deem it appropriate to

remit the matter for reconsideration before the Disciplinary Authority. The respondents are directed to confer the benefits on the petitioners, as if, the impugned order of punishment was never passed. Let the needful in this regard be done within a period of 90 days from the date of submission of certified copy of this order.

26. With the aforesaid, this petition is **allowed and disposed of**.

**(ASHISH SHROTI)**  
**JUDGE**

bj/-