

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 9543 of 2021

SANTOSHI LAL BATHAM

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. M.P.S. Raghuvanshi - Senior Advocate with Mr. Dharmendra Singh
Raghuvanshi - Advocate for the petitioner.

Mr. Naval Kishore Gupta - GA for the State.

ORDER

Reserved on : 27.09.2025

Delivered on : 15.10.2025

ORDER

The petitioner has filed this writ petition challenging the order dated 03.05.2012 (Annexure P/2), whereby punishment of stoppage of two increments without cumulative effect has been inflicted upon him under Rule 19 of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966,

by the Disciplinary Authority. The petitioner has also challenged the order dated 25.07.2017 (Annexure P/1), whereby the appeal filed by him against the punishment order has been rejected.

2. The petitioner was substantively holding the post of Assistant Engineer in the Public Health Engineering Department and at the relevant time he was holding the current charge of the post of Executive Engineer and was posted at Shivpuri. He was appointed as OIC in relation to W.P. No.490/2009 pending before this Court. The aforesaid writ petition was disposed of by this Court vide order dated 06.04.2010. Thereafter, SLP was filed before Apex Court, against the order of this Court, on 15.02.2011 which was dismissed by the Hon'ble Supreme Court on the ground of delay as well as on merits.

3. A show-cause notice was issued to the petitioner on 09.09.2010, whereby it was alleged that the petitioner, being OIC of the aforesaid case, failed to take immediate steps for filing of SLP before the Apex Court as a result of which the SLP was dismissed. The petitioner submitted his reply on 15.02.2011 explaining the steps taken by him for purposes of filing the SLP. He claimed that he took all the steps diligently for purposes of filing SLP.

4. The Disciplinary Authority decided to inflict punishment of stoppage of two increments without cumulative effect on the petitioner. Vide memo dated 09.02.2012, it sought concurrence of Public Service Commission in the matter. The Public Service Commission accorded its concurrence, to the decision taken by the Disciplinary Authority, vide memo dated 21.03.2012. Accordingly, vide

impugned order dated 03.05.2012 (Annexure P/2), punishment of stoppage of two increments without cumulative effect was imposed upon the petitioner.

5. Being aggrieved, the petitioner challenged the punishment order by filing an appeal under Rule 23 of CCA Rules before the Governor of M.P. The matter was considered and a decision was taken to reduce the punishment to 'warning'. The Appellate Authority again referred the matter to PSC seeking its concurrence. The PSC however, did not agree with the opinion of the Appellate Authority as communicated vide memo dated 20.11.2013. Accordingly, the Appellate Authority dismissed the petitioner's appeal vide impugned order dated 25.07.2017. Challenging the orders passed by Disciplinary as well as Appellate Authority, the present writ petition has been filed.

6. The learned Senior Counsel for the petitioner challenged the impugned orders on the ground that both the authorities failed to consider the defence put forth by the petitioner. He submitted that the permission to file SLP was granted by the State Government on 04.10.2010 and immediately, thereafter he instructed the Supreme Court lawyer on 10.11.2012 to file SLP. It is his case that he was continuously following up the matter with the Supreme Court lawyer and ultimately SLP was filed on 15.02.2011. He thus submitted that the petitioner acted diligently and took all possible steps for challenging the order before the Apex Court. The learned senior counsel also submitted that the order passed by the Disciplinary Authority as also by the Appellate Authority is completely non-speaking inasmuch as both the orders do not discuss petitioner's explanation and

assign any reason for finding the explanation unsatisfactory. He also submitted that the Appellate Authority though took a decision to reduce the punishment but blindly accepted the disagreement of the PSC and dismissed the appeal. It is his submission that opinion of the PSC is not binding upon the Appellate Authority as has been held by this Court in the case of **S.K. Agarwal Vs. State of Madhya Pradesh** reported in **ILR (2017) MP 1840**.

7. The learned Government Advocate, on his turn, supported the impugned order and submitted that the order was passed by this Court on 06.04.2010, whereas the appeal was filed before the Supreme Court on 15.02.2011. He submitted that the permission to file SLP was granted by the State Government on 04.10.2010 and still SLP was filed after lapse of about 4 months, which shows the casual attitude and negligence on the part of petitioner. He submitted that the SLP was dismissed by the Supreme Court on the ground of delay. Thus, serious prejudice is caused to the State Government. The learned counsel also submitted that the Appellate Authority has assigned reasons for not accepting the petitioner's explanation. He further submitted that it was incumbent upon the Disciplinary/Appellate Authority to have sought concurrence from PSC and the opinion given by PSC needs to be followed. The learned Counsel also submitted that the scope of interference of this Court in disciplinary matters is very limited wherein this Court can examine only the decision making process and cannot act as appellate authority. He, therefore, submitted that both the orders are just and proper and do not warrant any interference of this Court.

8. Consider the arguments and perused the record.
9. Based upon the submissions made by learned counsel for the parties, following issues arises for consideration:

- (1) Whether the Appellate Authority was required to refer the matter to PSC for concurrence, even when it decided to reduce the punishment?
- (2) Whether the Appellate Authority is bound by the opinion given by the PSC or it could have disagreed with the said opinion?
- (3) Whether the authorities were justified in not accepting the explanation given by the petitioner and imposing the impugned punishment?

Issue No.1:

10. The provision for consultation with UPSC/SPSC is provided under Article 320(3)(c) of Constitution of India . It provides as under:

"320. Functions of Public Service Commission.-

- (1) xxx xxx xxx*
- (3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted;*
- (a) xxx xxx xxx*
- (b) xxx xxx xxx*
- (c) On all disciplinary matters **affecting a person** serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;"*

11. Similar provision is made under Rule 27 of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 which provides as under:

- "27. Consideration of appeal- (1) xxx xxx xxx*
- (2) In the case of an appeal against an order imposing any of the penalties specified in rule 10 or enhancing any penalty imposed under the said rule, the appellate authority shall consider:-*
 - (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has*

resulted in the violation of any provisions of the Constitution of India or in the failure of Justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 10 and an inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter on consideration of the proceedings of such inquiry, make such orders as it may deem fit.

(iii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 10 and an inquiry under rule 14 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed make such orders as it may deem fit.

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty."

12. Thus, by virtue of provisions of clause (i) of sub-rule (2)(c) of Rule 27 of CCA Rule, the Appellate Authority is required to consult PSC in all cases where consultation is necessary.

13. Article 320(3)(c) of Constitution of India provides that the disciplinary matters, which affects a person serving under the Government of India or the State Government in civil capacity, are required to be referred for consultation to PSC. The use of the words '*which effects a person*' would necessarily mean '*adversely effects a person*'. This is so because, for imposing punishment of stoppage of two increments without cumulative effect, the PSC has already been consulted by the Disciplinary Authority. Decision of Appellate Authority to reduce the punishment, since is in favour of delinquent, the same would not affect him *vis-a-vis* the order passed by Disciplinary Authority and, therefore, the PSC was not required to be consulted again. In other words, it is only in those cases, where the Appellate Authority decides to enhance the punishment, which adversely affects the civil servant, the matter is required to be referred to PSC again.

14. In other words, where the decision of authority is in favour of delinquent, the matter is not required to be referred to PSC again by Appellate Authority. In the present case, since the Appellate Authority took a decision to reduce the punishment, evidently it was not adversely affecting the interest of petitioner and, therefore, it was not required to refer the matter again to PSC.

15. The issue needs to be examined from another aspect. In exercise of powers conferred by virtue of clause (1) of proviso to Article 320(3) of Constitution of India, the Governor of Madhya Pradesh has framed regulations namely "*M.P. Public Service Commission (Limitation of Functions) Regulations, 1957*". Regulation 6 thereof provides for the matters wherein the Commission is not

required to be consulted. For the purposes of this case, Regulation 6(2)(a) is relevant and is reproduced hereunder:

“6(2)(a) Where, after completion of the departmental enquiry the Government Servant is to be exonerated or no penalty is proposed to be imposed and it is decided to close the case after issuing a simple warning to the Government Servant.”

16. Thus, when the Appellate Authority had decided to inflict punishment of 'warning' only on the petitioner, it was not required to refer the matter to PSC for its concurrence.

17. Therefore, in respect of issue no.1, this Court is of the considered opinion that the Appellate Authority was not required to refer the matter to PSC for its concurrence.

Issue No.2.

18. As is apparent from the records, the Appellate Authority took a decision to reduce the punishment of two increments without cumulative effect to the punishment of warning. The PSC however did not agree with the decision of the Appellate Authority. Accordingly, the Appellate Authority dismissed the appeal affirming the punishment order.

19. Issue as to whether the Appellate Authority was bound by the opinion of PSC or not has been considered by the Apex Court in the case of ***A.N.D. Silva v.***

Union of India reported in AIR 1962 SC 1130 wherein the Court held as under:

"4. In the view of the Enquiry Officer the motive for granting irregular connections was also established, but the Union Public Service Commission expressed a different view. By Article 320(3) of the Constitution it is provided that the Union Public Service Commission

shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, but the Union Public Service Commission is not an Appellate Authority over the Enquiry Officer. It is unnecessary for the purpose of this case to consider whether in making their recommendations or tendering their advice the Union Public Service Commission may express a conclusion on the merits of the case as to the misdemeanour alleged to have been committed by a public servant different from the conclusion of the Enquiry Officer."

20. The issue was again considered by Apex Court in the case of ***Nagaraj Shivarao Karjagi v. Syndicate Bank reported in (1991)3 SCC 219***, wherein the Court held as under:

"16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulations, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self-imposed rule to consult the Central Vigilance Commission in every

disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in A.N. D'Silva v. Union of India [1962 Supp 1 SCR 968 : AIR 1962 SC 1130] has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission."

21. Relying upon aforesaid Apex Court judgments, the Coordinate Bench of this Court in the case of **S.K. Agarwal (Supra)** held in para - 15 as under:

"15. Looking to the foregoing precedents, it is apparent that the requirement to consult the Madhya Pradesh Public Service Commission and its report/advice is not binding on the disciplinary authority or appellate authority abdicating the quasi judicial functions entrusted on him. It is further clear that the employee and employer is having master-servant relationship in between and the third party like Public Service Commission could not dictate the disciplinary authority or the appellate authority as to how they should have exercised their power and what punishment ought to be inflicted to the employee. It has further been made clear that the recommendations of the Public Service Commission regarding quantum of punishment is not binding and if the disciplinary authority or the appellate authority relying upon the advice passes an order treating it to be binding on him, it would amounting to abdication of their power, which is given under the statute. The appellate authority while accepting the said advice and giving weightage to the quantum of punishment changes the penalty as proposed by him only for this reason while exercising the quasi judicial power to hear the appeal prescribed under the statute is not permissible."

22. Thus, it has been a consistent settled legal position that the issue of

deciding quantum of punishment is within the exclusive domain of Disciplinary/Appellate Authority and the opinion of PSC is only advisory and not binding upon the authorities.

Issue No.3.

23. Coming on merits of the case, the allegation against the petitioner was that, being OIC of the case, he acted negligently in taking steps for filing of SLP before the Apex Court. In response, the petitioner has stated in his reply to show cause notice as also in the appeal memo that immediately after the order was passed by this Court, he applied for obtaining certified copy of the order and also approached the office of Advocate General at Gwalior for obtaining opinion in the matter. Substantial time expired in obtaining the opinion from the office of Advocate General. After the opinion was obtained, he referred the matter to the State Government for necessary permission to file SLP. The permission was granted on 04.10.2010 and immediately thereafter, he met the counsel at Supreme Court on 10.11.2010 and deposited requisite expenses. He has brought on record, copy of receipt dated 10.11.2010 (Annexure P/3) issued by the office of lawyer at Supreme Court.

24. It is the case of the petitioner that the preparation of SLP also took substantial time and he continuously followed up the matter with the lawyer of Supreme Court and ultimately the SLP was filed on 15.02.2011. The aforesaid explanation is not found to have been appreciated at all by the Disciplinary Authority. He has simply observed in the order that the petitioner's explanation is

found to be unsatisfactory. No reason however has been assigned as to why the reply is not found satisfactory.

25. The Appellate Authority also does not refer to the detailed explanation given by the petitioner. In its order, the Appellate Authority only stated that after the permission to file SLP was granted on 04.10.2010, the SLP was filed on 15.02.2011 after lapse of four months, therefore, the petitioner has been held guilty. The Authority has not considered the fact narrated by petitioner in his explanation that after the permission was granted on 04.10.2010, the petitioner approached the lawyer at Supreme Court on 10.11.2010, as is evident from the receipt filed as Annexure P/3. It failed to appreciate that once the brief is handed over to lawyer, it was for him to prepare and file the SLP and the petitioner could not have been held responsible for the delay in filing SLP after 10.11.2010. Thus, the orders passed by both the authorities are found to be lacking in necessary consideration of petitioner's explanation and suffers from defect of non-application of mind.

26. The Apex Court in the case of **M/s Kranti Association Pvt. Ltd & another Vs. Masood Ahmed Khan & others**, reported in (2010)9 SCC 496 has held as under:

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150] .

13. *In Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380 : AIR 1973 SC 389] this Court approvingly referred to the opinion of Lord Denning in R. v. Gaming Board for Great Britain, ex p Benaim [(1970) 2 QB 417 : (1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA)] and quoted him as saying “that heresy was scotched in Ridge v. Baldwin [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL)]”.*

14. *The expression “speaking order” was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).*

15. *This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the “inscrutable face of a sphinx”.*

27. In view of the aforesaid discussion, this Court is of considered opinion that both the authorities failed to properly appreciate the explanation given by the petitioner and thus the impugned orders are vitiated.

28. Accordingly, both the impugned orders, dated 03.05.2012 & 25.07.2017 (Annexure P/2 & P/1) passed by the respondent authorities are found to be unsustainable in law and are accordingly set aside. Since this Court has held that the Appellate Authority was not required to refer the matter to PSC for consultation when it decided to reduce the punishment, the decision taken by the Appellate Authority to inflict the punishment of warning is thus **upheld**. Consequently, the punishment of stoppage of two increments without cumulative effect imposed upon the petitioner is substituted by the punishment of warning, as per the decision taken by Appellate Authority.

29. The respondents are accordingly directed to undo the effect of the impugned punishment and extend the consequential benefits upon the petitioner within a period of 90 days from the date of production of certified copy of this order.

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

(ASHISH SHROTI)
JUDGE

bj/-