IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 20th OF FEBRUARY, 2025

WRIT PETITION No. 9653 of 2021

MAHENDRA SINGH CHAUHAN

Versus

NORTHERN CENTRAL RAILWAY AND OTHERS

Appearance:

Shri Ankur Mody - advocate for the petitioner.

Shri Shiv Shankar Bansal - advocate for the respondents.

ORDER

The matter is finally heard at the motion stage with the parties' consent.

The petitioner has preferred this petition under Article 226 of the Constitution of India seeking following relief :

> "7. In the light of the foregoing facts and circumstances it is prayed that the present writ petition filed by the petitioner may kindly be allowed and
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> A. Further the impugned orders dated 13.01.2021 passed in departmental revision; the order dated 31/08/2020 passed in departmental appeal and the order dated 29/03/2019 may be quashed and set aside in the interest of justice AND;
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> B. Respondents be directed to reinstate the petitioner back in service with all consequential benefits including arrears of salary with interest from 29.03.2019 till the date of actual realization in the interest of justice.
>
> C. Any other relief which this Hon'ble court deems fit in the prevailing circumstances".

The brief facts of the case are that the petitioner was posted as a constable in the respondent/department at Dabra Distt. Gwalior. On 11.06.2016 the petitioner applied for one day's leave through the proper channels and the same was also granted by the competent authority. While on leave the petitioner was wrongfully detained by the Datia police in Crime No. 50/2014 in which the petitioner was charged under IPC and Arms Act. Due to his wrongful detention, the petitioner wasn't able to resume his services on 12/06/2016, which is beyond the control of the petitioner. Due to wrongful detention and seizure of cell phones, the petitioner was unable to rejoin the service or intimate about the same to the department officials about the whole situation. Consequently, the petitioner was suspended from service vide order dated 20/06/2016 Annexure P/7. In pursuance of the suspension order, a departmental inquiry was initiated against the petitioner under Rule 153 of RPF Rules, 1987 (In short "RPF Rules'). The petitioner was served with a memorandum of three charges as per Annexure P/4. The inquiry officer after conducting the inquiry, submitted his report to the disciplinary authority on 24.02.2019 and no charge has been found proved against the petitioner but respondent no.3 without issuing notice and without affording any opportunity of hearing to the petitioner, passed the impugned order dated 29.03.2019 whereby, punishment of dismissal from service was imposed upon the petitioner. The petitioner preferred appeal and revision before the authorities but the same was also dismissed without application of mind or granting an opportunity of hearing. Being aggrieved by the same, the petitioner has preferred this writ petition.

Per contra, learned counsel for the State opposed the prayer by submitting in their return that the petitioner had applied and requested for sanction of one-day rest permission on 11.06.2016, and the same was granted by the competent authority. Thereafter, the petitioner should have reported on 12.06.2016 for duty. But the petitioner was arrested by the Civil Lines Police Station, Datia (M.P) on 13.06.2016, and the criminal case No.50/14 U/sec.302, 34, 149, 148,147, 201, 120(B), 195, 194 of IPC and Section 25,27 of Arms Act was registered against him. This case is still pending and is under trial. Therefore, the petitioner was kept under suspension by Assistant Security Commissioner RPF Gwalior on 20.06.2016 w.e.f. 13.06.2016 and after conducting an inquiry and after issuing the charge sheet, inquiry has been conducted and the petitioner has been granted sufficient opportunity of hearing, and vide order dated 24.02.2019, the charges were found proved against the petitioner. Then, the disciplinary authority issued a letter dated 27.02.2019 to the petitioner serving an inquiry report upon him. Thereafter, the disciplinary authority i.e.Senior Divisional Security Commissioner, RPF Jhansi as per Schedule III read with Rule 151.1 read with 154.3 of the Railway Protection Force Rules, 1987 imposed major punishment upon the petitioner of dismissal from service. According to the provisions given in rules 212 to 214 of Railway Protection Force Rules, 1987, he could have filed his appeal to the appellate authority within the stipulated time, but he didn’t submit his appeal at that time and even after the lapse of one year, he had directly filed a writ petition being W.P.No. 6969 of 2020 which has been disposed of vide order dated 15.06.2020. Later on, in the year 2020, the

petitioner submitted a copy of the appeal dated 18.04.2019 which has been decided vide order dated 31.08.2020 Annexure R/1. The petitioner has been released on bail as per the order dated 17.08.2020 by the High Court of M.P. Bench Gwalior in M.Cr.C.No.25700 of 2020. Thereafter, the petitioner submitted a review petition against the appellate order, and the same has also been rejected by the revisional authority vide annexure R/2. It is also submitted that according to Circular dated 08.07.2018 issued by Central Vigilance Commission vide letter No.99/VGL/087-389176 dated 31.07.2018 on the subject of "SIMULTANEOUS ACTION OF PROSECUTION AND INITIATION OF DEPARTMENTAL PROCEEDINGS", appropriate action in respect of disciplinary proceedings along with criminal prosecution may also be initiated by the Administrative Authorities. The petitioner has failed to send intimation regarding his absence to the respondents. Two persons were murdered by accused Dharmendra Chauhan with the licensee revolver of the petitioner which is a serious offence. The impugned order has been passed after affording reasonable opportunity to the petitioner, therefore, the petitioner is not entitled to any relief and this petition is liable to be dismissed.

The petitioner has also filed a rejoinder by submitting that the punishment of "dismissal from service" has been imposed vide impugned order 29.03.2019 without issuing any show cause notice and without considering the Inquiry report prepared by the Enquiry Officer dated 24.02.2019, arbitrarily and illegally terminated the services of the petitioner. As per law also, the presumption of innocence until found guilty lies in

favour of the petitioner, and the petitioner should not be punished on the pretext of charges alone. The punishment order is also not reasoned. The punishment order should be reasoned and speaking and must be passed after considering the entire material on record whereas, in the case of the petitioner, neither the statements of the petitioner nor the inquiry report were considered. The order of dismissal from service was passed in contravention of the statutory rules applicable to the service condition to the petitioner. The petitioner has submitted justifiable reasonings. The departmental inquiry and the criminal proceedings can be initiated simultaneously but do not speak about whether during the ongoing trial, the employee can be terminated by the department or not. Thus, the said circular is not applicable in the present case at hand and the reliance of the respondents on the said circular is misplaced. Therefore, the petition should be allowed.

The respondents opposed the rejoinder by submitting an additional reply stating that the charges levelled against the petitioner were found proven and the petitioner has duly participated in the inquiry. It is settled law that the disciplinary authority is not bound to accept the inquiry report and the disciplinary authority after going through the material on record as well as the inquiry report can decide as deemed fit having concern with the gravity of the case. There is no ban on making decisions under departmental proceedings and the same can run simultaneously with criminal proceedings. Therefore, the action taken by the authorities is proper in the facts and circumstances of the case. The impugned order has been passed by the respondent authorities according to the rules. Therefore, this petition be

dismissed.

Heard learned counsel for the parties and perused the record.

Admittedly, the petitioner who was posted as constable of RPF outpost Dabra had applied for sanction of one-day rest permission, and the same has been granted, and accordingly, the petitioner should have reported on 12.06.2016 to resume his duties. But in the meanwhile, the petitioner was arrested by Civil Lines Police Station, Datia (M.P) on 13.06.2016 in Criminal Case No.50/14 registered for offenses punishable U/sec.302, 34, 149, 148,147, 201, 120(B), 195, 194 of IPC and Section 25,27 of Arms Act. From perusal of the inquiry report, it appears that the petitioner was not arrested on 12.06.2016 and he was not in police custody on that day, he was free to resume his duties and if for one reason or another, he was not able to resume his duties, he was duty bound to intimate regarding his absence to the higher officials. But he failed to do so, therefore, the reason assigned by the petitioner for not resuming the duties on 12.06.2016 due to the police custody not appearing to be bonafide and amounts to willful absence.

Learned counsel for the petitioner has contended that the three charges were levelled against the petitioner in the departmental inquiry but Charges No.2 and 3 were not found proved against the petitioner. Regarding charge No.1, the inquiry officer concluded that "दी गयी विभागीय जॉच में आरोप क्रमांक 01 जो दिनांक 12.06.2016 को अनुपस्थित के सम्बन्ध में है यह साबित पाया जाता है। यदि्प आरोपित बलसदस्य कास्टेबल महेन्द्र सिंह चौहान के सामने ड्यटी पर उपस्थित होने की गई परिस्थिति नहीं थी।"

From perusal of the aforesaid finding, it is clear that Charge No.1 has

been found proved against the petitioner, therefore, the contention made by counsel for the petitioner is not acceptable that the charge no.1 was not found proved against him. Indeed, Charges No.2 and 3 were not found proved against the petitioner by the inquiry officer but he has been punished for the aforesaid charges vide order annexure P/3. Learned counsel for the petitioner submitted that the disciplinary authority without issuing any notice and without assigning any reason for disagreement with the inquiry report submitted by the inquiry officer has passed the impugned order annexure P/3 which is arbitrary and also violates the principles of natural justice. Counsel for the petitioner relied upon a judgment of Apex Court in the case of **Lav Nigam Vs. Chairman and MD, ITI Ltd. and Another reported in (2006) 9 SCC 440** wherein, in para 12, it has been held as under :

> "12. This view has been reiterated in Yoginath D. Bagde V. state b Maharashtra². In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p. 758, para 29)
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> "But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it e has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority

was not liable to be 9 interfered with."

Counsel for the petitioner has also relied upon the judgment of the Hon'ble Apex Court in the case of **Punjab National Bank and Others Vs. Kunj Behari Misra reported in (1998) 7 SCC 84** wherein, the Hon'ble Court has observed as under :

> "The principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer"

Counsel for the petitioner has further relied upon the judgment of the Calcutta High Court in the case **Nuka Ramana Rao Vs. Union of India and Others on 08.10.2013 (W.P.No.12601 (w) of 2003)** in which, it has been held as under :

> "Although the petitioner had submitted a detailed representation against this show-cause notice, the show-cause notice did not ask the petitioner to make any representation. As a matter of fact, the conclusion was reached about the guilt of the petitioner without giving him an opportunity to make any representation. He had been held guilty by the said authority and merely the punishment was left to be imposed. Thus in view of the settled principle of law as discussed above this show-cause notice is liable to be set aside".

The petitioner is the police constable serving in the police department under RPF Rules 1987 and in case of **Punjab National Bank (Supra)** is related to Assistant Bank Managers and another citation in the case of **Lav Nigam (Supra)** is related to the service matter under Civil Service (Discipline and Appeal) Rules 1979 therefore, these two citations are not applicable in the instant case because the inquiry against the petitioner has been conducted under the provisions of Railway Protection Force Rules, 1987. For ready reference, Sections 153 and 154 of the RPF Rules, 1987 are as under :

> "153. **Procedure for imposing major punishments:** 153.1 Without prejudice to the provisions of the Public Servants Inquires Act, 1850, no order of dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the Force (save as mentioned in rule 161) without holding an inquiry, as far as may be in the manner provided hereinafter, in which he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded a reasonable opportunity of defending himself.
> 153.2.1 Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into, or appoint an Inquiry Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a Court of Inquiry to inquire into the truth thereof.
> 153.2.2 Where the disciplinary authority itself holds the inquiry, any reference to the Inquiry Officer in these rules shall be construed as a reference to the disciplinary authority.
> 153.3 On receipt of complaint or otherwise, the disciplinary authority on going through the facts alleged or brought out shall decide whether it is a case for major or minor punishment. No attempt shall be made to convert cases punishable under section 16 A or section 17 into disciplinary cases nor divert cases in respect of which major punishments are imposable to the category of cases where minor or petty punishments are imposable.
> 153.4 Where it is proposed to hold an inquiry against an enrolled member of the Force under this rule, the disciplinary authority may order that the enrolled member shall not be transferred to any

other place nor given leave without its written permission till the conclusion of the disciplinary proceedings, and the disciplinary authority shall draw up or cause to be drawnup –

(a) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;

(b) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain,-

(i) a statement of all relevant facts including any admission or confession made by the enrolled member of the Force,

(ii) a list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained.

153.5 The disciplinary authority shall deliver or cause to be delivered to the delinquent member, at least seventy-two hours before the commencement of the inquiry, a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and fix a date when the inquiry is to commence; subsequent dates being fixed by the Inquiry Officer.

153.6 Where the enrolled member charged has absconded or where it is not possible to serve the documents on him in person or where he deliberately evades service, the procedure laid down in sections 62, 64, 65 and 69 of the Code of Criminal Procedure, 1973 shall be adopted by the Inquiry Officer for service of such documents and the same shall be deemed to be a conclusive proof of service.

153.7 For securing the presence of private prosecution witnesses, the Inquiry Officer may allow free travel passes according to their status in accordance with extant Railway Rules.

153.8 The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (hereinafter referred to as “friend”) where in the opinion of the Inquiry Officer, the enrolled member charged cannot put up his defence properly. Such “friend” must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a “friend” in any other proceedings pending anywhere. Such “friend” shall, however, not be allowed to address the Inquiry Officer nor to cross-examine the witnesses.

153.9. If the enrolled member charged fails to turn up on the day fixed for the start of inquiry and no reasonable excuse is offered for not being present on the fixed time and day, the Inquiry Officer may commence the inquiry *ex-parte.*

153.10 At the commencement of the inquiry, the party charged shall be asked to enter a plea of "guilty" or "not guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary. If oral-

(a) it shall be direct;

(b) it shall be recorded by the Inquiry Officer in the presence of the party charged; and

the party charged shall be allowed to cross-examine the witnesses.

153.11 If the witnesses are government officers of a rank superior to the party charged, the Inquiry Officer may, at the request of the party charged, put the questions to such officer.

153.12 All evidence shall be recorded, in the presence of the party charged, by the Inquiry Officer himself or on his dictation by a scribe. Cross-examination by the party charged or the fact of his declining to cross-examine the witness, as the case may be, shall also be recorded. The statement of each witness shall be read over to him and explained, if necessary, in the language of the witness, whose signature shall be obtained as a token of his having understood the contents. Statement shall also be signed by the Inquiry Officer 79 and the party charged. Copy of each statement shall be given to the party charged who shall acknowledge receipt on the statement of witness itself. The Inquiry Officer shall record a certificate of having read over the statement to the witness in the presence of the party charged.

153.13 Documentary exhibits, if any, are to be numbered while being presented by the concerned witness and reference of the number shall be noted in the statement of the witness. Such documents may be admitted in evidence as exhibits without being formally proved unless the party charged does not admit the genuineness of such a document and wishes to cross-examine the witness who is purported to have signed it. Copies of the exhibits may be given to the party charged on demand except in the case of voluminous documents, where the party charged may be allowed to inspect the same in the presence of Inquiry Officer and take notes.

153.14 Unless specifically mentioned in these rules, the provisions of the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 shall not apply to the departmental proceedings under these rules.

153.15 The party charged shall then be examined and his statement recorded by the Inquiry Officer. If the party charged has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "not guilty", he

shall be required to file within 10 days a written statement together with a list of such witnesses as he may wish to produce in his defence and giving therein a gist of evidence that each witness is expected to give. If he declines to file a written statement, he shall again be examined by the Inquiry Officer on the expiry of the period allowed and his statement, if any, recorded.

153.16 If the party charged refuses to produce any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence, the Inquiry officer shall proceed to record the evidence. If the Inquiry Officer considers that the evidence of any witness or any document which the party charged wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders after recording the statement, if any, of the party charged and obtaining any clarification, if necessary, from him.

153.17 Under no circumstances additional prosecution witnesses shall be examined after the defence has been let in unless supplementary defence witnesses have been allowed on that ground. However, if at any stage during the inquiry, it appears to the Inquiry Officer that examination of any witness who has not been produced by either party so far or recall of any witness who has already been examined is essential in the interest of justice or to clear any doubt, he may summon him for the purpose and examine him as a witness of the Inquiry Officer after recording his reasons for doing so. Such a witness may also be cross examined by the party charged, if desired.

153.18 Whenever any Inquiry Officer after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another Inquiry Officer who has and exercises such jurisdiction, the Inquiry Officer so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by him or himself record it afresh as he deems expedient.

153.19 At the conclusion of the inquiry, the Inquiry Officer shall prepare a report of the inquiry recording his findings on each of the charges with reasons therefor. The findings must be of “guilty” or “not guilty” and no room shall be allowed for “benefit of doubt” or personal surmises. A charge shall be deemed to have been proved if after considering the evidence before him, the

Inquiry Officer believes the ingredients constituting the charge to exist or considers their existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they exist.

153.20 If in the opinion of the Inquiry Officer, the proceedings of the inquiry establish charges different from those originally framed, he may record his findings on such charges:

Provided that findings on such charges shall not be recorded unless the party charged has admitted the facts constituting them and has had an opportunity of defending himself against them.

154. Action on the Inquiry Report :

154.1 If the disciplinary authority, having regard to its own findings where it is itself the Inquiry Officer or having regard to its decision on all or any of the findings of the Inquiry Officer, is of the opinion that the punishment warranted is such as is within its competence, that authority may act on the evidence on record. However, in a case where it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, it may recall the witness, examine him and allow the party charged to crossexamine him and further reexamine him. After that, it may impose on the party charged such punishment as is within its competence according to these rules.

154.2 While communicating the order imposing the punishment, a copy of the findings of the Inquiry Officer shall also be given to the party charged.

154.3 Where such disciplinary authority is of the opinion that the punishment warranted is such, as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

154.4 The disciplinary authority, if it is not itself the Inquiry Officer may, for reasons to be recorded, remit the case to the Inquiry Officer for further inquiry and report. The Inquiry Officer shall thereupon proceed to hold 81 further inquiry according to the provisions of rule 153 and submit to the disciplinary authority the complete records of such inquiry along with his report.

154.5 The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

154.6 If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor punishments should be imposed on the party charged, it shall, notwithstanding anything contained in rule 158, make an

order imposing such punishment.

154.7 If the determining authority, having regard to its findings on all or any of the articles of charge and on the basis of evidence on record, is of the opinion that any of the major punishments should be imposed on the party charged, it shall make an order imposing such punishment and it shall not be necessary to give to the party charged any opportunity of making representation on the punishment proposed to be imposed".

From a perusal of Rule 154(5) of the Rules of 1987, if the disciplinary authority disagrees with the findings of the Inquiry Officer on any article of charge, he shall record its reasons for such disagreement and record its findings on such charge, if the evidence on record is sufficient for the purpose. Rule 154(7) of the Rules of 1987 indicates that it shall not be necessary to give the party charged any opportunity to make representation on the punishment proposed to be imposed.

Apart from the above, from a perusal of the impugned order annexure P/3 passed by the disciplinary authority, it is clear that after receiving the inquiry report and the petitioner's representation, the impugned order Annexure P/3 has been passed. Therefore, it cannot be said that the petitioner was not given any opportunity of hearing regarding the disagreement of the disciplinary authority with the inquiry report, and the disciplinary authority while passing the impugned order annexure P/3 has not mentioned reasons for disagreement from the report of the inquiry officer.

As per Rule 156 of the Rules of 1987 for absence from duty without prior intimation or overstay beyond sanctioned leave without sufficient cause, an order for removal from service can be passed. Therefore, as per provision of Section 154 (iii) of the Rules of 1987, the disciplinary authority

has passed the impugned order within the jurisdiction by providing sufficient opportunity for a hearing to the petitioner. As per the charges framed against the petitioner, serious allegations were levied against the petitioner that two persons were murdered by using the licensee revolver of the petitioner which was recovered from his house. The trial is still pending, therefore, as per the circular dated 31.07.2018 (Annexure R/3), the impugned order annexure P/3 appears to be just and proper. The impugned order passed by the appellate authority as well as by the revisional authority is also based upon the evidence available on record and with due application of mind. Therefore, the actions of the respondents cannot be said to be arbitrary or illegal, and in the facts and circumstances of the case, the action of the respondent authorities is as per the service rules. The authorities have no option except to dismiss the petitioner from service as he was found guilty and therefore, there is no illegality or perversity in passing an impugned order which calls for no interference by this court.

Resultantly, this petition sans merits and is hereby **dismissed** with no order as to the cost.

(ANIL VERMA)
JUDGE

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