

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

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT APPEAL No. 1614 of 2022

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

ASHOK RAWAT AND OTHERS

Appearance:

Shri Vivek Khedkar – Additional Advocate General for the appellants/State

Shri Nirmal Sharma – Advocate for the respondent No.1/petitioner.

Shri Shashank Indapurkar – Advocate for the respondent No.2/CBI.

WRIT APPEAL No. 1615 of 2022

NAVNEET BHASIN AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri M.P.S.Raghuvanshi – Senior Advocate with Shri Manish Gurjar – Advocate for the appellants.

Shri Vivek Khedkar – Additional Advocate General for the respondents/State.

Shri Shashank Indapurkar – Advocate for the respondent No.5/CBI.

Shri Nirmal Sharma – Advocate for the respondent No.6/petitioner.

&

WRIT APPEAL No. 1616 of 2022

ATMARAM SHARMA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri R.B.S.Tomar – Advocate for the appellants.

Shri Vivek Khedkar – Additional Advocate General for the respondents/State.

Shri Shashank Indapurkar – Advocate for the respondent No.5/CBI.

Shri Nirmal Sharma – Advocate for the respondent No.6/petitioner.

JUDGMENT

(Delivered on 16th Day of June 2025)

Per: Justice Anand Pathak

Heard on I.A.No.8856/2022 filed in W.A.No1615/2022 and I.A.No.8854/2022 filed in W.A.No.1616/2022 seeking leave of the court to file both the appeals.

2. For the reasons mentioned in the applications, same are allowed.
3. Regard being had to similitude of the dispute, all these three writ appeals are heard analogously and decided by a common order.
4. However, these three writ appeals have been preferred against the judgment dt.28.11.2022 passed by the learned Writ Court in W.P.No.7097/2022, out of which W.A.No.1614 of 2022 is preferred at the instance of State of M.P., W.A.No.1615/2022 has been preferred by appellant No.1 Navneet Bhasin, who was posted as S.P. Gwalior between the period 16.05.2018 to 26.07.2020 and appellant No.2 Amit Sanghi, who remained posted as S.S.P. Gwalior between the period w.e.f. 27.07.2020 till March 2023. W.A.No.1616/2022 has been filed by Atmaram Sharma – appellant No.1, Gurudutt Sharma - appellant No.2

and Sanjay Chaturvedi - appellant No.3, who were SDOPs Karera, District Shivpuri at the relevant point of time.

5. For factual clarity, facts of Writ Appeal No.1615/2022 are taken into consideration.

6. For appreciating the dispute in detail, following dates and events are important :-

S.No.	Date	Events
1	Between 16.05.2018 to 26.07.2020	Appellant No.1/Navneet Bhasin remained posted as Superintendent of Police, Gwalior.
2	w.e.f. 27.07.2020 till March 2023	Appellant No.2/Amit Sanghi remained posted as S.S.P. Gwalior.
3	10/08/19	The dispute took place between father of writ petitioner late Shri Suresh Rawat and Khemu Shakya.
4	10/08/19	FIR was lodged at Crime No.81/2019 on the complaint of Khemu Shakya against deceased Suresh Rawat under Section 294, 323, 506 of IPC read with Section 3(1)(r) and (s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
5	10/08/19	At 18.10 O' clock the deceased Suresh Rawat committed suicide in police lockup.
6	10/08/19	The postmortem of body of deceased Suresh Rawat was performed and videography was done.
7	10/08/19	The matter was referred for judicial enquiry under Section 176 of Cr.P.C.
8	10/08/19	Promptly, appellant No.1 reported the matter to the National Human Rights Commissioner (vide Annexure A/4).
9	10/08/19	The intimation was forwarded to the State Human Rights Commission Bhopal regarding death of deceased Suresh Rawat (Vide Annexure A/5).
10	10/08/19	Considering the negligent work of the police officers, who were present at the time when the

		deceased Suresh Rawat committed suicide in the police lockup, were placed under suspension vide order No. 33/2019 on 10.08.2019.
11	11/08/19	The offence under Section 302, 34 IPC at Crime No.295/2019 was registered for maintaining law and order situation against the erring police officials in Police Station Bhitwar without any delay. Thereafter, because of crime related to Police Station Belgada, therefore, the same was registered at Crime no.82/2019 at Police Station Belgada.
12	11/08/19	A request was made by appellant No.1 to I.G. Gwalior Zone, Gwalior for transferring of investigation to be carried out by a gazetted officer of the other district, so that a fair and impartial investigation can be undertaken.
13	12/08/19	The I.G. Gwalior Zone, Gwalior without any further delay, returned the investigation to SDOP Karera District Shivpuri.
14	07.11.2019, 7.11.2019 18.12.2019 and, 17.02.2020	The applications were received for revocation of suspension orders.
15	22.02.2020	Considering the request made by the employees and looking towards the length of period of suspension served by them, the suspension order was revoked.

7. Thereafter a petition vide W.P.No.7097/2022 was filed by Ashok Rawat (son of the deceased Suresh Rawat), in which petitioner sought investigation of case by CBI, departmental action against culprits of crime and to get compensation from the respondents/State.

8. Learned Writ Court after hearing rival submissions passed the order in which direction was given for handing over of case to the CBI and Rs.20 Lakhs by way of compensation were directed to be paid by the State. Said Rs.20 Lakhs were directed to be recovered from the

erring police personnel as discussed in para 90 of the impugned order. Besides that, adverse remarks have been passed against the appellants as they were holding different posts at the relevant point of time. Therefore, appellants including the State and other officers are before this Court against the observations in the impugned order specially in para 68, 71, 75, 79, 83, 89 and 90 of the impugned order. Therefore, appellants are before this Court.

9. It is the submission of learned counsel for the appellants that adverse remarks have been made without affording opportunity of hearing to the appellants. Appellants Navneet Bhasin, Amit Sanghi and three SDOPs were not before learned Writ Court as party respondents. Only S.P. Gwalior, District Gwalior and SHO Police Station Bhitwarwar, District Gwalior were made party in official capacity and not by individual names, therefore, in the absence of being heard such harsh order has been passed which is illegal and suffers from the vice of principal of natural justice.

10. There were no pleadings or reliefs claimed against the present appellants in the writ petition. Therefore, in absence of any proper pleadings and evidence produced before this Court regarding alleged lapse/guilt of present appellants, impugned order does not deserve to stand. Appellants relied upon the judgments of the Apex Court in the

case of **Bharat Singh and others Vs. State of Haryana and others (AIR 1988 SC 2181) & Punjab Financial Corporation & Another Vs. M/s Garg Steel & Another (2010) 15 SCC 546.**

11. It is further submitted that adverse remarks can not be made unless the person concerned is given opportunity of hearing and to show cause his lapse, if any. In the present case, neither opportunity of hearing was provided to the appellants nor any notices were given to them nor they were made party in the proceeding. In absence thereof, impugned order deserves to be set aside.

12. Learned counsel for the appellants relied judgments of Apex Court in the case of **Dr.Dilip Kumar Deka and another Vs. State of Assam and another (1996) 6 SCC 234, State of Karnataka Vs. Registrar General, High Court of Karnataka (2000) 7 SCC 333, Manish Dixit and others Vs. State of Rajasthan (2001) 1 SCC 596, State of W.B. And others Vs. Babu Chakraborty (2004) 12 SCC 201, Samya Sett Vs. Sambhu Sarkar and another (2005) 6 SCC 767, Om Prakash Chautala Vs. Kanwar Bhan and others (2014) 5 SCC 417 and Manish S. Pardasani and others Vs. Inspector State Excise and others (2019) 2 SCC 660** and judgment of this court in **Sushil Ranjan Singh and others Vs. State of M.P. 2006 (5) MPHT 488.**

13. It is further submitted that findings recorded by learned Single Judge are based upon the presumptions and are not based upon any cogent evidence. In some of paragraphs, contradictory findings were given. Counsel for the appellants referred paragraphs 51, 53 and 54 to bring home the contradictions. Only because the suspension orders of some suspended employees were revoked in February 2020, a presumption is raised by the writ court that undue benefit is extended to the accused persons. However, such suspension was revoked in view of the judgment of the Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India and others (2015) 7 SCC 291**. Therefore, writ court proceeded on erroneous assumptions and caused illegality.

14. It is the submission of learned counsel appearing for the appellants that CBI has conducted its enquiry and filed charge sheet against accused persons for offence under Section 342 and 220 of IPC. Besides that, judicial enquiry under Section 176 of Cr.P.C. was also conducted and the enquiry officer did not find the role of the appellants as guilty. Once CBI filed the charge sheet, then the offence is under consideration of trial court and trial court would ensure fair trial. Therefore, writ court had no occasion to interfere in the matter but writ court proceeded on assumptions that appellants are guilty of misconduct and directed the

Director General of Police to institute an appropriate proceeding against them.

15. Learned counsel for the appellants also referred the fact that there was no occasion to pay compensation, that too, from the appellants without having any involvement in the case. Trial would reveal the truth.

16. Learned counsel for the respondent/writ petitioner/complainant of the case opposed the prayer and supported the impugned order. According to him, compensation can be given in particular fact situation. Not only this, the role of appellants was incriminating. Therefore, they were punished by the writ court. For this purpose, no opportunity of hearing was required to be given. He prayed for dismissal of all the writ appeals.

17. Heard learned counsel for the parties at length and perused the record.

18. This is the case where appellants are either State of M.P. Or its instrumentalists and/or the officers, who suffered adverse remarks and compensation to the respondent/petitioner.

19. Petitioner filed the writ petition under Article 226 of the Constitution of India before the learned Single Judge seeking following reliefs:-

- i. That respondent may kindly be directed to initiate departmental action against culprits of Crime No.295/2019 and conclude the same within stipulated time.
- ii That investigation of Crime No.295/2019 Registered at Police Station Bhitwar, District Gwalior

be transferred to CBI for further investigation and accordingly they be directed to submit final report within stipulated time.

iii. That respondent be further directed to pay compensation to the petitioner/victim of such custodial death to the tune of Rs.1 crore which be further directed to be recovered from pocket of culprits.

iv. The cost of the litigation may also kindly be awarded to the petitioner.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner.

20. On perusal of reliefs, it appears that the petitioner only wanted the matter to be investigated from CBI, sought compensation and to initiate the departmental action against the culprits of Crime No.295/2019. Therefore, ultimately relief of petitioner was considered and allowed.

21. The prayer of the petitioner was addressed and grievances were redressed. The matter was taken up by the CBI, investigation carried out and charge sheet has also been filed purportedly for offence under Section 342 and 220 of IPC. Trial is underway.

22. So far as departmental action is concerned, it is the domain of departmental authority which can look into it and decide on its own merits. So far as compensation is concerned it, is a grey area because in writ petition, scope of grant of compensation is limited because allegations in writ petition can meet through pleadings only and no scope of calling witnesses or evidence exists. Thus, compensation ought not to have been awarded in present case.

23. Most important aspect in the controversy appears to be pleadings in this regard and opportunity of hearing.

24. So far as pleadings in writ proceedings are concerned, Apex Court in the case of **Bharat Singh (supra)** held that writ proceedings are different than civil proceedings and given guidance as under :-

13.....In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter, affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us PG NO 1060 by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

25. Similarly in the case of **Punjab Financial Corporation (supra)**, Apex Court in regard to pleadings has held as under :-

“Time has come when this Court needs to emphasise that in cases where writ of mandamus is sought, High Courts should be very particular in finding out from the averments of the writ petition whether there exist proper pleadings. In the present case, arguments are advanced on the basis of promissory estoppel, waiver and breach of contract without proper averments being made in the writ petition. Be that as it may, the facts indicate that, by this writ petition, the original petitioner [Borrower] has

sought damages and enforcement of contractual commitments which, in our view, were beyond the scope of a writ petition. Adjustment of accounts and enforcement of back- to-back transactions with a party with whom there was no privity of contract coupled with the claim for damages are all contractual matters un-enforceable by way of writ petitions.

26. Therefore, in absence of any proper pleadings regarding injuries caused, misfeasance and damages caused, scantily pleaded petition cannot be entertained.

27. Another aspect deserves consideration is opportunity of hearing. Apex Court in the case of **Dr.Dilip Kumar Deka (supra)** while relying upon the earlier judgment of Apex Court in the case of *State of U.P. Vs. Mohd. Naim (AIR 1964 SC 703)* reiterated the test to be applied in similar fact situation in following manner -

6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in State in Uttar Pradesh vs. Moh. Naim (1964) 2 SCR 363. Those tests are:

(i) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(ii) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(iii) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in *Jage Ram v. Hans Raj Midha AIR 1972 SC 1140*, *R.K. Lakshmanan v. A.K.Srinivasan AIR 1975 SC 1741* and *Niranjan Patnaik v. Sashibhusan Kar air 1986 SC 819*.

28. This view has been affirmed consistently by the Apex Court in the cases of **Manish Dixit (supra)**, **Samya Seth (supra)**, **State of Karnataka (supra)**, **Manish S. Pardasani (supra)**. Apex Court time and again reiterated that without affording opportunity of hearing, no adverse remarks ought to be passed. In the judgment of **Manish S. Pardasani (supra)**, Apex Court held that writ court does not hold enquiry on disputed facts. Such issues in the opinion of the court could be decided properly and in accordance with law by a fact finding body where the parties would have got an opportunity to lead evidence and explain the reasons. Not only this, even Apex Court deprecated the practice of making adverse remarks and passing strictures against judicial/administrative authorities, whose order/action is under challenge. So far as possible such dispersing /harsh remarks and strictures are directed to be avoided.

29. Looking to the present case, it appears that no opportunity of hearing was provided to the officers, who were involved in the case. In fact, they were not party in the lis. Sanjay Chaturvedi, SDO(P) Karera, District Shivpuri (Appellant No.3 in W.A.No.1616/2022) appeared before the Writ Court on 28.11.2022 and pleaded that he was recently transferred and handed over the case diary. However, all investigating officers, who were according to the writ court, were casual in their disposition, were given punishment. Once they were not made party to the lis and were not given sufficient opportunity, then proceedings against them deserves correction.

30. Some suspended employees were re-instated after six months in February 2020. That was the domain of administrative authority. In fact, Apex Court in the case of **Ajay Choudhary (supra)** has directed authorities to re assess the need of suspension on regular intervals. Therefore, if employees are reinstated after revocation of suspension, then adverse inference cannot be drawn.

31. So far as direction for investigation through CBI is concerned, that has been followed by the appellants and counsel for CBI informs this Court that charge sheet has already been filed under Section 342 and 220 of IPC against accused persons. Therefore, that part of the order has already been complied with.

32. So far as direction given to the Director General of Police for conducting an enquiry is concerned, that can be carried out after the judgment passed in the trial by the trial court. If in the trial any mischief or casualness in investigation is found, then Director General of Police can take into consideration said aspect and thereafter can proceed as per law.

33. So far as imposition of cost/compensation of Rs.20 lacs is concerned, matter is sub judice before trial court. Not only that, it would amount to preempting the controversy if the order of cost and compensation is permitted to stand because it reflects alleged mens rea, casualness and/or culpability of officers concerned. Since matter is under consideration before trial court, such order awarding cost/ compensation deserves to be diluted.

34. When investigation was transferred from Police Station Belgada to Police Station Karera, then any motive can not be attached to the alleged irregularities and/or casualness of appellants of W.A.No.1615/2022 (Navneet Bhasin and Amit Sanghi) because they were at the helm of affairs at District Gwalior and not at District Shivpuri, where Police Station Karera falls. Similarly, three investigating officers (SDOPs), who are appellants of WA No.1616/2022, proceeded with investigation and were as submitted in fact of the opinion that offence under Section 306 of IPC read with Section 7 of Prevention of Corruption Act is made out prima facie but that aspect/submission was not taken into account.

35. Be that as it may.

36. However, since no opportunity of hearing was provided to all these officers, therefore, impugned order deserves to be set aside on that point alone, but still for bringing clarity matter is discussed on merits also.

37. In the conspectus on the facts and circumstances of the case, Writ Appeals preferred by the appellants are hereby **allowed**. Impugned order dt.28.11.2022 passed by the learned Single Judge is set aside partly. However, in absence of any interim order, the matter was already referred to CBI and CBI filed charge sheet. That portion of the order stands affirmed.

38. It is also clarified that after trial is over, Director General of Police may take a holistic view about the case and if it appears to him that some mischief or casualness has been displayed by the officers, then Director General of

Police may proceed against them in accordance with law after giving due opportunity of hearing to them. Otherwise not. Rest of the findings and observations made by the learned Writ Court against the officers (appellants herein) are hereby expunged. Similarly, order regarding cost/compensation is also set aside. Complainant may pursue civil remedies, if any, after judgment of trial court, if any cause of action exists for complainant to agitate.

Accordingly, appeals are allowed and disposed of in above manner.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

SP