

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT APPEAL No. 900 of 2023

THE STATE OF MADHYA PRADESH & OTHERS

Versus

LAL SINGH JATAV

Appearance :

Shri Ankur Mody – Additional Advocate General for the appellants/State.

Shri M.P.S.Raghuvanshi – Senior Advocate with Shri Mohammad Amir – Advocate for the respondent.

JUDGMENT

(Delivered on 16th Day of June 2025)

Per: Justice Anand Pathak

Heard on I.A.No.5315/2025, an application under Section 5 of the Limitation Act for condonation of Delay.

2. As per office report, appeal is barred by 3 days.
3. For the reasons mentioned in the application, same is allowed. Delay in filing the present appeal is condoned.
4. Present Writ Appeal has been preferred by the appellant/State under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 being crestfallen by the order dated 27.03.2023

passed in Writ Petition No.5062/2010, whereby the petition preferred by the respondent (petitioner in the writ petition) has been allowed and he has been directed to be reinstated with all consequential benefits.

5. For appreciating the dispute, following dates and events are relevant, which are as under :-

Date	Events
16.11.1983	Petitioner was appointed as Constable in District Police Force, District Bhind.
10/10/02	While working at Police Station, Mau, petitioner was granted three days' casual leave.
06/08/23	Petitioner overstayed as he allegedly fell sick and reported on duty with delay of around 10 months. He remained under treatment of Dr.Radhesyam Sharma up to 29.07.2003. He submitted fitness certificate (6.8.2023).
29.04.2004	A charge sheet was issued to the petitioner on the ground of overstaying without authorization and intimation and for being habitual absentee.
25.06.2005	After conducting enquiry, Enquiry Officer submitted the report finding both the charges proved.
28.09.2005	After supplying the copy of enquiry report and affording opportunity of hearing, disciplinary authority inflicted major penalty of dismissal from service.
04/03/06	Being aggrieved by the order of dismissal from service, petitioner preferred departmental appeal, which was dismissed.
03/08/06	A mercy appeal was also filed, which too was dismissed.

6. The sole ground raised by the petitioner before the Writ Court was that no Presenting Officer was appointed, therefore, as per Rule 10 of M.P.Civil Services (Classification, Control and Appeal) Rules, 1966, the enquiry is vitiated. Therefore, petitioner did not get proper opportunity to cross examine the prosecution witnesses.

7. Learned Writ Court allowed the writ petition and directed to reinstate the petitioner with all consequential benefits forthwith. Therefore, appellant/State is before this Court.

8. It is the submission of learned counsel for the appellants/State that as per Regulation 230 of M.P. Police Regulations, there is no provision for appointment of Presenting Officer. Entire exercise is to be conducted by the Enquiry Officer including recording of statements. Therefore, non-appointment of Presenting Officer by no means would render enquiry proceeding vitiated. Learned counsel for the appellants/State referred circular dt.01.10.2010 (Annexure B filed with the Writ Appeal) issued by the Director General of Police, Madhya Pradesh, Bhopal, in which direction for appointment of Presenting Officer was issued w.e.f. the date of issuance of circular. No retrospectivity is attached to said circular. Pending cases were to be governed on their own merits.

9. Since the present matter was of years 2002-2005, therefore, it was not a case governed under the said circular. At that point of time, when enquiry was held as per practice, no Presenting Officer was appointed in any departmental proceeding. Therefore, according to counsel for appellant/State, there was no statutory provision for appointment of Presenting Officer at that point of time. Learned counsel relied upon the judgments of the Apex Court in the case of *Chairman, Life Insurance Corporation of India and others v. A. Masilamani (2013) 6 SC 530* and *Managing Director, ECIL, Hyderabad*

and others v. B.Karunakar and others others (1993) 4 SCC 727 in support of his submissions.

10. Learned counsel also raised the point that if the Writ Court intended to allow the writ petition on this ground, even then appropriate approach would have been to give direction and liberty to initiate the departmental enquiry after appointment of Presenting Officer, so that department as well as employee, both get a chance afresh. By passing the order of reinstatement with back wages is contrary to the judgment of the Apex Court in the case of *Union of India and others v. Ram Lakhan Sharma (2018) 7 SCC 670* as well as *B.Karunakar (supra)*. No bias has been caused to the petitioner if presenting officer was not appointed.

11. *Per contra*, learned counsel for the respondent (petitioner) vehemently opposed the prayer and submits that when enquiry officer acts as Presenting Officer and himself leads examination-in-chief, then such enquiry vitiates. He relied upon the judgment of the Apex Court in the case of *Union of India and others v. Ram Lakhan Sharma (supra)*. According to him, non-appointment of Presenting Officer is fatal in the departmental enquiry.

12. While relying upon the judgment rendered by the Apex Court in the case of *State of Uttar Pradesh and others v. Saroj Kumar Sinha (2010) 2 SCC 722* as well as judgment of this Court in the case of *Union of India, Through its Secretary, Ministry of Railway, New Deli and others v. Mohd.*

Naseem Siddiqui, Bhopal ILR 2004 MP 821, it is the submission of learned counsel for the petitioner that when reinstatement order is passed because of non-appointment of Presenting Officer, then reinstatement with consequential benefits is imperative. Writ Court rightly reinstated the petitioner.

13. Heard learned counsel for the parties at length and perused the record of the departmental enquiry.

14. This is a case where petitioner raised the ground of non-appointment of presenting officer in departmental enquiry and he succeeded before the Writ Court on this count alone. No other ground was pressed by the petitioner.

15. So far as law in this regard is concerned, it is worth noting the fact that petitioner was working as Constable at the relevant point of time and he remained absent from 12.10.2002 till 06.08.2003, almost 10 months without any intimation and without any permission from the competent authority. After joining again on 06.08.2003 he submitted treatment papers of Dr.D.K.Sharma under whose treatment he was till 18.11.2002 and thereafter of Dr.Radheshyam Sharma under whose treatment he was till 29.07.2003. Period of absence was inordinate looking to the disciplined force. As submitted, earlier also he remained absent **29 times. For this indiscipline, he was inflicted punishment of censure 12 times and punishment of stoppage of increment for one year, 4 times.** Therefore, he was habitual shirker.

16. It is further worthwhile to mention here that petitioner is a Police Constable and therefore his service conditions are governed by the M.P. Police Regulations. Regulation 232 deals in this regard. For the first time in year 2010, concept of appointment of Presenting Officer was included by the Police Department in the departmental enquires to be conducted against the employees like the petitioner. Therefore, at the relevant point of time in the year 2004-05, statute nowhere prescribed appointment of Presenting Officer.

17. Be that as it may.

18. In the case of *Ram Lakhan Sharma (supra)*, Supreme Court has discussed in detail about the contingency when the statutory rules do not contemplate appointment of Presenting Officer. Whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? The court discussed this issue in detail in paras 28 to 30, which are reproduced as under for ready reference :-

“28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceed to act in a manner as if he is interested

in eliciting evidence to punish an employee, the principle of bias comes into place.

29. Justice M. Rama Jois, J. of the Karnataka High Court had occasion to consider the above aspect in *Bharath Electronics Ltd. v. K.Kasi*, ILR 1987 KAR 366. In the above case the order of domestic inquiry was challenged before the Labour and Industrial Tribunal. The grounds taken were, that inquiry is vitiated since Presenting Officer was not appointed and further Enquiry Officer played the role of prosecutor. This Court held that there is no legal compulsion that Presenting Officer should be appointed but if the Enquiry Officer plays the role of Presenting Officer, the inquiry would be invalid. The following was held in paragraphs 8 and 9:

“8. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry (See : *Gopalakrishna Raju v. State of Karnataka* (ILR 1980 KAR 575). It is true that in the absence of Presenting Officer if the inquiring authority plays the role of the Presenting Officer, the inquiry would be invalid and this aspect arises out of the next point raised for the petitioner, which I shall consider immediately hereafter.

9. The third ground on which the Industrial Tribunal held that the domestic inquiry was invalid was that the Enquiry Officer had played the role of the Presenting Officer. The relevant part of the findings read :

"The learned counsel for the workman further contended that the questions put by the enquiry officer to the management's witnesses themselves suggest that he was biased and prejudiced against the workman. There has been no explanation as to why no Presenting Officer was appointed and as to why the enquiry officer took upon himself the burden of putting questions to the management witnesses. The enquiry proceedings at Ext. A-6 disclose that after the cross-examination of the management's witnesses by the defence, the enquiry officer has further put certain questions by way of explanation, but from their nature an inference arises that they are directed to fill in the lacuna. The learned counsel for the management contended that the enquiry officer has followed the principles of natural justice and that the

domestic enquiry is quite valid. I am of the view that the fact that the enquiry officer has himself taken up the role of the Presenting Officer for the management goes to the root of the matter and vitiates the enquiry,"

As far as position in law is concerned, it is common ground that if the inquiring authority plays the role of a prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. But the question for consideration in this case is : whether the Enquiry Officer did so ? It is also settled law that an inquiring authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long the delinquent employee is permitted to cross-examine the witnesses after the inquiring authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair. (See : *Munchandani Electrical and Radio Industries Ltd. v. Workman*, (1975) 4 SCC 731).

30. This Court had occasion to observe in *Workmen v. Lambabari Tea Estate*, 1966 (2) LLJ 315, that if the Enquiry Officer did not keep his function as Enquiry Officer but becomes prosecutor, the inquiry is vitiated. The following was observed:

“The inquiry which was held by the management on the first charge was presided over by the Manager himself. It was conducted in the presence of the Assistant Manager and two others. The enquiry was not correct in its procedure. The Manager recorded the statements, cross-examined the labourers who were the offenders and made and recorded his own statements on facts and questioned the offending labourers about the truth of his own statements recorded by himself. The Manager did not keep his function as the enquiring officer distinct but became witness, prosecutor and Manager in turns. The record of the enquiry as a result is staccato and unsatisfactory.

19. Even if the judgment of the Division Bench of this Court relied upon by the learned counsel for the petitioner (respondent herein) in the case of *Mohd. Naseem Siddiqui (supra)* is taken into consideration, even then also Division Bench of this Court has summarized the principles as under :-

“We may summarise the principles thus:

- (i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.
- (ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.
- (iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.
- (iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.
- (v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

20. Therefore, it is settled in law that non-appointment of Presenting Officer does not render the departmental enquiry vitiated automatically. It is

to be seen in peculiar fact situation of each case. Thus, we have to see the record of the case.

21. This Court called the record of the departmental enquiry and after hearing the arguments, matter was reserved for orders. After some time, record was made available by appellants. We have gone through the record of departmental enquiry pertaining to the petitioner.

22. Head Constable Bhure Kha is P.W.1, who made his statement on his own. He was not suggested by Enquiry Officer. Detail cross-examination of this witness was carried out by the petitioner. Thereafter, Brajendra Dixit (P.W.2) gave his examination-in-chief without assistance of Enquiry Officer. Petitioner did not examine him and let him go. ASI Gajendra Singh (P.W.3) was another witness and he was cross examined by the petitioner to his satisfaction. Constable Gulab Singh (P.W.4) also led his statement on his own. Petitioner did not examine and let him go. S.I. Chandrabhan Singh Raghuvanshi (P.W.5) was another witness, who was also cross examined by the petitioner. Copy of evidence of all the witnesses was provided to the petitioner.

23. After prosecution evidence, a questionnaire was given to the petitioner to answer, just like accused statement under Section 313 of Cr.P.C. He answered those questions and sought three days' time to produce evidence in defence. However, from the record it appears that no defence witness was

produced. Thereafter, Enquiry Officer gave his findings and the matter was referred to the competent authority to proceed further.

24. Perusal of record of departmental enquiry indicates that Enquiry Officer never over reached in any manner. He neither put leading questions before the prosecution witnesses nor interrupted the petitioner (delinquent employee) to disturb the cross-examination. Even employee's statement was taken and he was permitted to produce defence evidence also. In fact, petitioner never raised any point regarding malice or malafide intention of the Enquiry Officer. Therefore, once Enquiry Officer acted in just and fair manner giving adequate opportunity of hearing and to lead evidence to the petitioner and did not manipulate witnesses, then case of the petitioner goes which is solely based upon non-appointment of Presenting Officer. This Court holds that in given set of facts, non-appointment of Presenting Officer for conducting enquiry does not vitiate the departmental enquiry and the enquiry was carried out in accordance with law. Circular dt.01.11.2010 issued by the Director General Police, Madhya Pradesh, Bhopal also substantiates the case of the appellant because at that point of time, no Presenting Officer was required to be appointed as per Regulation 232.

25. So far as point regarding reinstatement with consequential benefits is concerned, that part of the order is also hit by the judgment of the Apex Court in the case of **B. Karunakar (supra)**. Relevant para 31 of the judgment is reproduced as under for ready reference :-

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Court/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunals find that the furnishing of the report would have made a difference to the result in the case that should set aside the order of punishment. Where after following the above procedure, the Court/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

26. Judgments of the Apex Court in the case of *U.P.State Spinning Co. Ltd. v. R.S.Pandey and another (2005) 8 SCC 276* as well as in *A. Masilamani (supra)* affirm the aforesaid view.

27. Therefore on this count also, the impugned order suffers illegality because here learned writ court interfered on the basis of alleged irregular procedure. In such cases, reinstatement can only be made (if at all) for the purpose of conducting departmental enquiry from the stage where the presenting officer would be appointed and thereafter the enquiry shall proceed. Backwages are to be decided later, on basis of result of the enquiry.

28. However, in the present set of facts when this Court holds that there was no illegality committed in non appointment of Presenting Officer as per the Police Regulation [See : **Ram Lakhan Sharma and Mohd. Naseem Siddiqui (supra)**], as well as the fact situation, when the enquiry officer did not reflect malafide intention in his disposition as Enquiry Officer, then scope of interference constricts.

29. In administrative arena, it is always decision making process which is to be seen and not the decision itself as mandated in the case of *Union of India and another v. K.G.Soni, (2006) 6 SCC 794*, wherein Apex Court observed as under :-

“14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* [Associated

Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.”

30. Here, petitioner was habitual shirker and earlier remained absent on 29 occasions, in which 12 times, he was inflicted punishment of censure and four times punishment of stoppage of increment for one year. Therefore, overall facts and circumstances of the case go against the petitioner even on question/ quantum of punishment.

31. In the cumulative analysis, present appeal succeeds and is **allowed**. The impugned order passed by the Writ Court on 27.03.2023 in W.P.No.5062/2010 is set aside. Impugned order of punishment dt.28.09.2005, order dt.04.03.2006 passed by the appellate authority and order dt.03.08.2006 passed in the mercy petition are hereby affirmed. If by the effect of the order passed by the Writ Court, petitioner worked for some time, then no recovery shall be made for that period when he worked actually on the post. However, other benefits shall not be available to him and his service condition shall be governed as dismissed employee.

Record of the departmental enquiry be returned back to the counsel for the respondents/State.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE