IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 10th OF FEBRUARY, 2025

WRIT PETITION No. 11989 of 2023

GAJENDRA SINGH BHADORIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anil Kumar Mishra and Shri Ravi Ballabh Tripathi – Advocates for petitioner.

Shri G.K. Agrawal- Government Advocate for respondents/State.

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking following relief(s):

7.1 That, the Hon'ble court may kindly be set aside/quash the dismissal order Annexure P-1.

7.2 That, the respondent no.3 be directed to reinstate the petitioner with immediate effect.

7.3 That, the benefits during the period of dismissal including pay and other benefits including promotion (if eligible) be awarded to the petitioner including backwages.

7.4 Any other relief, deemed fit by this Hon’ble court including

cost may be awarded.

2. It is submitted by counsel for petitioner that petitioner was appointed as Constable in the Police Department. In the year 2020, he was working on the post of Head Constable (Writer) and was posted at Police Station Chilwani, District Sheopur (M.P.). It was alleged that petitioner fired a gunshot on Constable No.171 Khagraj Dhakad who was also posted at Police Station Chilwani. The gunshot was fired from a government pistol. Crime No.14/2020 under Section 308 of IPC was registered. Investigation was done and charge-sheet was filed. The services of petitioner were terminated vide Annexure P-1 without conducting departmental enquiry. The Superintendent of Police, District Sheopur, while terminating the services of petitioner, held that holding of departmental enquiry is not reasonably practicable and therefore by exercising power under Section 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (for brevity "Rules 1966), the departmental enquiry was dispensed with and petitioner was terminated from service. Further, petitioner was also tried for another offence under Section 302 or in the alternative 302/34 of IPC in ST No.566/2013 but he was acquitted by judgment dated 30.07.2018 passed in ST No.566/2013. However, it was fairly conceded by counsel for petitioner that acquittal was primarily on account of the fact that witnesses had turned hostile on vital issues.

3. Be that whatever it may be.

4. The only question for consideration is as to whether a sufficient ground was made out to dispense with the departmental enquiry or not?

5. Rule 19 of Rules 1966 reads as under:

19. Special procedure in certain cases.

- Notwithstanding anything contained in Rule 14 to Rule 18 :-

> (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
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> (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
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> (iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:
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> Provided that the Commission shall be consulted where such consultation necessary, before any orders are made in any case under this rule.

From plain reading of Rule 19(ii) of Rules 1966, it is clear that where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the rules, then the departmental enquiry can be dispensed with before imposition of major penalty.

6. The photocopy of record of disciplinary proceedings under which the order of termination was passed has also been produced.

7. From the impugned order dated 31.07.2020, it is clear that Superintendent of Police, Sheopur, had taken note of the previous conduct of petitioner to the effect that earlier also he was tried for an offence under Section 302 of IPC and he had remained out of job but only after his acquittal he was reinstated, however, petitioner has not improved his conduct and fired a gunshot on his colleague by government firearm and thus it was held that it is not reasonably practicable to conduct a departmental enquiry.

8. Now, the only question for consideration is as to whether the seriousness of allegations can be said to be a good ground to dispense with the departmental enquiry or not?

9. The Supreme Court, in the case of **Union Of India And Another vs**

Tulsiram Patel And Others reported in **(1985) 3 SCC 398**, has held as under:

> 130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A

> disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India and others, [1984] 3 S.C.R. 302, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

10. The Supreme Court, in the case of **Union Of India (UOI) And Ors. vs R. Reddappa And Anr.** reported in **(1993) 4 SCC 269**, **Jaswant Singh vs State Of Punjab And Ors** reported in **(1991) 1 SCC 362** and **Sahadeo Singh & Ors vs Union Of India & Ors** reported in **(2003) 9 SCC 75**, has held that dismissal without conducting a departmental enquiry on the ground of being not reasonably practicable is open for judicial review.

11. In the present case, petitioner was earlier tried for an offence under Section

302 of IPC and ultimately the witnesses did not support the prosecution case and as a result thereof petitioner got acquittal. Thereafter, allegation in the present case is that petitioner fired a gunshot from a government firearm thereby making an attempt to take life of his own colleague. Thus, it is clear that petitioner has no hesitation in using firearms whether on general public or his own colleague.

12. It is true that disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid holding of an enquiry or because the department's case against the government servant is weak and must go. However, if the facts and circumstances of the present case are considered, then it is clear that on one occasion petitioner was tried for offence under Section 302 of IPC and he got acquittal because the witnesses did not support the prosecution case and now petitioner has fired a gunshot on his own colleague by using the government weapon. Had it been a case that a personal weapon was used to wreck vengeance against the complainant, the things could have been considered from a different perspective but the government weapons are meant for protection of the general public and if the colleague of petitioner was not safe on account of aggressive and violent nature of petitioner, then this Court is of considered opinion that the assessment made by Superintendent of Police, District Sheopur (M.P.) to dispense with the departmental enquiry by holding that it is not reasonably practicable cannot be said to be unfounded or baseless or arbitrary exercise of power.

13. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference.

14. Petition fails and is hereby ***dismissed***.

(G.S. Ahluwalia)
Judge

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