IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 09th OF JANUARY, 2025

WRIT APPEAL NO. 1874 of 2024

KAMLA KRISHNA SHARMA
Vs.
STATE OF MADHYA PRADESH & ORS.

APPEARANCE:

Shri Jitendra Sharma – Senior Advocate with Shri Abhishek Choubey – Advocate for the appellant.

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

JUDGMENT

Per*: *Justice Anand Pathak

1. The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant (hereinafter referred to as "the petitioner") being crestfallen by the order dated 15-05-2024 passed by learned Single Judge in Writ Petition No.17702 of 2017 whereby the writ petition filed by the petitioner has been dismissed.

2. Precisely stated facts of the case are that on the basis of a complaint in relation to demanding bribe on phone call, a preliminary enquiry was conducted against the petitioner by CSP, Morena in which vide enquiry report dated 13-08-2015, it was held that opinion can only be given after receiving the advice from the voice expert. Thereafter,

again the said officer submitted its report dated 13-11-2015 finding the petitioner guilty. On the basis of said enquiry report, the disciplinary authority (Superintendent of Police, Morena) punished the petitioner with stoppage of one increment without cumulative effect. Thereafter, matter was taken under *suo motu* revision by the Inspector General of Police, Chambal Zone, Morena by issuing show cause notice dated 07-06-2016. Petitioner replied the said notice but the appellate authority, set aside the punishment order of petitioner and remitted the matter to the disciplinary authority for initiating a fresh enquiry against the petitioner in writ appeal.

3. The order of *suo motu* revision passed by the appellate authority was called in question by the petitioner by filing writ petition but the said writ petition was dismissed by learned Writ Court, therefore, petitioner is before this Court in writ appeal.

4. The foremost and the core point of argument of learned counsel for the petitioner is that the case of petitioner has been concluded under *suo motu* revision by the appellate authority beyond the prescribed period of limitation of six months. It is further submitted that the punishment imposed upon the petitioner has lost its currency as it has already been suffered by the petitioner, therefore, the order impugned passed by the appellate authority under *suo motu* revision was not sustainable. Since M.P. Police Regulations do not prescribe any limitation for taking the order under *suo motu* revision, therefore, rule 29 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as "the CCA Rules") will be applicable and according to that rule, the order under *suo motu* revision can be passed within six months from the date of order of penalty. Reliance has been placed over the judgment

of Apex Court in the case of **Union of India and others Vs. Vikrambhai Maganbhai Chaudhari, (2011) 7 SCC 321** and the judgments of Single Bench of this Court in the case of **Sushil Kumar Shrivastava Vs. State of M.P. and others, 2007 (1) MPLJ 392** and **Angad Singh Rathore Vs. Stat of M.P. and others, 2010 (1) MPLJ 171**.

5. It is further submitted that learned Writ Court did not consider the controversy in correct perspective and dismiss the writ petition preferred by the petitioner. Thus, prayed for setting aside the orders impugned.

6. *Per contra*, learned counsel for the respondents/ State opposed the prayer and supported the order passed by learned Writ Court. It is submitted that the provisions of CCA Rules are inapplicable to the non-ministerial post in the Police Department and the limitation prescribed for taking the matter under *suo motu* revision is six months and it was not the limitation prescribed for conclusion of *suo motu* proceedings. Thus, prayed for dismissal of the present writ appeal.

7. Heard learned counsel for the parties and perused the documents appended thereto.

8. In the present case, counsel for the petitioner has raised the question that whether the review proceedings purportedly under rule 29 of the CCA Rules can be initiated as well as concluded within six months or whether review can be initiated within six months however it can be concluded "**beyond six months**".

9. Rule 29(1)(iii) of CCA Rules gives a time limit of six months for the appellate authority from the date of order, for review of the order proposed. Contention of petitioner is that the said review proceeding

is to be initiated within six months and to be concluded within that period.

10. Rule 29 of CCA Rules is reproduced for ready reference as under:

"Review 29. *(1) Notwithstanding anything contained in these rules except Rule 11-*

(i) the Governor; or

(ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or

(iii) the appellate authority, within six months of the date of the order proposed to be reviewed, or

(iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to

make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 [X X X] and except after consultation with the Commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless:

(i) the authority which made the order in appeal; or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

***Explanation I** - The powers conferred on the Governor under this sub-rule shall in the case of a Class III or Class IV Government servant serving in a District Court or a Court Subordinate thereto be exercised by the Chief Justice.*

***Explanation II** -The powers conferred on the Governor under this rule shall, in the case of Judicial Officers be exercised by the High Court].*

(2) No proceeding for review shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules."

Perusal of rule indicates that proceeding of Review can be initiated within 6 months not to be completed.

11. If this analogy is accepted then the purpose of legislative intent appears to be defeated. Proviso attached to rule 29 of the CCA Rules contemplates a situation whereby a Government servant concerned has to be given a reasonable opportunity of making a representation against the penalty proposed and if the review authority proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty order sought to be reviewed to any of the penalties specified in those clauses, enquiry under rule 14 of the CCA Rules is to be held and consultation with Public Service Commission is to be carried out where such consultation is necessary.

12. It means that review authority first has to take decision within six months for review of the order. Thereafter, authority has to issue show cause to the delinquent employee who in turn would submit his representation and thereafter review authority would go to the conclusion whether minor penalty or major penalty as per clause (v) to (ix) of rule 10 of the CCA Rules is to be imposed. If enquiry is required then such enquiry would also consume time. All these procedures can not be completed within six months because these proceedings require time.

13. Even otherwise if a delinquent employee delays the matter and does

not cooperate in the proceedings then he cannot be given premium over his mischief by holding that the review proceedings are to be necessarily concluded within six months. This would be nothing but a travesty of justice. Delay in proceedings would deny the opportunity to the review authority to punish the delinquent. Said perspective cannot be the legislative intent. Therefore, this contention deserves rejection.

14. Even otherwise, present petitioner is a Head Constable and he was governed by the M.P. Police Regulations. Regulation 270 deals in respect of *suo motu* revision by any competent authority superior to the authority making the order. As such no time limit has been prescribed in taking *suo motu* revision and service condition of Head Constable (Police) are governed by the M.P. Police Regulations. Nonetheless, period of limitation even if borrowed from rule 29 of the CCA Rules even then the said period of limitation does not come to the rescue of present petitioner.

15. The Division Bench of this Court in the case of **State of Madhya Pradesh and another Vs. Om Prakash Gupta and another, 2001(2) MPLJ 690** while interpreting rule 29 of the CCA Rules held that power of review could be exercised within a period of six months and not thereafter. In the said case, review authority taken the decision to review the order dated 04-02-1998 on 12-01-2012. Since it was the period exceeding period of six months as stipulated under rule 29 of the CCA Rules, therefore, in the fact situation it is held that after six months power of review cannot be exercised. Here, the order under challenge was passed on 22-03-2016 and matter has been taken under review jurisdiction on 05-05-2016 hence proceedings were initiated within six months. Although, final

order was passed on 28-07-2017 but as discussed earlier the said order dated 28-07-2017 cannot be interfered with on the ground that the said proceeding of review ought to have been completed within six months. In the present case when review authority initiated the proceedings within six months, then conclusion of proceeding is immaterial.

16. This view is supported by the earlier Division Bench judgment of this Court in the case of **State of Madhya Pradesh and others Vs. Brijesh Niboria, 2007(2) MPLJ 273** wherein the Division Bench held in following manner:

> "***7.*** *In the case of State of M.P. v. Prahlad, 1988 (1) MPWN 113, this High Court has also held that plain reading of the rule indicates that it fixes outer limit of six months to be calculated from the date of the order of the disciplinary authority when the power may be exercised by the Appellate Authority. The use of word "may" only indicates that it is not compulsory for him to exercise this power even within the period of six months. The Court has held that the Rule does not vest in him any power after the expiry of period of six months. Therefore, the question before the Single Judge of the High Court of Madhya Pradesh was that whether the order can be reviewed under Rule 29(1) of the Rules of 1966 within a period of six months. Therefore, from the aforesaid judgment it is clear that the Appellate Authority may take decision and order proposed to be reviewed can be done within a period of six months and not beyond that, but that does not mean that after the review the entire exercise about the enhancement or confirmation,*

modification or setting aside the order should be completed within six months for that S.C. and Full Bench of CAT has held that it should be in reasonable time.

8. *We have also considered the Division Bench decision of this Court in the case of State of M.P. v. Om Prakash Gupta, 2001 (2) MPLJ 690, in which the similar question was involved before the Division Bench of this Court and it was held that a perusal of the aforesaid Rule clearly indicates that the provision relating to limitation of 6 months is in respect of the authorities referred to the Rule 29(1)(i)(ii) and (iii) of the Rules. The use of word "or" in the aforesaid rule is indicative of the fact that the power of review could be exercised by any of the authorities referred to in the Rule 29(1)(i)(ii) and (iii) of the Rules within a period of 6 months and not thereafter. This clearly indicates that decision regarding review of the order should be taken within a period of six months and that is the outer limit for that. Though the question before the Division Bench was not whether the final order should be passed within a period of six months, but after considering the provisions of Rule 29 of the Rules of 1966, we are of the view that Rule does not envisage that final decision should be taken within a period of six months as has been held by the Tribunal in the impugned order dated 16-11-2001 and argued by learned counsel for the respondent because once the decision is taken to review the order, then a detailed procedure is required to be followed, which has been mentioned in Rule 29(1)(iv), (a), (b), (c), (d). After review,*

the authority may confirm, modify or set aside the order; or, confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or pass such other order as it may deem fit. If after the review of the order, case is remitted for further enquiry, then certainly the same cannot be completed within a period of six months. Therefore, the aforesaid rider of six months cannot be made applicable for passing the final order after review. It can only be held that the Appellate Authority shall take a decision within a period of six months about reviewing the order. In this case the decision was taken by the State Government on 7-4-1994. In the order dated 7-4-1994 it has been mentioned that the State Government exercising powers under Rule 29 proposed to review the order dated 27-10-1993 by which the penalty of censure was imposed on the incumbent. This order indicates that clear decision was taken by the authority on 7-4-1994 about reviewing the earlier order dated 27-10-1993, which was within a period of six months. But the learned Tribunal considering the period of six months has neither considered the order dated 7-4-1994 nor assigned any reason whether the whole exercise till imposing the final punishment is to be completed within a period of six months, therefore we find that the order passed by the Tribunal is not a reasoned

order and the same has been passed without considering the effect of Rule 29(1)(iii) of Rule of 1966 and also without considering the effect of order dated 7-4-1999 by which the decision was taken by the State Government (Appellate Authority) to review the order."

17. Logically also, it is to be seen that initiation of proceeding can be prescribed but not conclusion of it because of various factors including Opportunity of hearing, Nature of allegations, Enquiry if required to be initiated for imposing penalty and Non-cooperation of delinquent employee. All these factors (which are illustrative and not exhaustive in nature) contribute to conclusion of proceedings, therefore, these proceedings may prolong and go beyond six months. Therefore, prescription of six months period for conclusion of proceedings may lead to Injustice and Absurdity. Both are required to be avoided and be kept at bay.

18. In the conspectus of facts and circumstances of the case, no manifest illegality, procedural impropriety or palpable perversity is reflected in the order passed by the respondents and the order passed by learned Writ Court. This Court does not find any reason, warranting interference in the order passed by learned Writ Court, hence, it is affirmed. The appeal sans merits and is hereby dismissed.

19. Appeal stands **dismissed.**

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

Anil*