

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 31st OF OCTOBER, 2022

WRIT PETITION No. 6868 of 2008

BETWEEN:-

**NAGESHWAR SOLANKI S/O LATE RAMLALJI
SOLANKI, AGED ABOUT 38 YEARS,
OCCUPATION: SERVICE 9/1,DRP.POLICE
LINE,SHANKAR MANDIR,RATLAM (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI MUKESH PARWAL, ADVOCATE)

AND

**1. STATE OF M.P. & 4 ORS. THRU.CHIEF
SECT.GRIH VIBHAG,BHOPAL (MADHYA
PRADESH)**

**2. POLICE MAHANIDHESHAK M.P POLICE
MUKHAYALAYA BHOPAL (MADHYA
PRADESH)**

**3. POLICE MAHANIRIKSHAK UJJAIN UJJAIN
(MADHYA PRADESH)**

**4. POLICE UP MAHANIRIKSHAK RANGE
RATLAM (MADHYA PRADESH)**

**5. POLICE ADHIKSHAK RATLAM RATLAM
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AKASH SHARMA, G.A.)

This petition coming on for orders this day, the court passed

the following:

ORDER

Heard finally with the consent of the counsel for the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 31.03.2007, and 31.07.2007 passed by respondent No.5, S.P., Ratlam as also against the order dated 13.11.2007 passed by respondent No.4 Deputy Inspector General of Police, (DIG) Ratlam Range. In the order dated 31.07.2007, a minor penalty of withholding one increment has been imposed upon the petitioner with cumulative effect. However, the same was enhanced to reduction of minimum pay scale for one year with cumulative effect vide order dated 13.11.2007. The petition is also preferred against the order passed in appeal dated 13.09.2008 whereby the order of punishment has been affirmed.

3] The case of the petitioner is that on 18.01.2006 he accosted the complainant Vishal Singh and his friend on a motorcycle and took out Rs.500/- from his pocket and also demanded Rs.2,000/-. In the inquiry which was conducted at the instance of the complaint made by Vishal, the petitioner was given a clean chit vide inquiry report dated 09.11.2006. The disciplinary authority S.P. Ratlam, however, disagreed with the inquiry report and remanded the matter back directing the inquiry officer to take the evidence afresh from the stage of prosecution witness and pass the appropriate order.

4] Counsel for the petitioner has submitted that the aforesaid direction issued by the disciplinary authority runs contrary to Rule 15

of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, which provides that only a further inquiry can be undertaken. In support of his contention, Shri Parwal has relied upon a decision rendered by the Division Bench of this Court in the case of **Kamal Kishore Bansal Vs. M.P. E.B.** reported as **[1994 (I) MPWN 91]**. Reliance has also been placed on a decision rendered by Co-ordinate Bench this Court at Gwalior in the case of **Parmal Singh Tomar Vs. State of M.P.** reported as **2019 (I) MPWN 67** whereby this Court has held that the inquiry officer, who has cross-examined the petitioner as also the defence witnesses assumes a partisan character resulting in the inquiry being vitiated. It is submitted that in the present case also no presenting officer was appointed and it was only the inquiry officer, who had cross-examined the petitioner as also the defence witnesses. Thus, it is submitted that on these two grounds only the petition is liable to be allowed and the impugned orders are liable to be quashed.

5] Shri Akash Sharma, counsel for the respondents/State, on the other hand, has opposed the prayer and it is submitted that as per the reply filed by the State, no case for interference is made out.

6] On due consideration of submissions, and on perusal of the documents filed on record, it is found that so far as the reply is concerned, it is only a reply of denial and no additional documents have been filed to substantiate the same. On perusal of the order passed by the disciplinary authority i.e., S.P. Ratlam, it is found that while disagreeing with the inquiry officer, the following observations

have been made:-

“अतएव उपरोक्तानुसार उल्लेखित विभागीय जांच के दौरान उपलब्ध साक्ष्य एवं दस्तावेज साक्ष्य में आये तथ्यों व सम्पूर्ण परिस्थितियों आदि के सम्बन्ध में आरोपी आर. पर लगाये गये उक्त आरोप बाबत उक्त बिन्दुओं पर शेष अपेक्षित आवश्यक कार्यवाही/जांच सम्पादित कर अभियोजन पक्ष में तथा न्यायहित में स्पष्ट साक्ष्य व तथ्यों पर आधारित विश्लेषण व परीक्षिता किया जाकर जांच निष्कर्ष निष्कर्षित किया जाना आवश्यक है। अतः उपरोक्त सम्पादित विभागीय जांच को अभियोजन साक्ष्य स्टेज से रिमांड किये जाते हुए जांचकर्ता अधिकारी को आदेशित किया जाता है कि वे उपर उल्लेखित बिन्दुओं पर अपेक्षित कार्यवाही विधिवत सम्पादित करें व आरोपी को इस दौरान अपना पक्ष पेश करने हेतु युक्तियुक्त अवसर दें। उपलब्ध साक्ष्य, दस्तावेजी साक्ष्य एवं तथ्यों आदि के आधार पर जांच निष्कर्ष प्रतिवेदन मय पूरक उप-पत्ति के इस कार्यालय को 15 दिन में आवश्यक रूप से भेजें।”

(emphasis supplied)

7] A perusal of the aforesaid direction clearly reveals that the disciplinary authority had directed the inquiry officer to proceed *de novo* from the stage of prosecution witnesses and there is no such direction that any further inquiry be taken up as per Rules 15 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 which envisages only further inquiry and not the fresh or *de novo* inquiry. In such circumstances, this Court finds force in the contentions raised by the counsel for the petitioner and has no hesitation to come to a conclusion that the subsequent *de novo* inquiry taken up by the inquiry officer at the instance of the disciplinary authority runs contrary to Rule 15 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, which only prescribes further inquiry.

8] In such circumstances, on this ground only, the subsequent impugned orders against the petitioner cannot be sustained. As a result, the petition stands **allowed** and the impugned orders dated

31.03.2007, 31.07.2007, 13.11.2007 and 13.09.2008 are hereby quashed.

9] Respondents are directed to remit the amount, which has been deducted so far from the petitioner's salary within a period of six months from the date of receipt of certified copy of this order.

(Subodh Abhyankar)
Judge

Pankaj