

WA-704-2014

(THE STATE OF MADHYA PRADESH Vs MAHESH KUMAR BHARGAVE)

14-09-2016

Shri Rohit Mangal, learned Government Advocate for the appellant/State.

Shri S.K.Gupta, learned counsel for the respondents.

O R D E R

(Passed on 14.09.2016)

Per. Vivek Rusia, J.

1. Heard on the question of admission.

2. The appellant has filed the present appeal being aggrieved by the judgment dated 14.08.2013 passed in W.P.No.9346/2013, by which, the writ petition filed by the respondent was allowed and the charge-sheet dated 27.09.2012 was quashed.

Facts of case are as under:

3. That, the respondent/petitioner was served with the charge-sheet dated 27.09.2012, issued by the Deputy Inspector General of Police, Ratlam. Being aggrieved by the said charge-sheet, he filed a petition before the High Court under Article 226 of the Constitution of India mainly on the ground that for Class-II, Gazetted Officer a Deputy General Officer is not competent to issue a charge-sheet and under regulation 228 of the Madhya Pradesh Police Regulations (hereinafter written as '**Regulation**'), the Superintendent of Police is competent

to issue a charge-sheet.

4. That, the learned writ Court, placing reliance upon the judgment in the case of ***Naresh Kumar Suryavanshi Vs. State of Madhya Pradesh & Others***, passed in ***W.P.No.6816/2012*** on ***22.11.2012*** has set-aside the charge-sheet and liberty was granted to the disciplinary authority to issue a fresh charge-sheet in case, need so arises, in future.

5. Being aggrieved by the aforesaid judgment dated 14.08.2013, the State Government has preferred *inter-alia* appeal on the ground that the learned writ Court has passed the order placing reliance upon the judgment in the case of ***Naresh Kumar Suryavanshi*** (Supra), whereas, the controversy has been decided by the Division Bench of this Court in the case of ***Arun Prakash Yadav Vs. State of M.P. & Others***, reported in ***2013(3) MPLJ 508***, therefore, the issue requires to be considered in light of ***Arun Prakash Yadav*** (Supra).

6. That, the appeal has been filed on the ground that under Regulation 228 of the '***Regulation***' in all cases of removal, compulsory retirement, reduction in rank and withdrawal of increment, the Inspector General of Police also competent to issue the charges.

Regulation 228 and 229 of the said Rules are reproduced as under:

â□□228. ***D.E. - When and how held.- In every case of removal, compulsory retirement from service, reduction in rank, grade or pay or withholding of increment for a period in excess of one***

year a formal proceedings must be recorded by the Superintendent in the prescribed form, - setting forth].

- (a) the charge;**
- (b) the evidence on which the charge is based'**
- (c) the defence of the accused;**
- (d) the statements of his witnesses (if any);**
- (e) the finding of the Superintendent, with the reasons on which it is based;**
- (f) the Superintendent's final order or recommendation, as the case may be;**

Provided that it shall not be necessary to record a formal proceeding, if due to exigencies of serviced and not by reason of any misconduct or fault on his part, a police officer is transferred from a post carrying a specialist pay in the special Armed Force, Motor Transport or Radio Telegraphy sections to a post not carrying such pay and reduction in his pay is caused by reason of such transfer.

Note (1) â If a written defence is tendered, it should be accepted and attached to the record.

Note (2) â Reasonable time should, however, be given to the accused person to submit his written defence after the charge sheet is handed over to him.

Note (3) â The traveling allowance of the defence witnesses shall be borne by the department. In order to facilitate the production of defence witnesses, the Inquiry Officer on the application of the accused should issue a notice to the defense witnesses to present themselves on

the date so fixed. If the witnesses do not turn up after such notice, it shall be the responsibility of the accused to produce his own witnesses.

229. D.E. - Final orders in. - If the Superintendent is empowered to pass the final order in the case, the papers will be filed in his office, a copy of the order being sent to be Deputy Inspector General with the monthly punishment return. In other cases they will be forwarded as follows:-

(a) Reduction in rank of an Assistant Sub-Inspector to the Deputy Inspectors General through the District Magistrate.

(b) All proposals for the dismissal, removal or compulsory retirement of an officer of and above the rank of Assistant Sub-Inspector should be forwarded to the proper authority though the District Magistrate except in cases where an officer is not serving in a district.

(c) In the case of transfer of an officer of or above the rank of Inspector, the Superintendent of Police should forward the District Magistrate's suggestion to the Deputy Inspector General of Police.â

7. It is further submitted that is Inspector General of Police is the appointing authority of Inspector as per the Madhya Pradesh Police Recruitment Rules, 1997, therefore, he is competent to issue the charge-sheet.

8. Shri Mangal, learned Government Advocate for the appellant submits that the judgment passed in case of ***Arun Prakash Yadav*** (Supra) requires reconsideration as the scope of Regulation 229 has not been considered

by the Division Bench where the Superintendent is empowered to pass the final order in certain cases and in other cases file would be sent to the Deputy Inspector General of Police, therefore, the Regulation 228 and 229 has to be read together and according to which, the Superintendent of Police alone is not competent to issue the charge-sheet, but Deputy Inspector General of Police can also issue a charge-sheet to the Inspector. In support of his contention, he has placed reliance over the judgment of this Court in case of ***State of M.P. Vs. Virendra Singh Gurjar***, reported in **2015, SCC Online MP 5850**, in case of ***Shyambaboo Vs. State of M.P.***, reported in **1987(2) MPWN 43** and in case of ***State of M.P. Vs. Shivaji Rao***, reported in **1990(2), MPWN 172**.

9. Per contra, Shri S.K. Gupta, learned counsel for the respondent submits that however, the State Government is challenging the order passed in ***Arun Prakash Yadav*** (Supra) by way of SLP 820-821/15 but vide order dated 01.12.2015 the SLP was dismissed and thereafter the review petition has also been dismissed, therefore, the order passed in case of ***Arun Prakash Yadav*** (Supra) has attained finality and is not require to be reconsidered. He has further submitted that after passing the order in the case of ***Arun Prakash Yadav*** (Supra), various writ appeals were filed by the State of Madhya Pradesh has been dismissed. One of the copy of order was passed in W.A.No.553/2013 dated 30.11.2015

is produced at the time of argument, therefore, no case is made out to interfere with the order of Single Judge in the present writ appeal.

10. In rejoinder, Shri Mangal submits that the SLP was dismissed in default because of non-compliance of the Court order and not on merits, therefore, it does not construe a binding precedent. In support of his plea, he has placed reliance over the judgment passed in case of ***Bhakra Beas Management Board Vs. Krishan Kumar Vij and Anr.***, reported in ***(2010) 8 SCC 701***, therefore, this Court can reconsider the issue decided in the case of ***Arun Prakash Yadav*** (Supra).

11. We have heard learned counsel for the parties.

12. Though the writ Court has allowed the writ petition placing reliance over the judgment passed in ***Naresh Kumar Suryavanshi*** (Supra) and set-aside the charge-sheet, but in case of ***Arun Prakash Yadav*** (Supra), the Division Bench on a reference has specifically held that the Superintendent of Police alone has been mentioned as authority to frame and issue the charge-sheet in respect of penalty or penalties. Para 19, 20, 21, 34 and 36 of the judgment passed in the case of ***Arun Prakash Yadav*** (Supra) is reproduced as below:

â□□**19. It would be appropriate at this stage to decipher the real intent and purport of the Regulation 228 for finding out as to whether any other authority superior or inferior in rank to SP can also exercise the power of issuance of charge-sheet against an**

Officer subordinate in rank to SP. For convenience, the relevant extract of the Regulation 228 is reproduced below:

228. D.E. - When and how held.- In every case of removal, compulsory retirement from service, reduction in rank, grade or pay or withholding of increment for a period in excess of one year a formal proceedings must be recorded by the Superintendent in the prescribed form, - setting forth].

(a) the charge;

(b) the evidence on which the charge is based'

(c) the defence of the accused;

(d) the statements of his witnesses (if any);

(e) the finding of the Superintendent, with the reasons on which it is based;

(f) the Superintendent's final order or recommendation, as the case may be;

20. A bare reading of Regulation 228 indicates that Superintendent alone has been mentioned as the authority to frame and issue a charge-sheet in respect of major penalty or penalties which have the effect of major penalties. The term 'Superintendent' means the Superintendent of Police, which is evident from Regulation 32 which describes the SP as the head of Police Force of his District. The Police Regulations do not prescribe the competence of any authority to issue a charge-sheet in any other provisions except Regulation 228, which solely empowers the SP. This power of issuance of charge-sheet is

bestowed upon the SP in regard to all persons holding the ranks subordinate to that of the SP. By necessary implication, the provisions of Regulation 228 exclude all authorities, superior or inferior to the SP to issue a charge-sheet to any Police personnel holding the rank subordinate to that of SP. It can, thus, be safely held that for an Inspector of Police, which in rank is subordinate to SP, the sole competent authority to issue charge-sheet is the SP under the Police Regulations, which exclusively govern the field as held supra.

21. From the above discussion, it is crystal clear that no other authority except SP is empowered under the Police Regulation to institute disciplinary proceedings/issue charge-sheet to an Inspector of Police.

34. From the above conspectus of facts and law, it is evident that neither in the case of N.K. Pandey (supra) nor in the case of Dalchand Ahirwar (supra) the question of applicability or non-applicability of the Rules of 1966 was raised or considered by this Court for deciding the question of competence of the authority to initiate disciplinary proceedings against an Inspector of Police. Moreso, this Court in both these contrary decisions was not posed with, and, therefore, did not consider, the question as to whether mere declaration of the post of Inspector as Gazetted can induct by implication the post of Inspector

into the Gazetted service constituted under the Gazetted Rules, without the said Rules being amended.

36. This bench, thus, answers the reframed question in the following manner:-

(i) An Inspector of Police while assailing the competence of authority to issue major penalty/charge-sheet against him cannot avail induction into the gazetted cadre constituted under the Gazetted Rules of 2000 merely because of being declared as Gazetted and being upgraded in the scale of pay of Rs.6500-10,500/-, unless the Gazetted Rules of 2000 are amended suitably.

(ii) For the purpose of deciding the competence of an authority to institute disciplinary proceedings/issuance of charge-sheet against an Inspector of Police, the M.P. Police Regulations alone would apply to the exclusion of M.P. Civil Service (Classification, Control and Appeal) Rules, 1966.

(iii) As per Regulation 228 of Police Regulations, the Superintendent of Police alone is the competent authority to initiate disciplinary proceedings/issue charge-sheet for major penalties, against an Inspector of Police; and

(iv) Neither the decision rendered in the case of N.K.Pandey Vs. State of M.P., ILR (2011) MP 2168 nor the decision in the case of Dalchand Ahirwar Vs. State of M.P., ILR (2012) M.P. 902 lay down the correct law for deciding the question of competency of authority

to initiate disciplinary proceedings/issue charge-sheet to an Inspector of Police.□□

13. In the present case, the impugned charge-sheet was issued by the DIG and the petitioner was holding the post of Inspector, therefore, the ratio laid down by the Division Bench in case of ***Arun Prakash Yadav*** (Supra) is fully applicable in the present case.

14. So far as the contention of the learned counsel for the appellant is concerned about the applicability of Regulation 229, the Regulation 229 deals with the final orders after completion of the departmental enquiry. Under Regulation 229 if the Superintendent of Police is empowered to pass the final order in case of paper will be filed in his office, a copy of the order be sent to the DIG with the monthly punishment return, therefore, the power to exercise the authority at the time of final order may be exercised by DIG but that stage would come at the time of passing of final order. But in the present case, the petitioner has challenged the charge-sheet on an issue under Regulation 228 by Superintendent of Police. Stage of issuance of charge-sheet is provided under Regulation 228 of the '***Rules of 1964***' , where the Superintendent alone has been granted authority to issue the charge-sheet and conduct the departmental enquiry. Thereafter, under Sub-Regulation (f) of Regulation 228 , he is also competent to pass the final order or give a recommendation, as the case may be,

therefore, in view of the above, since, the present case is at the stage of issuance of charge-sheet, therefore, provision of Regulation 228 will alone apply.

15. In view of the law laid down in the case of ***Arun Prakash Yadav*** (Supra), the present case is examined independently within the scope of Regulation 228. The writ Court has not committed any error while quashing the charge-sheet, therefore, we do not find any ground to interfere with the order of learned Single Judge and do not find any ground to reconsider the judgment passed in case of ***Arun Prakash Yadav*** (Supra).

16. The present appeal is **dismissed**, however, the liberty granted by the writ Court to the competent authority to issue charge-sheet is maintained.

(P.K. JAISWAL)
JUDGE

(VIVEK RUSIA)
JUDGE