HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

Case Number	**W.A. No.1280/2020**
Parties Name	State of M.P. & another Vs. Vishnu Prasad Maran & another
Date of Judgment	**19/01/2021**
Bench	**Division Bench:** Justice Sujoy Paul Justice Shailendra Shukla
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsel for parties	Shri Shrey Raj Saxena, learned Panel Lawyer for appellants. Shri A.K.Sethi, learned Sr.Counsel with Shri Rahul Sethi, counsel for respondent No.1.
Law laid down	[1] **Section 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nyaypith Ko Appeal) Adhiniyam, 2005** - The Writ Court has taken a plausible view. No interference is warranted. Even if another view is possible, it cannot be a ground for interference. [2] **The Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966** – *Rule 10* – The punishment of "Censure". The punishment enlisted in Rule 10 can be imposed on "existing government servants". The said punishment cannot be imposed on a retired government servant. [3] **The Madhya Pradesh Civil Services (Pension) Rules, 1976** - *Rule 8 & 9* - The punishments mentioned in Rule 8 can only be imposed on a retired government servant. The said punishment can be imposed if retired government servant is found to be guilty of "grave" misconduct. If punishment of "Censure", the smallest punishment was imposed, it is clear that Governor was of the opinion that misconduct was not "grave".

	Thus, while interfering with punishment order, matter is not remitted back for imposing the punishment under the Pension Rules. [4] **Article 21 of Constitution of India** - Unreasonable, unexplained and improper delay in initiating, conducting and concluding the enquiry hits fundamental rights. Enquiry can be set aside on this ground alone. [5] **Interpretation of Statute** - If a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. [6] **Interest on delayed payment of retiral dues** – Delay in making the payment of retiral dues is solely attributable to the department, employee would be entitled to get interest on such payment.
Significant paragraph numbers	11,12,15 & 16

JUDGMENT
19.01.2021

As per: Sujoy Paul,J.

This intra-court appeal takes exception to the order dated 17.09.2019 passed in W.P. No.9838/2018, whereby learned Writ Court directed the department to open the sealed cover and give effect to the recommendations for promotion. In addition, learned Writ Court directed to grant interest on delayed payment of retiral dues with further direction to pay arrears of 7th Pay Commission.

2. Shri Shrey Raj Saxena, learned Panel Lawyer assailed the order of learned Writ Court on twin grounds. **Firstly**, it is argued that the main reason for interference with the punishment of censure dated 13.03.2018 was that against the Enquiry Officer's report, the petitioner was not given any opportunity by issuance of notice by the disciplinary authority. He submits that the disciplinary authority issued a notice along with the Enquiry Officer's report and therefore,

this reason for interference on the punishment cannot sustain judicial scrutiny. **Secondly**, learned Writ Court has committed an error in granting interest on delayed payment of retiral dues.

3. Learned counsel for the appellant urged that the delay in releasing the retiral dues was because of pendency of disciplinary proceedings. On conclusion of such proceedings by imposition of punishment on 13.03.2018 (Annexure-P/10), the retiral dues were released. Hence, imposition of interest is without there being any justification.

4. Shri A. K. Sethi, learned Senior Counsel supported the impugned order.

5. No other point is pressed by the parties. We have heard the parties at length.

6. Before dealing with the points raised, it is apposite to mention the relevant facts. The employee was served with a charge-sheet on 30.07.2010 under Rule 14 of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter called the “CCA Rules”). The employee denied the charges in toto. Hence, enquiry and presenting officers were appointed. After conducting the enquiry, the Enquiry Officer submitted his report on 03.06.2016. The Enquiry Officer exonerated the respondent No.1 from the charges. The said report was communicated to the respondent No.1 with communication dated 22.06.2017. The respondent No.1 filed response stating that the Enquiry Officer's report is in his favour and he does not wish to say anything more. The original petitioner preferred an application on 05.08.2017 requesting the department to conclude the enquiry expeditiously. The same is followed by notice for demand of justice and other representations. The departmental enquiry ended with a punishment of “censure” on 13.03.2018. The employee retired on attaining the age of superannuation on 31.03.2017.

7. Learned Writ Court rightly recorded that the Enquiry Officer's

report was indeed supplied to the employee but the disciplinary authority has not taken pains to prepare a discordant note and put the employee to notice along with his reasons for disagreement with the Enquiry Officer's report.

8. In catena of judgments, the Apex Court opined that findings of the Enquiry Officer are not binding on the disciplinary authority. The disciplinary authority can disagree with the findings of the Enquiry Officer on the basis of material available on record. If the disciplinary authority intends to disagree with the findings, the only course open to him is to prepare a note of disagreement on the basis of evidence on record and furnish the same to the applicant to enable him to show cause against the same. The Apex Court in this regard opined as under in the following judgments:-

> ***Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84***
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> "……whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings."
>
> (emphasis supplied)

> ***Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739***
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> "…….The rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate

that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."

(emphasis supplied)

S.P. Malhotra v. Punjab National Bank, (2013) 7 SCC 251

"……..in case the disciplinary authority disagrees with the findings recorded by the enquiry officer, he must record reasons for the disagreement and communicate the same to the delinquent seeking his explanation and after considering the same, the punishment could be passed. In the instant case, as such a course had not been resorted to, the punishment order stood vitiated."

(emphasis supplied)

Deputy General Manager (Appellate Authority) and others v. Ajai Kumar Srivastava decided on 5/1/2021 (2021 SCC OnLine SC 4).

"It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry."

(emphasis supplied)

9. In view of settled legal position, it can be safely concluded that in the instant case, in absence of any discordant note being prepared and supplied by the disciplinary authority, the requirement of principles of natural justice and Rule 15 of the CCA Rules were not satisfied. Thus, no fault can be found in the findings of learned Writ Court, whereby punishment was interfered with in absence of any discordant note.

10. This matter may be viewed from another angle. As per Rule 9(2)(a) of The Madhya Pradesh Civil Services (Pension) Rules, 1976

(for short “Pension Rules”) if departmental proceeding is instituted while government servant was in service before his retirement, the said proceedings shall continue in the same manner as if government servant had continued in service. A proviso is appended to sub-rule 2(a) which envisages that if enquiry is instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its finding to the Governor. Thus, after retirement of a government servant, only the Governor can impose the punishments prescribed in the Pension Rules. Rule 8(1)(b) prescribes the punishment of withholding or withdrawing a pension or part thereof as punishments. Pertinently, said punishments can be imposed when pensioner is found guilty of *grave misconduct*.

11. The interesting question which cropped up during the hearing is whether after retirement of a government servant, the punishment of “Censure” can be imposed on him ?. For an existing government servant, the punishments are prescribed in Rule 10 of the CCA Rules. Pertinently, Rule 10 of CCA Rules makes it clear that the punishments enumerated in Rule 10 can be imposed on a “government servant”. “Government servant” is defined in Rule 2(f) which shows that government servant means a servant who is already in employment. The definition of “government servant” does not include a retired government servant. Thus, the statutory punishments listed in Rule 10 of CCA Rules can be imposed on an existing government servant and not on a retired government servant. For imposing punishment to a retired government servant, a different Rule i.e. Pension Rules is applicable. At the cost of repetition, the pension Rules prescribes punishment of withholding or withdrawing pension and by invoking said Rules, the punishment of “Censure” could not have been imposed on the petitioner. This is trite that if a statute prescribes a thing to be done in a particular manner it has to be done in the same manner and other methods

are forbidden (See ***Baru Ram v. Prasanni, AIR 1959 SC 93***, ***Dhanajaya Reddy v. State of Karnatka, (2001) 4 SCC 9***, ***CIT v. Anjum M.H. Ghaswala, (2002) 1 SCC 633 and Satyanjay Tripathi v. Bansari Devi, (2011) 2 MPLJ 690***. In view of this discussion, the punishment of "Censure" even otherwise could not have been imposed. The imposition of "Censure", (the smallest punishment prescribed in CCA Rules) shows that in the opinion of the Governor the misconduct was not "grave" in nature. Hence, as per Pension Rules, there is no question of remitting the matter back to the Governor to pass appropriate punishment under the Pension Rules.

12. In this case, the sword of disciplinary proceedings kept hanging on the head of employee for almost eight years. Ultimately a small punishment of "Censure" was inflicted but its impact was very grave because his fate which was kept in the sealed cover by Departmental Promotion Committee (DPC) was sealed. The Constitution Bench judgment of ***Abdul Rehman Antulay v. R.S. Nayak (1992) 1 SCC 225*** was followed by Supreme Court in the case of ***State of Punjab and others v. Chaman Lal Goyal (1995) 2 SCC 570*** and it was held that broad principles laid down in ***Abdul Rehman Antulay*** (supra) will be applicable in cases of departmental proceedings also. It was poignantly held that principles relating to right of speedy trial founded upon Article 21 of the Constitution are applicable for departmental enquiry. Unreasonable and unexplained delay in initiating, conducting and concluding the enquiry hits Article 21 of the Constitution.

13. In the case of ***M.V.Bijlani v. Union of India (2006) 5 SCC 88*** the Apex Court interfered with the punishment because there was unreasonable delay in concluding the enquiry. The relevant portion reads as under:-

> "The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of

> seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."
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> (emphasis supplied)

14. In the manner enquiry was kept pending for years together without there being any fault of the delinquent employee, in our view the prosecution became persecution. For this reason also, the punishment order was rightly interfered with. If punishment of "Censure" would have been imposed with quite promptitude, the employee would have suffered the punishment, but would not have been deprived from the fruits of consideration for promotion. The learned Single Judge has rightly followed the decision of ***Jagjitsingh Vs. Secretary, MPSEB & Ors. (WP No.3273/2005 decided on 3/4/2017***).

15. So far as challenge to grant of interest on retiral dues is concerned, suffice it to say that unnecessary, unexplained and unreasonable delay in conducting the enquiry and imposition of the punishment became reason for delayed payment of retiral dues. As noticed, the employee cannot be blamed for the same. The delay is solely attributable to the department. In this backdrop the employer is bound to pay interest in view of judgment of Supreme Court in the matter of ***Union of India v. Justice S.S.Sandhawalia (1994) 2 SCC 240***.

16. In view of foregoing analysis, in our view the writ court has taken a plausible view which does not warrant any interference by the division bench. (See ***Narendra & Co. (P) Ltd. v. Workmen (2016) 3 SCC 340***). The appeal sans substance and is hereby **dismissed**.

(Sujoy Paul)
Judge

(Shailendra Shukla)
Judge

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