

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL
SEAT AT JABALPUR**

Case No.	W.P.(S) No.12216/2004
Parties Name	A.A. Abraham vs. State of M.P. and others
Date of Judgment	03.12.2020
Bench Constituted	Single Bench
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	For the Appellant: Mr. R.N. Roy, Advocate For the respondent/State: Mr. Rahul Deshmukh, Panel Lawyer.
Law laid down	<p>1. Rule 15 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966- Disciplinary authority can issue direction for conducting 'further inquiry'.</p> <p>2. Further inquiry or denovo inquiry- Under Rule 15, the disciplinary authority cannot issue directions to conduct a 'denovo inquiry'. In the instant case, since charge-sheet remained the same and only direction issued was to record evidence of prosecution witnesses which was not previously recorded, the direction amounts to holding 'further inquiry' and not 'denovo inquiry/reinquiry'.</p> <p>3. Rule 9 of M.P. Civil Service (Pension) Rules, 1976- If a departmental inquiry is instituted before retirement of employee, it shall continue and conclude in the same manner by the authority by which it was commenced.</p> <p>4. Proviso to Rule 9(2) of the Pension Rules- Initiating/disciplinary authority cannot impose punishment, indeed, he is</p>

	<p>under a statutory obligation to submit his report to the Governor regarding the findings submitted by Inquiry Officer.</p> <p>5. Rule 64 of Pension Rules pending departmental inquiry or criminal case – The department is empowered to sanction anticipatory pension. The department is right in not releasing the entire pension and gratuity because of pendency of departmental enquiry.</p> <p>6. Article 300A of the Constitution– The pension/retiral dues are not bounty. The same can be withheld if law permits. Executive Instructions cannot be treated as law but Rule 64 of Pension Rules is a statutory provision which permits the department to grant anticipatory pension.</p>
Significant paragraph numbers	10, 11, 12 & 13

ORDER
(03.12.2020)

In this petition filed under Article 226 of the Constitution, the petitioner has called in question the legality, validity and propriety of order dated 02.09.2004 whereby the Commissioner, Health Services, M.P. directed to conduct a reinquiry against the petitioner. In addition, petitioner has prayed for a direction to release his retiral dues.

2. Draped in brevity, the relevant facts are that the petitioner was working as District Malaria Officer at Betul. In the year 2000, some persons died in District Hospital, Betul due to malaria. A question was raised in the State Legislative Assembly regarding death of citizens. Thereafter, a major

penalty charge-sheet dated 24.02.2001 was issued to the petitioner. The petitioner submitted his reply. Since department was not satisfied with the reply, a departmental enquiry was instituted by appointing Presiding Officer and Inquiry Officer. The petitioner retired on attaining the age of superannuation on 29.12.2001 whereas first Inquiry Officer was appointed on 28.08.2001. The first Inquiry Officer could not complete the inquiry and; therefore, another Inquiry Officer was appointed by order dated 05.11.2003 Annexure R/1. The petitioner was placed under suspension during his service. The suspension order was revoked by order dated 30.05.2002 (Annexure P/7).

3. Shri R.N. Roy, learned counsel for the petitioner submits that the Inquiry Officer conducted and completed the inquiry and submitted his report dated 19.06.2004 (Annexure P/12). Five charges levelled against the petitioner were not found to be proved. The inquiry report was placed before the Commissioner, Health Services, M.P. who, in turn, passed the impugned order dated 02.09.2004 (Annexure P/14). Criticising this order, learned counsel for the petitioner urged that – (i) learned Commissioner has set aside the conclusion drawn by the Inquiry Officer and directed to conduct ‘reinquiry’. This runs contrary to Rule 15 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (*hereinafter referred to as ‘CCA Rules’*). Under the said Rule, disciplinary authority is only empowered to conduct a ‘further inquiry’ and not a ‘denovo inquiry’ or ‘reinquiry’. In support of this contention, he placed reliance on judgments of Supreme Court reported in 1971 (2) SCC 102 (*K.R. Deb vs. The Collector of Central Excise, Shillong*) and 2014 (10) SCC 589 (*Vijay Shankar Pandey vs. Union of India and another*); (ii) after the retirement of petitioner, inquiry could have been continued only

under Rule 9(2) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short '***Pension Rules***') and not under the CCA Rules. By placing heavy reliance on the proviso to Rule 9(2) of the Pension Rules, Shri Roy urged that the disciplinary authority/ Commissioner has no authority, jurisdiction and competence to pass the order dated 02.09.2004; (iii) the respondents committed error in not releasing the entire pension and gratuity to the petitioner. Their action is erroneous whereby they only granted anticipatory/provisional pension to the petitioner. By placing reliance on **2013 (12) SCC 210** (*State of Jharkhand and others vs. Jitendra Kumar Srivastava and another*), Shri Roy urged that in the light of this judgment, the petitioner is entitled to get entire retiral dues including pension and gratuity.

4. *Per contra*, Shri Rahul Deshmukh, learned Panel Lawyer for the State supported the impugned order by contending that under Rule 9(2)(a) of the Pension Rules, the authority who instituted the departmental enquiry against the petitioner when he was admittedly in service, has every right to continue and conclude the inquiry against the petitioner. In exercise of that power, the disciplinary authority/authority who instituted the inquiry found that the Inquiry Officer's report is cryptic in nature because petitioner was facing five grave charges and no prosecution witness entered the witness box nor any documents were placed against the petitioner. Considering the aforesaid, the disciplinary authority directed 're inquiry/further inquiry' which by no stretch of imagination can be treated to be 'denovo inquiry' or 're inquiry'. He urged that the disciplinary proceeding begins with issuance of charge-sheet and in the instant case, the charge-sheet was not cancelled which shows that inquiry will proceed on the basis of same charge-sheet.

Hence, this 'further inquiry' ordered is in consonance with Rule 15 of CCA Rules.

5. Shri Deshmukh urged that in the teeth of proviso to Rule 9(2), it is clear that after obtaining the finding regarding inquiry, the authority who initiated the inquiry shall submit his report before the Governor thereupon the Governor is obliged to take a decision as per Rule 9(1) of the Pension Rules. The department has followed the said procedure and hence order is neither without jurisdiction nor it suffers from any procedural impropriety which warrants interference by this Court. Countering the argument regarding grant of release of full pension and gratuity, Shri Deshmukh placed reliance on Rule 64 of the Pension Rules.

6. No other point is pressed by learned counsel for the parties.

7. I have bestowed my anxious consideration on the rival contentions of parties and perused the record.

8. There are three core issues involved in this matter – (i) whether the direction contained in the impugned order dated 02.09.2004 (Annexure P/14) amounts to holding a 'denovo/reinquiry'?; (ii) whether under Rule 9(2) of the Pension Rules, the disciplinary authority was empowered to continue with the inquiry after petitioner's retirement and pass the impugned order of 'reinquiry'? and (iii) whether department was justified in only granting anticipatory/provisional pension to the petitioner ?

Issue No.(i) and (ii):

9. Both the issues are interrelated and; therefore, I deem it proper to decide these issues jointly.

10. Before dealing with the factual aspects, reference may be made to Rule 15 of CCA Rules which makes it clear that disciplinary authority is empowered to direct a further inquiry. Thus, the pivotal question is whether the direction so contained in order dated 02.09.2004 amounts to directing a 'further inquiry' or 'denovo inquiry/reinquiry'. It is apt to reproduced the relevant portion of the order which reads as under:

आदेश

संचालनालय के आदेश क्र./4/शिका. 2/03/3212 दिनांक 05/11/03 द्वारा श्री ए.ए. अब्राहम सेवा निवृत्त जिला मले. अधिकारी बैतूल के विरुद्ध संस्थित विभागीय जांच प्रकरण में श्री जी.एल.सोनी, निश्चेतना विशेष. जिला चिकित्सालय बैतूल को जांच अधिकारी नियुक्त किया गया था। जांच अधिकारी द्वारा प्रकरण की जांच कर जांच प्रतिवेदन मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, बैतूल द्वारा दिनांक 7.7.2004 को प्रस्तुत किया गया। जांच प्रतिवेदन में जांच अधिकारी ने यह निष्कर्ष दिया है कि शासकीय पक्ष का समर्थन करने हेतु शासकीय गवाह उपस्थित नहीं हुये, इस कारण लगाये गये आरोप प्रमाणित नहीं पाये गये। प्राप्त जांच प्रतिवेदन का परीक्षण किया गया, प्रकरण में आरोप गंभीर प्रवृत्ति के थे अतः इस प्रकरण में पूर्ण जांच कराया जाना आवश्यक है।

अतः मैं मनोज झालानी, आयुक्त स्वास्थ्य सेवाएँ, मध्यप्रदेश जांच अधिकारी द्वारा प्रस्तुत जांच प्रतिवेदन के निष्कर्षों को अमान्य करते हुए **पूर्व में भी जारी आरोप पत्रों के बिन्दुओं पर पुनः जांच आदेशित करता हूँ।**

श्री ए.ए. अब्राहम सेवा निवृत्त जिला मलेरिया अधिकारी बैतूल के विरुद्ध संस्थित इस विभागीय जांच प्रकरण में श्री के.एल. साहू, संयुक्त संचालक स्वास्थ्य सेवायें संचालनालय को जांच अधिकारी एवं मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी बैतूल को प्रस्तुतकर्ता अधिकारी नियुक्त किया जाता है। तथा जांच अधिकारी को निर्देशित किया जाता है कि प्रकरण की जांच एक माह में पूर्ण कर जांच प्रतिवेदन प्रस्तुत करें।

हस्ता./—

(मनोज झालानी)

आयुक्त स्वास्थ्य सेवायें, मध्यप्रदेश

पृष्ठ क्र./4/शिका./डी.ई.2/2004/3829

भोपाल, दिनांक 02/09/04

(Emphasis supplied)

A careful reading of this order makes it clear that initiating authority came to hold that the Inquiry Officer has submitted a report which shows that no departmental/prosecution witnesses entered the witness box and; therefore, charges could not be proved. He further opined that since charges are serious in nature, a complete inquiry needs to be conducted in the present

matter. On this basis, he disallowed the conclusion drawn by Inquiry Officer and directed to reinquire the matter *on the basis of the charge-sheet already in existence i.e. 24.02.2001 (Annexure P/2)*. The Apex Court in **AIR 1991 SC 2010 (Union of India vs. K.V. Jankiraman and others)** opined that a disciplinary proceeding is initiated/begins with the issuance of the charge-sheet. In the instant case, I find substance in the argument of Shri Deshmukh that since charge-sheet remained the same and previous charge-sheet is not set aside by directing issuance of fresh charge-sheet, the impugned order does not contain direction of conducting ‘denovo inquiry’ or ‘reinquiry’. Learned counsel for the petitioner placed heavy reliance on the judgment of Supreme Court in **K.R. Deb(Supra)** which is followed in the case of **Vijay Shankar Pandey(Supra)**. Para 12 of the judgment of **K.R. Deb(Supra)** reads as under:

“12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.”

The Apex Court opined that if serious defect has crept in into the inquiry or witnesses were not available when inquiry was held, disciplinary authority may direct the Inquiry Officer to record further evidence. This is exactly what had happened in the instant case. No witness on the side of prosecution was examined and; therefore, considering the gravity of charges, the disciplinary authority directed to conduct a further inquiry. Thus, the decision of disciplinary authority is infirmity with

Rule 15 of the CCA Rules and the law laid down in ***K.R. Deb***(Supra) and ***Vijay Shankar Pandey***(Supra). The said judgments are of no assistance to the petitioner.

11. So far ancillary argument that after retirement of petitioner with effect from 29.12.2001, the inquiry under the CCA Rules could not have continued is concerned, suffice it to say that Rule 9(2) of the Pension Rules provides that if inquiry is instituted before retirement of a government employee, it shall continue in the same manner and shall be deemed to be proceedings under the Pension Rules. This deeming provision/fiction permits the authority who has initiated the inquiry to conclude it. Rule 9(1) and (2)(a) of the Pension Rules needs reproduction:

“9. Right of Governor to withhold or withdraw pension-
(2)(a) The departmental proceedings [xxx], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.”

(Emphasis supplied)

A plain reading of Rule 9(2)(a) of the Pension Rules leaves no room for any doubt that disciplinary authority/authority who initiated/commenced the inquiry is empowered to conclude it in the same manner as if the Government employee had continued in service. The expression “shall be continued and concluded” by the authority by which they were commenced are of paramount importance which bestows power to the initiating authority to conclude the inquiry. Needless to emphasise that inquiry is concluded with imposition of punishment. This

power of imposition of punishment is cut down by inserting proviso to sub-rule (2) of Rule 9 of the Pension Rules.

12. A holistic reading of Rule 9 of the Pension Rules shows that the ultimate decision to punish a retired employee is within the province of the Governor. In the case of a retired employee, as noticed above, the departmental enquiry so instituted before his retirement shall continue in the same manner and the disciplinary authority/authority instituted the proceedings is required to submit a report regarding Enquiry Officer's findings to the Governor. To elaborate, in case of retired employee the inquiry will proceed in the same manner as if employee was in service, inquiry officer will submit his findings and disciplinary authority will submit his report regarding the said findings to the Governor. Thus, as per Rule 9 of the Pension Rules, the initiating/disciplinary authority cannot impose the punishment, indeed, he is under a statutory obligation to submit his report regarding the findings submitted by the Inquiry Officer. His report alongwith the findings of Inquiry Officer needs to be placed before the Governor who, in turn, will take a decision as per sub-rule (1) of Rule 9 of the Pension Rules.

Issue No.(iii):

13. In view of catena of judgments of Supreme Court including the judgment of *Jitendra Kumar Shrivastava*(Supra), it is clear that the retiral dues of an employee cannot be treated as bounty. The same are his right under Article 300A of the Consitution. However, a minute reading of this judgment in *Jitendra Kumar Shrivastava*(Supra) makes it clear that in the said case, the State Government had withheld the retiral dues on the basis of an executive instruction. The Supreme Court after considering the scope and ambit of Article 300A of the

Constitution came to hold that such retiral dues can be withheld only by an enabling provision which has force of law and not on the basis of executive fiat. In the present case, as pointed out, Rule 64 of the Pension Rules (issued in exercise of power proviso to Article 309 of the Constitution) empowers the Government to release anticipatory pension pending completion of departmental enquiry/criminal case. In view of this rule, no fault can be found if department has not released the full pension and gratuity to the petitioner and decided to release anticipatory pension subject to outcome of the inquiry. Pertinently, in the present case, inquiry could not be concluded during the pendency of this case because ex-parte ad interim order was passed by this Court.

14. In view of foregoing analysis, I am unable to hold that impugned order suffers from any illegality which warrants interference by this Court. However, considering the fact that impugned order was issued on 02.09.2004 and a long passage of time is there in between, this petition is disposed of by directing the respondent No.2 **(i)** to conclude the further inquiry within six months from the date of production of copy of this order (subject to cooperation of the petitioner), failing which the departmental enquiry shall stand abated automatically; **(ii)** after conclusion of inquiry, appropriate order be passed within aforesaid time regarding retiral dues of petitioner. In case petitioner is found entitled for any retiral dues, retiral dues shall be settled within two months from the date final order is passed under Rule 9 of the Pension Rules. Needless to mention that if inquiry stands abated after six months as mentioned above, the petitioner shall get all consequential benefits as if instant disciplinary proceeding was never instituted against him.

15. With the aforesaid and without expressing any opinion on merits of the case, petition is **disposed of**.

(Sujoy Paul)
Judge

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