IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SMT. JUSTICE NANDITA DUBEY

WRIT PETITION (SERVICE) No. 195 of 2005

BETWEEN:-

PAWAN MISHRA, S/O LT. SHRI MAHAVEER PRASAD MISHRA, AGED ABOUT 43 YEARS, R/O NEW BASTI KATNI, ADARKA, KATNI (MADHYA PRADESH)

....PETITIONER

(BY SHRI ROHAN HARNE - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH THE SECRETARY, DEPARTMENT OF HOME (POLICE), MANTRALAYA, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTER, BHOPAL (MADHYA PRADESH)**

3. **INSPECTOR GENERAL OF POLICE. JABALPUR RANGE, JABALPUR (MADHYA PRADESH)**

4. **SUPERINTENDENT OF POLICE, KATNI, DISTRICT KATNI (MADHYA PRADESH)**

(BY SHRI ALOK AGNIHOTRI – GOVT. ADVOCATE)

….RESPONDENTS

Reserved on : 08.07.2022
Pronounced on : 10.01.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following :

O R D E R

By this petition under Article 226 of the Constitution of India, petitioner has questioned the legality and validity of the order dated 30.09.2003, whereby the petitioner was removed from service with immediate effect as also the order dated 05.02.2004, rejecting his appeal and the order dated 09.07.2004, whereby his mercy appeal was also dismissed.

2. Petitioner was posted as constable at the office of S.P. Katni at the relevant time. A complaint was filed against him by one Harish Chandra Rajak on 09.04.2002 that he was assaulted by present petitioner at the instance of Subhadra Bai resulting in

grievous injuries. MLC of complainant was conducted, which showed four simple injuries on his body.

3. On the basis of this complaint, the S.P. directed the SDOP to conduct preliminary enquiry. Thereafter, a departmental enquiry was instituted against him. The Superintendent of Police after framing a charge against him, appointed the Addl. S.P. as Enquiry Officer, who after making the necessary enquiry in accordance with the law, submitted his report alongwith record to the Superintendent of Police. After considering the report, the Superintendent of Police issued a notice dated 28.07.2003 (served on 30.07.2003), calling upon the petitioner to submit his objection against the enquiry report within seven days, else it will be considered that he has nothing to say and final decision will be taken.

4. Since no reply to the said notice was filed by the petitioner, the disciplinary authority, S.P. Katni, after considering the enquiry report, concurred with the finding of enquiry officer and holding the petitioner guilty of grave misconduct imposed major penalty of removal from service on him. Being aggrieved, the petitioner preferred an appeal before the respondent No.3, Inspector General of Police, Jabalpur Range, however, the said appeal met with the same fate. The mercy appeal preferred

thereafter by the petitioner was also dismissed. Hence, this petition.

5. These orders are assailed on the ground of violation of principles of natural justice, as he was not afforded opportunity to defend himself during the departmental enquiry proceedings. It is further argued that the findings are based on no evidence and the order of removal was passed without application of mind. It is stated that complainant and his wife later on submitted an affidavit before the enquiry officer, stating that the petitioner has not committed any offence, but the same was not considered. Lastly, it was also argued that the punishment is disproportionate to the misconduct alleged.

6. Per contra, the stand of respondent is that reply to the charge sheet filed by the petitioner on 10.05.2003, was not found satisfactory. The departmental enquiry was conducted in accordance with law. The petitioner was given opportunity to cross-examine the witnesses and also to produce the witnesses in defence, but he elected not to examine them, nor produce any witness in his defence. The enquiry officer concluded the enqiry and submitted his report, wherein he found the charge of misconduct as proved, to the Superintendent of Police. It is pointed out that copy of this enquiry report was sent to petitioner

to submit his objections. Petitioner, however did not submit any objection despite being afforded an opportunity.

7. Learned counsel for the State pointed out that only for determining the quantum of punishment, the S.P. has examined the previous record of the delinquent/petitioner and after giving careful consideration to the fact that petitioner in 17 years of his career, has been subjected to 28 minor and 2 major punishments as against 36 rewards, most of the which were with regard to dereliction of duty, unauthorised absence, drinking alcohol on duty and misbehaviour with the superiors, decided to impose major punishment of removal from service. It is stated that despite being given a number of opportunities, he failed to learn a lesson and indulged in similar misconducts, which makes it evident that he is incorrigible and no improvement can be expected in his conduct. Under such circumstances, no interference is required in the order.

8. Having heard the learned counsel for the parties and on perusal of the record of departmental enquiry, it is observed that holding disciplinary proceedings against a government employee and imposing a punishment on his being found guilty of misconduct under the rules is in the nature of quasi judicial proceedings and therefore, principles of natural justice required to be observed strictly and the enquiry is required to be conducted

fairly and reasonably and the enqurity report must contain reason for reaching the conclusion that charge framed against the delinquent stood proved against him. In the present case, during departmental enquiry, statement of Harish Chandra Rajak and Subhadra Bai were recorded. Subhadra Bai has stated that she had some family dispute with Harish Chandra Rajak and was living separately. On 09.04.2002, while she was going back from work, Harish Chandra Rajak saw her and came running after her with a knife, this incident was seen by present petitioner, who while trying to save her, had slapped Harish Chandra. The MLC report with the enquiry record shows that complainant sustained simple injuries, i.e., contusions and abrasions and nosebleed. The complainant, though reiterated his allegations, in chief examination, but in his cross-examination, has admitted that he was beaten up by the public and the petitioner tried to intervene and save him. The enquiry officer, however, did not believe the explanation given by the petitioner and the statement of Subhadra Bai, and instead relied on the statement of the complainant and recorded a finding to that effect holding the petitioner guilty of misconduct and submitted his report.

9. The Disciplinary authority, S.P. concurred with the enquiry report and considered the injuries caused to complainant, grievous in nature, which incidentally is contrary to the MLC

report, which shows only simple injuries and rejected the explanation or version given by the petitioner, for the reason that instead of bringing the complainant to police station, he took action on his own and slapped him. The S.P. has heavily relied upon the past conduct of the petitioner for considering the proportionately of the punishment, though it had not been a part of charge sheet nor the petitioner was informed of the same while issuing the show cause notice, giving him opportunity to make representation /objection against the enquiry report. The S.P. found him guilty of grave misconduct and imposed the major punishment of removal from service. The same was unfortunately upheld by the appellate authorities.

10. In the order dated 30.09.2003, the reason for giving major punishment of removal from service was that earlier he had committed similar misconduct and was punished. These circumstances on which the S.P. heavily relied for infliction of punishment of removal were not put to the petitioner for being explained by him. Further, the show cause notice which was issued to petitioner on 28.07.2003 asking to submit reply within 7 days received by him on 30.07.2003, did not mention the proposed punishment. A government employee cannot be punished for his acts or omissions unless the said act or omissions are subject to specific charge and are enquired into in accordance with law. If

the previous record is considered in inflicting the punishment of removal from service, the facts that form the basis of that punishment should be disclosed in the show cause notice to give an opportunity of hearing to the government employee to explain his earlier conduct or to show that he has not been guilty of any misconduct so as to merit the extreme punishment of removal and any of the lessor punishment ought to have been sufficient.

11. This aspect was also considered in **State Of Mysore vs K. Manche Gowda, 1964 SCR(4) 540** wherein the Supreme Court has referred to the case of **Nagpur High Court in Gopalrao Vs. State (ILR 1954 Nagpur 90)**, where in the previous record of a government servant was taken into consideration in awarding punishment without bringing the said fact to his notice and giving him a reasonable opportunity of explaining the same and the High Court has observed:

> *"Normally, the question of punishment is linked up with the gravity of the charge, and the penalty that is inflicted is proportionate to the guilt. Where the charge is trivial and prima facie merits only a minor penalty,, a civil servant may not even care to defend himself in the belief that only such punishment as would be commensurate with his guilt will be visited on him. in such a case, even if in the show cause notice a more serious punishment is indicated than what the finding of guilt warrants, he cannot be left to guessing for himself what other possible reasons have impelled the proposed action. It is not, therefore, sufficient that other considerations on which a*

higher punishment is proposed are present in the mind of the competent authority or are supported by the record of service of the civil servant concerned. In a case where these factors did not form part of any specific charge and did not otherwise figure in the departmental enquiry, it is necessary that they should be intimated to the civil servant in order to enable him to put up proper defence against the proposed action."

The Supreme Court has further observed in para 7 thus :-

7. Under Article 311(2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the State of Assam v. Bimal Kumar Pandit(1). If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed

on him or that he knew of his past record. This contention misses the real point, namely, that what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact .was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer (1) [1964] 2 S.C.R. 1.for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an Opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

Further in para 8, it has been held that :-

> *8. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made a specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it, relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.*

12. The Supreme Court in the case of **Nicholas Piramal India Limited Vs. Harisingh (2015) 8 SCC 272** has held that nothing in law prevents the punishing authority from taking the past record of the delinquent employee into consideration at the stage of punishment rather than to that of guilt. But what is essential is that the employee shall be given a reasonable opportunity to know that fact and meet the same.

13. In (2010) 10 SCC 539 **Mohd.Yunus Khan vs State Of U.P. and others** the Supreme Court held thus **:-**

> *33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.*

14. In the present case, the charge of misconduct was found proved by the enquiry officer. The findings of the enquiry officer was accepted by disciplinary authority (S.P.), who served the show cause notice on the petitioner on 30.07.2003, therefore, the punishment of misconduct could only have been imposed in consonance with the statutory rules and principles of natural justice. The show cause notice served on petitioner does not mention the proposed punishment nor does it mention that the S.P. intended to take his previous punishment/past record into consideration in proposing to remove him from service. If the authority intended to relied upon the past record of the petitioner for imposing a punishment, the same should have been made a specific charge in the first stage of enquiry itself and if it is not done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the

punishment, as the petitioner/delinquent employee should be given a reasonable opportunity to know the fact and meet the same.

16. It is evident that the disciplinary authority while imposing the punishment was guided by the past record of the petitioner, which was not a part of charge sheet nor put to the notice of the petitioner. In the present case, the petitioner was charged with having remained absent from duty unauthorizedly and assaulting the complainant in public. The MLC of the complainant showed that he sustained simple injuries. It was not such a grave misconduct, which merits the harsh punishment of removal from service, which is totally disproportionate to the misconduct alleged.

17. For the reasons aforestated, the order of removal from service cannot be sustained. Resultantly, the impugned orders dated 30.09.2003, 05.02.2004 and 09.07.2004 are hereby set aside and the petitioner is reinstated. Since this matter is pending before this Court for the last 18 years, the respondents are directed to reinstate the petitioner within four weeks from the date of receipt of certified copy of this order and compute 50% back-wages payable to him from the date of his removal from service till the date of reinstatement.

18. The petition stands allowed to the extent indicated hereinabove.

(Nandita Dubey)
Judge
10/01/2023

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