IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT APPEAL No. 287 of 2009

SHIV KUMAR DUBEY

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....

Appearance:

Shri Shreyash Pandit – Advocate for appellant.

Shri Ritwik Parashar – Government Advocate for the respondent – State.

.....

O R D E R

(Reserved on : 24.04.2025)

(Pronounced on : 13.05.2025)

Per*: *Hon'ble Shri Justice Vivek Jain.

The present intra-court appeal has been filed under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 arising out of the order dated 18.11.2008 passed by learned Single Judge of this Court in W.P. No.9814/2003, whereby the penalty of dismissal from service awarded to the appellant/writ petitioner has been confirmed and the writ petition has been dismissed.

2. It is contended by learned counsel for the appellant while assailing the order of dismissal from service that the writ petitioner was working as

Constable in M.P. Police and was appointed in the year 1981. In the year 1993, when he was posted in Police Line, Jabalpur his father got seriously ill in November, 1993 and the appellant submitted an application for leave on 08.11.1993 to the Reserve Inspector, so that he could take care of his father and take him for medical assistance. He was told that he should attend duties on 09.11.1993 and may take his father to Doctor after 10.11.1993. Incidentally, his father shortly thereafter expired on 14.11.1993.

3. On 09.11.1993, the appellant and another constable namely Jagendra Singh were allotted duty for taking four accused persons namely, Ashok, Murat, Sitaram and Ashok (two accused were named Ashok) to the Court of Seventh Additional Sessions Judge, Jabalpur. They brought the said four accused persons from the Central Jail, Jabalpur to Sessions Court, Jabalpur on foot and after depositing the warrant of the accused persons in the Court, they started waiting for their call in the Court. The other Constable, Jagendra Singh went to take lunch and petitioner alone remained on duty guarding the accused. In between one accused Sitaram told the petitioner/appellant that he is suffering from dysentery and wanted to attend the call of nature. The petitioner had asked him to wait till the other Constable comes back and on return of said other Constable namely Jagendra Singh, the petitioner/appellant informed him about the request of accused Sitaram and after obtaining a separate chain from Roopkari In-charge Nathulal, the petitioner chained accused Sitaram in separate chain and handcuff and took him to toilet situated in the Court premises after intimating Jagendra Singh.

4. It is further contended that accused Sitaram went inside the toilet and petitioner/appellant stood outside the door to guard him, but after sometime the door of the toilet suddenly banged against the head and face of the petitioner and as a result, he fell down and lost his senses for some time i.e. for one or two minutes and when he recovered from this shock, he immediately checked the

toilet and found that the accused had fled. Despite searching for him at all nearby places and in the Court premises, he could not find the accused Sitaram, then he rushed to fellow Constable Jagendra Singh and intimated about the happening and the higher authorities were intimated.

5. It is also contended that his repeated requests to get his own medical examination carried out were not acceded to by the authorities in which the injuries received by him as a result of blow of toilet door could have been brought out. An FIR was lodged against him under Section 222/224 of I.P.C. and he was produced before the Magistrate who enlarged the petitioner/appellant on bail bond on 10.09.1993. Thereafter, he went to attend his ailing father, who expired on 14.11.1993. After return to duty, he was handed over a charge sheet dated 06.12.1993 on 17.12.1993, wherein charge was leveled that he willfully aided accused Sitaram to abscond from custody and exhibited doubtful conduct and negligence from duties by taking accused Sitaram separately by himself to attend Court date.

6. It is further contended that the departmental enquiry suffered from various technical and legal defects and thereafter, an order of dismissal from service was passed on 31.08.1994 while the co-delinquent Jagendra Singh, who was also charge-sheeted along with the petitioner was punished only with stoppage of one increment. Upon appeal being preferred against the said order of dismissal, the same was rejected vide order dated 17.10.1994 and mercy appeal was also rejected vide order dated 29.12.1994 by the Director General of Police. Thereafter, he filed O.A. No.2249/1995 before the M.P. State Administrative Tribunal, which thereafter was abolished in the year 2003 and the case was transferred to this Court as W.P. No.9814/2003 that was ultimately decided on 18.11.2008 by learned Single Judge and the writ petition was dismissed by upholding the penalty of dismissal from service.

7. It is vehemently argued by learned counsel for the appellant that looking to the conduct of the petitioner in the matter, in fact no misconduct is made out, because it was the case of four accused persons being entrusted into custody of two Constables and one of the accused persons being brought to toilet to attend the call of nature and he banged the toilet door against the petitioner and fled from the custody of the petitioner, which cannot be said to be negligence or misconduct of the petitioner, but only an untoward event arising during the course of duties of the petitioner. It is further argued that even if any misconduct is said to be made out from the alleged incident in question in the manner happened, then the punishment of dismissal is shockingly disproportionate, because it could not be proved in the enquiry that the petitioner was conspiring with or was hand in gloves with the accused Sitaram or he had conspired with the said person to abscond from custody. Therefore, it is argued that the case is not a fit case to award the penalty of dismissal, which is shockingly disproportionate looking to the facts of the case and neither the departmental authorities of the force nor the learned Single Judge adverted on that aspect.

8. It is argued that now the petitioner/appellant has passed the age of superannuation and is nearly 67 years old and therefore; alternatively this Court may interfere in the quantum of penalty and also that though the dismissal is of the year 1993, but the petitioner/appellant has been litigating since 1995 immediately after his mercy appeal was rejected and he is in litigation for the last 30 years. It is further argued that the criminal trial under Section 222 of I.P.C. initially ended in conviction of the petitioner with sentence of three months R.I. vide judgment dated 28.04.2004 passed by the J.M.F.C., but in appeal the 12th Additional Sessions Judge, Jabalpur in Cr.A. No.160/2004 vide judgment dated 28.02.2006 has acquitted the petitioner. Therefore, this aspect

also requires to be taken into consideration as the Departmental Enquiry and the Chargesheet were on same set of facts.

9. *Per contra*, it is vehemently argued by learned Government Advocate for the State that the present case pertains to departmental enquiry and subsequent major penalty of dismissal from service, which was awarded to be appellant on 31.08.1994 and that in writ jurisdiction neither the evidence can be re-appreciated by the High Court exercising judicial review nor the appellant has failed to point out any illegality or lapses in the departmental enquiry proceedings and therefore, learned Single Judge has rightly rejected the writ petition, because neither there is any jurisdictional defect nor violation of principle of natural justice in the matter of enquiry and consequential penalty imposed on the petitioner.

10. It is further argued that the escape of prisoners from custody is a serious lapse on the part of member of police force and by relying upon the case of ***Secy. to Govt., Home Deptt. v. Srivaikundathan, (1998) 9 SCC 553***, it is argued that allowing the prisoners to escape from the custody of police personnel is a serious offence and misconduct and the penalty should not be interfered with by this Court.

11. Heard learned counsel for the parties.

12. The case of the petitioner/appellant is that the accused Sitaram, who escaped from the custody was merely an untoward event that occurred during the course of the duties of the petitioner without any wilful or overt act of the petitioner and it is also not in dispute that the escaped accused Sitaram was rearrested on the following day itself. We have perused enquiry report placed on record as Annexure A-4. The Enquiry Officer held that once all the four accused persons were in single handcuff, then for what purpose the appellant took separate handcuff and chain from Head Constable, Nathulal and once all the

accused persons were brought to attend the Court proceedings, then all the accused persons were to have been produced together before the Court. The Enquiry Officer in his findings has not considered the defence of the petitioner that he had taken the accused Sitaram separately to attend the call of nature, though in his deposition before the Enquiry Officer as has been duly quoted by the Enquiry Officer in his enquiry report, the petitioner had stated that the accused Sitaram was complaining of having been down with dysentery and was asking to be taken to toilet to answer the call of nature. However, Enquiry Officer has noted in the enquiry report that since the key of the handcuff was with the present appellant, therefore, it does not appear plausible that the accused would have opened the handcuff and fled away.

13. The Enquiry Officerhas only expressed apossibility and on these surmises and conjectures, has held that since the key of handcuff was still with the petitioner/appellant, it cannot be inferred that the accused Sitaram was handcuffed by him and it appears that he aided and abetted the accused Sitaram to flee from custody. However, the Enquiry Officer seems to have not considered the position that both hands of a convict cannot be handcuffed together once he is being taken to toilet to answer the call of nature. At the most, it could have been the case that one part of the chain of the handcuff might have been held by the petitioner standing outside the toilet door. In such situation, after banging the toilet door on the head of the petitioner, it was possible for the accused to have fled when the petitioner might have lost grip on the other side of handcuff chain after being hit on the head by toilet door. It is also not in dispute that the said accused person was nabbed on the very next date. During the course of enquiry, apart from probability that the petitioner might have willfully aided the accused Sitaram in fleeing from custody, nothing was brought on record that how the petitioner aided and abetted the accused Sitaram to flee from police custody. Though in Departmental Enquiry, preponderance of

probability is the test, and not strict proof, yet, inference based on preponderance may be invoked only if all the circumstances only point towards the implicacy of the delinquent. However, in the present case, it was a mere inference of the Enquiry Officer, and other views were also possible.

14. It could be a case of lack of alertness on the part of the petitioner and not properly standing guard to prevent the attempt made by the accused Sitaram to flee from police custody. However, from the manner in which the incident seems to have occurred, there seen to be no ingredients of any conspiracy of the present petitioner to aid and abet the accused Sitaram to flee from police custody. Even the Enquiry Officer did not come across any such evidence during course of the enquiry and only taking note of the fact that the accused Sitaram was separately taken in a separate handcuff, he has held that the petitioner indulged in elusive practice,though, he did not doubt that accused Sitaram was demanding to answer the call of nature and was complaining to have suffered from dysentery.

15. So far as reliance on the judgment in the case of ***Srivaikundathan(supra)*** is concerned, in the said case it was duly brought out in the enquiry proceedings on the record that the police personnel, who accompanied prisoners to attend Court proceedings allowed the prisoners to unauthorizedly go to their native village, visit their relatives and concubine and also that the Constables left their rifles at some other place. It was in such circumstances and in view of such facts that the Hon'ble Supreme Court held that the punishment of removal from service is infact a lesser punishment. It was in view of the said peculiar facts of the case and the position that the accused persons were life convicts were being allowed to enjoy a private visit to their village on the pretext of attending Court proceedings. However, in the present case looking to the material placed on record, in our opinion though

some carelessness or lack of alertness in the course of duties is duly brought out from record, but it does not seem to be such a conduct, which may entail the maximum penalty of dismissal from service, which, to our opinion seems to be shockingly disproportionate. This is because the act of the petitioner/appellant though amounts to misconduct but does not amount to misconduct of a nature that may warrant removal of the member of service because it cannot be said that the act of appellant-writ petitioner was such which was incorrigible. Thus it appears to us that the act of the appellant though amounts to misconduct that too major misconduct, but it may not warrant removal of appellant from service because there was always a possibility of appellant correcting himself

16. Apart from that, the other Constable, who had accompanied the accused persons, i.e. Jagendra Singh has been inflicted with a lesser penalty of withholding of one increment. The said factor is required to be taken into consideration, though the petitioner cannot absolutely claim parity with Jagendra Singh, because the accused escaped from the immediate custody of the present appellant and not from of Jagendra Singh.

17. So far as the subsequent acquittal of the petitioner in criminal case under Section 222 of I.P.C. is concerned, the said acquittal is on technical ground of absence of sanction for prosecution and not on merits, therefore, the said acquittal has no relevance either for or against the petitioner/appellant so far as the present case is concerned. However, as we have already held above, the punishment looking to the facts of the case and the findings of the Enquiry Officer seems to be shockingly disproportionate.

18. The Supreme Court in the matter of punishment being shockingly disproportionate has considered the scope of jurisdiction in judicial review in the case ***of Delhi Police Through Commissioner of Police and others Vs. Sat Narayan Kaushik (2016) 6 SCC 303*** and ***Union of India and others Vs. Ex.***

Constable Ram Karan (2022) 1 SCC 373. In the case of ***Sat Narayan Kaushik (supra)***, it has been held that the High Court can interfere with the quantum of punishment in an appropriate case after considering the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left, etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of the punishment. In the case of ***Ex Constable Ram Karan (supra)***, after considering paragraph-18 of the three-judge Bench judgement in the case of ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749,*** it has been held that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court, it could appropriately mould the relief and to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

19. It is not in dispute that the petitioner/appellant now more than 65 years of age and would have superannuated from service many years ago. Therefore, it is not a fit case to remand the matter back to the Departmental authorities to award any other punishment. More so, when he has been litigating in the matter since the year 1995 i.e. last 30 years and remand after such a long period of litigation is not at all in the interest of justice. Therefore, in our opinion, it is a fit case wherein we ourselves substitute the appropriate penalty by interfering in the quantum of punishment. Therefore, in our considered opinion, the interest of justice would be met, if the punishment of dismissal from service is replaced with punishment of withholding four increments **with** cumulative effect.

20. As 31 years have elapsed since the date of dismissal and the remaining length of service was almost 25 years on that date, therefore, in our

considered opinion, interest of justice would be met, if the petitioner is awarded 25% back wages from the date of termination till the date of superannuation and thereafter, he shall be entitled to full pensionary benefits as permissible under the law. The entire dismissal period would however, be counted for other purposes like length of service etc. and other consequential benefits.

21. Let necessary calculation be carried out and payment be released to the petitioner/appellant within two months from the date of production of certified copy of this order.

22. Writ appeal is **allowed** and **disposed of.**

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

rj/nks