

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**JUSTICE SUJOY PAUL**

**ON THE 17<sup>th</sup> OF AUGUST, 2023**

**WRIT PETITION No. 13018 of 2010**

**BETWEEN :-**

**RAVINDRA KUMAR RAJNEGI S/O LATE  
SANT RAM RAJNEGI, AGED ABOUT 37  
YEARS, CONSTABLE TRAFFIC POLICE  
STATION JABALPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI DINESH UPADHYAY - ADVOCATE )***

**AND**

**1. THE STATE OF MADHYA PRADESH,  
DEPARTMENT OF HOME (POLICE)  
TH. ITS PRINCIPAL SECRETARY,  
VALLABH BHAWAN BHOPAL  
(MADHYA PRADESH)**

**2. DIRECTOR GENERAL OF POLICE,  
P.H.Q. JAHAGIRABAD BHOPAL  
BHOPAL (MADHYA PRADESH)**

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

**4. SUPERINTENDANT OF POLICE  
JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI LALIT JOGLEKAR – GOVT. ADVOCATE FOR THE RESPONDENT /  
STATE )***

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*This petition coming on for hearing this day, the court passed the following:*

**ORDER**

With the consent of parties, finally heard.

2. The singular question involved in this matter is whether the respondents were justified in depriving the petitioner from the right of consideration for promotion on the post of Head-Constable in the year 2010 based on the reasons mentioned in para-3 of the return.

3. Indisputably, the petitioner filed the petition with the impression that he has been deprived from right of consideration to participate in the selection because respondents are not treating him as scheduled tribe/reserve category candidate. However, the respondents while filing return in (para-2) made it clear that petitioner was indeed treated as a reserved category candidate. The only impediment because of which petitioner was deprived from right of consideration is spelled out in para-3 of the return which reads as under :-

“3. As far as non-selection of the petitioner is concerned, it is submitted that eligibility criteria laid down in GOP No. 27/1997 prescribes that a candidate should be qualified for promotion in case he earns minor punishment more than the rewards in the last five years of tenure. In case of the petitioner, Selection Committee has gone through the service record of the petitioner and has found that the petitioner has earned four minor punishments against only one reward during his last five years of service tenure. Accordingly, case of the petitioner was not found worthy of further consideration for promotion.

The answering respondents undertake to produce record of the Selection Committee if and when so required. Copy of the GOP No. 77/1997 is annexed herewith as **Annexure R-2**”

**(Emphasis Supplied)**

4. The singular contention advanced by Shri Dinesh Upadhyay, learned counsel for the petitioner is that Chapter-VIII of **M.P. Police Regulations** (Regulations) prescribes ‘Punishment and Prosecution of Police Officers’. Section (I) deals with ‘Kinds of punishment’. By taking this Court to clause 214, 216 and 217 of the regulations it is urged that ‘*Ninda*’ is not a statutory punishment. Pertinently, even ‘censure’ is not a statutory punishment under the Regulations. Thus, the GOP 77/97 (Annexure R-2) and its clause (2) does not create any bar for the petitioner. Clause (2)(ब) deals with *punishments* and since respondents are unable to show that petitioner has undergone any punishment prescribed under the regulations, his deprivation from right of consideration is bad in law.

5. Per *Contra*, Shri Lalit Joglekar, learned G.A. for the State placed heavy reliance on para-3 of return and GOP No. 77/1997

6. The parties confined their arguments to the extent indicated above.

7. I have heard the parties at length and perused the record.

8. It is apt to reproduce the relevant clauses of Regulations, which read thus:

**“214. Punishment-Kinds of.**-Without prejudice to the provisions of any law or any special orders for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any member holding a post in a Subordinate Police Service:-

- (i) Withholding of promotion;
- (ii) Withholding of increments of pay including stoppage at an efficiency bar or stagnation allowance;
- (iii) Reduction to a lower post or time scale or reduction to a lower stage in the time scale of pay for a specified period with further direction as to whether or not the member of the Subordinate Police Service will earn increments of pay or the stagnation allowance, as the case may be, during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance;

**Note.** The expression "reduction to a lower stage in the time scale of pay" shall also include reduction of pay from the stage of pay drawn by a member of the Subordinate Police Service on account of grant of stagnation allowance if any.

- (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government or to any fund maintained for the welfare of the Police by negligence or breach of orders;

- (v) Removal from the service, which does not disqualify from future employment;
- (vi) Dismissal from the service, which ordinarily disqualifies for future employment;
- (vii) Suspension is not punishment;
- (viii) Compulsory retirement.

**217. Punishment of Constables.-** Constables may also be punished with-

- (a) Deprivation or withholding of increment (for a period not exceeding one year at any one time).
- (b) Extra fatigue duty, which should be restricted to the following tasks:-
  - (i) Tent pitching:
  - (ii) Drain digging:
  - (iii) Cutting grass, clearing jungle and cleaning parade ground:
  - (iv) Repairing huts and huts and similar work in the lines:
  - (v) Cleaning arms;”

**9.** The singular impediment shown by respondents is founded up on averments mentioned in para-3 of the return. The reason is that petitioner earned four minor punishments against only one reward during last five years of service and hence in the teeth of GOP No. 77/1997, he was rightly not considered.

**10.** I am unable to persuade myself with the line of stand taken by the State for the simple reason that if respondents are talking about

*punishments* inflicted on the petitioner, they must satisfy that the said orders of ‘*Ninda*’ are indeed statutory punishments under the Regulations. Learned Govt. Advocate could not point out any provision from the regulation which includes ‘*Ninda*’ or ‘censure’ as a punishment. It is trite that only a punishment prescribed in the rule can be treated to be a ‘punishment’ under the law. In **(2012) 5 SCC 242 (Vijay Singh v. State of U.P.)** it was held that-

“**20.** Unfortunately, a too trivial matter had been dragged disproportionately which has caused so much problem to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that (*sic* it cannot be left to) the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct. [See *Glaxo Laboratories (I) Ltd. v. Presiding Officer* [(1984) 1 SCC 1 : 1984 SCC (L&S) 42 : AIR 1984 SC 505] and *A.L. Kalra v. Project and Equipment Corpn. of India Ltd.* [(1984) 3 SCC 316 : 1984 SCC (L&S) 497 : AIR 1984 SC 1361] ]

**21.**Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim *nulla poena sine lege* which means that a person should not be made to suffer penalty except for a clear breach of existing law.”

The necessary corollary of the *ratio* of this judgment is that only such punishments can deprive the petitioner from right of consideration which are statutorily prescribed.

**11.** In this view of the matter, there was no valid reason to deprive the petitioner from the right of consideration for promotion. Right of consideration is not only a statutory right it is a fundamental right under the Constitution flowing from the Articles 14 and 16 of the Constitution (See : **(2022) 12 SCC 579 Ajay Kumar Shukla and Ors. Vs. Arvind Rai and Ors.**). The said right of petitioner is taken away for a reason which cannot sustain judicial scrutiny.

**12.** Resultantly, the respondents are directed to consider and permit the petitioner to participate in the selection process and if he is selected promote him from appropriate date as if petitioner had participated in the examination held on 28.08.2010. In the event petitioner is promoted, he shall get all the consequential benefits except the arrears of pay for the intervening period on the promotional post.

**13.** Petition is **allowed** to the extent indicated above.

**(SUJOY PAUL)**  
**JUDGE**