

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

Case No. Parties Name	WP. No.21426/2012 <i>Duryodhan Bhavtekar</i> <i>Vs.</i> <i>State of M.P. & Ors.</i>
Date of Order	07/08/2020
Bench Constituted	Single Bench
Order delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsels for parties	For Petitioner: Shri Sanjay K. Agrawal Advocate For respondents-State: Shri A.P. Singh, Deputy A.G.
Law laid down	1. M.P.C.S. (CCA & Pension) Rules, 1966- Rule 9(2)(a)- If the departmental enquiry is instituted when government servant was in service, it can continue in the same manner after his retirement. However, the punishment of dismissal cannot be imposed once the employee attains the age of superannuation. 2. C.C.A. & Pension Rules- The competent authority to punish an employee after his retirement is the authority mentioned in the pension rules and the disciplinary authority cannot inflict the punishment of dismissal from service. 3. Departmental Enquiry- further enquiry- As per judgment of this Court, the department was given option to conduct further enquiry and produced evidence against the petitioner. No fresh/further evidence was produced. Presenting Officer did not enter the witness box nor subjected himself for cross examination. He prepared a note on the strength of which the petitioner was held guilty. The course adopted is impermissible. It is a case of no legal evidence against the petitioner. 4. Relief- When termination is set aside because the employee is not held guilty of misconduct, backwages/ consequential relief

	can be granted. It cannot be granted as a rule of thumb in other cases where interference is further on technical grounds or employee is not exonerated on merits.
Significant paragraph numbers	15,16.17,18

O R D E R
(07.08.2020)

This petition under Article 226 of the constitution of India assails the order dated 16.09.2011 whereby Collector/Disciplinary Authority opined that previous order of punishment of dismissal from service dated 07.08.1997 was in accordance with law and therefore, restored. Petitioner is also aggrieved by appellate order dated 31.07.2012 (Annexure P/11) whereby appeal of the petitioner was dismissed by Commissioner, Jabalpur Division.

2. This is second visit of the petitioner to this Court based on the departmental enquiry which was initiated by issuing the charge-sheet dated 23.11.1993. After completing the said enquiry, punishment order dated 07.08.1997 was passed whereby the petitioner was dismissed from service. Aggrieved, petitioner filed Original Application No. 2738 of 1997 before M.P. State Administrative Tribunal, which was on its abolition, transferred to this Court and was renumbered as W.P.No.11747/2003. This matter was decided on 24.02.2009. The petition was allowed against which the State filed writ appeal no.49/2010, which was dismissed by the Division Bench of this Court.

3. Shri Sanjay K. Agrawal, Learned counsel for the petitioner by taking this Court to the previous order dated 24.02.2009 urged that this Court set-aside the punishment order dated 07.08.1997 (Annexure P/2 therein) and directed reinstatement of petitioner by reserving liberty to proceed with the enquiry from the stage of submission of enquiry report. The action of enquiry officer in relying on the statement of Shri A.K. Namdeo (which was collected behind the back of the petitioner) was disapproved and it was categorically directed to conduct enquiry from a particular stage.

4. The department by order dated 01.12.2010 appointed an Enquiry Officer and Presenting Officer. No witness entered the witness box in this round of

enquiry. Shri Agrawal urged that enquiry report dated 26.05.2011 (Annexure P/7) shows that the Presenting Officer prepared a written note regarding charge no.2 and opined that delinquent employee/petitioner has illegally drawn Rs.45,000/- from Group Insurance Scheme of deceased employee Nanuram (Peon), but did not pay it to his widow Jaivanta Bai. It is urged that neither Jaivanta Bai nor any person who was in the helm of affairs at the relevant time entered the witness box. The Presenting Officer had no knowledge about the incident. On the basis of his note, the Enquiry Officer illegally held the petitioner as guilty.

5. Learned counsel for the petitioner further urged that petitioner attained the age of superannuation on 30.06.1999. Impugned order dated 16.09.2011 was passed by approving the previous punishment order dated 07.08.1997. This could not have been done because the said order stood quashed by the order of this Court in W.P.No.11747/2003. After retirement of petitioner, no punishment order could have been passed by the Disciplinary Authority under the CCA Rules. The petitioner is suffering since 1993 for no fault on his part. Thus, while setting aside the impugned order of punishment, respondents be directed to provide all consequential benefits to the petitioner. Reliance is placed on **2007 (11) SCC 517, Kanailala Bera Vs. Union of India and others.**

6. Shri A.P. Singh, learned Deputy Advocate General opposed the said contention. He submits that in para no.9 of W.P.No.11747/2003 makes it clear that the liberty was given to Disciplinary Authority to take into account the further evidence by proceeding in the matter as per M.P.C.S. (CCA Rules) of 1966. In the light of this and liberty given by this Court, no fault can be found in the order dated 01.12.2010 whereby an Enquiry Officer and Presenting Officer was appointed. Reliance is placed on Rule 9 (2) (a) of M.P.C.S. (Pension) Rules, 1976 which provides that if an enquiry is instituted when government service employee was in service, same enquiry will continue even after his retirement.

7. Learned Deputy Advocate General further urged that charge no.2 alleged against the petitioner is very serious and the Enquiry Officer has rightly held

the petitioner as guilty. The Disciplinary Authority has not committed any error of law in imposing the punishment. The Appellate Authority has rightly rejected his appeal. No other point is pressed by the learned counsel for the parties.

8. I have heard the learned counsel for the parties at length and perused the record.

9. Before dealing with rival contentions, it is apposite to reproduce the relevant paragraph of the order passed in W.P.No.11747/2003 decided on 24.02.2009 which reads as under:-

“7. Considering the aforesaid grounds and reasons it is a fit case where the order of dismissal from service based on such a enquiry be quashed and the matter remanded back to the disciplinary authority to proceed from the stage of submission of enquiry report.

8. Accordingly, this petition is allowed. Order impugned Annexure P/2 dated 7.8.99 is quashed. It is directed that petitioner shall be reinstated and respondents are granted liberty to proceed with the enquiry from the stage of submission of enquiry report. That apart the finding of the enquiry officer so far as it is based on the material collected by him from District Nazir, Shri A.K. Namdeo, shall not be taken into consideration at all for proceeding against the petitioner and the enquiry from the stage of submission of enquiry report shall be based on the material collected by the enquiry officer in the enquiry conducted on 4.3.94, 2.4.94, 6.5.94 and 29.9.94 respectively and not on any other material after giving an opportunity to the petitioner to give his say on the report (except the evidence collected through Shri A.K. Namdeo). Respondents shall proceed to pass final orders in the departmental enquiry. The aforesaid exercise shall be completed within a period of three months from the date of receipt of certified copy of this order. The question of regularizing the intervening period and payment of salary for the said period shall be decided while passing the final order in the matter after concluding the proceedings as directed herein above. Petitioner shall be deemed to have been reinstated in service, and in case he has attained the age of superannuation enquiry shall continue as if it is being held against the retired employee and penalty as is permissible to be imposed on a retired employee shall only be imposed against the petitioner.

9. However, while reconsidering the matter with effect from the state of submission of report by the enquiry officer in case the disciplinary authority feels that further evidence is required to be

taken, the disciplinary authority is free to proceed in the matter in accordance to the statutory provisions contained in this regard in the Rules of 1966.

10. Petition stands allowed and disposed of with the aforesaid without any order so as to costs.”

10. A plain reading of this order makes it clear that this Court has given two options to the department; (i) to proceed against the petitioner by supplying him copy of enquiry report and take a decision thereupon without considering the statement of Shri A.K. Namdeo, which was collected behind the back of the petitioner; and (ii) if the Disciplinary Authority feels that further evidence is required to be taken, he is free to proceed as per CCA Rules, 1966.

11. Since the Disciplinary Authority appointed new Enquiry Officer and Presenting Officer by order dated 01.12.2010 (Annexure P-5/A), it is clear like noonday that they have given up the first option to proceed on the basis of previous enquiry report. Thus, previous report, in my opinion, pales into insignificance.

12. In the teeth of Rule 9(2)(a) of Pension Rules, which as per learned Dy. A.G. was considered in WP. No.3719/06 (*Saroj Kumar Shrivastava vs. State of M.P.*), there is no doubt that it is the prerogative of the employer to continue with the same enquiry, if the charge sheet was issued when government servant was in employment. In this view of the matter, no fault can be found in the order dated 01.12.2010 (Annexure P-5/A).

13. The new Enquiry Officer conducted the enquiry in which neither the complainant Jaiwanta Bai entered the witness box nor any other witness entered the witness box. The Presenting Officer prepared a written note and submitted before the Enquiry Officer. The ‘conclusion’ drawn by Enquiry Officer is solely founded upon the note so prepared by the Presenting Officer. The Presenting Officer was not a listed witness. He had no personal knowledge about the incident. He did not enter the witness box and offered himself for cross examination. He did not prove any document. In this

backdrop, this enquiry report solely founded upon the note of Presenting Officer cannot be countenanced.

14. Interestingly, the Collector Balaghat passed the order dated 16.09.2011. I find substance in the argument of Shri Agrawal that once the previous order of punishment dated 07.08.1997 was set aside by this Court in the previous round of litigation, it was no more open to the Disciplinary Authority to give it validity and upheld it. He also could not have passed a fresh punishment order because as per Pension Rules, this could have been done only by the Governor/Competent Authority under the Pension Rules. In other words, the Disciplinary Authority has no power to dismiss the employee after his retirement. The punishment of dismissal can be imposed when an employee is on the rolls of the department.

15. In view of foregoing analysis, it is clear like a cloudless sky that in the second enquiry pursuant to order dated 01.12.2010 (Annexure P-5/A), no further evidence could be produced before the Disciplinary Authority. This Court in Para 9 of the judgment of WP. No.11747/03 granted liberty to deal with further evidence.

16. As noticed, previous enquiry has lost its complete shine and in the further enquiry, no evidence could be produced. The question is whether in a case of this nature, the matter should be remanded back to the department to conduct a further enquiry. In the fact situation of this case, it will be travesty of justice, if the petitioner is again relegated to face the departmental enquiry. More so, when in further enquiry no further evidence could be produced. Thus, it is a case of no evidence against the petitioner and, therefore, it cannot be said that enquiry stood vitiated only because of violation of principles of natural justice or it suffered with technical error only. On merits also the department could not produce any legal evidence to substantiate the charges. For these cumulative reasons, I am not inclined to remit the matter after about 27 years from the date of issuance of charge sheet.

17. The judgment of Apex Court in *Kanailal Bera* (supra) is relied upon for the purpose of grant of consequential benefits. In the said judgment, the Apex Court made it clear that it should not be treated as a precedent. Hence, the said judgment is of no assistance to the petitioner

As analyzed above, the punishment order dated 16.09.2011 and appellate order dated 31.07.2012 cannot sustain judicial scrutiny. At the cost of repetition, it is held that it is a case of no legal evidence against the petitioner. In this backdrop, the petitioner is entitled to get all consequential benefits. Reference may be made to the judgment of Supreme Court reported in *(2007) 2 SCC 433 (J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr.)* wherein the Apex Court opined that grant of backwages/consequential benefits does not flow as a natural or necessary consequence of interference in the punishment order. However, there are two exceptions. First is where the Court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the enquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him.

Present case is covered by the first exception aforesaid. This Court for the reasons stated hereinabove held that there was no legal evidence against the appellant held in guilty. Hence, all consequential benefits are directed.

18. Resultantly, the respondents shall provide all consequential benefits to the petitioner as if he was never subjected to any departmental enquiry. The said benefits shall be provided to the petitioner within 90 days from the date of production of copy of this order.

19. The petition is allowed.

(SUJOY PAUL)
JUDGE