HIGH COURT OF MADHYA PRADESH : JABALPUR

Case No.	**W.P. No.7187/2012**
Parties Name	Madan Mohan Dwivedi **Vs.** The State of M.P. and others
Date of order	28th April, 2022
Bench Constituted	**Justice Vivek Agarwal**
Order passed by	**Justice Vivek Agarwal**
Whether approved for reporting	**Yes**
Name of counsel for parties	Shri Shailesh, learned counsel for the petitioner. Shri Subodh Kathar, learned Govt. Advocate for the respondents.
Law laid down	**1.** *Reasonable opportunity does not mean that petitioner could have slept over notice for a period of more than six/nine months whereas he was obliged to submit his reply within 15 days. This act of the petitioner itself amounts to indiscipline, therefore, in the opinion of this Court, it cannot be said that Rules of natural justice have been by-passed.* ***2****. For imposing a minor penalty, consultation with Public Service Commission is not mandatory.* ***3.*** *Whether recommendations of enquiry officer/disciplinary authority is mandatory for the appellate authority to accept-* ***'No'***
Significant paragraph numbers	**14, 17, 18 & 19**

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 28th OF APRIL, 2022

WRIT PETITION No. 7187 of 2012

Between:-
MADAN MOHAN DWIVEDI S/O SHRI LATE DR. C.P. DWIVEDI, AGED ABOUT 55 YEARS, ASSISTANT CONSERVATOR OF FOREST, RESEARCH AND EXTENSION FOREST CIRCLE REWA, DISTT. REWA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SHAILESH TIWARI, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE P.S. MADHYA PRADESH FOREST DEPT., VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **PRINCIPAL CHIEF CONSERVATOR OF FOREST MADHYA PRADESH FOREST DEPTT. SATPURA BHAWAN, BHOPAL, (MADHYA PRADESH)**
3. **CHIEF CONSERVATOR OF FOREST FOREST CIRCLE, REWA, (MADHYA PRADESH)**
4. **DIVISIONAL FOREST OFFICER TERRITORIAL FOREST DIVISION, EAST, SIDHI-SINGRAULI. (MADHYA PRADESH)**
5. **THE M.P. PUBLIC SERVICE COMMISSION, THROUGH ITS SECRETARY, PUBLIC SERVICE COMMISSION OFFICE RESIDENCY AREA, INDORE, M.P. (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SUBODH KATHAR, GOVT. ADVOCATE

This writ petitions has come up for hearing on admission on this day, the court passed the following :

ORDER

Petitioner has raised three issues in this writ petition namely, petitioner was given a show cause notice dated 22.04.2009, Annexure P-1, which was admittedly received by him on 06.06.2009 but he filed reply on 15.01.2010.

2. It is submitted that though reply was submitted on 15.01.2010 it was not considered and impugned order dated 03.03.2010 was passed.

3. Issue which is raised is that whether authorities are required to consider a reply even filed belatedly after more than seven months of receiving the show cause notice or not ?

4. Second issue which has been raised is that as per the provisions contained in Rule 16(1)(e) whether consultation with the Public Service Commission while imposing minor penalty of stoppage of two increments

without cumulative effect was mandatory or not ?

5. Third issue which is ancillary is that the disciplinary authority himself had recommended to the appellate authority to convert punishment of stoppage of two increments without cumulative effect to that of censure. Thus whether the recommendation of the disciplinary authority to the appellate authority is binding or not ?

6. Another subsidiary issue is whether proper opportunity of hearing was given to the petitioner or not ?

7. It is evident from the impugned order, Annexure P-3 that petitioner was not furnishing acknowledgment of the receipt of the show cause notice dated 22/04/2009 till 23/09/2009 which was received from him on 04.01.2010 as was forwarded by the Conservator of Forest. In Annexure-P/3 it is mentioned as under :

> ''उक्त पत्र श्री द्विवेदी, सहायक वन संरक्षक द्वारा दिनांक 23.9.09 को मुख्य वन संरक्षक रीवा के माध्यम से प्राप्त किया गया, इस कार्यालय द्वारा जारी पत्र में स्पष्ट उल्लेख था कि वे बचाव उत्तर पत्र पावती से 15 दिवस की अवधि में

निश्चित रुप से प्रस्तुत करें, किन्तु उनका बचाव उत्तर आदिनांक तक इस कार्यालय में प्राप्त नहीं हुआ और न ही बचाव उत्तर प्रस्तुत करने के प्रयोजन से सुसंगत अभिलेख अवलोकन करने के संबंध में कोई आवेदन प्राप्त हुआ।

4. प्रकरण में मुख्य वन संरक्षक अनुसंधान विस्तार वृत्त रीवा द्वारा उनके पत्र क्रमांक/अनु.वि./वि.जां./21 दिनांक 4.1.2010 से श्री द्विवेदी द्वारा प्राप्त किये गये उक्त पत्र की पावती प्रेषित की गयी है। मुख्य वन संरक्षक अनुसंधान विस्तार वृत्त रीवा के पत्र के साथ प्राप्त सहपत्रों के अवलोकन से स्पष्ट होता है कि श्री द्विवेदी को पत्र की पावती भेजने हेतु वनमंडल अधिकारी सिंगरौली द्वारा उनके पत्र दिनांक 6.6.09 से लेख किया गया था किन्तु पावती न भेजने पर मुख्य वन संरक्षक रीवा द्वारा पुनः स्मरण कराये जाने पर मुख्य वन संरक्षक रीवा के पत्र पर ही श्री द्विवेदी द्वारा पावती दी गयी है। प्रकरण में श्री द्विवेदी द्वारा पावती दी गयी है। प्रकरण में श्री द्विवेदी का बचाव उत्तर अप्राप्त होना तथा उनसे कोई पत्राचार प्राप्त न होने से यह मानकर कि श्री द्विवेदी को अपने बचाव में कुछ नहीं कहना है तथा उनको लगाया गया आरोप मान्य है, उनके ऊपर लगाये गये आक्षेप के संबंध में उनका उत्तरदायित्व निर्धारित किया जाता है।

अतः प्रकरण में समग्ररुप से विचारोपरान्त में आदेश देता हूं कि :–

//आदेश//

भोपाल,दिनांक 3.3.2010

क्रमांक //100// श्री एम.एम.द्विवेदी, सहायक वन संरक्षक, उप वनमंडल अधिकारी कर्थुआ को मध्य प्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम 1966 के नियम

10 (4) के अंतर्गत आगामी दो वेतनवृद्धियां असंचयी प्रभाव से रोके जाने के दण्ड से दण्डित किया जाता है।"

8. Shri Shailesh Tiwari, learned counsel for the petitioner, has raised several grounds to assail impugned orders; namely; there is no provision for imposition of punishment on the ground of non-submission of daily diary. It is submitted that impugned order is contrary to the provisions of Rule 10 and Rule 16 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and the impugned order has been passed with mala fide intention without going through the reply.

9. It is also submitted that there is no consultation/approval of the M.P. Public Service Commission before issuance of the impugned orders, therefore, on this ground alone the petition deserves to be allowed. Lastly it is submitted that petitioner had an unblemished career, therefore, the order of punishment is perverse.

10. Shri Subodh Kathar, learned Govt. Advocate, in his turn, submits that impugned order of punishment was passed on 03/03/2010 and thereafter appeal was rejected by respondent No.1 vide order dated 20/12/2011. It is submitted

that authorities were not required to consider the reply of the petitioner submitted after considerable unexplained delay. The daily diary is an important document to have administrative control over the activities of a Sub Divisional officer (Forest)/Assistant Chief Conservator of Forest, a post on which petitioner was working to have effective control over the activities of the SDO (Forest). Petitioner has admitted that he had not completed the case diary in time. As per the Office working, daily working diaries of the executive officers are required for valuation of their duties, work, performance. It is submitted that show cause notice was issued on 22/4/2009. Notice was acknowledged by the petitioner on belatedly but he had not submitted his reply. Thus, minor penalty of stoppage of two annual increments without cumulative effect was imposed under Rule 10(4) of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as 'CCA Rules, 1996").

11. It is submitted that there is delegation of authority in terms of sub-rule (2) and (3) of Rule 12 of CCA Rules, 1966 on the Chief Conservator of Forest as is evident from

Annexure-R/1 and, accordingly, punishment order was passed by the Chief Conservator of Forest.

12. Shri Kathar, learned Govt. Advocate, submits that as per requirement of Rule 16(1)(e), consultation with Public Service Commission is not mandatory. Authorities were not required to consider a belated reply. It is also submitted that opinion of the disciplinary authority was not binding on the appellate authority. Maintaining case diary is part of discipline and if it is not maintained as is admitted by the petitioner in his reply contained in Annexure-P/2, it amounts to indiscipline, thus, violation of Conduct Rules. In view of aforesaid, it is submitted that the writ petition is liable to be dismissed.

13. After hearing learned counsel for the parties and going through the record, it is evident that Rule 16 of CCA Rules 1966 in clause (1)(a) only requires informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

14. Words used are “giving him reasonable opportunity of making such representation.” Reasonable opportunity does not mean that petitioner could have slept over notice for a period of more than six/nine months whereas he was obliged to submit his reply within 15 days. This act of the petitioner itself amounts to indiscipline, therefore, in the opinion of this Court, it cannot be said that Rules of natural justice have been by-passed. It is true that authority acting as a quasi judicial functionary must act fairly, but, it does not give leeway to a delinquent employee to act as per his whims and fancy. In **Joseph Serverance and others Vs. Benny Mathew and others, (2005) 7 SCC 667**, it is held that what is ‘reasonable time’ depends upon the facts and circumstances of each case and is essentially a question of fact.

15. Similarly, in **Hick Vs. Raymond & Reid, (1993) AC 22**, it is held that there is no such thing as a reasonable time in the abstract. In the case of **B.N. Agarwalla Vs. State of Orissa, (1995) 6 SCC 509**, Hon’ble Supreme Court has held that ‘By a certain time’ may mean ‘before a certain time’ or ‘on or before a certain time’ depending upon the context. Thus, interpretation of reasonable time is that it should be

within the time prescribed in the notice. A perusal of the show cause notice (Annexure-P/1), reveals that petitioner was categorically asked to submit his reply within 15 days of receipt of show cause notice. Petitioner admittedly did not submit his reply to the show cause notice within prescribed time, therefore, it cannot be said that he had a right to get his reply considered. Accordingly, issue No.1 is answered that petitioner filing a reply after considerably long delay of receiving the show cause notice is not entitled to get his reply considered.

16. As far as second issue is concerned, as to whether the impugned order is vitiated on account of non-consultation with the Public Service Commission. This issue has been answered by Hon'ble Supreme Court in the case of **State of U.P. Vs. Mabodhan Lal Shrivastava, AIR 1957 SC 912**, wherein it is held that provisions of Article 320(3)(c) of the Constitution of India are not mandatory and non-compliance with those provisions does not afford a cause of action to civil servant in a Court of Law. They are not in the nature of rider or proviso to Article 311 of the Constitution of India. It is held that Article 320(3)(c) of the Constitution of India does

not confer a right on a public servant so that absence of consultation or any irregularity in consultation should not afford him a cause of action in a Court of Law or entitle him to relief under special powers of a High Court under Article 226 of the Constitution of India or of the Supreme Court under Article 32. It is held that it is not a right which could be recognized and enforce by a writ.

17. Even a plain reading of Rule 16(1)(e) makes it clear that consulting the commission is not obligatory. Freedom has been given in regard to proceedings under Rule 16 of CCA Rules, 1966 by use of language 'where such consultation is necessary'. Thus, for imposing a minor penalty, consultation with Public Service Commission is not mandatory. This aspect has also been considered by Hon'ble Supreme Court in the case of **Ram Gopal Chaturvedi Vs. State of M.P., AIR 1970 SC 158**.

18. Third issue is as to whether recommendations of enquiry officer/disciplinary authority is mandatory for the appellate authority to accept, answer is in clear term 'no'. In the case of **Ram Niwas Bansal Vs. State Bank of Patiala, 1998 (4) SLR 711 (P&H-FB)** wherein a Full Bench of

Punjab and Haryana High Court has held that appellate authority has to keep in mind three factors when an appeal is preferred to such authority :-

a) There should be proper application of mind scrutiny of the records before it, by the appellate authority to enable it to record its satisfaction in terms of the rules.

b) It should pass a speaking order which would at least *prima-facie* show that the authority concerned has applied its mind to the various contentions or points of determination raised before it. Further that it has particularly examined whether the penalty imposed is excessive and/or inadequate.

c) The scope of applicability of the maxim *Audi Alteram Partem* before the appellate authority depending upon the language of relevant regulation/rule.

19. Thus, requirement for the appellate authority have been laid down by Punjab and Haryana High Court, no where provides that opinion of disciplinary authority is binding on the appellate authority. When the order of appellate authority is tested in terms of the principles of law laid down in the case of **Ram Niwas Bansal (supra)**, then impugned order

cannot be faulted on the ground that opinion of the disciplinary authority was not taken into consideration. Accordingly, it is held that recommendation of the disciplinary authority is not binding.

20. This brings to the last question as to whether opportunity of hearing was given to the petitioner or not. It is evident from the impugned order (Annexure-P/7) itself that in para-3 of the impugned order it is mentioned that petitioner was called for personal hearing on 30th November, 2011 and he was heard in person. Thus, it is evident that petitioner was given fair opportunity of hearing at the time of appeal and on that ground also it cannot be said that petitioner has been discriminated.

21. In the case of **Chairman and Managing Director, United Commercial Bank and others Vs. P.C. Kakkar, (2003) 4 SCC 364**, it is held that unless punishment imposed by the disciplinary authority is shocking to the consignee of the Court/Tribunal, it is not subject to the judicial review. Similarly in the case of **Indian Oil Corporation Ltd. And another Vs. Ashok Kumar Arora, (1997) 3 SCC 72**, it is held that High Court does not exercise powers of appellate

Court/authority. Restating the scope of writ jurisdiction of High Court in such cases, it is held that jurisdiction of the High Court in such cases is very limited. For instance where it is found that domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or punishment is totally disproportionate to the proved misconduct of an employee.

22. Thus, when tested on above touchstone, then impugned order cannot be said to be disproportionate, arbitrary or violating of principles of natural justice calling for any interference.

23. Accordingly, this petition fails and the same is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

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