

HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR

WRIT PETITION NO.3636 OF 2017

Anil Kumar Jain

Vs.

State of M.P. and others

Shri Vipin Yadav, Advocate for the petitioner.
Shri Piyush Jain, Panel Lawyer for the respondents/State.
Shri Abhinav Shrivastava, Advocate for the respondent No.2.

ORDER

(Passed on this the 19th day of April, 2017)

The question before this Court is that whether the dispatch of charge sheet to delinquent employee after his suspension would tantamount to furnishing of a copy of the charge sheet to him if the dispatch is made within 45 days of the order of suspension and the charge sheet has been received after 45 days.

2. In brief the facts of the case are that the petitioner has filed this petition against the order of suspension dated 15.11.2016, which has been passed by respondent No.2 against him for dereliction of his official duties under the provisions of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as the 'Rules of 1966').

3. The contention of learned counsel for the petitioner is that

he was suspended on 15.11.2016 but no charge sheet was served on him within 45 days from 15.11.2016 as is the requirement of rule 9(5)(a) of the Rules of 1966. According to the petitioner, 45 days had completed on 29.12.2016 when the charge sheet was to be served to the petitioner. Hence, he made several representations to the authorities on 13.1.2017, 27.1.2017 and 30.1.2017 for revocation of his suspension order but the authorities took no action.

4. On 11.1.2017 the petitioner received a copy of the charge sheet dated 30.12.2016 but it was also visible that the same was dispatched on 10.1.2017. Thus, admittedly the charge sheet which ought to have been dispatched on or before 29.12.2016 was finally dispatched on 10.1.2017. The learned counsel for the petitioner has contended that the entire exercise has been done with the mala fide intention of respondent No.3, hence this petition against the order of suspension deserves to be allowed.

5. On the other hand, the respondents in their reply have justified their actions and submitted that the charge sheet was ready and signed on 30.12.2016 and as such the same was within the period prescribed under Rules of 1966. It is further submitted that no fault can be found in the action of respondents and has also submitted that rule 9(2)(a) of the Rules of 1966 provide for issuance of the charge sheet and other documents to the Government servant

within a period of 45 days from the date of order of suspension and the object behind the said rule is that the competent authority having placed a delinquent officer under suspension, cannot sit over the case without prompt follow up action of conducting an enquiry into the alleged misconduct. Hence, it is submitted that it is open to the concerned authority to keep Government servant under suspension and have the articles or charges together with the particulars be issued or caused to be issued by the concerned authority.

6. It is further submitted by the respondents in their return that the charges were issued on 30.12.2016 from the office of answering respondent No.2 and the petitioner was posted at Head Office, Municipal Corporation, Jabalpur and since the petitioner refused to receive the copy of the articles of charges, which has also been noted by the Server, hence the petitioner cannot be allowed to take advantage of his own evasion of duties/wrongs and it cannot be said that subsequent service on him through post would tantamount to issuance of charge sheet after the prescribed period of 45 days as the petitioner himself has refused to accept the charge sheet. The respondents have also filed a copy of the charge sheet dated 30.12.2016 wherein it is appended that the petitioner had refused to accept the notice i.e. “लेने से इंकार”. Thereafter the petitioner was served the charge sheet through post.

7. Heard the learned counsel for the parties and perused the record.

8. The admitted facts of the case are that the petitioner was suspended on 15.11.2016 as per rule 9(2)(a) of the Rules of 1966, the said rule provides as under :-

“9. (1) xxx xxx xxx

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority –

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) xxx xxx xxx

Explanation.- The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(2-a) Where a Government Servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it is proposed to hold an enquiry against such Government servant under rule 14, a copy of the articles of charges, the statement of imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained **shall be issued or caused to be issued by the disciplinary authority to such Government servant as required by sub-rule (4) of Rule 14, within a period of 45 days from the date of order of suspension:**

Provided that where the disciplinary authority is the State Government or the High Court, the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Government servant within a period of 90 days from the date of order of suspension.”

(emphasis supplied)

9. According to the respondents, the charge sheet was prepared on 30.12.2016 i.e. after one day of the prescribed period of 45 days as provided under rule 9(2)(a) of the Rules of 1966. It is also admitted fact that the charge sheet was dispatched to the petitioner on 10.1.2017 and received by the petitioner on 11.1.2017. In the circumstances, even if the respondents' contention is accepted that the petitioner refused to accept on 30.12.2016 and the same was dispatched on 10.1.2017, admittedly the petitioner was suspended on 15.11.2016, the charge sheet was issued one day after the prescribed period of 45 days which came to an end on 29.12.2016. Thus, the contention as raised by the respondents that petitioner refused to accept the notice, even if it is true for the sake of arguments, the same cannot be used for the benefits of the respondents for the simple reason that even then the charge sheet was issued after one day from 29.12.2016 i.e. on 30.12.2016 . On the other hand, when this Court examined the letter dated 30.12.2016, which is alleged to be refused by the petitioner on 30.12.2016, there is no proper procedure adopted to serve the notice to the petitioner. If the

petitioner had refused to accept the charge sheet on 30.12.2016, the better procedure was to prepare a Panchanama, signed by at least five persons.

10. Thus the article of charge has to be issued or caused to be issued by the disciplinary authority to the Government servant as required by sub rule (4) of Rule 14 within a period of 45 days. Sub rule (4) of Rule 14 reads as under :

“14. Procedure for imposing penalties.- (1) xx xx xx

(2) xx xx xx

(3) xx xx xx

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(emphasis supplied)

Thus it is clear that even though the words “shall be issued or caused to be issued” are mentioned in rule 9(2)(a), but the same has to be in accordance to sub rule (4) of Rule 14 in which the words “shall deliver or cause to be delivered” have been used meaning thereby that a charge sheet has to be delivered by the concerned authority to the delinquent public servant. In the present case as is

already observed that it was not even issued within a period of 45 days and, in fact, it was issued on 10.1.2017 and it was signed on 30.12.2016 and was delivered on 11.1.2017. There is no iota of doubt in the case of the petitioner that the respondents have not delivered or cause to be delivered the copy of the charge sheet within the prescribed period of limitation. Despite filing the charge sheet after the prescribed period, the respondents have not obtained any permission from the State Government for the extension of time to submit the charge sheet.

11. In these circumstances, the petitioner has made out a case for its interference under Article 226 of the Constitution of India. Hence, in the result, the petition is **allowed** and the impugned order of suspension dated 15.11.2016 passed by respondent No.2/Commissioner, Municipal Corporation, Jabalpur is hereby **quashed**.

(Subodh Abhyankar)

Judge

19/04/2017

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