

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

<b>Case No &amp; Parties Name</b>	<b><u>Writ Petition No.22576/2021</u></b>  Deenbandhu Saket Vs. The State of Madhya Pradesh and others.
<b>Date of Judgment</b>	<b>14.12.2021</b>
<b>Bench Constituted</b>	<b><u>Division Bench:</u></b> Justice Sheel Nagu and Justice Purushaindra Kumar Kaurav
<b>Judgment delivered by</b>	Justice Sheel Nagu
<b>Whether approved for reporting</b>	YES
<b>Name of counsels for parties</b>	<b>Petitioner:</b> Shri Abhinav Shrivastava, Adv. <b>Respondents:</b> Shri Anshuman Singh, Adv.
<b>Law laid down</b>	The delinquent employee in a disciplinary proceedings has statutory right under Rule 18(4) of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, to engage a Defence Assistant for which the Disciplinary Authority/Inquiry Officer ought to assist the delinquent employee so that the requirement of reasonable opportunity of being heard is satisfied.
<b>Significant paragraph numbers</b>	<b>5 &amp; 6</b>

**ORDER**  
**(14.12.2021)**

**Per: Sheel Nagu, J.**

The present petition under Article 226 of the Constitution of India is preferred by a delinquent employee facing disciplinary proceedings initiated by charge sheet (Annexure-P/1), assailing order dated 04.09.2021 passed by Inquiry

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Officer denying request of petitioner/delinquent employee for passing necessary directions to the Controlling Authority of the proposed Defence Assistant to relieve the said proposed Defence Assistant to enable petitioner to exercise his right to defend himself.

2. The inquiry officer while passing the impugned order had directed that petitioner/delinquent employee is free to arrange for Defence Assistant as proposed by him for which last opportunity is afforded.

3. It is informed that the proceedings have last been adjourned due to none presence of Defence Assistant and are now posted in the first week of January, 2022.

4. To take assistance of defence assistant, is a statutory right of delinquent employee, as per the provisions of Rule 14 of M.P. Civil C.C.A.Rules. The relevant provisions of the said rule are reproduced as below:-

*“The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.”*

5. If a delinquent employee proposes a Defence Assistant who is employed elsewhere then the Inquiry Officer ought to take the initiative and pass necessary directions to ensure that the delinquent employee does not remain unrepresented leading to denial of his right to defend himself. The Inquiry Officer in all fairness should request in writing to the Controlling Officer of the proposed defence assistance to act as defence assistant provided there is no other legal impediment. The

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Inquiry Officer should not leave the delinquent in a lurch. Inquiry Officer ought to remember that he is not a prosecutor but an independent and impartial arbiter and umpire whose prime object is to conduct & conclude the disciplinary proceedings in a fair and impartial manner following the principles of natural justice.

6. However, learned counsel for petitioner has brought to the notice of this Court an executive instruction issued by GAD, Govt. of M.P. dated 18.06.1974 which deals with an issue raised herein and thus for ready reference and convenience the same is reproduced below:-

“विषय – मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियन्त्रण तथा अपील) नियम, 1966 के अन्तर्गत विभागीय जाँच में शासकीय सेवक द्वारा अन्य शासकीय सेवक की सहायता लेने के सम्बन्ध में।

1. मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियन्त्रण तथा अपील) नियम, 1966 के नियम 14 (8) के अन्तर्गत अभियुक्त शासकीय सेवक अपनी ओर से मामला प्रस्तुत करने के लिए किसी अन्य शासकीय सेवक की सहायता ले सकता है। ऐसा करने के लिये उसे जाँच प्राधिकारी या अनुशासनिक प्राधिकारी से अनुमति लेने की आवश्यकता नहीं है किन्तु जिस शासकीय सेवक को विभागीय जाँच में सहायता करने के लिये बुलाया जाता है उसे अपने वरिष्ठ अधिकारी से उस कार्य के लिये अनुपस्थित रहने की अनुमति लेनी होगी। इस सम्बन्ध में आपका ध्यान इस विभाग के दिनांक 11 जनवरी, 1971 के ज्ञापन क्रमांक 32-1-1090-एक (3)-70 के पैराग्राफ 2 की ओर भी आकृष्ट किया जाता है जिसमें यह स्पष्ट किया गया है कि जाँच प्राधिकारी/अनुशासनिक प्राधिकारी को चाहिए कि वे सहायता करने वाले शासकीय कर्मचारी के वरिष्ठ अधिकारी को सूचित करें कि उनके अधीनस्थ कर्मचारी विभागीय जाँच में मददगार के रूप में कार्य कर रहा है। ऐसी सूचना प्राप्त होने पर वरिष्ठ अधिकारी का यहाँ कर्तव्य हो जाता है कि उस शासकीय सेवक को नियत तिथि पर अभियुक्त शासकीय सेवक की सहायता करने के लिये अपने कार्य से अनुपस्थित रहने की अनुमति प्रदान करने में तब तक किसी प्रकार की आपत्ति न करें जब तक कि उनकी अनुपस्थिति से किसी शासकीय अपरिहार्य कार्य में रुकावट न पड़ती हो।

2. अभियुक्त शासकीय सेवक केवल उसी शासकीय सेवक की सहायता ले सकता है जो शासकीय सेवा में कार्यरत हो, भले ही वह

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निलम्बित क्यों न हो, किन्तु वह सेवानिवृत्त शासकीय सेवक की सहायता नहीं ले सकता। यदि सहायता करने वाला शासकीय सेवक विभागीय जाँच के दौरान सेवानिवृत्त हो जाता है या सेवा से पृथक हो जाता है तो उसके सेवानिवृत्त या सेवा से पृथक होने की तिथि के बाद उसकी सहायता नहीं ली जा सकेगी।

[म.प्र. शासन, सामान्य प्रशासन विभाग, डी. क्रमांक 406-970-एक (3)/74, दिनांक 18-06-1974]”

7. The above executive instruction lay down procedure which appears to be just fair and reasonable and inline with the requirements of principles of natural justice.

8. In view of the above discussion, the present petition stands **allowed** with the following directions:-

- (1) To impugned order dated 04.09.2021 (Annexure-P/4) passed by the Inquiry Officer stands quashed to the extent it denies the prayer for engaging proposed Defence Assistant.
- (2) The Inquiry Officer is directed to initiate request to the Controlling Authority of the proposed Defence Assistant for his consent to relieve the Defence Assistant if there is no legal impediment.
- (3) In case, the person sought to be engaged as Defence Assistant is declined to be relieved by his Controlling Authority, then Inquiry Officer should give prior intimation and opportunity to delinquent employee to search & engage alternative Defence Assistant.

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9. It is expected of the Inquiry Officer in this case to ensure completion of the aforesaid process before proceedings ahead with the inquiry.

10. We make it clear, that this order should not be treated by delinquent as licence to adopt dilatory tactics. The reasonable opportunity afforded to the delinquent, as aforesaid, cannot eclipse the paramount requirement of expeditious completion of D.E. proceedings.

11. The employer herein is well advised to adopt the executive instructions (Supra) in all DEs against it's officers & employees by issuing advisories to disciplinary & Inquiry Officers.

12. Accordingly, this petition stands **disposed of** .

**(SHEEL NAGU)**

**JUDGE**

*Nitesh*

**(PURUSHAINDR KUMAR KAURAV)**

**JUDGE**