

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
JUSTICE SUJOY PAUL
ON THE 31st OF AUGUST, 2023
WRIT PETITION No.3699 OF 2023**

BETWEEN :-

**BALENDRA SINGH S/O SHRI VIRENDRA SINGH,
AGED ABOUT 56 YEARS, JUNIOR ASSISTANT/
CENTRE INCHARGE SIRMOUR, REWA (M.P.)
STATE CIVIL SUPPLY CORPORATION LTD. R/O
NIRMAL EMPIRE D-54 REWA (M.P.)**

.....PETITIONER

(BY MR. VIPIN YADAV - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
SECRETARY, DEPARTMENT OF FOOD AND
CIVIL SUPPLY, VALLABH BHAWAN,
BHOPAL (M.P.)**
- 2. MANAGING DIRECTOR MADHYA
PRADESH STATE CIVIL SUPPLY
CORPORATION LTD. BHOPAL (M.P.)**

.....RESPONDENTS

**(MR TARUN SENGAR – PANEL LAWYER FOR RESPONDENT NO.1
MR SHOBHITADITYA – ADVOCATE FOR RESPONDENT NO.2)**

*This writ petition coming on for orders this day, JUSTICE
SUJOY PAUL passed the following :*

ORDER

With the consent, finally heard.

2. The challenge is mounted in this petition to the order dated 07/02/2023 (Annexure P/9) whereby punishment of removal from service was inflicted on the petitioner.
3. Draped in brevity, the admitted facts between the parties are that the petitioner who was initially placed under suspension was served with a charge-sheet on 10/02/2020. In turn, petitioner submitted his reply and denied the charges in toto. The Disciplinary Authority dissatisfied with the reply of petitioner appointed an Enquiry Officer. On 30/03/2022, the Enquiry Officer prepared his report (Annexure P/7) and found that charges are not found to be proved.
4. The Disciplinary Authority upon receiving the said report, exercised power under Rule 15(1) of **The Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966** (in short 'CCA Rules') and remitted the matter back to another Enquiry Officer to conduct the enquiry. In turn, this Enquiry Officer submitted his report on 21/10/2022 (Annexure P/8) and opined that charges could not be established.
5. Upon receiving the report of Enquiry Officer dated 21/10/2022, Disciplinary Authority invoked Rule 15(2) of CCA Rules, disagreed with the findings and issued a discordant notice dated 07/12/2022 Annexure R-2/1. Petitioner filed his response and thereafter, Disciplinary Authority imposed the impugned order of punishment dated 07/02/2023.

6. Shri Vipin Yadav, learned counsel for the petitioner submits that since both the Enquiry Officers by their reports dated 30/03/2022 (Annexure P/7) and 21/10/2022 (Annexure P/8) exonerated the petitioner, the Disciplinary Authority could have taken action only as per Rule 15 of CCA Rules. The discordant note dated 07/12/2022 which became foundation for imposition of punishment is bad in law.

7. To elaborate, Shri Vipin Yadav, learned counsel for the petitioner submits that as per sub-rule (2) of Rule 15, the disciplinary authority was required to assign reasons on the basis of material on record regarding his disagreement but no reasons are recorded in the discordant note dated 07.12.2022 (Annexure R-2/1). Thus, the very foundation on which edifice of punishment order is standing is liable to be interfered with.

8. Shri Tarun Sengar, learned Penal Lawyer for the State submits that State is a formal party.

9. Shri Shobhitadiya, learned counsel for respondent No.2 supported the discordant note dated 07.12.2022 and the punishment order dated 07.02.2023 founded upon the said discordant note.

10. No other point is pressed by learned counsel for the parties.

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

12. Indisputably, both the Enquiry Officers in their reports dated 30.03.2022 (Annexure P/7) and dated 21.10.2022 (Annexure P/8) found that charges are not proved. Learned counsel for the parties fairly admitted that in the event of exoneration of petitioner by the

Enquiry Officers, action by the disciplinary authority can be taken as per Rule 15 of the CCA Rule. The relevant portion of the said Rules reads as under :-

“15.Action on the inquiry report.-(1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, **record its reasons for such disagreement and record its own finding** on such charge, **if the evidence on record is sufficient for the purpose.**”

(Emphasis supplied)

13. The relevant portion of the discordant note dated 07.12.2022 (Annexure R-2/1) reads as under :-

“आप जिला कार्यालय रीवा में कनिष्ठ सहायक के पद पर सिरमौर केन्द्र प्रभारी के पर कार्यरत थे। आपकी पदस्थी वधि में जिला प्रबंधक रीवा द्वारा चाकघाट प्रदाय केन्द्र पर द्वार प्रदाय योजना अंतर्गत उचित मूल्य दुकानों को वितरण हेतु प्रदाय केन्द्र सिरमौर से गेहूँ परिवहन बावत परिवहन आदेश क्रमांक-19200923250011108 दिनांक 17/09/2019 से 1000 मे.टन एवं आदेश क्रमांक-19201023250011110 दिनांक 19/10/2019 से 1000 मे.टन कुल 2000 मे.टन गेहूँ के परिवहन आदेश जारी किये गये थे एवं आपके द्वारा अपनी पदस्थी प्रदाय केन्द्र से सम्बंधित गोदामों से उक्त मात्रा का परिवहन सिमोर प्रदाय केंद्र हेतु कराया गया। आपके द्वारा प्रेषित कुल मात्रा में से 33 ट्रक 18600 बोरी वजन 9286.97 क्विंटल गेहूँ प्रदाय केन्द्र चाकघाट पर प्राप्त नहीं हुये।

इस सम्बन्ध में मुख्यालय ज्ञाप क्रमांक/स्थापना/20689/2020/1604 दिनांक 10/02/2020 से आपको आरोप पत्र जारी किया गया। श्री बालेन्द्र सिंह द्वारा दिनांक 24/02/2020 से उक्त जारी आरोप पत्र को प्रतिउत्तर प्रस्तुत किया गया जो परीक्षण उपरांत समाधानकारक नहीं पाये जाने के कारण मुख्यालय आदेश क्रमांक/स्थापना-1/20689/2020/1126 दिनांक 14/12/2020 से विभागीय जांच संस्थित की जाकर क्षेत्रीय प्रबंधक सतना को जांचकर्ता अधिकारी एवं जिला प्रबंधक रीवा को प्रस्तुतकर्ता अधिकारी नियुक्त किया गया।

जांचकर्ता अधिकारी द्वारा दिनांक 30/03/2022 को जांच प्रतिवेदन प्रस्तुत किया गया। जांच अधिकारी द्वारा अपने जांच प्रतिवेदन में प्रतिवेदित किया है कि श्री बालेन्द्र सिंह पर अधिरोपित आरोप प्रमाणित नहीं पाता हूँ।

मैं जांचकर्ता अधिकारी के निष्कर्ष से असहमत हूँ क्योंकि स्कंध प्रेषणकर्ता प्रदाय केंद्र प्रभारी का नैतिक कर्तव्य एवं पदीय दायित्व होता है कि उनके द्वारा परिवहनकर्ता को सुपुर्द किये गए स्कंध की जानकारी प्राप्तकर्ता प्रदाय केंद्र प्रभारी को नियमित रूप से दी जावे, स्कंध गंतव्य स्थल तक पहुंचा है अथवा नहीं इस सम्बन्ध में प्राप्तकर्ता प्रदाय केंद्र प्रभारी से संपर्क में रहकर जानकारी प्राप्त करे, स्कंध प्राप्त न होने की स्थिति में जिला प्रबंधक को सूचित करें एवं परिवहनकर्ता से जानकारी प्राप्त करें।

आपका यह कर्तव्य था कि परिवहनकर्ता को माल की डिलेवरी देते समय यह सुनिश्चित करते कि परिवहनकर्ता को पूर्व दिनांकों में जितनी मात्रा चाकघाट प्रदाय केन्द्र हेतु सौंपी गयी है, वह गंतव्य स्थल तक पहुँच गया है अथवा नहीं। किन्तु आपके द्वारा अपने दायित्वों के निर्वहन नहीं किया गया।”

14. A bare perusal of the relevant portion of the discordant note shows that the disciplinary authority recorded that Enquiry Officer has not found the charges as proved. Thereafter, he recorded his disagreement and the ‘conclusion’. A microscopic reading of sub-rule (2) of Rule 15 leaves no room for any doubt that the disciplinary authority has power to disagree with the findings of Enquiry Officer but while doing so he is obliged to assign (i) reasons therefore, (ii) and such reasons must be based on evidence on record.

15. The point involved in the case is no more *res integra*. The Apex Court in **Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84** opined as under :-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, **it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.** The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as

we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

(Emphasis supplied)

16. The view taken by Court in the aforesaid **Kunj Behari Misra case [Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 : 1998 SCC (LandS) 1783 : AIR 1998 SC 2713]** has consistently been approved and followed as is evident from the judgments in **Yoginath D. Bagde v. State of Maharashtra [(1999) 7 SCC 739 : 1999 SCC (LandS) 1385 : AIR 1999 SC 3734]**, **SBI v. K.P. Narayanan Kutty [(2003) 2 SCC 449 : 2003 SCC (LandS) 185 : AIR 2003 SC 1100]**, **J.A. Naiksatam v. High Court of Bombay [(2004) 8 SCC 653 : 2004 SCC (LandS) 1190 : AIR 2005 SC 1218]**, **P.D. Agrawal v. SBI [(2006) 8 SCC 776 : (2007) 1 SCC (LandS) 43 : AIR 2006 SC 2064]**, **Ranjit Singh v. Union of India [(2006) 4 SCC 153 : 2006 SCC (LandS) 631 : AIR 2006 SC 3685]** and **S.P. Malhotra v. Punjab National Bank and others (2013) 7 SCC 251**.

17. If discordant note dated 07.12.2022 is minutely examined, it will be clear like cloudless sky that (i) the disciplinary authority has reached to a ‘conclusion’ without assigning any ‘reason’ and without discussing and referring to any evidence whatsoever. This runs contrary to the principles of natural justice and statutory mandate ingrained in sub-rule (2) of Rule 15 of the CCA Rules.

18. The legislative intent behind insertion of Rule 15(2) of the CCA Rules is clear that if disciplinary authority intends to disagree with IO’s report, he cannot disagree based on his whims or fancies or in other

words, it cannot be a pure *ipse dixit* of disciplinary authority. He is obliged to assign 'reason' for such disagreement. In **M/s Kranti Associates Pvt. Ltd. and another vs. Masood Ahmed Khan and others, (2010) 9 SCC 496**, the Apex Court made it clear that 'conclusion' must be based on 'reasons'. The discorded note in the instant case contains only the 'conclusion' of disciplinary authority without referring to the reasons and without mentioning the basis of any evidence on record. This action of learned disciplinary authority cannot be countenanced.

19. In view of foregoing discussion, the discordant note dated 07.12.2022 cannot be upheld and consequently, the punishment order solely based thereupon cannot sustain judicial scrutiny.

20. Resultantly, the order of punishment dated 07.02.2023 is set aside. The liberty is reserved to the disciplinary authority to issue a fresh discordant note (if he so decides) in accordance with law and proceed from that stage as per law.

21. The Writ Petition is **allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE