

(2024) 05 CHH CK 0014
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 821 Of 2014

Alexius Minj (Died) Through Lrs

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 18, 18(1)

Citation : (2024) 05 CHH CK 0014

Hon'ble Judges : Goutam Bhaduri , J

Bench : Single Bench

Advocate : N. Naha Roy, Raj Shengale, Devesh Kela, Anuradha Jain

Final Decision : Allowed

Judgement

1. Heard.

1. The present petition is against the order of dismissal of the petitioner from service dated 22.08.2013 (Annexure P-1) and subsequent order passed in appeal dated 16.01.2014 (Annexure P-2).

2. The facts of the case are that petitioner Alexius Minz was working as Head Constable in reserved police station Mahasamund. He was served with a charge-sheet dated 03.02.2013 (Annexure P-3). The allegations pertain to negligence in checking arms and ammunition and failure to deal with command Guard Constables strictly during the course of discharging function as he was the In-Charge of security guards. The duty was assigned at mini stadium before the republic day ceremony. The charge-sheet shows that the original petitioner was In-Charge of four home-guards and was supposed to check their duties, but he left for his house after assigning the duty and one of the riffles was got stolen and 20 bullets of guard bullets were found missing. Along with petitioner Alexius Minj, four guards were there. According to the State, the said act of the petitioner had caused damage to the reputation of police force.

3. The case of the petitioner is that he was only in charge of those four guards and from one of them, riffle and bullets were stolen or found missing, therefore, the charges could not be framed against him at par with others. However, the joint/common charge-sheet containing omnibus allegations was issued to the petitioner. The petitioner filed reply on 15.02.2013 and denied the allegations on the ground that at the same time, he was deployed to perform the security duty at the Cabinet Level Minister, as such, he could not come back on time. The petitioner further stated that they were certain it followed with certain elements which were to inform to the higher officers. When he came back, he found that one of the constable Narendra Yadav, lost his riffle and bullets and it was informed to the higher officers.

4. The state authorities not being satisfied with the reply, proceeded with departmental enquiry. In a departmental enquiry, the evidence was adduced and the petitioner was also given, the opportunity of hearing and after due enquiry, the petitioner was found guilty and the disciplinary authority dismissed the service of the petitioner Alexius Minj by order dated 22.08.2013 (Annexure P-1). Being aggrieved by such order a departmental statutory appeal was preferred which too was dismissed by the DIG. Therefore, this petition.

5. Learned counsel for the petitioner would submit that the inception of the charge-sheet and the enquiry itself is valid as it is against the norms of Rule 18 of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules 1966. He would submit that in case a joint enquiry is contemplated, then in such a case, the compliance of Rule 18 is must and In absence thereof, the entire enquiry would be vitiated. He has placed reliance in Narayan Singh Lange v. State of Madhya Pradesh ILR 2017 Chhattisgarh 1342 as also in Shyamlal Tiwari v. Manager Director, Chhattisgarh Khadi Gramodyog Board, Raipur and submits that accordingly the order of termination is liable to be set-aside.

6. Per contra, learned State counsel would submit that looking to the nature of duty which was assigned, the act of the petitioner having lost the riffle and the bullets would be a major misconduct and the petitioner was terminated from service after being given due opportunity of hearing, therefore, no further deviation is made in proceeding against the petitioner. He submits that even otherwise this Court would not sit as an appellate authority over the order of the Enquiry Officer and the punishment of dismissal in the like nature of case is well justified. He further submits that reading of Rule 18 of CCA Rules 1966 would show that the word 'may' has been used therefore, compliance of Rule 18 is not mandatory. Consequently, the termination order does not call for interference.

7. I have heard learned counsel for the parties. The original petitioner namely Alexius Minj has breathed his last on 14.06.2020 during the pendency of petition. Being so, his legal representatives were brought on record. It is not in dispute that Alexius Minj was In Charge of the four constables who were deployed at a mini stadium, Mahasamund, to perform their duty. During such process, four constables were deployed with riffle and bullets. After reaching the spot,

according to the petitioner, he left for another assignment and he was informed that one of the constable Narendra Yadav has lost his rifle and bullets. The petitioner was In Charge of the four guards and according to the State, he was duty bound to perform his duty with due diligence. Consequently, he was charge-sheeted along with four constables. The charge-sheet is filed as a Annexure P-3. The beginning of it would show that T.R. Painkra, Superintendent of Police, had ordered for a joint/ common Departmental Enquiry and the allegations against the petitioner was that while the guards were deployed on 24.01.2013 at mini stadium, Mahasamund which was the venue of republic day celebration, he failed to check the arms and ammunition held by the constable under him and failed to give strict instructions which resulted into negligent behaviour of the guards and shows gross indifference towards duty.

8. The very inception of the proceeding, therefore, would show that a common proceeding was adopted by the State. Rule 18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules 1966 speaks about the common proceeding which reads as under :

18. Common proceedings.—(1) Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding :

Note.—If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others :

[Provided that the powers conferred on the Governor under this rule shall in case of Judicial Officers, be exercised by the Chief Justice.]

(2) Subject to the provisions of sub-rule (3) of Rule 12, any such order shall specify :

(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in Rule 10 which such disciplinary authority shall be competent to impose; and

(iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding.

9. A plain reading of the aforesaid Rule would show that where two or more government servants are concerned in any case, the Governor or any authority competent to impose the penalty of dismissal from service on all such Government Servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding. A plain reading of

Rule 18 of the Rules of 1996 purports that the discretion has been given to the authority to order or not to order for the joint enquiry.

10. According to Lord Atkinson in *Corp of the City of Victoria v. Bishop of Vancowver Island*, AIR 1921 PC 240, p 242. -:

In the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense.

11. According to *Principles of Statutory Interpretation* by Justice G.P. Singh, 15th Addition at page 365 -

When a capacity or power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it, or the manner in which it may only be exercised. In other words the legal and factual context in which the power is to be exercised may combine the power with an obligation to exercise it even though it is conferred by use of the word "May"

12. This extract is taken from *L. Hirday Narain v. ITO*, (1970) 2 SCC 355 at page 359.

15. In *Julius v. Bishop of Oxford* [1880 5 AC 214] it was observed by Cairns, L.C. at pp. 222-23 that the words "it shall be lawful" conferred a faculty or power, and they did not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Lord Blackburn observed in the same case at pp. 244-45 that the enabling words give a power which *prima facie* might be exercised or not, but if the object for which the power is conferred is for the purpose of effectuating a right there may be a duty cast upon the donee of the power to exercise it for the benefit of those who have that right when required on their behalf. Lord Penzance and Lord Selborne made similar observations at pp. 229 and 235.

13. The Supreme Court in *Yogendra Kumar Jaiswal v. State of Bihar*, (2016) 3 SCC 183 as held as under.

135. Having said about the guidance, we would like to make it clear that the word "may" used in Section 13 has to be understood in its context. It does not really relate to authorisation of filing. To clarify that the authority does not have the discretionary power to authorise for filing against some and refrain from authorising in respect of the other, it has to be construed that the said word relates to the purpose, that is, the application to be filed for the purpose of confiscation. This is in consonance with the legislative policy, the scheme of the

Act and also the Objects and Reasons of the Act. The legislative policy, as declared, clearly indicates that there should not be any kind of discretion with the Government in these kinds of matters. The fulcrum of the policy, as is discernible, is that delinquent officers having disproportionate assets coming within the purview of Section 13(1)(e) have to face the confiscation proceedings subject to judicial scrutiny as the rest of the provisions do unveil. The learned counsel for the appellants would contend that the legislature has delegated such power on the authority which can act in an indiscriminate manner. The said submission in the context of this Act, is sans substance as we have already opined that there is no discretion to pick and choose but to see the minimum requirement, that is, the offence and the status. Nothing beyond that.

14. When the statute prescribed such a harsh majeure which if implemented may result into financial death of the employee then, in presence of such clause like Rule 18 have a larger impact. Therefore, it is important to read may as shall, as invocation of such power may have devastating effect on whole service career of employee.

15. This provision was read by this court in a case reported in *Narayan Singh Lange v. State of Madhya Pradesh* (supra) wherein the interpretation of Rule 18 was held to be a necessity and para 8 of the judgment the court held thus :

8. A plain reading of the above-quoted rule would manifest that the order for common or joint enquiry is required to be made by the Governor or any other authority competent to impose penalty of dismissal from service on all such Government servants, meaning thereby that when Government servants holding different rank or belonging to different cadre are required to be proceeded jointly in one common department enquiry, the authority competent to remove them shall pass an order directing joint enquiry against all of them. In the absence of such order, joint enquiry against the persons holding different rank or belonging to different cadre is not permissible. The mandate of Rule 18(1) becomes very clear with the aid of note appended to the sub-rule which says that if the authorities competent to impose penalty of dismissal on such Government servants are different, an order for taking disciplinary action in any proceeding may be made by the highest of such authorities with the consent of others. Therefore, when the persons are holding different ranks or belonging to different cadre, consultation between the competent authorities qua different posts is necessary so that order of dismissal is passed by one authority and not by different authority even though enquiry was common.

16. Admittedly in this case, there is no order either by the Governor or authority competent to impose the penalty to conduct the common proceeding. The Court in case of *Narayan Singh* (supra) has further referred to different pronouncements interpreting Rule 18. Paras 10 to 14 are relevant in quoted below:

10. In *Premchandra Dhalpuria, Ex-Sub-Inspector, Police* (supra), the Madhya

Pradesh High Court held, thus in paras- 23 &24:-

"23. There is no express provision in the Police Regulations for common proceedings against delinquent servants. Rule 18 of the Control and Appeal Rules is in these terms: -

"Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding."

There is no such order by the Deputy Inspector General who is the competent authority. In the decision in *Ashok Y. Naik v. The Administrator, Goa*, 1979 Serv LJ 84, it has been held that where there is no order by the competent authority for common proceedings, the entire proceeding is vitiated being without jurisdiction irrespective of the question of proof of prejudice which must be implied. The decision in *Tripura Charan v. State of West Bengal*, 1979 (1) Serv LR 878, is also pertinent. As it is clear that Rule 18 of the Control and Appeal Rules has been violated, the Departmental Enquiry is vitiated.

24. From the foregoing discussion it is clear that in the instant case the impugned order is not only in utter disregard of the principles of natural justice but is also violative of Rule 18 of the Control and Appeal Rules."

11. Yet again same view was expressed by the Madhya Pradesh High Court in the matter of *Shyamkant Tiwari v. State of M.P. and others*, (1986 MPLJ 37) wherein it was held thus:-

"14. In the decision in *Ashok Y. Naik v. The Administrator Goa*, it has been held that where there is no order by the competent Authority for common proceedings, the entire proceeding is vitiated being without jurisdiction irrespective of the question proof of prejudice which must be implied. The decisions in *Tripura Charan v. State of West Bengal* and *Mool Chand's case* are also pertinent. As it is clear that Rule 18 of the Control and Appeal Rules has been violated the Departmental Enquiry is vitiated."

12. In the matter of *Sardar Badeo Singh v. State of M.P. and others* (1989 MPJR 510) also, it was categorically held that violation of Rule 18 would vitiate the proceedings rendering the order for punishment as null and void.

13. The co-ordinate Bench of this Court in *Ghasiram Kosariya v. State of M.P. and others* (2011 (2) CGLJ 147) has followed the ratio of law declared by the M.P. High Court to take similar view when there is violation of Rule 18 of the Rules, 1966.

14. Another single Bench of the Madhya Pradesh High Court in the matter of *Balveer Singh v. State of M.P. and others* (2010 (2) MPHT 374) has followed the earlier decisions.

17. Prima facie, therefore, the very inception of the proceeding would appear to

be violation of Rule 18 of CCA Rules 1966. The joint enquiry having been conducted in flagrant violation of Rule 18, the very inception of staring point would be defective which can not be sustained and upheld. Accordingly the order dated 22.08.2013 (Annexure P-1), terminating of service of the petitioner and the subsequent appellate order dated 16.01.2014 (Annexure P-2), are set-aside.

18. Since the petitioner has breathed his last on 14.06.2020 and while the petition was filed he was aged about 56 years in the year 2014 till his attaining the age of superannuation, he would have been entitled for all the service benefits. The petitioner being not alive at this moment, his legal heirs who were brought on record would be entitled to all retrial benefits which would otherwise accrued to late Alexius Minj till his retirement. In the result, the writ petition is allowed.