

(1986) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 924 of 1983

Amar Singh Chhotkan Singh

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 08-07-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) JLJ 596 : (1986) MPLJ 682

Hon'ble Judges : K.K. Verma, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.H. Sen, for the Appellant; Kulshreshtha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Varma, J.

This is a petition under Article 226 of the Constitution of India whereby the petitioner has challenged the enhancement of penalty imposed on him by the order dated 20-9-1982 (Annexure "Ka") passed by the Addl. Inspector General of Police Ujjain respondent No. 3 and the order (Annexure "Kha") rejecting the petitioner's representation therefrom passed by the Inspector General of Police respondent No. 2.

The petitioner, who was Head Constable in the Police Department was charged-sheeted for misbehaviour during his posting in Police Station Agar, on 18-10-81. After holding a departmental inquiry, the Superintendent of Police Shajapur respondent No. 4 held him guilty of the charges and issued a show cause notice to the petitioner proposing the punishment of reduction in rank from the post of Head Constable to the post of constable for a period of two years. After considering the petitioner's reply to the show cause notice and taking into account the service record of the petitioner and the numerous Awards received by him during his service career the Superintendent of Police Shajapur in his final

order dated 5-6-1982 awarded punishment of withholding only one increment for a period of two years instead of the initially proposed punishment of reduction in rank for two years.

The respondent No. 3 however, considered the punishment awarded by the Superintendent of Police Shajapur to be inadequate, having regard to the seriousness of charges and therefore proposed the penalty of permanent reduction in rank of the petitioner and accordingly issued a show cause notice dated 9-8-1982 to the petitioner. After considering the reply of the petitioner to the said show cause notice the respondent No. 3 by the impugned order Annexure "Ka" imposed the penalty of permanent reduction in rank of the petitioner from the post of Head Constable to the post of Constable.

The petitioner's challenge in this petition is limited to the question of enhancement of punishment by the impugned order of the respondent No. 3. The learned counsel for the petitioner contended that according to the Police Regulation No. 214 as amended by notification No. 4698-5030-II-B(ii), published in M.P. Rajpatra Pt. I, dated 24-2-78 at page 227 the reduction of rank by way of punishment, could only be ordered for a specified period and it could not be for any unlimited period. The impugned order (Annexure "Ka") whereby the petitioner has been awarded the punishment of reduction in rank for all times, is not in accordance with the Regulation No. 214 Clause (iii) and is therefore liable to be quashed. Learned counsel placed reliance on a decision of this Court in Shyambabu vs. The State of M.P. and others (M.P. No. 496 of 1982 decided on 13-9-1983 : 1983 MPLJ 787) in support of his contention.

The amended Regulation 214(iii) reads as under:-

214. Punishment - kinds of: - Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any member holding a post in a subordinate police Service:-

(i) **** *

(ii) **** *

(iii) Reduction to a lower post or time scale or reduction to a lower stage in the time scale of pay for a specified period with further direction as to whether or not the member of the Subordinate Police Service will earn increments of pay or the stagnation allowance as the case may be, during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance.

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From a plain reading of the said clause (iii) it becomes clear that the penalty of reduction to a lower post is contemplated for a specified period and that a further direction has to be given in the order of punishment as to whether or not the

delinquent member of the subordinate police Service will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay. It is also evident from this that the penalty of reduction to a lower post is to last for a specified period which must expire while the delinquent member is still in service and not retired. Consequently, it follows that a penalty of reduction to a lower post permanently, that is to say for all time to come, as has been imposed by the impugned order, is in excess of the power conferred by Regulation 214(iii).

We, therefore, agreeing with the view taken in the case of Shyambabu (Supra) hold that the impugned order (Annexure-"Ka") cannot be sustained in law, being not in accordance with the provision contained in clause (iii) of the Police Regulation 214.

In the result, this petition succeeds and is allowed with costs. The impugned orders (annexures "Ka and Kha") passed by the respondents Nos. 3 and 2 respectively, are hereby quashed. The respondents shall, however, be at liberty to pass fresh orders in accordance with the Regulation. Counsel's fee Rs. 250/-, if certified. The outstanding amount of security-deposit, if any, be refunded to the petitioner.