
(2009) 11 MP CK 0049
In the Madhya Pradesh High Court

Balveer Singh and Tarachand Sagar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Citation : (2010) ILR (MP) 191 : (2010) 2 MPHT 374

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Sharma, J.—Regard being had to the similitude of the controversy involved in both these writ petitions, i.e., W.P. No. 606/2003 (S) and W.P. No. 457/2004 (S), they were heard analogously together and disposed of by this singular order. For the sake of convenience, the facts in Writ Petition No. 606 of 2003 (S) are exposted herein.

2. The petitioner before this Court a dismissed Constable has filed this present petition being aggrieved by an order dated 30-9-2002 passed by the respondent No. 4 as well as the order dated 24-2-2003 rejecting the appeal preferred by the petitioner and also the order dated 15-9-2003, by which, a mercy petition has been dismissed.

3. The contention of the petitioner is that he was appointed on the post of Constable in the year 1997 and was posted at Police Station, Kolaras. The petitioner has further stated that on 22-6-2002 he was detailed as a Duty Guard in a public vehicle belonging to Hardoul Bus Service and while the bus was going from Kolaras to Akajhiri was blocked by putting a tractor trolley in the middle of the road and thereafter the passengers were told to come down from the bus. The dacoits thereafter kidnapped the passengers and the contention of the petitioner is that he did not open fire as the same would resulted in loss of innocent lives. The petitioner has further stated that a preliminary enquiry was conducted in the matter and based upon the preliminary enquiry report, a

charge-sheet was issued to him on 28-6-2002 as well as to another Constable namely Shri Tarachand Sagar, who was also on duty along with the petitioner. The Disciplinary Authority granted time to the petitioner to file a reply to the charge-sheet and after taking into account the reply of the petitioner, a joint enquiry took place in the matter. The petitioner has further stated that the Enquiry Officer has recorded statements of number of witnesses and thereafter has also cross-examined the witnesses. The petitioner has further stated that the defence witnesses were also examined and they were also cross-examined by the Enquiry Officer and thereafter a report was submitted on 12-9-2002 and a show-cause notice was issued on 16-9-2002. The petitioner did submit a reply to the show-cause notice and thereafter an order of punishment of removal from service was passed on 30-9-2002. An appeal preferred by the petitioner was dismissed by an order dated 24-2-2003 and a mercy petition has also been dismissed on 15-9-2003.

4. The petitioner has raised various grounds before this Court and his contention is that no order of holding a joint enquiry as stipulated in Rule 18 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 was passed by the Competent Disciplinary Authority and, therefore, the enquiry proceedings stand vitiated. He has relied upon a judgment delivered by the Apex Court in the case of Moolchand Namdev v. State of M.P. and Ors. reported in AIR 1982 MP 459. The learned Counsel for the petitioner has also argued before this Court that the Enquiry Officer has acted as a prosecutor as well as a Judge. His contention is that no Presenting Officer was appointed by the Disciplinary Authority at any point of time and the Enquiry Officer has himself cross-examined the witnesses produced during the course of enquiry. The contention of the petitioner is that because of the conduct of the Enquiry Officer, who has acted as a Presenting Officer, the entire disciplinary proceedings deserves to be quashed in the light of the judgment delivered by the Division Bench of this Court in the case of Union of India through its Union of India (UOI) and Others Vs. Mohd. Naseem Siddiqui, . The petitioner has also stated before this Court that he is not guilty of misconduct as alleged in the charge-sheet. It has been argued before this Court that the petitioner did not open fire as a large number of innocent passengers were also standing along with the dacoits and firing on dacoits would have resulted in loss of lives of innocent passengers also. The petitioner has prayed for quashing of the orders dated 30-9-2002, 24-2-2003 and 15-9-2003.

5. A detailed reply has been filed on behalf of the respondents/State and the record relating to Disciplinary Enquiry has also been produced before this Court. The respondents/State have admitted that on 22-6-2002, the petitioner and one another Constable namely Shri Tarachand Sagar were deployed to escort the bus belonging to Hardoul Bus Service and while the bus was going from Kolaras to Akajhiri, it was stopped by certain dacoits/anti-social elements. The dacoits forcibly took away all the passengers in the deep forest area and four passengers were kidnapped. The respondents have further stated that a preliminary enquiry

took place in the matter and on the basis of statements of witnesses recorded during the preliminary enquiry, the petitioner was prima facie found guilty of dereliction of duties. A charge-sheet was issued on 28-6-2002, wherein, it was alleged that the petitioner has not taken any action to save the passengers and by hiding himself beneath the seat of the bus has committed a misconduct. A reply was also filed in the matter and, thereafter, a joint enquiry was held. It has further been stated in the return that the Enquiry Officer has conducted the Departmental Enquiry strictly as per the provisions of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and the petitioner was not able to point out violation of principles of natural justice and fair play in the matter. The respondents have also stated that no order regarding joint enquiry was required in the facts and circumstances of the case as both the delinquent officials were holding the equivalent rank and it is only when delinquent officials are holding the different ranks, then only an order is required to be passed in the matter. The respondents have also stated that merely because there is no order ordering a joint enquiry, the enquiry proceedings does not stand vitiated. The respondents have also stated that under the Police Regulation, there is no provisions for appointment of a Presenting Officer and, therefore, merely because no Presenting Officer was appointed, the enquiry proceedings does not stand vitiated. The respondents have further stated that the petitioner was permitted to participate in the Departmental Enquiry, evidence of witnesses were recorded by Enquiry Officer and, therefore, merely because the Presenting Officer was not appointed, the order of punishment cannot be said to be unjustified, illegal or bad in law. The respondents have also argued before this Court that keeping in view the statements of witnesses adduced during the course of Disciplinary Enquiry proceedings, the petitioner has rightly been found guilty for the alleged misconduct and no case for interference can be made out in the matter.

6. The learned Counsel appearing for the respondents/State has also argued before this Court that the petitioner has not been able to point out any procedural irregularity in the Departmental Enquiry and, therefore, in absence of any procedural irregularity committed by the respondents and in absence of violation of principles of natural justice and fair play, this Court is not competent to appreciate the evidence on record and the writ petition deserves to be dismissed.

7. Heard learned Counsel for the parties at length and perused the record.

8. In the present case, the petitioner before this Court was holding the post of Constable at the relevant point of time and on 22-6-2002 while he was deployed to escort the bus belonging to Hardoul Bus Service which was going from Kolaras to Akajhiri witnessed an incident, wherein the bus was stopped by certain dacoits by putting a tractor-trolley on the road. It is alleged that the petitioner who was responsible to protect the bus and passengers therein did not take action in the matter and a fact finding enquiry took place in the matter. Based upon the fact

finding enquiry, a charge-sheet was issued on 28-6-2002, wherein, it was alleged that the petitioner has not taken any step to save the passengers from dacoits who have looted and terrorized the passengers and on the contrary, the petitioner by hiding himself beneath a seat of this bus have shown himself to be coward and has committed an act of unbecoming of a Government servant. The petitioner did submit a reply to the charges levelled against him and the Enquiry Officer was appointed in the matter by the Disciplinary Authority. It is pertinent to note that the petitioner was deputed to escort the bus along with one Tarachand Sagar, who was also a Constable and a joint enquiry took place in respect of both the Constables.

9. The learned Counsel for the petitioner has argued before this Court that the enquiry proceedings stand vitiated as no order was passed by the Disciplinary Authority to hold a common proceedings. The learned Counsel for the petitioner has relied upon a judgment delivered by the Apex Court in the case of Moolchand Namdeo v. State of M.P. 1982 MPWN SN 459 and also a judgment delivered by this Court in the case of S.N. Singh v. State of M.P. and Ors. 2005 (2) MPLJ 18.

10. The Rule 18 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 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:

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

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.

(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.

The aforesaid statutory provisions of law provides for holding a common proceedings where two or more Government servants are involved in a disciplinary proceeding. The requirement of passing an order in such case arises

where the delinquent employees are holding the different ranks. In the present case, the delinquent employees were holding the same ranks and, therefore, no such order was required to be passed under Rule 18 of the Rules of 1966 in the peculiar facts and circumstances of the case. In the present case, as both the employees were holding the post of Constables there was no necessity of passing an order as required under Rule 18 of the Rules of 1966.

11. The judgment relied upon by the learned Counsel for the petitioners in the case of Moolchand Namdeo v. State of M.P. (supra), relates to a case, wherein the employees were from the Irrigation Department as well as from the Education Department and there were different Disciplinary Authorities in the matter and, therefore, in such circumstances, this Court has held that an order was required to be passed under Rule 18 of the Rules of 1966. Another judgment relied upon by the learned Counsel for the petitioner in the case of S.N. Singh v. State of M.P. and Ors. (supra), is also distinguishable on facts. A Sub-Inspector of Police was charge-sheeted along with one Head Constable and, therefore, an order was required to be passed under Rule 18 of the Rules of 1966 by the Competent Authority for holding a joint enquiry. Keeping in view of the aforesaid, as in the present case, the petitioner was holding the rank of a Constable and other employee was also a Constable and, therefore, no such order of the Disciplinary Authority was required to be passed under Rule 18 of the Rules of 1996.

12. The learned Counsel for the petitioner has vehemently argued before this Court that no Presenting Officer was appointed by the Disciplinary Authority and the Enquiry Officer has acted as Presenting Officer and has also cross-examined the witnesses produced during the course of Departmental Enquiry.

13. This Court has carefully gone through the record of the Disciplinary Enquiry and it is event that the Enquiry Officer has conducted the chief examination and he has also conducted the cross-examination of all the witnesses. Thus, it is evident that the Enquiry Officer himself has played the role of prosecutor. This Court in the case of Ram Prakash v. State of M.P. and Ors. 2008 (II) MPWN 59, in Paragraphs 9,10,11 and 12 has held as under:

The Presenting Officer appointed under Rule 14 (5) (c) of the CCA Rules of 1966 is in fact is a person appointed like a prosecutor and the person has to prove the misconduct before the Enquiry Officer. It is the Presenting Officer who conducts the chief examination of the prosecution witnesses as well as cross-examination of the defence witnesses. It is again the Presenting Officer who conducts the cross-examination of the delinquent Government servant in order to arrive at a finding of guilt. In the present case, after going through the record minutely, it is evident that the Enquiry Officer has conducted the chief examination and he has conducted the cross-examination of the defence witnesses as well as cross-examined the delinquent Government servant. Thus, the Enquiry Officer himself has played the role of the prosecutor.

A Division Bench of this Court in the case of Union of India through its Union of India (UOI) and Others Vs. Mohd. Naseem Siddiqui, , in Paragraph 16 has held as under:

We may summarise the principles thus:

- (i) The Enquiry Officer, who is in the position of a Judge shall not act as a Presiding Officer, who is in the position of a prosecutor.
- (ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every enquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.
- (iii) The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.
- (iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the enquiry.
- (v) As absence of a Presenting Officer by itself will not vitiate the enquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in any recorded in the enquiry.

Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of enquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.

Keeping in view the aforesaid, and also keeping in view the record relating to the Disciplinary Enquiry in the present case, it is evident that no Presenting Officer was appointed by the Disciplinary Authority. The evidence on behalf of the prosecution has been appreciated by the Enquiry Officer by conducting a regular examination in chief of prosecution witnesses by taking them through the prosecution case. The Enquiry Officer has also conducted the regular cross-examination of defence witnesses. It is not a case where Enquiry Officer has simply asked the clarificatory questions to the delinquent officials or to the witnesses. It is a case, in which, Enquiry Officer has acted as a prosecutor as well as a Judge. Resultantly, the enquiry proceedings stand vitiated and the consequential order passed by the Disciplinary Authority of removal from service

dated 30-9- 2002, the order rejecting the appeal dated 24-2-2003 and the order passed in the mercy petition dated 15-9-2003 deserve to be quashed.

14. The respondents in their return have stated that under the Police Regulation there is no such provision for appointment of a Presenting Officer. The respondents/State in its reply has relied upon the provisions of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 and a charge-sheet was issued under the provisions of Rules of 1966 and for all purpose, the Rules of 1966 have been relied upon and only for appointment of a Presenting Officer it has been stated that there is no provision for appointing a Presenting Officer. The Rules of 1966 are very much applicable in the case of police personnels and, therefore, once there is provisions of appointment of a Presenting Officer, under the Rules of 1966, the same has to be adhere to. Resultantly, the Disciplinary Enquiry proceedings as no Presenting Officer was appointed in the matter and the Enquiry Officer himself has acted as a prosecutor, deserves to be quashed. The writ petition is allowed with the following directions:

(a) The order passed by the Disciplinary Authority of removal from service dated 30-9-2002, the order rejecting the appeal dated 24-2-2003 and the order passed in the mercy petition dated 15-9-2003 are hereby quashed.

(b) The respondents are directed to reinstate the petitioner forthwith back in service. The petitioner shall not be entitled for back wages in the matter and he shall be entitled for notional fixation of salary and other consequential benefits.

(c) The respondents shall be at liberty to proceed afresh against the petitioner by following the prescribed procedure as provided under the Rule of 1966.

15. With the aforesaid, the writ petitions stand allowed. No order as to costs.