**(2018) 03 MP CK 0174**

**In the Madhya Pradesh High Court**

**Case No :** W.A. No. 88 OF 2018

Chattrapal Singh Parihar APPELLANT

Vs

State Of Madhya Pradesh & Ors RESPONDENT

**Date of Decision :** 27-03-2018

**Acts Referred:**
Constitution of India — Article 20

**Citation :** (2018) 03 MP CK 0174

**Hon'ble Judges :** SHEEL NAGU, J;S.A. DHARMADHIKARI, J

**Bench :** Division Bench

**Advocate :** D.P. Singh, Kamal Jain

**Final Decision :** Disposed Of

## Judgement

1. The present intra Court appeal u/S 2(1) of MadhyaPradesh Uchacha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, assails the final

order dated 05.01.2018 passed by the writ Court in W.P. No. 19285/2017 where by the petition of appellant petitioner primarily assailing the

chargsheet dated 10.07.2017 vide Annexure P-1 on the ground of being hit by the principle of double jeopardy, has been dismissed.

2. Learned counsel for the rival parties are heard on the question of admission andÂ final disposal.

3. Learned counsel for the petitioner appellant by referring to the pleadings in the petition including contents of the earlier charges dated 28.06.2012

vide P-4 and in the subsequent impugned chargsheet dated 07.10.2017 (vide P-1), submits thatÂ State in its return dated 18.02.2017, para 5 in

particular had admitted that to the extent of Rs. 2,00,000/-, the charges relating to pecuniary loss alleged againstÂ the petitioner in both the

chargsheets was common. Learned counsel for the petitioner/appellant does not dispute that the earlier chargsheet dated 28.06.2012 vide P-4 relates

to a similar period of time i.e. from June, 2010 to July 2010 whereas the subsequent impugned chargsheet dated 07.10.2017 related to misconduct

alleged during a larger period of time from

01.01.2009 to 30.04.2011. In this factual background, which is not disputed by the State, learned counsel for the appellant submits that to the extent of

the said commonality, the principle of double jeopardy ought to have been invoked in favour of the petitioner by the learned Single Judge.

4. Reliance in this regard is placed on the decisions of Apex Court in the case of Kanailal Bera Vs. Union of India (UOI) and Ors. reported in (2007)

11 SCC 517 andÂ Â reported in 2007(1) SCC 338.

5. Learned Single Judge has declined the relief sought by the petitioner for the reasons mentioned in the last two paragraphs of the impugned order,

which for ready reference and convenience are reproduced below:

The genesis of second charge sheet issued on07/10/2017 is not the complaint but the AuditReport of the accounts of petrol pump for the period from

01/01/2009 to 30/04/2011 and as evident from imputation of charges which reveals that a loss ofRs. 5,76,917.78/- is found to be caused during said

period which included non deposit of Rupees Two Lacs which was subject matter of earlier enquiry.Thus an embezzlement of Rs. 3,76,917/- in the

accounts of Battalion Petrol Pump and after adjusting the stock of Rs. 85,087/- total loss was found to be Rs. 4,91,829/out of which said Leran Kuzoor

had deposited Rs. 3,939.96/- and the loss on the part of petitioner is worked not to Rs.4,87,889.97/-; therefore, he is charged that:

^^01& vkWfMV vof/k fnukad 01-01-2009 ls fnukad 30-04-2011 rd dh vof/k esa iqfyl osyQs;j fQfyax LVs'ku 18oha okfguh folcy f'koqijh ij dk;Zjr jgrs

gq;s] foRRkh; vfu;ferrk dj iqfyl osyQs;j fQfyax LVs'ku dks 4]87]889-97@&#i;s dh gkfu igqWpkukA

02& iqfyl osyQs;j fQfyax LVs'ku ds izHkkjh ds :i esa dk;Z vof/k ds nkSjku Hkz""Vkpkjiw.kZ vkpj.k dk izn'kZu dj lsok fu;eksa dk mya?ku djrs gq,

lafnX/k fu""Bk ds izn'kZu ls Lor% dks 'kkldh; lsok ds v;ksX; iznf'kZr djukA^^

When the charges levelled against the petitioner vide charge sheet dated 07/10/2017 are adjudged with the imputations, the facts and period are

different than from the subject matter of earlier charge sheet as would attract the doctrine of dual jeopardy.

 

In view whereof no indulgence is caused.

Petition fails and is dismissed. No costs.

5.1 The above reveals that the learned Single Judge has though taken cognizance of the fact that loss of Rs. 2 lacs to the Government was the subject

matter of the earlier inquiry, but it was held by relying upon the audit note that the charges in the impugned chargsheet dated 07.10.2017 relate to

imputations of period different than the period relating to the subject matter of earlier chargsheet. With these findings, the benefit of principle of double

jeopardy was not extended to the petitioner.

6. Before testing the legality and validity of the impugned order of the learned Single Judge, it would be apt to reproduce the charges alleged in the

earlier chargsheet vide P-4 and the subsequent chargsheet vide P-1. Earlier Chargsheet P-4 dated 28.06.2012

01 â?" fnukWad 27-06-10 dks isVksy iEi dk pktZ ysrs le; fcuk vkbZ- vks-lh-,oa ukirkSy vf/kdkjh dh iqf""V ds isVÂªksy ] Mhtay ds LVkWd esa deh

crkuk ,oa vius ofj""B vf/kdkfj;ksa dks dksbZ fyf[kr tkudkjh u nsdj rF; dks Nqikdj lansgtud vkpj.k izfnZ'kr djukA 02- fnukWad 27-07-10 dks ofj""B

vf/kdkfj;ksa dh mifLFkfr ds fcuk gh] fcuk vuqefr ds ih-lh-ys#u dqtwj o iz-vkj-477 jkeyky ls 02 yk[k #i;s dh jkf'k isVÂªksy ] Mhty esa crkbZ x;h deh

dh iwrhZ gsrq ysuk vkSj mudks dksbZ ikorh j'khn iznk; u djukA

03-ekg twu] tqykbZ 2010 esa vkbZ-vks-lh- }kjk iznRr Mh-lh-vkj Â¼LVkWad jftLVjÂ½ vukf/kd`rÂ #i ls dqN ys[k dj OgkvVuj }kjk feVk;k tkuk rFkk

mlds fMi okys dkWye esa vksoj jkbfVax ,oa OgkbVuj dk iz;ksx dj lansgtud vkpj.k izfnZ'kr djukA

04- #i;s 2]00]000Â Â¼nks yk[kÂ½ dh jkf'k dk isVÂªksy] Mhty eSu Vsadksa esaugha Mkyk tkuk rFkk dS'k cqd esa bldk dksbZ mYys[k ugha dj ?

kksj foRrh; vfu;ferrk djukA

05- jkstukepk lkUgl dzekad 765Â fnukWad 27-06-2010 esa n'kkZ;h x;hisVÂªksy] Mhty dh deh dqy dher fnukWad 25-07-2010 dh izpfyr njksa ds

vuqlkj #i;s 268033-07Â gksus ds ckotwn Hkh mDr Mhtr isVÂªksy dh deh dks dsoy 02 yk[k #i;s esa iwrhZ dj xaHkhj foRrh; vfu;ferrk djukA

Subsequent Chargsheet P-1

bl rjg izkFkfed tkWapdrkZ vf/kdkjh }kjk izLrqr izkFkfed tkWap izfrosnu ds v/;;u ls Li""VÂ gS fd vipkjh mi fujh{kdÂ N=kiky flag ifjgkj }kjk okfguh isVÂªksy iEi ij dk;Zjr jgus ds nkSjku iqfyl osyQs;j fQfyax Lvs'ku 18oha okfguh folcy f'koijh ds izHkkjh ds #i esa dk;Zjr jgrs gq, 4]87]889-97@& #i;s

dh foRrh; vfu;ferrk dj] iqfyl osyQs;j fQfyax Lvs'ku dks gkfu igqWapkdj Hkz""VÂ vkpj.k izfn'kZr fd;k x;k gSA vr% vipkjh mi fujh{kd Â¼folcyÂ½

N=kiky flag ifjgkj] 18 oha okfguh folcy] f'koiqjh ds fo#)Â izdj.k esa foHkkxh; tkWap fd;s tkus ds mnns'; ls fuEu fyf[kr vkjksi vf/kjksfir djrk gwWaA

1- vkWfMV vof/k fnukWad 01-01-2009 ls fnukWad 30-04-2011 rd dh vof/k esa iqfyl osyQs;j fQfyax Lvs'ku 18oha okfguh folcy f'koiqjh ij dk;Zjr jgrsa

gq;s] foRrh; vfu;ferrk dj iqfyl osyQs;j fQfyax LVs'ku dks 4]87]889-97@& #i;sÂ dh gkfu igqWapkukA

2- iqfyl osyQs;j fQfyax Lvs'ku ds izHkkjh ds #i esa dk;Z vof/k ds nkSjku Hkz""Vkpkiw.kZ vkpj.k dk izn'kZu dj lsok fu;eksa dk mya?ku djrs gq, lafnX/k

fu""Bk ds izn'kZu ls Lor% dks 'kkldh; lsok ls v;ksX; izfnZ'k djukA

7. After hearing learned counsel for the petitioner and perusing the record, especially the pleadings contained in the return filed by the State to the writ

petition, the aspect which comes out loud and clear is that the period of misconduct alleged in the earlier chargsheet for which the petitioner had been

punished is part and parcel of the larger period of time in regard to whichÂ subsequent impugned chargsheet is issued. Return of respondent in para 5

is to the following effect:

5. That, it is pertinent to mention here that during audit of accounts of the Petrol Pump for the period 01.01.2009 to 30.04.2011, it has been traced that

a loss of Rs. 576917.78/- has been caused in the Battalion Petrol Pump. This amountsÂ of Rs. 576917.78/- also includes the amount of Rs. 2 lacs

which was subject matter of the chargsheet dated 28.06.2012. However, it is emphatically mention here besides the non-deposit of Rs. 2 lacs which

was subject matter of the earlier inquiry, there was a major embezzlement of Rs. 3,76,917/- in the accounts of Battalion Petrol Pump after adjusting

the stock of Rs. 85087/-Â total loss was worked out to be Rs. 491829/- out of which PC Lerun Kuzoor has deposited Rs. 3939.96/- and the loss on

the part of the petitioner was worked to be Rs. 487889.97/-.

Therefore, for such negligent corrupt act of the petitioner, chargsheet dated 07.10.2017 (Annexure P-1) has been issued with the following charges:

1- vkWfMV vof/k fnukWad 01-01-2009 ls fnukWad 30-04-2011 rd dh vof/kesa iqfyl osyQs;j fQfyax Lvs'ku 18oha okfguh folcy f'koiqjh ij dk;Zjr jgrsa gq;s] foRrh; vfu;ferrk dj iqfyl osyQs;j fQfyax LVs'ku dks 4]87]889-97@& #i;sÂ dh gkfu igqWapkukA

2- iqfyl osyQs;j fQfyax Lvs'ku ds izHkkjh ds #i esa dk;Z vof/k ds nkSjkuHkz""Vkpkiw.kZ vkpj.k dk izn'kZu dj lsok fu;eksa dk mya?ku djrs gq, lafnX/k

fu""Bk ds izn'kZu ls Lor% dks 'kkldh; lsok ls v;ksX; izfnZ'k djukA

Â That, it is therefore evident from the record that in earlier chargsheet, the allegation was of extracting illegally Rs. 2 lacs from PC Lerun Kuzoor

and Head Constable Ramlal as well as Constable Kailash Sagar by giving them threat of action for deficiency in the quantity of diesel and petrol found

by the petitioner. Whereas in the present chargsheet, the allegation is of embezzlement of Rs.3,76,917/-Â and of not depositing the amount of loss of

Rs. 2 lacs and not making any entry of the same in the relevant cashbook. In the present chargsheet clear cut distinctive charge of embezzlement of

Rs. 3,76,917/is against the petitioner and therefore it cannot be said that the present chargsheet has been issued on the set of facts on which the

earlier chargsheet was issued. In such circumstances, the chargsheet dated 07.10.2017 (Annexure P-1) is proper legal and valid. The writ petition is

misconceived and liable to be dismissed.

8. During the pendency of this writ appeal, a clarification was sought by this Court from the respondent in regard to the nature and extent of

commonality of charges in both the said chargsheets. Clarification was filed by the respondents on 06.03.2018 where in sum and substance, the same

revelation is made by the State as made in the return before the learned Single Judge, but with much more clarity and detail. ParagraphsÂ 3, 4, 7 and

11 are relevant and have bearing to the issue involved here and therefore are reproduced below for convenience and ready reference:

3. That, it is not disputed that the allegation offinancial irregularity against the appellant forming the subject matter of chargsheet Annexure P-1 is of a

larger amount that also includes the amount of Rs. 2 Lacs that was in question in the earlier chargsheet also. However, the scope of charges is totally

different.

4. That, the loss as alleged in the fresh chargsheetis arrived at in the manner that Special Audit Team has found a deficiency of Rs. 3,76, 917.00, apart

from the amount of Rs. 2 Lacs extracted from three other employees, namely

 

Larun Kujoor, Ramlal and Kailash Sagar. Thus, the total amount of Rs.

5,76,917.78 is arrived at. In preliminary inquiry, an amount of Rs. 85,087.85 was found to be not part of loss, hence, deducting that amount, the amount

of Rs. 4,91,829.93 was arrived at and after further deducting amount of Rs. 3939.96 deposited by Lerun Kujoor, the net amount of Rs. 4,87,889.97

forms the subject matter of the present impugned chargsheet.

7. That, in the earlier chargsheet, as mentioned about, there was no allegation of causing embezzlement of this amount of Rs. 2 lacs, but of attempting

to cover up the matter and extracting Rs. 2 lacs from the employees.

11. That, from the above, it is clear that even in respect of the amount of Rs. 2 lacs (which is alleged to be overlapping amount in both the

chargsheets), the charge now is embezzlement, whereas in the earlier chargsheet, there was no allegation of embezzlement at all. Thus, it cannot be

said that both the chargsheets operate on same set of facts and allegations. The amount is different, the period is larger and the nature of allegation is

different. Hence, the Hon'ble Writ Curt has not erred in rejecting the writ petition.

8.1 From the above response of the respondents in their return to the petition and the subsequent clarification filed in this appeal, it is clear as day light

that the embezzlement alleged to the tune of Rs. 2 lacs was the subject matter of the earlier charges vide P-4Â for which the petitioner has already

been punished vide penalty order dated 20.09.2013 P-6 by upholding one increment cumulatively.

8.2 By their own showing, the State Government in their pleadings have come out with a case that though the amount of Rs. 2 lacs which was the

subject matter of the earlier chargsheet is part and parcel of the impugned chargsheet, but since a different charge of embezzlement is being alleged

against the petitioner, the State is justified in including the said amount of Rs. 2 LacsÂ in the impugned chargsheet.

9. A bare perusal of the earlier chargsheet P-4 reveals that inter-alia, the misconduct was alleged arising out of financial irregularity to the tune of Rs.

2 lacs. Just because a different expression of â??embezzlementâ? is used in the subsequent impugned chargsheet, the same would not justify the

inclusion of the said amount of Rs. 2 Lacs as subject matter by employing a different expression â??embezzlementâ? in the impugned chargsheet, for

which the petitioner/appellant has already been tried and punished.

 

10. The principle of double jeopardy is in fact foreign to the field of service jurisprudence, but was well recognized in the realm of criminal

jurisprudence arising out of the constitutional provision contained in Article 20 which prohibits the prosecution and punishment of a person more than

once for the same offence.

10.1 The principle behind the doctrine of double jeopardy as manifested by Article 20 (exclusive in the field of criminal jurisprudence emanates out of

the fundamental principle that no person should be punished twice for the same mistake/misdemeanor). This fundamental principle applies to the field

of disciplinary proceedings.

11. The petitioner/appellant had been punished earlier and therefore now cannot be subjected to another disciplinary proceeding by way of impugned

chargsheet to the extent it alleges same misconduct for which the appellant has earlier suffered disciplinary proceedings followed by penalty.

11.1 The difficulty is that the charge as regards loss of Rs. 2 Lakhs for which the appellant had been punished earlier appears to be inextricably

involved in the impugned chargsheet. However, this by itself may not prevent this Court from doing complete justice in the matter of reaching the

common charges contained in the earlier and the subsequent impugned chargsheets and preventing the petitioner/appellant from falling prey to the vice

of double jeopardy.

12. In view of the above, this Court deems it appropriate to allow this appeal to the extent indicated below:

1. The disciplinary authority is hereby directed to apply its mind on the question of commonality of charges between the earlier chargsheet P-4 and the

subsequent chargsheet P-1 and remove the common portion of the charge in the subsequent chargsheet and thereafter proceed to conclude the

disciplinary proceedings commenced by the impugned chargsheet dated 07.10.2017 Annexure P-1.

2. Till the above exercise is completed, the disciplinary inquiry proceedings pending against the appellant commenced by the impugned chargsheet

dated 07.10.2017 shall remain stayed.

13. With the above said directions, the present intra Court appeal stands disposed of.

 