
(2001) 08 MP CK 0043
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3628 of 2000

Dr. (Mrs.) Geetika Nigam

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 95 FLR 289 : (2002) 2 MPHT 70 : (2002) 1 MPLJ 289

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : Sobha Menon, for the Appellant; Rajendra Menon, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

By this writ petition filed under Articles 226 and 227 of the Constitution of India, petitioner prays for quashing of the order dated 7-5-99 (Annex. P-I 0), whereby the disciplinary authority passed the order dismissing the petitioner from service as a measure of punishment. Further prayer made by the petitioner is to quash the order dated 22-4-2000 (Annexure P-I3), whereby appeal/review preferred by the petitioner has been dismissed,

Shorn of unnecessary details, facts giving rise to the present petition are that a charge-sheet was issued against the petitioner by order dated 11-3-97; containing four charges, which are as follows:-

Charge No. 1;

Dr. (Mrs.) G. Nigam, M.O. attached to the MPEB Hospital, Sarni, had submitted Casual leave application for the period from 4-7-96 to 12-7-96 with permission to avail 13th and 14th July, 96 being Second Saturday and Sunday. She was to join her duty on expiry of leave ie., on 15-7-96. But she failed to join duty at MPEB Hospital, Sarni on 15-7-96. Even after lot of correspondence and advises

to her to join her duty immediately she has not joined duty and remained absent unauthorisedly from duty and head quarter Sarni w.e.f. 15-7-96 to 8-1-97.

Charge No. 2:

Dr. (Mrs.) G. Nigam, M.Sub- attached to the MPEB Hospital, Sarni, during her unauthorised absence period was advised to attend the Chief M.O., MPEB Hospital, Jabalpur, but she did not attend the Chief M.O., MPEB Hospital, Jabalpur and failed to comply the order of the superior authority.

Charge No. 3:

Dr. (Mrs.) G. Nigam, M.O. attached to MPEB Hospital, Sarni, after remaining absent from her duty and head quarter Sarni, unauthorisedly, joined her duties on 9-1-97 and is again absent unauthorisedly from duty and head quarter Sarni w.e.f. 29-1-97 to till date. Thus, she is habitual of remaining absent from her duty and head quarter Sarni, unauthorisedly.

Charge No. 4:

Dr. (Mrs.) G. Nigam, M.O. attached to MPEB Hospital, Sarni, was absent from her duty and head quarter Sarni, unauthorisedly w.e.f. 15-7-96 to 8-1-97 and is again absent unauthorisedly from her duty and head quarter Sarni, w.e.f. 29-1-97 to till date. During this period it has been noticed that Dr. (Mrs.) G. Nigam, M.O., MPEB Hospital, Sarni, is doing private practice at Bhopal which is contrary to the Service Conduct Rules."

Petitioner was asked to submit her written statement of defence within 15 days from the date of receipt of the charge-sheet. In response thereto, petitioner, vide letter dated 10-5-97 demanded photocopies of the documents, which, in her opinion, were necessary to submit her defence. This request of the petitioner was acceded to and the documents were sent to her by letter dated 27-5-97 with a further direction to her to submit her written statement of defence within 10 days. However, she did not submit any reply in response to the charge-sheet. Later on, by order dated 16-8-97 Shri R.K. Banjhal, Superintending Engineer was appointed as Enquiry Officer to enquire into the allegations made against the petitioner. Said communication was sent to the petitioner by registered post by letter dated 23-8-97, which was received back undelivered. The Enquiry Officer also intimated to the M.P. Electricity Board (hereinafter referred to as the Board) that the petitioner did not attend the enquiry proceeding on the date fixed for hearing and all the letters issued to her by the Enquiry Officer were received back undelivered. Ultimately the Enquiry Officer got the notice published in daily newspapers "Dainik Bhaskar", Bhopal, "Dainik Nai Duniya ", Bhopal and "Nav Bharat", Bhopal and by the said notice, she was directed to attend the enquiry proceeding on 28th October, 1997. All these efforts made by the Enquiry Officer to acquaint the petitioner about the enquiry being conducted by him, did not yield any result and the petitioner did not participate in the enquiry. Left with no option, the Enquiry Officer proceeded to conduct enquiry ex pane and submitted

his findings by letter dated 5-2-98 holding the petitioner guilty of the charges.

The disciplinary authority sent a copy of the finding of the Enquiry Officer to the petitioner by letter dated 17-2-98 for submission of her representation, if any, against the findings of the Enquiry Officer. She was asked to submit her representation within a period of 15 days but she did not choose to do the same. She was again asked by letter dated 27-6-98 to submit her , representation and the said letter was sent to her home address at Bhopal under registered post but the same was also returned undelivered by the postal authority with the remark that in spite of information being given to the petitioner, she remains unavailable
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As the Board failed in its attempt to get the enquiry report served on the petitioner, the same was again sent by letter dated 29-8-98 through the Executive Director (Gen.) Sarni and the Executive Director by letter dated 19-11-98 communicated to the Board that the letter was sent to the petitioner through Medical Officer of the MPEB Hospital, Bhopal and he was informed that Dr. G. Nigam was not available at her residence although the Medical Officer made three attempts for delivering the letter. The Executive Director sent a letter to the petitioner again by registered post dated 2-11-98 but the same was again returned undelivered with the remark by the postal authority that the addressee refused to receive the same. Left with no option, the Executive Director got the notice published in the daily newspaper "Dainik Bhaskar" on 20-13-98 calling upon the petitioner to submit representation against the findings of the Enquiry Officer within three days but she did not submit any representation.

The enquiry report was considered by the disciplinary authority and it found that in spite of several and fair opportunities given by the Enquiry Officer, petitioner did not, participate in the enquiry. It also found that after submission of the enquiry report, in spite of the publication in the daily newspaper calling upon the petitioner to submit her reply, she had not chosen to file any. Accordingly the disciplinary authority concluded that the only reason of not participating in the enquiry or to submit reply to the enquiry report is that she had nothing to say in the matter and has no defence to offer. The disciplinary authority on consideration of the report of the Enquiry Officer held that the Departmental Enquiry conducted against the petitioner was proper and legal, she was given full opportunity to defend herself and the enquiry was conducted in accordance with rules and regulations and further the findings of the Enquiry Officer are justified on the basis of the evidence produced in the enquiry. Accordingly, it imposed the punishment of dismissal from service.

Petitioner, aggrieved by the same preferred appeal before the appellate authority. Assailing the order of the disciplinary authority and complaining that her appeal has not been disposed of by the appellate authority, she filed W.P. No. 10/2000 before this Court. This Court by order dated 17-1 -2000 directed the Board to dispose of the appeal.

It is relevant here to state that the disciplinary authority of the petitioner is the Board and the impugned order of dismissal has been passed by the Board itself. It is further relevant here to state that the purported appeal preferred by the petitioner against the order of disciplinary authority was considered as review petition by the Board under Rule 29 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and by the impugned order dated 22-4-2000 (Annexure P-13), the said review application has been rejected.

Mrs. Shobha Menon appears on behalf of the petitioner. Respondent Nos, 2 to 4 are represented by Shri Rajendra Menon.

Mrs. Shobha Menon, appearing on behalf of the petitioner, submits that the entire enquiry is vitiated as the Enquiry Officer has not followed the procedure provided under Rule 14 (11) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as the Rules). Rule 14 (11) of the rules reads as follows :-

"(11) The inquiry authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the presenting officer to produce the evidence by which he proposes to prove the articles of charge and, shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the enquiring authority may allow, the documents specified in the list referred to in Sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf.

Note :- If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in Sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) Give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may, allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in Sub-rule (3).

Note:- The Government servant shall indicate the relevant of the documents required by him to be discovered and produced by the Government."

According to the aforesaid rule, if the delinquent employee fails to appear within the specified time or refuses or omits to plead, he is required to ask the presenting officer to produce the evidence by which he proposes to prove the articles of charge and to adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose

of preparing his defence inspect the documents and submit list of witnesses. As found earlier, petitioner was informed about the appointment of the Enquiry Officer by order dated 16-8-97 and was asked to submit her reply. The Enquiry Officer also intimated her to attend the enquiry proceeding on the date fixed for hearing and when all attempts failed to serve the notice under registered cover, the Enquiry Officer had published a notice in three daily newspapers but the petitioner did not avail the opportunity. In that view of the matter, I am of the opinion that the complaint made by the petitioner that she was not given opportunity by the Enquiry Officer is absolutely misconceived. As stated earlier, when the charge-sheet was served on the petitioner, she asked for the documents and thereafter maintained golden silence. She even did not react when she was asked to submit her reply, on the findings of the Enquiry Officer when it was published in the newspaper. Not only this, at the initial stage when the charge-sheet was served on her, she did not choose to file any reply. In that view of the matter, I am of the considered opinion that the petitioner was given sufficient opportunity at every stage of the proceeding and she is herself responsible for not availing the opportunities.

Mrs. Menon then submits that the finding recorded by the Enquiry Officer about the guilt of the petitioner is perverse. Mr. Rajendra Menon, appearing on behalf of the respondent Nos. 2 to 4, however, submits that the finding recorded by the Enquiry Officer is based on the material placed before it and this Court cannot permit the petitioner to assail the finding as if, it is hearing appeal against the findings of the disciplinary and the appellate authority. In support of his submission, he has placed reliance on a judgment of the Supreme Court in *Apparel Export Promotion Council Vs. A.K. Chopra*,]. Relevant portion of the judgment is as follows :-

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole Judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities, Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some

other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision making process."

It is relevant here to state that the charge against the petitioner is of remaining on unauthorised leave and to remain out of place of posting for doing private practice at Bhopal. As stated earlier, petitioner did not deny the charges at any point of time and even in the present petition, she has not chosen to deny those charges. It is relevant here to state that the strict rules of Evidence Act, do not apply in the departmental proceedings and materials placed before the Enquiry Officer clearly go to suggest that its finding is based on the material available on record. As the finding is based on the material on record, this Court cannot act as the Court of appeal to permit the petitioner to assail the finding. I do not find any merit in the submission of Mrs. Menon.

Mrs. Menon lastly submits that the punishment of dismissal from service is disproportionate to the gravity of allegation and as such same requires interference by this Court. It is well-settled that what punishment a particular misconduct deserves is in the domain of the disciplinary authority and on appeal by the appellate authority and this Court interferes with the quantum of punishment only when it is found that the same is disproportionate to the gravity of allegation or in other words, shocking to the conscience to the Court. Petitioner was a Medical Officer posted in a hospital of the Board. She remained absent from the hospital unauthorisedly for months together from the place of posting to carry out her private practice at Bhopal. By the said conduct she has left the life of a large number of persons in lurch, who required medical care. Her absence cannot be equated with absence of employee who does not have any public dealing or absence having no serious impact. Absence of a doctor from the hospital causes tremendous miseries to the patients. Many times damages caused are irreparable. In that view of the matter, I am of the opinion that the punishment of dismissal from service cannot be said to be disproportionate to the gravity of allegation, so as to call for interference by this Court in exercise of its writ jurisdiction.

In the result, I do not find any merit in the writ petition, which is dismissed accordingly. In the facts and circumstances of the case, there shall be no order as to costs.