

(2010) 12 CHH CK 0026
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 645 of 2005

Ghasiram Kosariya

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Chhattisgarh Police Regulations — Regulation 213, 221, 222, 224, 469
Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 14(5), 18, 226

Citation : (2011) 129 FLR 459

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J.—The Petitioner filed Original Application before the Madhya Pradesh State Administrative Tribunal, registered as O.A. No. 3121 of 1992.

2. After abolition of the Tribunal, the aforesaid original application has been transferred to this Court and registered as W.P. (S) No. 645 of 2005. By this petition, the Petitioner has assailed legality and validity of order of penalty passed by the Superintendent of Police on 23.12.1991 (Annexure A-12) as also order dated 30.3.1992 (Annexure A-14) passed by the Deputy Inspector General of Police, Raipur, by which, appeal against the order of penalty has been dismissed. The Petitioner has also challenged validity of order dated 27.8.1992 (Annexure A-16) passed by the Director General of Police, Bhopal, dismissing Petitioner's mercy petition.

3. On account of an accused having escaped from police custody of the Petitioner, who was working as a Constable at the relevant point of time, he was placed under suspension and thereafter, departmental enquiry was initiated by issuance of a charge-sheet on 6.2.1991 (Annexure A-2). After submission of reply, vide order dated 26.2.1991, one Shri R.K. Katare, City Superintendent of

Police was appointed as Enquiry Officer followed by appointment of Shri J.P. Dwivedi, City Superintendent of Police as Enquiry Officer vide memo dated 27.4.1991. Statements of prosecution witnesses were recorded and after completion of departmental enquiry, the enquiry report was prepared and submitted by the Enquiry Officer vide Annexure A-9. Thereafter, a show cause notice dated 4.12.1991 was issued to the Petitioner and other delinquent employee namely Mohd. Raseed, Constable vide Annexure A-10. The Petitioner submitted his reply to the show cause notice (Annexure A-11). After receipt of reply, Respondent No. 5-Superintendent of Police, Raipur passed the final order in the departmental enquiry whereby the Superintendent of Police, Raipur vide order dated 23.12.1991 (Annexure A-12), holding the Petitioner and Constable-Mohd. Raseed guilty of charges of misconduct imposed penalty of compulsory retirement. The Petitioner preferred an appeal followed by mercy petition which were also dismissed and thereafter this petition has been preferred.

4. Learned Counsel for the Petitioner raised many-fold contentions to submit that because of serious illegalities and irregularities and violation of principles of natural justice, the departmental enquiry and the consequent order of penalty and order passed in appeal are vitiated. Learned Counsel for the Petitioner contended that the entire enquiry is rendered illegal as there has been no order of joint enquiry as mandatorily required under Rule 18 of M.P/C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as the "Rules of 1966"). It is then submitted that no presenting officer was appointed as required under Rule 14 (5) (c) of the Rules of 1966 and in fact, the enquiry Officer acted like a prosecutor which is clearly indicative of his bias and he cannot be said to be fair and impartial. This, according to learned Counsel for the Petitioner, by itself renders the enquiry illegal. The other submissions are that though the Petitioner demanded supply of preliminary enquiry report, the same was not supplied to him. Moreover, the statement of Incharge of the Police Station, Accused-Gorelal @ Amarnath was also not supplied nor statement of Armourer Krishna Rao was supplied to the Petitioner. Further submission of learned Counsel for the Petitioner is that the Petitioner was not informed regarding desperate nature of accused Sunil and Rawel Minz, who were hardcore criminals nor special guard was provided, therefore, if the accused persons fled away from his custody, he was not responsible. It is also submitted that the defence of the Petitioner has not been considered by the Enquiry Officer or by the Disciplinary or Appellate Authority. Learned Counsel for the Petitioner also submitted that the punishment imposed on the Petitioner is highly disproportionate to the gravity of misconduct while imposing punishment of compulsory retirement and the past record of the Petitioner, which is excellent and unblemish has not been considered as required under Regulation 224 of the Police Regulations. It is also contended that imposition of major penalty of compulsory retirement is harsh and is not justifiable and also violative of provisions contained in Rule 226 of the Police Regulations. Learned Counsel for the Petitioner lastly submits that the appellate authority has dismissed the

appeal in a most mechanical manner without due and proper application of mind to the specific ground raised in the appeal against the order of penalty. It is submitted that in view of the provisions contained in Police Regulations as also in the Rules of 1966, the appellate authority was required to consider each and every ground raised in appeal and pass reasoned and speaking order which has not been done in the present case.

5. Per Contra, learned Counsel for the Respondent/State would submit that none of the grounds raised by the Petitioner are made out so as to call for any interference by this Court in this petition. Learned Counsel for the Respondent/State submitted that the enquiry was held by the competent authority and Petitioner was given due and proper opportunity of hearing. The prosecution documents were disclosed to him and he was allowed to cross-examine the prosecution witnesses and further, full opportunity of hearing was afforded to him to lead defence witnesses. Further submission of learned State Counsel is that the allegation of violation of Rule 18 is liable, to be rejected at the threshold because the competent disciplinary authority is the Superintendent of Police as prescribed under the Regulation 221 of the Police Regulations but there is no pleading that the Superintendent of Police did not pass any order of common proceedings as required under Rule 18 of the Rules of 1966. It is also submitted that the Petitioner is not entitled to challenge an otherwise just and proper order of penalty on the technical ground that no specific order of common proceedings was passed in the absence of any proof of prejudice caused to the Petitioner. Learned Counsel for the State further submitted that the allegations of bias against the enquiry officer also deserve to be rejected as the "concerned enquiry officer has not been impleaded as a party. It is also submitted that the allegations of mala fide against the enquiry officer are highly vague, unspecific and do not meet the requirement of strict pleading and proof of mala fide as required under the law.

6. Learned State Counsel also argued that there is no allegation of the Petitioner that the documents relied upon by the prosecution were not supplied or allowed to be inspected by the Petitioner. In so far as preliminary enquiry report is concerned, non supply of the same has not caused any prejudice. The enquiry officer and the disciplinary authority have relied upon the substantive evidence led during the course of enquiry by the prosecution wherein prosecution witnesses were examined. The Petitioner was allowed to cross-examine those prosecution witnesses, and therefore, in the absence of any specific prejudice caused in his defence, non-supply of preliminary enquiry report would not by itself, be violative of principles of natural justice. Learned Counsel for the State further submitted that witnesses were examined and allowed to be cross-examined by the Petitioner. If at all, the Petitioner required copies of the statements, after receipt of show cause notice along with the enquiry report, the Petitioner could have demanded such copies but the Petitioner did not make any such demand which is clear from his reply to show cause notice after submission of enquiry report. In the appeal, no such ground has been raised and all such

grounds as stated above are being raised for the first time before this Court, therefore, they are liable to be ignored

7. It is then submitted that otherwise also in the departmental enquiry, misconduct of the Petitioner has been clearly proved, and has also been admitted by the Petitioner in as much as violation of Regulation 469 of the Police Regulations is apparent and it has come in the evidence which part has not been disputed by the Petitioner that chain was not fastened to the belt Moreover, after receiving reply to the show cause notice, the disciplinary authority adopted a lenient approach and imposed penalty of compulsory retirement only. Therefore, it is submitted that the punishment is neither excessive nor harsh. In support of his submission, learned Counsel for the State relied upon the decision in the case of Vijay Kumar Nigam (dead) through L.Rs. v. State of M.P. and Ors. 1997 (77) FLR 7 (SC).

8. I shall first deal with the foremost contention of learned Counsel for the Petitioner that as the common proceedings in the departmental enquiry against

the Petitioner as well as other delinquent employee Mohd. Raseed have been drawn without there being any order of the competent authority for holding common proceedings as required under Rule 18 of the Rules of 1966, departmental proceedings are vitiated and consequently the impugned order of punishment is also liable to be set aside.

9. In the petition, it has been very specifically pleaded in Clause 13 of the grounds raised in the petition that there is no order that disciplinary action against the Petitioner and Mohd. Raseed would be taken in a common proceeding. It has been stated as below:

There is no such order by the Dy. Inspector General who is the competent authority.

In reply thereof, Respondent have stated in their return in para M as below:

The allegations made in this sub-para are specifically denied. The enquiry was rightly conducted and according to rules laid down in P.R. it was completed.

Thus, it would be clear that in reply to specific pleadings that no orders were passed regarding conducting common departmental enquiry proceedings as required under Rule 18 of the Rules of 1966, all that has been stated in the return is that the same is denied and the enquiry was held according to the provisions, of Police Regulations. There is not even an averment that order as required under Rule 18 of the Rules of 1966 was passed by the competent authority. Before this Court, the Respondent did not produce any order or any other material to demonstrate that a valid and proper order as envisaged under Rule 18 of the Rules of 1966 was ever passed either by the Superintendent of Police or by the Deputy Inspector General of Police. Submission of learned Counsel for the State that pleading in this regard are very vague and not specific and as there is no averment that Superintendent of Police, who issued charge-

sheet and competent to act as a disciplinary authority, did not pass any order as required under Rule 18 of the Rules of 1966, there said question could not be taken up for consideration, deserves to be rejected. Under the statutory scheme of Police Regulations, the Superintendent of Police as well as Deputy Inspector General of Police both are empowered under Regulations 221 and 222 respectively to impose penalty on Constable/Head Constable. Thus, averment made in this petition cannot be said to be vague or unspecific. The object and purpose of specific pleadings is to enable the other party to specific issues raised and not to be left with surprise at subsequent stages of proceeding or at the time of hearing. If the pleadings made in Clause 13 of the grounds raised in the petition are looked into in its totality, a just, fair and logical reading shows that Petitioner has specifically raised this issue, that the entire departmental enquiry is vitiated on account of violation of provisions contained in Rule 18 of the Rules of 1966 as no order for conducting common proceedings have been passed. The Respondents having failed either to make specific pleading as to when and by whom order of holding joint enquiry has been passed and in any case, having failed to produce any order or any other material to that effect, this Court is left with no other option but to hold that common, proceedings of enquiry have been drawn against the Petitioner and Mohd. Raseed Raseed without there being any order as contemplated in Rule 18 of the Rules of 1966. So far as applicability of Rule 18 of the Rules of 1966 is concerned, this Court in the case of Soniram Dhruv v. State of Madhya Pradesh and Ors. W.P. (S) No. 1367 of 2005, decided on 5.2.2010, relied upon the judgment of High Court of Madhya Pradesh in the matter of Krishnanarayan Shivpyare Dixit v. State of M.P. and Ors. 1985 M.P.L.J. 343. and taking into consideration the provisions contained in Regulation 213 of the Police Regulations, held:

10. Clause 213 of the Chhattisgarh Police Regulations provides that the provisions contained in C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 shall regulate penalty and appeal in respect of police officers. It has been held by the High Court of Madhya Pradesh in the matter of Krishnanarayan Shivpyare Dixit v. State of M.P. and Ors. 1985 M.P.L.J. 343. that regulations 213 does not exclude the operation of M.P. Civil Service (Classification, Control & Appeal) Rules, 1966. As no specific provisions had been made in Police Regulations to prescribe the manner in which the appeal against the order of punishment shall be decided by the Appellate Authority, the provisions contained in C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 prescribing mode and manner of exercise of appellate power by the Appellate Authority are applicable.

10. Applying the aforesaid principles, as there is no specific provision dealing with the aspect relating to common proceedings, the provisions contained in Rule 18 of the Rules of 1966 relating to common proceedings in case of more than one delinquent employee would also apply with equal force in the case of departmental enquiry in respect of officials of the Police department. Therefore, while holding departmental enquiry, Respondents were obliged under the law not

only to hold enquiry in accordance with the provisions contained in Police Regulations but also in compliance of the provisions of Rules of 1966, wherever applicable.

11. Rule 18 of the Rules of 1966 reads thus:

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.

(2)****

12. Consequences of violation of provisions contained in Rule 18 of the Rules of 1966, in holding common proceeding have been considered in plethora of decisions and it is no longer *res Integra*. In the case of Mahesh Kumar Shrikishan Tizvari v. State of Madhya Pradesh and Ors. 1985 MPLJ 516. the issue with regard to requirement of passing specific order, order as required under Rule 18 and its consequences came up for consideration. That was also a case relating to an official of the Police Department. While holding that the applicability of the Rules of 1966 is not altogether excluded, relying upon the judgment in the case of Premchandra Dhalpuria, Ex-Sub-Inspector, Police v. The State through the. I.G. Police Bhopal 1970 MPLJ 430. it was held that where the Police Regulations are silent; the provisions of the Rules of 1966 would apply in departmental enquiries against sub-ordinate Police Staff. Relying upon the judgments in several cases on the point, it was held thus:

23. There is no express provision in the Police Regulations for common proceedings against delinquent servants. Rule 18 of the Control & 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 & 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."

13. The aforesaid view was reiterated in the case of *Shyamkant Tiwari v. State of M.P. and Ors.* 1986 MPLJ 37 and it was held:

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 & Appeal Rules has been violated the Departmental Enquiry is vitiated.

14. In the case of *Sardar Badeo Singh v. State of M.P. and Or.* 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.

15. Relying upon the aforesaid decisions, in the case of *S.N. Singh v. State of M.P. and Ors.* 2005 MPLSR 136, it was held that as no prior sanction of the Governor or of the competent authority who can impose penalty of dismissal from service was ever obtained, the common proceedings cannot be said to be validly held.

16. From the aforesaid decision on the applicability and requirement of Rule 18 of the Rules of 1966, which are applicable in the present case also, it is too well settled that in the absence of there being proper order as contemplated under Rule 18 of the Rules of 1966, the entire enquiry is vitiated and consequently the order of punishment is also rendered null and void.

17. Therefore, the inevitable conclusion is that in the absence of there being any order of common proceedings to be drawn proceeding against the Petitioner and Mohd. Raseed as mandatorily required under Rule 18 of the Rules of 1966, the entire departmental enquiry against the Petitioner is rendered illegal being in violation of statutory rules and consequently the impugned order of punishment dated 23.12.1991 (Annexure A-12) is illegal and void. In view of the above finding, which has been recorded, it is not necessary for this Court to take up other issues for consideration. Consequently, the order passed in appeal on 30.3.1992 (Annexure A-14) and order dated 27.8.1992 (Annexure A-16) passed in Mercy Petition are also set aside.

18. Normally this Court would have remanded the matter to the concerned authority for holding fresh enquiry in accordance with the provisions of the Rules. However, in view of the submission made by learned Counsel for the Petitioner that at this distance of time, it would be a great hardship to subject the Petitioner to de novo enquiry, it is required to be considered as to what orders should be passed in the facts and circumstances of the present case and in the interest of justice. In the case of *G. Vallikumari Vs. Andhra Education Society and Others*, a similar situation cropped up for consideration before the Supreme Court and peculiar circumstances were dealt with taking into consideration long lapse of time and it was held:

20. Since the order of punishment passed by the Chairman of the Managing Committee is vitiated due to violation of the statutory rules and the principles of natural justice, we may have remitted the matter to the Tribunal with a direction to consider whether or not the penalty of removal from service imposed upon the Appellant was disproportionate to the misconduct found against her or the action taken by the management was wholly arbitrary or unjust but keeping in view the fact that the Appellant was removed from service more than 13 years ago, we do not consider it proper to adopt that course.

21. In Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai, . this Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the authority concerned is free to pass fresh order but, at the same time, the Court declined to give such liberty to the administration on the ground that a period of 15 years had elapsed since the framing of charge.

22. In Bhagwan Lal Arya case, 2004 (101) FLF 193 (SC) : 2004 (2) LLN 7 : 2004 (17) AIC 604 (SC)

12. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the Appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the Appellant to be reinstated in service subject to the condition that the period during which the Appellant remained absent from duty and the period calculated up to the date on which the Appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The Appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the Appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The Appellant must report on duty within a period of six weeks from today to take benefit of this judgment.

(emphasis supplied)

19. Almost similar circumstances exist in the present case also. The departmental enquiry was initiated against the Petitioner vide charge sheet which was issued in the year 1991, in which, penalty was imposed in the year 1992. The Petitioner took up the matter in appeal and finally the petition was filed before the Madhya Pradesh State Administrative Tribunal in the year 1992. Thus, almost 19 years have elapsed since the date of initiation of enquiry. Therefore, in the considered opinion of this Court, it would not be proper at this stage to

remand the matter for de novo enquiry as the Petitioner would be nearing his age of retirement, moreover, when the Petitioner is aged approximately 53 years when this petition is being now decided. Taking into consideration the nature of accusation against the Petitioner and all relevant circumstances, in the opinion of this Court, interest of justice would be met, if the matter is finally set at rest without any further enquiry and Petitioner is directed to be reinstated in service. However, the Petitioner will not be entitled to arrears of pay or any other monetary benefits which he would have earned during the period he was out of employment.

20. Petition is accordingly allowed. There shall be no orders as to costs.