
(2009) 03 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7220 of 2003 and O.A. No. 1352 of 2000

Govind Mane

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Citation : (2009) 3 MPLJ 338

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : Gopal Hardia, for the Appellant; M.S. Dwivedi, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

Petitioner was working on the post of Constable in the 1st Battalion of SAF under the Home (Police) Department of the State Government.

A charge-sheet dated 7-12-1995 was issued to him alleging therein that in the intervening night of 19th and 20th November, 1995 while he was on duty at Chief Minister's Bungalow at Bhopal he gagged the mouth of one labourer Smt. Santibai w/o Gotriharam while she was sleeping in the premises which was under construction in the said Bungalow. It was alleged that he after lifting her took her to the adjoining room and misbehaved with her. The petitioner replied the said charge-sheet and denied the charges. The Enquiry Officer was appointed and in the departmental enquiry evidence of the departmental witnesses were recorded who deposed against the petitioner. In the enquiry, the petitioner in his cross-examination admitted the guilt. After considering the evidence the Enquiry Officer held the petitioner guilty of the charges.

On receipt of the enquiry report the Disciplinary Authority the 5th respondent Commandant 1st Battalion SAF Indore, issued a show-cause notice to the petitioner proposing penalty of dismissal from service. The petitioner replied to

the said show-cause notice and accepted the guilt. In the said reply he requested for lesser punishment taking the plea that he is not having sufficient means of livelihood and the proposed penalty of dismissal from service will ruin his family. He also assured that he will not commit such misconduct in future, if he is given an opportunity to serve.

The Disciplinary Authority after considering the petitioners reply instead of inflicting upon him the proposed penalty of dismissal from service, awarded penalty of lowering his pay to the minimum of his pay scale of Constable for a period of three years.

Aggrieved by the aforesaid order of penalty, the petitioner preferred a Departmental Appeal before the Appellate Authority. The Appellate Authority the fourth respondent Deputy Inspector General of Police SAF, Indore, after perusal of the record vide order sheet dated 23-8-1996 held that the punishment inflicted to the petitioner is not in accordance with Regulation 226 of M.P. Police Regulations (for short Regulations) and decided to take the matter in suo motu revision.

As a result of the said decision a show-cause notice was issued to the petitioner on 23-8-1996 proposing imposition of penalty of dismissal from service. The petitioner replied to the said show-cause notice. In the reply he stated that he will not repeat the mistake and prayed for reducing the penalty. The Revisional Authority after considering the gravity of the misconduct and the petitioner's rely, passed the impugned order dated 30-10-1996 inflicting upon the petitioner penalty of dismissal for service.

Feeling aggrieved, the petitioner preferred a Mercy Petition before the Director General of Police. The said Mercy Petition was dismissed by the Director General of Police vide order dated 26-12-1998. In the circumstances, the petitioner had filed OA No. 1352/2000 before the M.P. State Administrative Tribunal Indore Bench which on its abolition has been transferred to this Court for adjudication.

The only point urged by Shri Gopal Hardia, Learned Counsel for the petitioner is that the Appellate Authority while considering the petitioners appeal could not have taken the matter in a suo motu revision so as to enhance the penalty imposed upon the petitioner. According to him the Appellate Authority ought to have decided the petitioners appeal first and then could have taken a decision of suo motu revision if it would have been found necessary.

Shri M.S. Dwivedi, learned Panel Lawyer on the other hand, supported the impugned action by contending that while deciding the appeal, the Appellate Authority noticing the seriousness of the misconduct found to be proved against the petitioner came to the conclusion that the penalty of lowering down the petitioners pay to the minimum for three years is not appropriate punishment and in the circumstances, a decision was taken to take the matter in a suo motu revision. He submitted that such an action on the part of the Appellate Authority cannot be said to be illegal or contrary to the Regulations.

Having heard Learned Counsel for the parties, I find no merit in this writ petition. The petitioner was held guilty for the alleged misconduct. He admitted the guilt during the enquiry proceedings. Though the Disciplinary Authority proposed to inflict upon the petitioner penalty of dismissal from service, but taking a lenient view, imposed upon him penalty of lowering down his pay to the minimum of pay scale of Constable for a period of three years. The Appellate Authority while considering the petitioners appeal against the said order of penalty vide order-sheet dated 23-8-1996 noticing that for the proved misconduct the penalty imposed is inadequate thought it fit to take the matter in suo motu revision in exercise of its powers under Regulation 270 of the Regulations. Such a course adopted by the Appellate Authority who is also the Revisional Authority cannot be said to be illegal or contrary to Regulation 270 of the Regulations. The Revisional Authority issued a show-cause notice to the petitioner as to why the penalty of dismissal be not inflicted upon him. In the reply to the said show-cause notice, the petitioner again admitted the guilt and prayed for taking a lenient view.

Regulation- 270 of the Regulations provides that every order of punishment, of exoneration whether original or appellate is liable to revision suo motu by any Authority superior to the Authority making the order. It empowers the Revising Authority to exonerate or to remit, vary or enhance the punishment imposed or to order a fresh enquiry or to order for taking further evidence in the case, for the reasons to be recorded in writing provided such order shall not be varied or reversed unless a notice has been served on the parties interested and opportunity is given to them of being heard.

On going through the record produced by the respondents at the time of hearing, it is revealed that the Revising Authority which is admittedly Superior to the Authority which had passed the order of punishment, on finding that for the proved misconduct the penalty imposed is inadequate after recording reasons issued the show-cause notice to the petitioner for reviewing the order of penalty. The petitioner submitted his reply and admitted the charges and requested for taking lenient view. The Revising Authority after considering the petitioner's reply vide impugned order imposed upon him the penalty of dismissal from service. Thus, in my considered view the procedure adopted by the Revising Authority is fully in consonance with Regulation 270 of the Regulations and the same is well within its jurisdiction.

In view of the aforesaid, no illegality is found in the impugned action and the order by which the petitioner has been dismissed from service.

Accordingly, the petition deserves to be and is, hereby, dismissed. No orders as to costs.