
(2008) 09 MP CK 0054

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7578 of 2003

Jagdish Rathi

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Citation : (2009) 2 MPLJ 458

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : Vandana Kasrekar, for the Appellant; M.S. Dwivedi, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

The petitioner was appointed by the State Government vide order dated 28-12-1985 on the post of District Excise Officer, Ujjain in the Commercial Tax Department of the State Government.

While he was posted as District Excise Officer, Ujjain a charge-sheet dated 5-10-1994 (Annexure A/1) was issued to him in the year 1988 along with two Excise Sub Inspectors. A joint enquiry was ordered by the third respondent, Excise Commissioner against the petitioner along with the said two Excise Inspectors. The enquiry officer after holding a joint enquiry submitted his report in which out of three charges one charge was found partially proved against the petitioner. On the basis of the enquiry report of punishment withholding of one increment with cumulative effect was inflicted upon him vide order dated 25-7-1998 (Annexure A/6). In the appeal, the said order of punishment was maintained by the appellate authority vide order dated 13-10-1999 (Annexure A/9)

Aggrieved, the petitioner filed OA No. 2088/00 before the Madhya Pradesh State Administrative Tribunal Bench at Indore (for short "the tribunal"). On abolition of

the tribunal, the matter, has been transferred to this Court for adjudication.

The case of the petitioner is that the joint enquiry which was conducted against him was by way of common proceedings conducted against him along with one T. P. Bhusakhare and U. C. Taram, Sub Inspectors of Excise Department without there being any order passed by the Governor or by the Authority competent to impose penalty of dismissal from service to him as provided in Rule 18 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules of 1966"). It is thus, stated that without any prior order or sanction the joint enquiry conducted against the petitioner and the order of penalty imposed upon him being contrary to Rule 18 of Rules of 1966 is liable to be quashed.

Respondents have filed reply and also copy of the order dated 3-4-1995 (Annexure R/1) by which permission has been granted by the third respondent Excise Commissioner to hold joint enquiry against the petitioner, T. P. Bhusakhare, Sub Inspector and U. S. Taram Sub Inspector. The respondents have also filed copy of the letter dated 14-3-1991 (Annexure R/2) and the letter dated 6-12-1991 (Annexure R/3) to show that preliminary enquiry was ordered against the petitioner and it was further ordered that on examination of the documents, those officers/employees who are found guilty of breach of departmental rules, disciplinary action be taken against those officers.

Heard learned counsel for the parties and perused documents.

Rule 18 of Rules of 1966 provides that when 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 such Government servants may make an order directing that the disciplinary action against all of them, may be taken in a common proceedings.

On going through the schedule attached to the Rules of 1966 it is clear that for the post of District Excise Officer the post which petitioner was holding, the appointing authority and the authority competent to impose penalty was the State Government and the appellate authority was the Governor. On careful scrutiny of Annexure R/1, R/2 and R/3 on which reliance has been placed by the respondents, I find that none of these documents support the stand taken by the respondents that the joint enquiry (common proceedings) was ordered by the Competent Authority. In fact order dated 3-4-1995 (Annexure R/1) has not been issued by the State Government but has been issued by the third respondent, Excise Commissioner, who was neither the appointing authority of the petitioner nor it was the authority competent to impose penalty of dismissal from service upon him. The said permission to hold joint enquiry granted by the Excise Commissioner cannot be said to be by the Competent Authority and is not in conformity of Rule 18 of Rules of 1966. The documents Annexure R/2 and R/3 are also in fact communication of decision taken by the State Government to hold preliminary enquiry against the petitioner and also the communication of the decision that in case the said officers are found guilty in the preliminary

enquiry, the disciplinary proceedings be initiated against them as per the departmental rules. Thus the orders Annexure R/2 and R/3 are not the orders in regard to the permission for conducting the joint enquiry (common proceedings) against the petitioner along with other officers and as such these orders (Annexure R/2 and R/3) are also of no help to the respondents.

In aforesaid background, it is very clear that before holding the joint enquiry against the petitioner along with two Excise Sub Inspectors no prior sanction of the Governor or the Competent Authority who can impose penalty of dismissal from service upon him in conformity of Rule 18 of Rules of 1966 has been obtained by the respondents. Thus, the common proceedings by joint enquiry conducted against the petitioner cannot be said to be validly held proceedings. Since the respondents have violated Rule 18 of the Rules of 1966, therefore, the departmental enquiry held against the petitioner is vitiated.

In similar situation, learned Single Judge of this Court in the case of S.N. Singh vs. State of M.P., 2005 (2) MPLJ 18 set aside the order of penalty and the appellate order by holding that violation of Rule 18 would vitiate the enquiry. Learned Single Judge, while deciding the case of S.N. Singh vs. State of M.P. (supra) placed reliance on the judgment of this Court in the case of Shyamkant Tiwari Vs. State of Madhya Pradesh and Others, and Mahesh Kumar Shrikrishna Tiwari vs. State of M.P. and others, 1985 MPLJ 516 as also on the judgment of this Court in the case of Sardar Badeo Singh vs. State of M.P. and others, 1989 MPLJ 443 : 1989 MPJR 510.

Having reached to the conclusion that there is violation of Rule 18 of Rules of 1966 on the part of the respondents while holding joint enquiry against the petitioner by not obtaining the order from the Governor or any other authority competent to impose penalty of dismissal from service on the petitioner I have no hesitation in holding that the disciplinary enquiry conducted against the petitioner is vitiated. As a consequence, the impugned order of penalty dated 25-7-1998 (Annexure A/6) and the appellate order dated 13-10-1999 (Annexure A/9) deserves to be and are hereby are quashed.

Accordingly, the petition is allowed. No orders as to costs.