

(2022) 09 MP CK 0048
In the Madhya Pradesh High Court
Case No : Writ Petition No.19843 Of 2022

Manmohan Singh

APPELLANT

Vs

Home Department Through Principal Secretary Vallabh
Bhawan And Others

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Madhya Pradesh Civil Services (Classification Control Appeal Rules, 1966 — Rule 10,
14, 16
Public Gambling Act, 1867 — Section 4A

Citation : (2022) 09 MP CK 0048

Hon'ble Judges : Vijay Kumar Shukla, J

Bench : Single Bench

Advocate : Kuldeep Pathak, Harshwardhan Sharma

Final Decision : Allowed

Judgement

Vijay Kumar Shukla, J

1. Counsel for the petitioner submits that the issue involved in the present case regarding imposition of minor punishment without holding an inquiry under Rule 16 of Madhya Pradesh Civil Services (Classification Control Appeal Rules, 1966) (in short referred as "Rules 1966") has been decided by a Co-ordinate Bench at Gwalior by order dated 04.09.2019 in W.P. No.18375 of 2019 (Rajendra Kumar Sharma vs. State of M.P.) after referring to the judgments of the Supreme Court and the orders of Co-ordinate Bench.

2. With the consent of the parties the matter is heard finally.

3. The petitioner is working as Head Constable in the Police Department. At the relevant time he was posted in District Khargone. One case Crime No.779 of 2020 was registered under Section 4-A of the Gambling Act at Police Station Khargone. It was alleged that the petitioner and five other Police Officers had unlawfully provided shelter to the gambling activity. Consequent to the order

dated 03.12.2020, the petitioner and other police officers were placed under suspension by order dated 15.01.2021. The order of suspension was revoked. A show-cause notice dated 02.02.2021 was issued to the petitioner for imposition of punishment as to why the disciplinary proceedings be not initiated against the petitioner and other five Police Officers by Superintendent of Police, Khargone. The petitioner has filed the reply to the said show-cause notice.

4. It is submitted that without holding any inquiry, the Superintendent of Police, Khargone passed an order of punishment of stoppage of one increment with non-cumulative effect for the period of one year. Being aggrieved by the said order, the petitioner preferred an appeal before respondent No.3 - Deputy Inspector General of Police, Khargone. The said appeal was also dismissed by order dated 04.06.2021. Thereafter, the petitioner preferred an appeal before respondent No.2 - Inspector General of Police, PHQ, Bhopal who partly allowed the appeal and the original order of punishment was modified to the extent that period of suspension shall be treated as working period and the order of punishment of stoppage of one increment with non-cumulative effect was confirmed. Being aggrieved by the aforesaid orders the present petition is filed.

5. Counsel for the petitioner submits that the stoppage of increment with non-cumulative effect is a minor punishment under Rule 10 of Rules, 1966 and therefore, before passing an order of minor punishment, an inquiry as envisaged under Rule 16 of Rules, 1966 has to be held. Since, no enquiry is held under Rule 16 of Rules, 1966, the impugned orders are liable to be quashed.

6. Counsel for the State on the basis of impugned order of punishment and appellate order could not establish that an inquiry under Rule 16 of Rules, 1966 was conducted by the Disciplinary Authority before passing an order of punishment. It is submitted that matter be remanded to the Appellate Authority to pass fresh order.

7. I have heard learned counsel for the parties and upon perusal of impugned order and the appellate orders, it is manifest that no inquiry under Rule 16 of Rules, 1966 has been held before imposition of minor punishment.

8. The Hon'ble Supreme Court in the case of O.K. Bhardwaj vs. Union of India & others reported in (2001) 9 SCC 180 has held as under :-

"While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

The co-ordinate Bench of this Court, in the case of Ashok Kumar Sharma vs. Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd. & others by order dated 27/02/2018 passed in W.P .No.2200/2017 has held as under :-

"Taking the second issue first as to whether it was within the competence of the authority concerned to have inflicted the minor penalty of stoppage of one increment with non- cumulative effect for a period one year without holding a departmental enquiry as contemplated under Rule 14 of the Rules 1966, the same is settled at rest by the judgment rendered by the Supreme Court in O.K. Bhardwaj Vs. Union of India and others [(2001) 9 SCC 180] wherein it is held:

"3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

9. The same view has been taken by Co-ordinate Bench at Gwalior in the matter of Rajendra Kumar Sharma (Supra) wherein it has been held that order of minor punishment cannot be passed without compliance of the provisions of Rule 16 of Rules, 1966.

10. In view of the aforesaid discussion and the law laid down in the aforesaid cases, the impugned order of punishment by imposition of stoppage of increment with non-cumulative effect for a period of one year cannot be sustained. Accordingly, the impugned order dated 17.02.2021 (Annexure-P/1), order of dismissal of appeal dated 04.06.2021 (Annexure-P/2) and the order dated 06.01.2022 (Annexure-P/3) passed in the Mercy Appeal as far relates to confirmation of order of stoppage of one increment with non-cumulative effect are quashed and liberty is granted to the Disciplinary Authority to pass a fresh order in accordance with law.

11. With the aforesaid, writ petition is allowed and disposed of.