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**(2013) 02 MP CK 0135**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 9511 of 2009**

Pandurang Rao

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 04-02-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 311  
Police Act, 1949 — Section 7

**Citation : (2013) LabIC 3157**

**Hon'ble Judges : S.C. Sharma, J**

**Bench : Single Bench**

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**Judgement**

S.C. Sharma, J.—The petitioner before this Court who is working as an Asstt. Sub-Inspector of Police, has filed this present writ petition being aggrieved by the show-cause notice d/- 22/9/08, charge sheet d/- 20/3/09 and the order passed by the disciplinary authority d/- 4/12/09. The contention of the petitioner is that a Show-cause notice was issued by the Department alleging certain misconduct and the disciplinary authority by an order d/- 29/8/07 has inflicted a punishment. A fine of Rs. 1000/- was imposed upon the petitioner. The contention of the petitioner is that thereafter a Show-cause Notice was issued on 22/9/08 by the revising authority in exercise of the powers conferred under Regulation 270 of the M.P. Police Regulations and the petitioner immediately protested against the Show-cause Notice issued under Regulation 270 of the M.P. Police Regulations as it was time barred. Petitioner has further stated that a writ petition was preferred by him i.e., W.P. No. 6926/2009 and this Court vide order d/- 5/10/09 has directed the Superintendent of Police, to pass an appropriate order in the matter keeping in view the judgment delivered by this Court in the case of Sushil Kumar Shrivastava Vs. State of M.P. and others, The Superintendent of Police, was also directed to take into account the judgment delivered by this Court in the case of State of Madhya Pradesh v. Angad Singh Rathore (W.A. No. 123/2010, decided on 9/4/2010). Grievance of the petitioner is that his representation has been turned down in a mechanical manner by the

Superintendent of Police inspite of the fact that there are two judgments in his favour and the disciplinary authority cannot exercise the power of review or revision after expiry of limitation of 6 months period.

2. Learned Counsel for the respondent State, on the other hand, has argued before this court that the impugned Show-cause Notice d/- 22/9/08 has been issued under the provisions of Regulation 270 of the M.P. Police Regulations and there is no period of limitation prescribed under the M.P. Police Regulations. She has vehemently argued before this Court that as it is a case of police personnel the disciplinary action is going on under the provisions of the M.P. Police Regulations and the period of limitation of 6 months is provided for review only under the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. It has been further stated that enquiry has also been concluded in the present case and the enquiry officer has submitted his report also and, therefore, at this stage, the question of interference by this Court does not arise.

3. Heard learned Counsel for the parties at length and perused the record. The matter is being disposed of at the admission stage itself with the consent of the parties.

4. In the present case, it is an admitted fact that the petitioner was inflicted with a fine of Rs. 1000/- by the competent disciplinary authority vide order d/- 29/8/07. It is also an admitted fact that the revising authority in exercise of the powers conferred under Regulation 270 of the M.P. Police Regulations has issued a Show-cause Notice d/- 22/9/08 meaning thereby, after about 13 months from the date of the order d/- 29/8/07 by which a punishment was imposed upon the petitioner.

5. This Court in the case of Sushil Kumar Shrivastava (supra) has considered the provisions of Regulations 270 of the M.P. Police Regulations as well as the provisions of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and has arrived at a conclusion that the provisions of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 are very much applicable to the police personnels and the limitation period for reviewing an order is 6 months only. It was also a case of an employee serving the police department on the post of Sub-Inspector and in similar circumstances the subsequent order passed under Regulation 270 was set aside. This Court in the case of Sushil Kumar Shrivastava (supra) in Paras 6 to 11 has held as under:

6. Mr. Jaideep Singh, learned Counsel for the State supported the order.

7. In view of the rivalised submissions raised at the bar, it is appropriate to refer to 270(4) of the Police Regulations:--

The revision authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case:

Provided that it shall not vary or reverse any order unless notice has been served

on the parties interested and opportunity given to them for being heard.

8. In this context, on a scanning of the anatomy of the aforesaid provisions, it is perceptible that no time limit is provided, but a significant one, in the absence of any provisions in the Police Regulations, the provisions contained in M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 get attached. In this contest, I may refer with profit to the decision rendered in the case of Krishnanarayan Shivpyare Dixit Vs. State of M.P. and others, wherein the single Judge has held as under:--

15. Learned Counsel for the respondents replying to the contention regarding the infraction of the Control and Appeal Rules contends that a perusal of Sections 1 to 4 Chapter I of Part II of the Police Regulations, which according to the prefatory note at page II consist of rules and executive orders by the Government and the executive orders and rules of the Inspector General of Police shows that the following four classes of police personnel are involved in the administration: (i) Gazetted staff-Indian Police Service; (ii) Gazetted Staff-State; (iii) Subordinate Staff-Officers and (iv) Subordinate staff-rank and file and in this context it has to be held that the expression "State Police Service" occurring in Regulation 213 of the Police Regulations refers only to the gazetted Staff-State and not to be subordinate staff. In support of this submission he also invited my attention to Section 7 of the Police Act, which deals with punishments only for subordinate staff and to Regulations 228 to 232 regarding D.E. Regulation 213 runs thus:

The rules contained in All India Service (Discipline and Appeal) Rules, 1955 and those in the Civil Services (Classification, Control and Appeal) Rules, will regulate the punishment of an appeal from officers belonging to the Indian Police Service and the State Police Service respectively.

The respondents learned Counsel in support of his aforesaid submission also invited my attention to Rule 3(d) of the Control and Appeal Rules and urged that in view of the Police Act and the Police Regulations governing the question of punishments to subordinate staff of the Police department, the applicability of the Control and Appeal Rules is clearly excluded. Reliance for the submission was placed on the decision in Mewa Ram Ram Charan Vs. United Provinces, ). It is apposite to reproduce Rule 3(1)(d) referred to above.

3(1) These rules shall apply to every Government servant but shall not apply to--

(d) any reason for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Governor before or after the commencement of these rules, in regard to matters covered by such special provisions.

16. On a careful consideration of the arguments advanced by the learned Counsel for the parties and a perusal of the relevant provisions, I am of the view

that it cannot be held that the Control and Appeal Rules are wholly included in Departmental Enquiries against subordinate staff of the police department. The correct principle is as stated by Krishnan, J., in *Premchandra v. State*. Therein it was observed as under:--

Civil Service Regulations, as in force in the State are applicable to all civil Departments including the Police. Within that Department, there are the Police Regulations which naturally prevail wherever there is conflict between them and the Civil Service Regulations; but in a field like temporary employment, for which there is no special Police Regulations, the Civil Service Regulations as in force in this State apply. A probationary Sub-Inspector can be removed without a proceedings under Article 311, unless he has been confirmed during the interval. Of course if a probationary officer is to be sent away with a black-mark, then proceedings would be necessary.

The said principle was reiterated in the case of *Mahesh Kumar Shrikishan Tiwari Vs. State of Madhya Pradesh and others*,

9. In the case of *State of M.P. v. Prahlad*, MPWN (113) (sic), learned single Judge of this Court while dealing with Rule 29 (1) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 has expressed the opinion that power of review to enhance punishment cannot be exercised after expiry of period of six months. It is appropriate to quote what has been held in the said case.

A bare reading of this Rule indicates that the Appellate Authority may within six months of the date of the order proposed to be reviewed, enhance the penalty imposed by the order. The submission of the learned Counsel for the appellant is that the Rule given discretion to the Appellate Authority to exercise its power within six months and must, therefore, be held directory not mandatory. The submission appears to be that in such a case real test to be applied would be the test of prejudice caused to the respondent and not the breach of Rule itself. This Court is unable to find any substance in this submission. Vesting such a power in the Appellate Authority is not the normal procedure. Indeed review procedure as known in general Civil Law is the procedure available to the Authority passing the order itself. Any other authority may exercise such a power only in those cases where there is a specific provision in this behalf. Since, there is a specific provision in this behalf in this Rule, the D.I.G of Police will have to find his authority in this Rule itself. A plain reading of this Rule indicates that it fixes outer limit of six months to be calculated from the date of the order of the disciplinary authority when the power may be exercised by the appellate authority. The use of word may also indicate that it is not compulsory for him to exercise this power even within the period of six months. The Rule does not vest in him any power after the expiry of period of six months. In other words, the D.I.G of Police ceased to be Reviewing Authority for reviewing the punishment after the period of six months of the order passed by the Supdt. of Police. Under the circumstances the learned lower Appellate Court made no mistake in holding

that the impugned order of compulsory retirement was without any authority. The learned counsel has not been able to show any decision of any Court which takes a contrary view of the matter to support his submission.

10. In view of the aforesaid, I find substantial force in the submission of Mr. Vipin Yadav. As a consequence, the order of compulsory retirement contained in Annexure-P-8 stands quashed. The petitioner be reinstated in service. However, keeping in view the facts and circumstances of the case, I am of the considered opinion that the petitioner should not be entitled to any back wages.

11. The writ petition is allowed to the extent indicated above. There shall be no order as to costs.

6. The Division Bench of this Court has expressed a similar view in the case of State of Madhya Pradesh v. Angad Singh Rathore (W.A. No. 123/2010, decided on 9/4/2010) and, therefore, keeping in view the judgment delivered by this court in the case of Sushil Kumar Shrivastava (supra) as the revising authority has issued the Show-cause Notice after about 13 months, the Show-cause Notice d/- 22/9/08, deserves to be set aside and is accordingly set aside. Resultantly, the impugned Show-cause Notice d/- 22/9/08, charge-sheet d/- 20/3/09 and order d/- 4/12/09 are hereby set aside. All consequential disciplinary proceedings pending against the petitioner are also set aside. The writ petition stands allowed. No order as to costs.