
(2013) 07 MP CK 0204

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 2222 of 2004

Ramdas Singh Bhadoriya

APPELLANT

Vs

State of MP and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 07 MP CK 0204

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; Pravin Newaskar, Dy. Govt. Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In this petition the petitioner has challenged the disciplinary proceedings and the punishment of compulsory retirement inflicted by the Superintendent of Police by order dated 27.9.1999. This order was affirmed by the appellate authority on 19.5.2003. Shri D.K. Katare, learned counsel for the petitioner submits that the petitioner was participating in the enquiry. In various proceedings he appeared in the domestic enquiry. The earlier enquiry officer was transferred and thereafter Shri Angad Singh continued the enquiry. The enquiry was fixed on 2.8.1999. The petitioner was present in the enquiry but the prosecution witnesses were not present. Thus, the enquiry officer directed for issuance of notices on the prosecution witnesses and fixed the matter on 9.8.1999. On 9.8.1999 the petitioner was not present. On this date itself the statements of prosecution witnesses were recorded and it was opined by the enquiry officer that there is no possibility of petitioner's attendance in the enquiry and, therefore, he closed the enquiry and sent the enquiry report.

Criticizing this order, learned counsel for the petitioner submits that the principles of natural justice are not followed by the enquiry officer. There was no basis for the presumption that the petitioner will not attend the enquiry when on earlier occasions petitioner continuously attended the enquiry. He submits that on this

ground interference is warranted.

2. Shri Pravin Newaskar, learned Deputy Government Advocate supported the action and submits that there is no flaw in the enquiry and petitioner is not prejudiced by the said action of the enquiry officer. Shri Newaskar submits that the punishment order and appellate order are in consonance with law in view of the gravity of charges established against the petitioner.

3. I have heard learned counsel for the parties and perused the original record of the departmental enquiry produced by the learned Deputy Government Advocate.

4. The petitioner at page 4 of the petition has specifically pleaded that he was present on 2.8.1999 in the enquiry, but the prosecution witnesses were not present on the said date. On the next date unfortunately the petitioner was not present and, therefore, statements of prosecution witnesses should not have been recorded behind his back and enquiry should not have been closed on very same date.

5. A perusal of the proceeding dated 2.8.1999 from the original record shows that the petitioner was very much present in the departmental enquiry and prosecution witnesses were not present. Therefore, the matter was adjourned to 9.8.1999. On this date, the petitioner was not present and prosecution witnesses were present, whose statements were recorded. The enquiry officer opined that there is no possibility of petitioner's presence and, therefore, closed the enquiry and sent the report.

6. This is settled in law that scope of judicial review in disciplinary proceedings is limited to examine the decision-making process. This was held by the Supreme Court in Apparel Export Promotion Council Vs. A.K. Chopra, followed in State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, If such violation of principles of natural justice or "due process" results into prejudice to the petitioner, interference can be made. Punishment can be interfered with if it is based on "no evidence" or findings of the enquiry officer are palpably perverse in nature. If the punishment is shockingly disproportionate and pricks to the conscience of the court, interference can be made.

On the basis of this litmus test, it is to be seen whether the "decision making process" in the present case is polluted and runs contrary to the principles of natural justice.

7. A perusal of the enquiry proceedings shows that petitioner participated in various dates and on the last date, i.e., 2.8.1999 he was present and it was the prosecution witness, who was absent. On the next date (9.8.1999) the petitioner was absent. In the considered opinion of this Court, since the petitioner participated in the enquiry in various proceedings, there was no basis for the presumption by the enquiry officer that there is no possibility of petitioner's presence in the enquiry. In that situation, he should have adjourned the enquiry for another date to facilitate the petitioner to participate in the enquiry and cross-

examine the prosecution witnesses. Even if the prosecution evidence was over in the enquiry, the petitioner had a valuable right to lead his own evidence to disprove the charges or to establish his innocence. On the date when matter was fixed for prosecution evidence, the enquiry officer closed the complete enquiry thereby snatching away the right to lead defence evidence by the petitioner.

8. Although M.P. Civil Service (Classification, Control and Appeal) Rules, 1966 cannot be applicable in the present case, yet for the purpose of analogy it is relevant to rely on a recent judgment of this Court in Bhawani Shankar Singhal Vs. State of M.P. and Others, . This Court opined in para 9 of the judgment that the principles of natural justice are codified in the shape of M.P. Civil Service (Classification, Control and Appeal) Rules, 1966. Thus, the principles of natural justice and statutory provisions make it obligatory for the enquiry officer to act in a particular manner. This Court relied on Rule 14(11) of the CCA Rules and applied the principles of natural justice and opined that it was not proper on the part of the enquiry officer to close the enquiry on a singular date when the delinquent employee was absent; more so, when he was present on the earlier dates.

9. In the opinion of this Court, there is a serious flaw in the decision making process which has resulted into denial of reasonable opportunity of defence to the petitioner. It violates the principles of natural justice. In the considered opinion of this Court, such violation has resulted into grave prejudice to the petitioner inasmuch as his right to cross-examine the prosecution witness was taken away coupled with the right to lead his own evidence. This certainly caused prejudice because of which enquiry needs to be declared as illegal.

10. Consequently, the proceedings of enquiry from 9.8.1999 are set aside. Resultantly, the punishment and appellate orders based on the aforesaid defective enquiry are also set aside. Liberty is reserved to the respondents to conduct proper enquiry from the stage the defects are crept in and complete it expeditiously. The intervening period etc. will be decided by the authorities while passing the final order of the departmental enquiry in accordance with law. It is expected that the entire exercise will be completed within eight months from the date of production of certified copy of this order. Petition is allowed to the extent indicated above. No costs.