
(2011) 01 MP CK 0044
In the Madhya Pradesh High Court
Case No : Writ petition No. 4126/97

Ramesh Prasad Tihaiya

APPELLANT

Vs

Madhya Pradesh High Court and Another

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173
Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 10(4), 15(2), 23, 29
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) ILR (MP) 705 : (2011) 4 MPHT 224

Hon'ble Judges : Sushma Shrivastava, J; K.K. Lahoti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sushma Shrivastava, J.—This is a writ petition challenging the order (Annexure P-20) dated 20.08.96 passed by High Court of Madhya Pradesh on its administrative side, imposing punishment of withholding of two increments without cumulative effect on the Petitioner.

2. Petitioner is a judicial officer. He was appointed as a Civil Judge Class-II vide order dated 13.6.75; he was promoted as Additional District Judge in due course and joined as Additional District Judge, Rewa as per order dated 14.6.89. While posted as Additional District Judge, Manendragarh, District Sarguja, disciplinary proceedings were initiated against the Petitioner and a departmental inquiry was conducted against him in respect of three charges. A charge-sheet was served on the Petitioner on 15.11.94 by Madhya Pradesh High Court on administrative side (hereinafter referred to as "High Court"), alongwith the article of charges, statements of imputations, list of witnesses and list of documents. After submission of reply by the Petitioner, District and Sessions Judge, Ambikapur was appointed as Enquiry Officer, who after completing the inquiry, submitted his report to the High Court. The Enquiry Officer exonerated the Petitioner of all the

charges, but the High Court had not agreed with the finding of the Enquiry Officer with regard to charge No. 1 against the Petitioner. Article of charge No. 1 related to an order (Annexure P-24) passed by the Petitioner as an Additional Sessions Judge, Manendragarh, District Sarguja on 30.09.93 in S.T. No. 213/93 State v. Omprakash, whereby he discharged the accused despite there being sufficient material for framing of charge u/s 302 of IPC, contrary to the settled principle of law that the evidence could not be assessed while framing of charge, which was an act of grave misconduct.

3. The High Court disagreeing with the finding of the Enquiry Officer with regard to the aforesaid article of charge No. 1, reversed the finding for the reasons recorded by it and found that the Petitioner was guilty of aforesaid charge No. 1 and a show cause notice was issued to the Petitioner on 1.6.96 as to why the finding recorded by the High Court with regard to the charge No. 1 should not be accepted and why he should not be punished for the same. The Petitioner filed his reply dated 29.6.96 vide Annexure P-19 to the High Court and prayed for his exoneration. The High Court by its order dated 20.08.96 (Annexure P-20) imposed punishment of withholding of two increments without cumulative effect on the Petitioner, as specified in Rule 10(4) of M.P. Civil Services Control and Appeal Rules, 1966. The administrative appeal (Annexure P-21) filed by the Petitioner under Rule 23/29 of M.P. Civil Service (Classification Control and Appeal) Rules, 1966 was also dismissed.

4. The writ petition is preferred inter alia on the ground that the judicial order (Annexure P-24) passed by the Petitioner dated 30.09.93 in S.T. No. 213/93 as Additional Sessions Judge, Manendragarh, District Sarguja does not provide any factual basis for imputation of any misconduct and misbehaviour against the Petitioner. The Petitioner passed a judicial order, which was not legally challenged by anybody in any manner, neither by Police or the prosecution, nor by any relative of the deceased and even the High Court had not acted suo-moto to revise the order when it came to its notice. The Petitioner passed a judicial order (Annexure P-24) as judicial officer on the basis of records of the case, and the documents filed by prosecution in the Court u/s 173 of the Code of Criminal Procedure did not make out any eyewitness account of the case; even the possibility of forming a different opinion on the material available in the case by itself could not form the basis of imputing misconduct on the Petitioner or for initiating a disciplinary proceeding. There was no evidence to the fact that the order (Annexure P-24) passed by the Petitioner was actuated by any motive, nor an error or even gross error in writing the order by itself is enough to attribute the improper motive or misconduct to the Petitioner.

5. According to Petitioner, on account of the pendency of departmental inquiry and consequent punishment imposed on the Petitioner, his claim for grant of selection grade as Member of Higher Judicial Service in Madhya Pradesh has been rejected, as communicated to him by District and Sessions Judge, Shahdol vide Annexure P-23 and the junior members of the Higher Judicial Services have

been promoted to the selection grade ignoring the claim of the Petitioner. Petitioner, therefore, prayed that the order (Annexure P-20) imposing the punishment of withholding of two increments without cumulative effect on him and the order (Annexure P-23) regarding his unsuitability for grant of Selection Grade be quashed by issuing a writ of certiorari and the Petitioner be granted consequential reliefs and the benefits, of which he has been deprived on account of order-Annexure P-20.

6. In the return filed by High Court/Respondent No. 1, it has been contended that the report of the Enquiry Officer is not binding on the disciplinary authority; the disciplinary authority has jurisdiction under law to arrive at its own conclusion with regard to the guilt by examination of material on record, which has been done. The Petitioner was given due opportunity of hearing to show cause against disagreement of the disciplinary authority with the finding of Enquiry Officer and thereby he was granted full opportunity of hearing. After due consideration of the material on record in the form of oral and documentary evidence, circumstances appearing against the Petitioner and culpable negligence of the Petitioner indicating deliberate act of discharge of the accused, disciplinary authority recorded the finding that the act of the Petitioner in discharging the accused was actuated by corrupt and improper motive. There was no violation of principle of natural justice or any other illegality or irregularity in holding inquiry, the finding recorded by the disciplinary authority not being perverse and based on preponderance of probability, may not be interfered with in exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of India. Mere non-challenge of the order passed by the Petitioner in the superior court does not create any legal bar to hold any disciplinary action against the Petitioner. Sufficiency of the material or otherwise cannot be gone into in a petition under Article 226 of the Constitution of India, as it cannot be treated as an appeal to the Appellate Authority. Standard of proof required in disciplinary cases is not as strict as required in criminal cases. The Petitioner was afforded full opportunity of hearing and no interference is called for. Petitioner is not entitled to any relief claimed in the petition.

7. We have heard learned Counsel for the parties. Learned Counsel for the Petitioner mainly submitted that the judicial order passed by the Petitioner could not form the basis of punishing him in the disciplinary proceedings, particularly when there was no proof that the judicial order (Annexure P-24) passed by the Petitioner was actuated by any corrupt or improper motive and the same was never called in question by either party by way of an appeal or revision and none was aggrieved by it. Learned Counsel for the Petitioner vehemently urged that an error in the order or possibility of arriving at a different conclusion cannot be a ground to indict a judicial officer for taking one view, and to attribute misconduct or corrupt motive. Reliance was placed on the decisions rendered by the Apex Court in the case of P.C. Joshi Vs. State of U.P. and Others, and Ramesh Chander Singh Vs. High Court of Allahabad and Another, .

8. Learned Counsel for the High Court/Respondent No. 1, on the other hand, submitted that even a judicial order passed by a judicial officer, if it suffers from illegality or is actuated by malice and bias, can form the basis for initiating disciplinary proceedings. Relying on a judgment of the Apex Court rendered by its three Judges' Bench in the case of Union of India and Others Vs. K.K. Dhawan, learned Counsel for Respondent No. 1 vehemently urged that there is no legal bar in initiating disciplinary proceedings against a judicial officer on the basis of a judicial order passed by him. He mainly referred to para 26 of the judgment in the aforesaid case, wherein the Apex Court reiterated the legal position enunciated in its earlier decision in the case of Union of India and others Vs. A.N. Saxena, as under:

In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence, the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken.

9. Learned Counsel for the High Court/Respondent No. 1 also submitted that the legal position laid down in the case of K.K. Dhawan (supra) has not been upset by the Apex Court in its later decision rendered by the Bench of the equal strength in the case of Ramesh Chander Singh (supra), cited by learned Counsel for the Petitioner; on the other hand, it transpires from the following observations made by their Lordships in para 11 of the judgment in Ramesh Chander's case (supra) that disciplinary proceedings can be based on a judicial order, if there are grounds to suspect officer's bonafides and the order itself is actuated by malice or illegality:

If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bonafides and the order itself should have been actuated by malice, bias or illegality.

10. Learned Counsel for High Court/Respondent No. 1 also submitted that since there was no reference to K.K. Dhawan's case (supra) in the later decision of the Apex Court rendered in the case of Ramesh Chander's case (supra), the legal position as enunciated in its earlier decision in K.K. Dhawan's case (supra) shall still have a binding force.

11. Learned Counsel for the High Court/Respondent No. 1 further submitted that any violation of principle of justice or any illegality or irregularity in holding the enquiry was nowhere alleged in the writ petition; the disciplinary authority had recorded reasons for dissenting from the findings of the Enquiry Officer with regard to article of charge No. 1 and a show-cause notice was also issued to the Petitioner in this regard; as such the finding recorded by the disciplinary authority cannot be interfered with in exercise of the extraordinary jurisdiction under Article 226 of the Constitution. Reliance was placed in this regard on the two decisions of the Apex Court rendered in the case of Union of India (UOI) and Others Vs. Upendra Singh, and The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, . Attention was drawn particularly to the following observations made by their Lordships in para 17 of the judgment in the case of Shashikant Patil (supra), wherein the Apex Court reiterated the legal position laid down in the case of State of Andhra Pradesh Vs. Sree Rama Rao, thus:

The High Court is not constituted in a proceeding under Article 226 of the Constitution as a Court of appeal over the decision of the authorities holding departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

12. Lastly, learned Counsel for the High Court/Respondent No. 1 submitted that the report of the Enquiry Officer was not binding on the disciplinary authority and the disciplinary authority was empowered under law to disagree with any of the findings of the Enquiry Officer and could record its own findings and therefore, the action taken by the disciplinary authority after issuance of a show cause notice to the Petitioner and consequent imposition of penalty on him, did not call for any interference in the writ jurisdiction.

13. We have considered the rival submissions of the learned Counsel for the parties.

14. There can be no dispute to the legal proposition that the disciplinary authority can disagree with the findings of the Enquiry Officer on any article of charge and can record its own finding on the said charge after recording the reasons for its disagreement. Rule 15 Sub Rule 2 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 also provides the same, which reads thus:

The disciplinary authority shall, if it disagrees with the findings of the inquiring

authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose.

15. The Apex Court in its three Judges' Bench decision rendered in the case of Shashikant S. Patil (supra) also held that the findings of the Enquiry Officer are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion and it is also not necessary that the disciplinary authority should discuss the materials in detail and contest the conclusions of the Enquiry Officer.

16. A perusal of show cause notice (Annexure P-17) dated 1.6.1996 issued by the High Court/disciplinary authority to the Petitioner reveals that it contained elaborate reasons for disagreement with the finding of the Enquiry Officer, as to article of charge No. 1, also indicating that there was sufficient material on record, and the case diary statements of witnesses disclosed prima facie case for framing of a charge u/s 302 of IPC against the accused in S.T. No. 213/93. Thus it is manifest that the High Court reversed the finding of the Enquiry Officer with regard to article of charge No. 1, which related to discharge of the accused u/s 302 of IPC by the Petitioner/Judicial Officer, after recording reasons on the basis of the material available on record and recorded its own findings against the Petitioner finding him guilty for charge No. 1.

17. On perusal of the judicial order in question (Annexure P-24) dated 30.9.93 passed by the Petitioner in S.T. No. 213/93 discharging the accused u/s 302 IPC, we find that it is a detailed order wherein the Petitioner has assessed and evaluated the evidence in detail as if he was writing a judgment of acquittal and has gone even to the extent of assigning some hypothetical reasons for discharging the accused, which was not warranted at the stage of framing of charge. The law is well settled that at the stage of framing of charge the Court is not to see whether there is sufficient ground for conviction of the accused or whether trial is sure to end in his conviction. The Apex Court in the case of State of Bihar Vs. Ramesh Singh, , has observed that if there is a strong suspicion against the accused at the initial stage of framing of charge, which leads the Court to think that there is ground for presuming that the accused has committed an offence, in that event it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

18. In the aforesaid facts and circumstances, the judicial order (Annexure P-24) passed by the Petitioner in S.T. No. 213/93 discharging the accused u/s 302 of IPC by weighing and evaluating the evidence and considering the possibility of his innocence, suffered from patent illegality, being contrary to the settled principle of law and thus could form the basis of disciplinary proceedings in view of the legal position enunciated in K.K. Dhawan's case (supra) as well as in the case of Ramesh Chander (supra). we are, therefore, unable to accept the submission of learned Counsel for the Petitioner that the judicial order in question (Annexure P-24) could not form the basis for initiating departmental

enquiry against the Petitioner.

19. In view of factual and legal position as described hereinabove, it was competent for the disciplinary authority, i.e. High Court, to take a dissenting view from the findings of Enquiry Officer and to record its own finding on the basis of material available. Mere non-challenge of the order in question by way of appeal or revision or suo-moto revision, could not be an impediment in taking disciplinary action against the Petitioner on the basis of an order, which was patently illegal. As said hereinabove, a show cause notice was issued by the disciplinary authority to the Petitioner vide Annexure P-17 in respect of the disagreement with the finding of the Enquiry Officer and recording its own finding of guilt against the Petitioner in respect of the article of charge No. 1, as also proposing the penalty; as such it could not be said that there was any violation of principle of natural justice. It is also manifest from the record that the reply (Annexure P-19) to show cause notice dated 1.6.96 was also submitted by the Petitioner before the High Court. It was a detailed reply, therefore, it could not be said that the Petitioner was deprived of the opportunity of hearing. In the aforesaid facts and circumstances, personal hearing of the Petitioner was also not necessary.

20. The submission of learned Counsel for the Petitioner that there was no proof that the judicial order (Annexure P-24) was actuated by any corrupt or improper motive, also sans merit in view of the law laid down by the Apex Court in the case of Shashikant S. Patil (supra) .

21. In the wake of reasons recorded by the High Court in Annexure P-17 as to finding of guilt of the Petitioner with regard to the charge No. 1, in the disciplinary proceedings relating to illegal discharge of the accused u/s 302 of IPC in S.T. No. 213/93 by him, the view taken by the High Court that the order (Annexure P-24) was actuated by improper motive, and consequent imposition of the penalty of withholding of two increments of the Petitioner without cumulative effect vide order Annexure P-20, which was a minor punishment, passed by the High Court/Respondent No. 1, after holding due enquiry and giving proper opportunity of hearing, in the peculiar facts and circumstances of the case, does not call for any interference in exercise of writ jurisdiction of this Court.

22. As regards non-granting of the selection grade to the Petitioner, as communicated to him by (Annexure P-23), the Petitioner never made any representation before the High Court against this communication. Moreover, a perusal of the extract of minutes of High Court's Full Court Meeting, (Annexure R-1) dated 20-4-96 reveals that after consideration of the ACR's, other materials and over all performance of the Petitioner, he was not found fit for grant of selection grade. It does not appear to be an offshoot of the order (Annexure P-20), which was passed subsequently. For the foregoing reasons and in absence of any representation against the communication (Annexure P-23) regarding unsuitability of the Petitioner for the selection grade in Higher Judicial Services, no interference is called for in the decision taken in the Full Court Meeting of the

High Court, as per Annexure R-1, communicated to the Petitioner vide Annexure P-23.

23. Thus, no case for interference in the orders (Annexure P-20 and P-23) is made out.

The writ petition being devoid of merit is hereby dismissed. No costs.