
(2013) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17248 of 2003

Sanand Singh Shrinet

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 14, 15, 27

Citation : (2013) ILR (MP) 2410 : (2014) 2 MPHT 423 : (2014) 1 MPLJ 464

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : R.C. Tiwari, for the Appellant; Rahul Rawat, P.L. for the State, for the Respondent

Final Decision : Partly Allowed

Judgement

K.K. Trivedi, J.—This petition was filed as Original Application before the M.P. State Administrative Tribunal, Bench Jabalpur, which came on transfer to this Court after closer of the Tribunal and is registered as writ petition. The petitioner has challenged the validity of orders dated 24.12.1987 and 30.10.2000 by which a penalty after departmental enquiry was imposed on him under the provisions of Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966 (herein after referred to as "Rules") and by subsequent order, the appeal preferred by the petitioner was dismissed. Yet another penalty dated 03.07.1990 is also sought to be challenged by which the petitioner was reverted. Facts giving rise to filing of present writ petition are that the petitioner, who was at the time when original application was filed, working on the post of Forester in Flying Squad, Satna, was served with a charge-sheet for certain misconduct and it was said that an enquiry was to be conducted against him. At the relevant time, the petitioner was working in the Forest Division, Mandla. The charge-sheet was issued by the Divisional Forest Officer, West Bastar Forest Division, Jagdalpur on 24.10.1980. It was alleged in the charge-sheet that certain recovery was made by the petitioner from some of the persons said to be encroachers on the forest

land for which he was not authorized. In the second charge it was alleged that there was illicit felling of the trees within the range where the petitioner was posted and on account of illicit felling of trees, the Government has suffered a loss of Rs. 4,429.50. Out of this, the wood costing to Rs. 3,008.50 was illegally transported. A reply to the charge-sheet was submitted by the petitioner and he demanded supply of certain documents. The enquiry was thereafter conducted and a report was drawn. In the enquiry report it was held by the Enquiry Officer that Charge No. 1 was found to be fully proved. As far as the Charge No. 2 is concerned, illicit felling of trees was found proved but financial loss caused to the State Government was not found proved. After submission of the enquiry report, the matter was considered by the Disciplinary Authority and a penalty of reduction of pay of the petitioner to the minimum of the pay scale for whole of service and a recovery of the loss caused to the State Government was imposed on him. The petitioner preferred an appeal against the said order and by subsequent order the Appellate Authority modified the order of penalty and imposed the penalty of reduction to minimum of pay scale for a period of five years. However, the order of recovery was not interfered. Another order which the petitioner has sought to challenge in this petition was issued on 03.07.1990, which cannot be looked into in this petition as the same was an order of reversion on account of cancellation of promotion.

2. The Tribunal entertained the original application and issued the notices to the respondents. A return was filed by the respondents contending inter alia that enquiry was conducted against the petitioner in lawful manner. He was informed about the date of hearing in the enquiry well within time by issuing several notices on different dates. Even the information sent by the department was duly received by the petitioner as is indicated from his acknowledgment but the effective defence was not produced by him in the enquiry. Ultimately after completing the enquiry, the Enquiry Officer reached to the conclusion that there was material available to hold that petitioner was guilty of the misconduct. When such a report was made available, the Disciplinary Authority decided the same after examining the enquiry report and given his findings as per Rule 15 of the Rules. There was no irregularity committed in conducting the enquiry and, therefore, interference in the order of penalty was not called for. It is further contended that when the appeal was preferred, the Appellate Authority properly examined the enquiry record and came to the conclusion that the misconduct of the petitioner was rightly proved but the penalty so imposed by the Disciplinary Authority was treated to be excessive or disproportionate and exercising the powers, the Appellate Authority has reduced the penalty in appropriate manner. Thus, it is contended that there is no wrong committed in the matter of conducting the enquiry and passing the order against the petitioner. In such circumstances, it is contended that there is no scope of interference in the order of penalty and the petition is liable to be dismissed.

3. Though a rejoinder is filed by the petitioner but not much has been stated except reiterating the contentions raised in the petition. However, the petitioner

has disputed the fact that he was given adequate opportunity of hearing in the departmental enquiry.

4. Heard learned Counsel for the parties at length and perused the record.

5. It is the settled position of law that this Court would not interfere in an order of penalty unless it is demonstrated that illegality was committed in conducting the enquiry or that there was no evidence available on record to hold that the delinquent employee was guilty of the misconduct. In catena of decisions, this Court as also the Apex Court have held that interference in an order of penalty is not permissible as this Court would not assume the power of departmental appellate authority. That being so, only this much is required to be examined whether the enquiry was rightly conducted against the petitioner or not. True it is that the petitioner was served with the charge-sheet and he made certain application for supply of certain documents. He was stating that he needs certain documents, which were in fact part of the preliminary enquiry to examine whether any complaint was made against him or not. However, such documents were not made available to the petitioner and, therefore, according to him he was not in a position to put forth his defence. The provisions of Rule 14 of the Rules are examined. In none of the sub-rules it is provided that copies of documents would be provided to the delinquent employee. On the other hand a special Act is made by the Legislature, known as Madhya Pradesh Vibhagiya Janch (Sakshiyon Ka Hazir Karaya Jana Tatha Dastavejon Ka Pesh Karaya Jana) Adhiniyam, 1979 (herein after referred to "Act"). Under the aforesaid Act, the Rules are also made. It is prescribed under the provisions of the Act and Rules aforesaid that a delinquent employee may make an application before an Enquiry Officer for summoning of certain records. While considering such application, if made, the Enquiry Officer would exercise those powers, which are conferred on a Civil Court under the Civil Court Rules & Orders for the said purposes. That being so, if the petitioner was of the opinion that any particular document would be necessary to prove his defence, he could have moved such an application before the authority in appropriate manner and would have asked for the production of such records. There is nothing indicated that any such application was made by the petitioner. On the other hand he was demanding supply of documents, which were referred in the charge-sheet. As per the provisions of Rule 14 of the Rules, a delinquent employee is entitled to inspection of the enquiry record only. It is nowhere stated by the petitioner that he did exercise such an option but the permission was not granted to him by the Enquiry Officer to inspect the enquiry record. Therefore, such a stand taken by the petitioner that he was not supplied the copies of the documents on account of which he could not raise his defence in appropriate manner, cannot be accepted.

6. From the perusal of the order passed by the authorities, it is clear that petitioner was working as Range Assistant in Sukma Forest Range of South Bastar Forest Division at the relevant time w.e.f. 25.05.1978 to 30.06.1978. This particular fact was not disputed by the petitioner in his reply. It was alleged

against him that he has asked for certain damages from those, who were tribal persons living on the forest land by making encroachment. It was categorically alleged against the petitioner that he has recovered Rs. 100/-each from those persons and a total amount of Rs. 3,300/- was recovered by him. This particular allegation made against the petitioner was based on the information, which was given in the charge-sheet itself. If the petitioner was of the opinion that such a charge levelled against him was incorrect or that according to him he has not committed any such misconduct, he could have filed his detailed reply denying such facts. While submitting the reply to the charge-sheet only this much was said that on various occasions this fact was enquired and the villagers have categorically said that they have not paid any amount to any person. However, nothing more was said by him. After the conclusion of the departmental enquiry when the second notice was issued to the petitioner, again the petitioner repeated the same request that he may be provided copy of the complaint made against him. Nothing material was contended by the petitioner as to how charge was not to be found proved against him.

7. As against such submission of learned Counsel for the petitioner, if the findings are seen, as is referred in the order of penalty, out of 33 persons it was found that recovery was made from 32 persons as many of those persons have deposed before the Enquiry Officer. There was no rebuttal of such evidence produced by the petitioner. He has not confronted any such witness to his earlier stand that no money was taken by the petitioner from such a person. In view of this, if the finding was recorded by the Enquiry Officer, which was duly approved by the Disciplinary Authority, it cannot be said that the charge of receiving the money was not proved.

8. There was a second charge against the petitioner with respect to illicit felling of trees. In the said, a charge it was alleged against the petitioner that a loss of Rs. 3008.50 was caused to the Government on account of loss of the price of wood, which was illegally transported out of the State. However, the Enquiry Officer has recorded a reason for the same in his finding and has said that there was sufficient material available on record to show that there was illicit felling of trees within the range where the petitioner was posted at the relevant time, however, there was no proof of the fact that the wood, which was seized at Bhadrachalam was the same which was cut within the range where the petitioner was posted. Therefore, there was no evidence available that loss of Rs. 3008.50 was caused to the State Government. To that extent though a finding was given by the Enquiry Officer neither the same was disapproved nor there was any direction to conduct any further enquiry on the said issue of loss caused to the State Government by the Disciplinary Authority but saying that since there was illicit felling of trees, a loss was caused to the Government, order was issued to recover the said amount of loss from the petitioner. This was not rightly held by the Disciplinary Authority as no finding in that respect was recorded by the Disciplinary Authority in accordance to the provisions of Rule 15 of the Rules. If the Disciplinary Authority was not satisfied or agreeing with the finding of the

Enquiry Officer, the Disciplinary Authority could have given the finding after examining the enquiry record and the evidence available on record. However, instead of doing so, mechanically it was said that since the charge of illicit felling of trees was proved against the petitioner, the loss was also found proved. This particular aspect was not examined by the Appellate Authority while deciding the appeal of the petitioner and ultimately the Appellate Authority has partly allowed the appeal of the petitioner by reducing the penalty of reduction in the pay scale but the penalty of recovery was not interfered. In the considered opinion of this Court, Appellate Authority was required to set aside the order of recovery in view of the evidence available on record. As the Enquiry Officer himself has said that there was no proof of loss caused to the State Government as no evidence was produced by the department to prove such a loss, the Appellate Authority was required to interfere in the order of recovery issued against the petitioner. Instead the order of penalty of reduction in pay was reduced and that being so, only this much is required to be examined by this Court whether such an order passed by the Appellate Authority was proper or not.

9. Rule 27 of the Rules prescribes consideration of appeal and it specifically confers power on the Appellate Authority to examine whether an order of penalty is issued in accordance to the provisions of the Rules or not. Had this power been exercised properly, the Appellate Authority would have seen that the order of recovery of the alleged loss caused to the State Government could not have been issued against the petitioner since there was no evidence available to prove such a loss. This being so, the order of the penalty so issued by the Disciplinary Authority so far it relates to recovery is concerned, need to be interfered by this Court. However, sufficient material was available against the petitioner to hold that he has committed a misconduct as alleged in Charge No. 1 and partly in Charge No. 2 for which the penalty was rightly imposed on him. This penalty was reduced suitably by the Appellate Authority, therefore, such part of the order of the Appellate Authority is not required to be interfered with.

10. In view of the discussions herein above, this petition is partly allowed. The order dated 24.12.1987, so far it relates to recovery of loss of Rs. 3008.50 from the petitioner is concerned, is hereby quashed. The amount so recovered from the petitioner be refunded to him with interest at the rate of 6% per annum from the date of recovery till the date of realization. Let the amount required to be refunded to the petitioner, be paid to him within two months from today. As far as the order of penalty with respect to reduction of pay of the petitioner to the minimum of the pay scale is concerned, the same will remain intact as modified by the order of Appellate Authority dated 30.10.2000 (Annexure P-2) and the petitioner be treated to be reverted on the minimum of pay scale for a period of five years. The writ petition is partly allowed to the extent indicated herein above. There shall be no order as to costs.