

(2007) 12 MP CK 0011
In the Madhya Pradesh High Court

Shiv Pratap Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 07-12-2007

Acts Referred:

Citation : (2008) 2 MPHT 60

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Jha, J.—The petitioner has filed this petition being aggrieved by show-cause notice dated 31-10-2007 issued by respondent No. 2 in exercise of powers of review under Rule 29 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.

2. Submissions of the learned Counsel for the petitioner are two fold, firstly, that the respondent No. 2 has no power or authority to exercise powers of review in respect of the petitioner; and secondly, that the Reviewing Authority has no power to take into consideration the past record of the petitioner as the Departmental Enquiry against the petitioner was in respect of specific charges and incidents which occurred on 16-11-2005 and 25-5-2005 and on this basis it is submitted that the Reviewing Authority has no power to look into the record of the petitioner prior to that period.

3. Properly appreciating the submissions made by the learned Counsel for the petitioner it is relevant to take note of the provisions of Rule 29 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, which reads as under:

29. (1) Notwithstanding anything contained in these rules,-

(i) the Governor, or

(ii) the head of a department directly under the State Government, in the case of

a Government servant serving in a department or office (not being the Secretariate), under the Control of such head of a department, or

(iii) the Appellate Authority, within six months of the date of the order proposed to be reviewed; or

(iv) any other authority specified in this behalf the Government by a general or special order; and within such time as may be prescribed in such general or special order, may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 34 from which an appeal is, allowed but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any Reviewing Authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 [...] and except after consultation with the commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred is subordinate to him.

4. As is apparent, Rule 29 (1) (ii) gives power to the head of the department to take up suo motu review proceedings in respect of a Government servant serving in the department or in respect of a Government servant who is serving in an office under the control of such head of the department. The petitioner who is a Constable working in the police department is a Government servant serving in the police department and even otherwise, is also serving in an office which is under the control of the head of department, who, in the instant case is the

Director General of Police, respondent No. 2. In the circumstances, the contention of the learned Counsel for the petitioner that the respondent No. 2 has no power to initiate review proceedings under Rule 29 in respect of the petitioner is apparently misconceived.

5. It is also apparent from a perusal of Rule 29 that the Reviewing Authority may on its own motion or otherwise call for the records of any enquiry and review any order made under the rules and thereafter confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed.

6. In the present case, the petitioner was initially served with a charge-sheet for three charges relating to incidents which occurred on 16-11-2005 and 25-11-2005. In the disciplinary proceedings charge No. 1 was found unproved while charge Nos. 2 and 3 were found to be fully proved and, therefore, the Superintendent of Police, Umaria, imposed a penalty of termination of the petitioner's services. Being aggrieved by the said order the petitioner had preferred an appeal before the Deputy Inspector General of Police who, vide order dated 28-5-2007 dismissed the appeal. Thereafter the petitioner preferred a second appeal before the Inspector General of Police, Rewa Range, who reduced the quantum of punishment imposed upon the petitioner to stoppage of one annual increment with cumulative effect vide order dated 30-6-2007. The Deputy Inspector General of Police (sic : Director General of Police) vide the impugned show-cause notice dated 31-10-2007 has now sought to suo motu review the order passed by the Inspector General reducing the quantum of punishment in exercise of the powers under Rule 29 and while doing so respondent No. 2 has taken note of the fact that the past service record of the petitioner did not warrant reduction of punishment and it is in this context that the Reviewing Authority has taken note of the past record of the petitioner.

7. As is evident from the impugned show-cause notice, the Reviewing Authority has not differed with or sought to review the findings recorded against the petitioner in respect of the charges levelled against him but has proposed review of the punishment as reduced by the Second Appellate Authority and, therefore, the present case is essentially one of review of the punishment imposed upon the petitioner and in that context the Reviewing Authority has referred to the past record of the petitioner in the impugned show-cause notice.

8. It is settled law that apart from the charges the authority concerned can take into consideration the past record of an employee for the purposes of determining the quantum of punishment to be imposed upon him subject to the condition that the employee is given a show-cause notice informing him that his past record is being taken into consideration for the purposes of determining the quantum of punishment and in this context we may profitably refer to the decision in the case of State of Mysore Vs. K. Manche Gowda, , wherein the Supreme Court has held as follows:

Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the Final Authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the Punishing Authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.

8. In view of the aforesaid facts and circumstances and the law as laid down in the case of *Manche Gowda (supra)*, I am unable to agree with the contentions of the learned Counsel for the petitioner that the Reviewing Authority even for the limited purposes of determining the quantum of punishment cannot look into the past record of the employee but has to restrict and confine itself only to charges levelled against him in the disciplinary proceedings.

10. In the instant case, before taking any decision on the nature and quantum of punishment, the Reviewing Authority has issued a show-cause notice to the petitioner giving him due opportunity to place before him all facts and materials to urge that the past record to the petitioner need not be, cannot be and should not be considered for the purposes of enhancing the punishment imposed upon him or that his past record does not warrant any enhancement. Apparently, the petitioner has submitted a detailed reply to the said show-cause notice before the Reviewing Authority on 9-11-2007, copy of which has been filed alongwith the petition as Annexure P-7. The authority shall take into consideration all the issues raised by the petitioner while taking a final decision in the review proceedings.

11. In the circumstances, I do not find any legal infirmity or manifest illegality in the impugned show-cause notice dated 31-10-2007. The petition being meritless is accordingly dismissed.