

(2020) 03 MP CK 0221
In the Madhya Pradesh High Court
Case No : Writ Petition No. 29513 Of 2018

S.K. Lapalikar

APPELLANT

Vs

Disciplinary Authority And Managing Director And Others

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 03 MP CK 0221

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : S. K. Rao, Shailendra Pandey

Final Decision : Disposed Of

Judgement

Petitioner Assistant Accountant is before this Court against the order of dismissal dated 31.1.2017 (Annexure P/1) and confirming appellate order dated 21.7.2017 (Annexure P/2).

Shri S. K.Rao, learned Senior Counsel while criticizing the impugned orders has made following submissions:-

(i) the charges levelled against the petitioner in fact are without any factual foundation and influenced by ulterior motives to proceed against the petitioner and punish him with shocking punishment of dismissal;

(ii) the procedure for holding regular departmental enquiry in conformity with the principle of natural justice have been frightfully violated;

(a) the petitioner has not been extended the opportunity to examine all witnesses of management witnesses;

(b) the petitioner has not been allowed to lead evidence;

(iii) the petitioner has been visited with extreme penalty of dismissal disproportionate to the gravity of the allegations made in the charge sheet.

(iv) the appellate Court has not considered the grounds raised in the appeal against the punishment order relatable to facts and in law;

The appellate order, therefore, is vitiated by errors of law and fact and unsustainable in the light of the judgment reported in AIR 1985 Supreme Court 1147- Ram and Shyam Company Vs. State of Haryana and others.

In view of the aforesaid submissions, learned Senior Counsel prays for setting aside the impugned order of punishment and appellate order.

Per contra, Shri Praveen Dubey, learned counsel for the respondents submits that though counter affidavit is not on record nevertheless; (i) the departmental proceedings on record suggests that the charges were framed upon due consideration of complaints and material available with the Management;

(ii) the principle of natural justice has been fully followed;

(ii) the petitioner has been allowed to cross examine management witnesses through his defence assistant. There was no complaint whatsoever at any stage of the proceedings that the petitioner has denied the opportunity to cross examine the management witnesses;

(iii) further at no point of time during pendency of enquiry either petitioner or defence assistant ever sought permission to lead evidence.

As a matter of fact, even on the date of hearing, in the enquiry no such complaint was made instead the defence assistant agreed for submission of the defence brief.

The Disciplinary Authority after due advertance to the material on record has awarded proportionate punishment. The Appellate Authority has considered the appeal on merits and dismissed.

Hence, no interference is warranted either in the punishment order or in the appellate order.

After hearing the learned counsel for the parties and on due consideration of material placed on record, it is considered appropriate to put a final curtain over the controversy raised related to the procedural irregularities and complaint of violation of principle of natural justice.

For the reasons, there is no dispute that the petitioner has not led any evidence. As such, he did not place on record his defence through oral evidence combating the charges, irrespective of the fact, that the petitioner did not demand the opportunity to lead evidence. There is a lapse in the context of observance of principle of natural justice, while concluding the enquiry followed by the penalty of dismissal. Principle of natural justice is a sine qua non of the concept of rule of law; a bed rock of our Constitution. The power of judicial review under Article 226 of the Constitution of India is required to be exercised if there is a complaint of defiance to rule of law in an administrative action or quasi judicial action.

Therefore, though this Court refrains from commenting upon the merits of the order of dismissal and the order passed by the appellate authority, but considers it appropriate, in the fitness of things, to avoid vulnerability to the action taken against the petitioner, both the orders shall be kept in abeyance and petitioner is afforded an opportunity to lead his evidence subject to cross examination by the management. This right is extended to ensure observance of rule of law in a departmental action and the evidence so led shall be read in addition to the evidence already on record. The Disciplinary authority shall take into consideration the entire evidence placed on record and thereafter regard being had to the gravity of the allegations, the evidence placed on record and the past service record of the petitioner take a comprehensive view in the matter of the nature of punishment and thereafter pass an appropriate order. The petitioner shall be free to file an appeal against the said order and thereafter if he still aggrieved thereby can take recourse to law before appropriate forum.

With the aforesaid observations and directions, writ petition stands disposed of.

It is made clear that this Court has not expressed any opinion on the merits of the matter.

Let this exercise be completed within a period of six weeks from the date of appearance of the petitioner before the Disciplinary Authority. This Court hereby directs the petitioner to appear before the Disciplinary Authority on 18.3.2020.

C.c. as per rules.