
(2005) 01 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9476 of 2003 and O. A. No. 919 of 1995

S.N. Singh

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Citation : (2005) 2 MPLJ 18

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : V.P. Nema, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition the petitioner has challenged the order dated 12-11-1993 by which punishment for reduction in pay-scale for one year increment with cumulative effect has been passed, copy of said order is Annexure A/1. Against the order passed by the DIG, an appeal was preferred to I.G. Police which was dismissed on 8-4-1994 vide Annexure A/4 and the representation which was submitted to the Director General of Police was dismissed on 13-10-1994 (Annexure A/5).

The petitioner who at the relevant point of time was serving on the post of Sub Inspector was charge-sheeted along with one Head Constable Shambhu Singh. Different charges were framed against both the employees, in a common charge-sheet. The charges were denied by the petitioner as well as by Head Constable Shambhu Singh and eventually the enquiry officer, i.e. Superintendent of Police conducted the enquiry. After holding the enquiry the Enquiry Officer referred the matter to the punishing authority, i.e. DIG Police. The disciplinary authority i.e. DIG Police, Rewa respondent No. 2 by considering the report of enquiry officer found the charges to be proved against petitioner, however, against Head Constable Shambhu Singh two charges, out of four, were found to be proved, as

a result of which the petitioner and Head Constable Shambhu Singh were punished by withholding of one annual increment with cumulative effect. The other employee Head Constable Shambhu Singh was also punished by withholding one increment for six months. After the rejection of the representation Annexure A/5 by Director General of Police, this petition has been filed.

On going through the averments made in the petition, it is gathered that petitioner was subjected to a joint enquiry along with Head Constable Shambhu Singh which is not permissible under the law. According to Rule 18 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short "the Rules") when two or more Government servants are concerned in any case, the Governor or any other competent authority who can impose the penalty of dismissal from service on all such Government servants can direct that disciplinary action against all of them may be taken in a common proceeding. For better understanding, it would be appropriate to re-write Rule 18 which reads thus :

Common Proceedings. (1) Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

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In the present case, nowhere it is gathered that before holding the joint trial of the two delinquent employees, any prior sanction either of Governor or of the competent authority who can impose penalty of dismissal from service, was ever obtained. In these state of affairs, the common enquiry proceedings cannot be said to be validly held. In the case of Shyamkant Tiwari Vs. State of Madhya Pradesh and Others, , this Court while considering the scope of Rule 18 has held that there was no order by the competent authority allowing for common proceeding under Rule 18 of the Rules, and thus there is a violation of Rule 18 and the departmental enquiry would be vitiated. In the case of Mahesh Kumar Shrikishan Tiwari vs. State of Madhya Pradesh and others, 1985 MPLJ 516, it was held by this Court that in absence of provisions of Police Regulation for contrary, any proceedings taken against delinquent servants, even though they are member of Police Force, without obtaining order from competent authority as provided under Rule 18, would be vitiated. In the case of Sardar Badeo Singh vs. State of M.P. and others, 1989 MPLJ 443 : 1989 MPJR HC 510 again the same dictum has been laid down, para 13 of the said decision may be taken into the consideration to decide the point in hand. In all these three decisions, it has been categorically held that joint enquiry would amount to violation of principles of natural justice. In the present case also, since there appears to be no order to proceed a joint enquiry in terms of Rule 18, according to me, the principle of natural justice has been violated. On going through the averments made in the

return, nowhere it is gathered, that any order to hold joint enquiry was obtained from the competent authority under said Rule 18. No order in that regard has been annexed. The return is silent in that regard, though this point has been raised in the petition.

In view of above, according to me, the punishment order cannot be allowed to remain stand and eventually Annexure A-2 is hereby quashed and for the same reason the order passed by appellate authority Annexure A/4 and the order of Director General of Police Annexure A/5 dismissing the representation are also quashed.

This petition is hereby allowed. No order as to costs.