

(2005) 01 MP CK 0004
In the Madhya Pradesh High Court

Sobaran Singh Dadoria

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Citation : (2005) 106 FLR 105 : (2005) 2 MPLJ 304

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

Bench : Single Bench

Judgement

A.K. Shrivastava, J.

By this petition the petitioner has challenged his order of dismissal passed by the Disciplinary Authority vide Annexure A-4 dated 11-12-1996 and affirmed by Appellate Authority vide Annexure A-5 dated 22-1-1997. The petitioner has also assailed the order passed by the Director General of Police dated 12-9-4997 by which the order passed by the Disciplinary Authority as well as the Appellate Authority has been diluted and in compliance of order of dismissal, the order retiring the petitioner compulsorily, has been passed.

The contention of the learned Counsel for the petitioner is that, for a minor misconduct, as he remained absent for five days w.e.f. 4-6-1996 to 8-6-1996, he was subjected to departmental enquiry and ultimately his, services were dismissed, which was modified into order of compulsory retirement as passed by the Director General of Police. It has been put forth by learned Counsel for the petitioner that the charge-sheet was issued by Additional Superintendent of Police who was not competent to issue it and therefore the order passed by the Disciplinary Authority on the basis of the charges cannot be allowed to remain stand.

The argument though at the first, blush appears to be quite attractive, however, on deeper scrutiny, found to be devoid of any substance. The petitioner failed to demonstrate how he is prejudiced. It is no more in dispute that the order of dismissal was passed by the competent authority i.e. Superintendent of Police

and if that is the position, according to me, merely the charge-sheet was issued by Additional Superintendent of Police, since it had not prejudiced the petitioner, in any manner, the entire enquiry proceedings cannot be quashed.

It has been contended by Shri Singh, learned Counsel for the petitioner that the ultimate punishment which has been awarded by the Director General of Police vide Annexure A-7, is shockingly disproportionate. There is some substance in his submission. This fact is not disputed by learned Government Advocate that the only charge against the petitioner is that he remained absent from 4-6-1996 to 8-6-1996 and for the absence of only five days, the order retiring the petitioner compulsorily, according to me, is harsh and shockingly disproportionate.

A bare perusal of the reply, which was filed by the petitioner against the show cause, does reveal that on account of illness, the petitioner remained absent. In support of his contention he has also filed the requisite medical certificate, the copy of which has been placed on record as Annexure D-2. Since there is no rebuttal, of this document and it is not, the case of the respondents that the petitioner did not remain ill, therefore according to me, he had made out a case for remaining absent. Thus, the only mistake which he had committed is that without submitting any application of leave, he went on leave. On this ground alone, according to me, the order of punishment retiring him compulsorily is shockingly disproportionate.

Resultantly, the petition succeeds in part. The order passed by the Disciplinary Authority Annexure A-4 dated 11-12-1996 passed by the respondent No. 4, Appellate Authority Annexure A-5 dated 21-1-1997 passed by respondent No. 3 are hereby quashed. On the similar ground, the order passed by the; Director General of Police Annexure A-7 dated 12-9-1997 is also hereby quashed. The petitioner is hereby punished by withholding of one annual increment with; cumulative effect as well as he shall not be entitled for 50% back-wages. This would be appropriate punishment for him. The respondents are hereby directed, to take back the petitioner in service and pay 50% backwages and other consequential benefits. No costs.