

(1996) 07 SC CK 0135
In the Supreme Court Of India
Case No : Civil Appeal No. 6091 of 1990

State of M.P.

APPELLANT

Vs

Onkar Chand Sharma

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Citation : (2001) 9 SCC 177

Hon'ble Judges : S. C. Agrawal, J; B. L. Hansaria, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

S.C. Agrawal and; B.L. Hansaria, JJ.-This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh, Indore Bench, dated 17-6-1985 whereby the writ petition filed by the respondent has been allowed.

2. While he was posted as Deputy Inspector General of Police, Armed Police Training Centre, Indore, the respondent was placed under suspension by order dated 22-3-1983 passed by the Government of Madhya Pradesh in exercise of the powers conferred by Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as "the Rules"). The said order of suspension was followed by order dated 5-5-1983 whereby the respondent was required to submit his written statement of defence to the articles of charges enclosed with the said order. The said order along with the charge-sheet was served on the respondent on 6-5-1983. The said charge-sheet was subsequently amended by charge-sheet dated 25-10-1983.

3. In his writ petition the respondent challenged the validity of the order of suspension as well as the two charge-sheets on the basis of which disciplinary proceedings were being taken against him. The order of suspension was assailed on the ground that there had been contravention of the provisions contained in the second proviso to Rule 3 of the Rules for the reason that the disciplinary proceedings were not initiated before the expiry of 45 days from the date of

order of suspension inasmuch as the charge-sheet was served after the expiry of the period of forty-five days. The charge-sheets that were issued against him were challenged by the respondent on the ground that the charges were vague and were based on conjectures.

4. By the impugned judgment dated 17-6-1985 the High Court has quashed the order of suspension dated 22-3-1983 on the ground that disciplinary proceedings were not initiated against the respondent within forty-five days of the suspension of the respondent since the charge-sheet had been served on him on the 46th day, i.e., on 6-5-1983. The High Court has also quashed the disciplinary proceedings initiated against the respondent.

5. The second proviso to Rule 3 of the Rules reads as under:

"Provided further that, where a State Government passes an order placing under suspension a member of the service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government."

6. A perusal of the said provision shows that what is required is that the disciplinary proceedings should be initiated against the member of the service who has been placed under suspension before the expiry of forty-five days from the date from which he has been placed under suspension. It is not disputed that the respondent was placed under suspension on 22-3-1983, the charge-sheet was framed on 5-5-1983 and it was served on the respondent on 6-5-1983. The question is whether disciplinary proceedings can be said to have been initiated by framing of the charge-sheet or only after the charge-sheet has been served on the delinquent employee. In our opinion, disciplinary proceedings can be held to have been initiated on the day the charge-sheet has been prepared and signed by the competent authority. In the present case, the charge-sheet had been prepared on 5-5-1983 inasmuch as it was appended to the order dated 5-5-1983 whereby the respondent was required to submit his written statement of defence to the charges. It can, therefore, be said that disciplinary proceedings had been initiated against the respondent on 5-5-1983. Even if the day on which the respondent was placed under suspension is counted, we find that the disciplinary proceedings had been initiated within forty-five days from the date of order of suspension. We are unable to agree with the view of the High Court that the date of initiation of disciplinary proceedings against the respondent was 6-5-1983 on which date the order dated 5-5-1983 as well as the charge-sheet were served on the respondent. The High Court was, therefore, in error in quashing the order of suspension on the ground that the disciplinary proceedings had not been initiated against the respondent before the expiry of forty-five days from the date of the order of suspension. Although we are not in agreement with the reason given by

the High Court for quashing the order of suspension but having regard to the fact that more than 10 years have elapsed since the said order of suspension was quashed by the High Court, we do not consider it an appropriate case in which the said order of suspension should be restored by setting aside the direction given by the High Court quashing the order of suspension. We, therefore, maintain the said direction of the High Court.

7. As regards the quashing of the disciplinary proceedings against the respondent, we find that in the impugned judgment the High Court has not given any reason for quashing the disciplinary proceedings. We have heard Shri K.C. Dua, the learned counsel for the respondent, on merits. We are unable to hold that a case is made out for quashing of the charge-sheet. In these circumstances, the direction given by the High Court regarding quashing the disciplinary proceedings against the respondent is set aside. It will, however, be open to the appellant State to consider whether in view of the fact that more than 10 years have elapsed since the issuance of the charge-sheet, it would like to proceed further with the said disciplinary proceedings. The appeal is partly allowed to the extent indicated above. No orders as to costs.