
(2006) 11 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2059 of 2006 (S)

Vikram Singh Rana

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Madhya Pradesh Police Regulations — Para 270(4)

Citation : (2007) 1 MPLJ 95

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Gopal Hardia, for the Appellant; A.S. Gokhale, Government Advocate, for the Respondent

Judgement

J.K. Maheshwari, J.

This petition has been filed challenging the order Annexure-P/3 dated 12-11-2005 passed by the Respondent No. 2 by which the order of penalty offered by Respondent No. 3 vide Annexure-P/1 dated 18-10-2005 has been ordered to be cancelled, with a further direction to make regular departmental enquiry against the Petitioner and to pass appropriate order after such enquiry.

It is the case of Petitioner that he was punished by an order Annexure-P/1 dated 18-10-2005 inflicting on him the minor penalty after issuing a show cause notice. By such order, penalty of withholding one increment with non-cumulative effect for a period of 6 months was passed. In the show-cause notice Annexure-P/2 dated 15-9-2005 some non-compliance, in one case of NDPS Act, during investigation was alleged. The show-cause notice was issued to him of the proposed penalty of withholding of one increment with non-cumulative effect. After filing the reply by the Petitioner, order of minor penalty dated 18-10-2005 Annexure-P/1 was passed.

Thereafter, without issuing any show-cause notice and furnishing of an opportunity of hearing to him order Annexure-P/3 dated 12-11-2005 was issued

by the Respondent No. 2. By which the order of minor penalty Annexure-P/1 dated 18-10-2005 issued by the Respondent No. 3 was cancelled with the direction to hold a regular departmental enquiry against Petitioner and to pass the order against him afresh. Learned Counsel Shri Gopal Hardia appearing for Petitioner submits that as per provisions of para 270(4) of M.P. Police Regulations, it is apparent that the order Annexure-P/3 cannot be passed without issuing any show-cause notice and furnishing an opportunity of hearing. However action of Respondent No. 2 to issue the order Annexure-P/3 is against the above provisions of M.P. Police Regulations, therefore, such order is liable to be quashed.

Per contra, Shri A.S. Gokhale, Government Advocate appearing on behalf of Respondents submits that the order Annexure-P/3 has rightly been passed by the Respondents in compliance to the provisions Clause (4) of para 270 of M.P. Police Regulations. It is urged, that by passing the order Annexure P/3 no serious prejudice has been caused to the Petitioner; because, no other order of penalty, after varying or enhancing the earlier order has been passed by the Respondents, while exercising the suo motu powers of revision. By the order impugned merely the fresh enquiry has been ordered. However, it cannot be said that any prejudice has been caused to the Petitioner. It is said by him that, in the facts of the present case, compliance of Clause (4) of para 270 of M.P. Police Regulation is not necessary. It is further urged, that, by cancelling the order of minor penalty, the order to hold the fresh inquiry has been ordered, however while passing such an order, opportunity of hearing is not required to be offered to the Petitioner. Therefore, it is prayed that the petition filed by Petitioner deserves to be dismissed.

I have heard Learned Counsel appearing for the parties. But prior to dealing with the question involved in the present case, it is necessary to reproduce the order Annexure-P/3 as well as the provisions as enumerated para 270 of M.P. Police Regulations. The order Annexure-P/3 is produced as under:

Now the relevant provisions of Para 270 is reproduced, as under:

270 [(1) Every order of punishment or exoneration, whether original or appellate shall be liable to revision suo motu by any authority superior to the authority making the order].

(2) Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority, on application made in that behalf by the person against whom the order has been passed. Explanation: For the purposes of this clause, the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.

(3) The provisions of Regulations 266, 267, 268 and 271 shall, as nearly as may be, apply to an application for revision.

[(4) The revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or any order a fresh

enquiry or the taking of further evidence in the case. Provided that it shall not vary or reverse any order unless notice has been served on the parties interested an opportunity given to them for being heard.

After going through the provisions of para 270 of M.P., Police Regulations, it is apparent that the superior authority to the making authority may exercise the suo-motu powers of revision or an application made to him by the person against whom the order has been passed. It is further apparent that while exercising such power for revision, the revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry for taking further evidence in the case. Bare perusal of order Annexure-P/3 and the operative part as reproduced hereinabove, it is apparent that, in first para superior authority has referred the action of Respondent No. 3. Thereafter in 3rd para, it is observed that the punishment offered against the Petitioner is lesser, and not commensurate to the misconduct committed by him. For this reason, the matter was taken in suo-motu revision, thereafter without issuing any notice, the order of S.P., Neemuch Annexure-P/1 dated 18-10-2005 has been cancelled. After cancellation, it is further directed that the regular departmental enquiry to be held, thereafter the order be passed.

The aforesaid discussion apparently indicates that the superior authority has found that the penalty which was offered to Petitioner is lesser and not commensurate to the misconduct. Thus for this reason, order of minor penalty dated 18-10-2005 was cancelled. It is not disputed that prior to passing the order of cancellation of minor penalty, Petitioner was not given any opportunity of hearing by issuing a show-cause notice or by way of personal hearing. After cancellation of order dated 18-10-2005, direction to hold a regular departmental enquiry has been issued. It is not disputed by the parties, that a regular departmental inquiry, is required to be conducted for major penalty and not for minor penalty. By the order impugned, the order of minor penalty has been cancelled, observing that minor penalty as offered by Respondent No. 3 is not commensurate to the misconduct. Thus in such, sequel of facts, cancellation of the order of minor penalty, without giving opportunity of hearing is illegal and against the principles of natural justice. In the facts of the case in hand, compliance of Clause (4) of para 270 of M.P. Police Regulation, is necessary, and prior to passing the order a show-cause notice must be issued and opportunity of hearing ought to have given to Petitioner. In view of the aforesaid, it is apparent that it is not, an order merely to hold further inquiry, therefore, the arguments of learned Government Advocate, cannot be accepted.

At the same time, it is required to be dealt with here Clause (4) of Para 270 of M.P. Police Regulations, specifies that revising authority may for reasons to be recorded in writing exonerated or may remit, vary or enhance the punishment imposed or may order a fresh enquiry for taking further evidence in the case. Its proviso deals with contingency that if the revising authority is of the opinion that on the fact and material available on record, the order of subordinate authority

deserves to be varied or reversed; then by issuing notice to the parties and by giving an opportunity of hearing to them order may be passed. Clause (4) of para 270 of M.P. Police Regulations also states that revising authority ought to have record its reasons in writing while exonerating or to remit or to order for a fresh enquiry for taking further evidence. In the present case, after going through the language of the order, it is apparent that revising authority while exercising the suo-motu power of revision was not satisfied with the punishment, which was offered by the subordinate authority vide Annexure-P/1; for this reason, the matter was taken into suo-motu revision, undisputedly order of minor penalty has been cancelled with a further direction to hold a regular departmental enquiry; which is required to hold for major punishment. Thus cancelling the minor penalty, with further direction to hold regular departmental enquiry, passed by Respondents causes serious prejudice to the Petitioner. In that view of the matter Annexure-P/3 passed by Respondent No. 2 is in gross violation of principles of Natural Justice.

While enacting Clause (4) of Para 270 of the M.P. Police Regulations the legislative intent is very clear, whereby if the superior authority may vary or enhance the punishment by giving an opportunity of hearing. In the present case, while cancelling the order of minor penalty and to direct to hold regular departmental inquiry, has been passed. The regular departmental inquiry is required to be conducted to offer the major penalties. Thus, intention of varying or enhancing the punishment after regular departmental inquiry is reflected from the language of the order. Therefore, the compliance of the provisions of Clause (4) of Para 270 of the Police Regulations is necessitated. In that view of the matter it is to be held that the order Annexure-P/3 has been passed in gross violation of the principle of natural justice as well as in non-compliance of the provisions of para 270(4) of the M.P. Police Regulations.

In view of the foregoing discussion, Annexure-P/3 dated 12-11-2005 is hereby quashed and the impugned order Annexure-P/1 dated 18-10-2005 passed by subordinate authority shall be deemed to be revived. In the facts and circumstances of the present case, there is no order as to costs.