
(2012) 02 MP CK 0116
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4962 of 2007

Vinay Sharma

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Constitution of India, 1950 — Article 20(2), 226

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 18

Madhya Pradesh Police Regulations — Regulation 270(4)

Citation : (2012) 02 MP CK 0116

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Shri Justice Sujoy Paul

1. By invoking the jurisdiction of this Court under Article 226 of the Constitution, the petitioner has called in question the punishment order dated 08.06.2007 whereby the punishment of reduction of pay in the minimum pay scale with cumulative effect is imposed on the petitioner. The appellate order dated 11.09.2007 (Annexure P-2) whereby the punishment is affirmed is also called in question in the present petition. Shri Katare, learned counsel for the petitioner submits that petitioner was served with a show cause notice dated 14.05.2005 (Annexure P-3). The petitioner submitted his reply on 19.05.2005 (Annexure P-4). Thereafter, the disciplinary authority inflicted the punishment of "Censor" on the petitioner and other police officials who were served with the show cause notice (Annexure P-3). Thereafter, by order dated 20.09.2005 the I.G. (Appellate Authority) quashed the order with regard to constable No. 461 Shri Sunil only and yet directed for institution of disciplinary proceedings against all concerned. Thereafter, a charge sheet Annexure P-7 dated 05.12.2005 was issued which resulted into imposition of impugned punishment order affirmed by the appellate order.

2. Shri Katare assailed the disciplinary proceeding on the following grounds:

(i) The petitioner's punishment order of censor (Annexure P-5) was not cancelled and it was cancelled only with regard to constable No. 461 Shri Sunil and therefore, the petitioner can not be subjected to another disciplinary proceedings founded on the same allegation for which he was punished. In nutshell, Shri Katare, learned counsel for the petitioner submits that it amounts to double jeopardy and hits Article 20(2) of the Constitution of India.

(ii) The next attack is on the ground that before issuing Annexure P-6, the competent authority was under a statutory obligation as per regulation 270(4) of Police Regulation to issue notice and hear the petitioner but the said authority has not chosen to follow the mandate of said rules.

(iii) The further attack is on the ground that the petitioner is subjected to a common/joint inquiry and such inquiry could have been conducted only when an order by the competent authority is issued to conduct a joint inquiry. In absence thereof, Shri Katare submits that common inquiry was bad in law and for that he placed reliance on the judgment of this Court in the case of (Shyamkant Tiwari Vs. State of MP and Others) reported in 1986 MPLJ 37.

3. Shri Newaskar, learned Deputy Government Advocate for the respondent/ State supported the disciplinary proceedings and the impugned order.

4. I have heard the parties at length and perused the record.

5. So far ground (i) is concerned, it is clear on perusal of Annexure P-6 that a common order dated 10.05.2005 was passed regarding petitioner and other employees. By Annexure P-6 this order is cancelled. Since order was common for various employees, it's cancellation is also common. Thus, the first contention of Shri Katare deserves to be and is accordingly rejected that by Annexure P-6 the punishment was cancelled only with regard to constable No. 461 Sunil. On the contrary, it is clear that the punishment was cancelled for everybody to whom it was issued.

6. So far grounds No. (ii) and (iii) are concerned, this Court had an occasion to consider this aspect in 2007 (1) MPLJ 95 (Vikram Singh Rana Vs. State of M.P. and Others). In the said case, it is held as under:

10. 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 canceling 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 reelected 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 principles of natural justice as well as in non-compliance of the provisions of para 270(4) of the M.P. Police Regulations.

11. 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.

7. In this view of the matter, it is clear that sub-clause (4) of Regulation 270 of Police Regulations could not have been invoked without following principle of natural justice and without affording opportunity to the petitioner. Thus, this action of respondents in issuing Annexure P-6 is bad in law.

In 2009 (2) MPLJ 458 (Jagdish Vs. State of M.P. and Others), this Court while dealing with rule 18 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules 1966 held that in absence of prior sanction and order being issued by competent authority, joint inquiry is impermissible. The petitioner has categorically pleaded in the petition that the impugned inquiry is conducted jointly without any order of joint inquiry by the competent authority. This averment is not denied by the respondents in their return. Accordingly, as per the judgment in Jagdish (supra), I have no hesitation to hold that the impugned disciplinary proceedings are liable to be quashed for want of order by the competent authority to hold a joint inquiry. Resultantly, the impugned order Annexure P-1 dated 08.06.2007 and Annexure P-2 dated 11.09.2007 are quashed and set aside. The petition is allowed. The respondents shall restore the benefits to the petitioner within three months, failing which it will carry interest @ 6% per annum. No costs.