

(2013) 07 MP CK 0173

In the Madhya Pradesh High Court

Case No : Writ Petition No. 165 of 2004 (S)

Vishnu Kumar Tamotiya

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 MP CK 0173

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.S. Raghuvanshi, for the Appellant; Sangeeta Pachouri, Dy. Government Advocate for Respondent/State, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—This petition filed under Article 226 of the Constitution challenges the disciplinary proceedings and the punishment order dated 30.7.2002, whereby the punishment of reduction of pay to the minimum is inflicted on the petitioner. The appellate order, Annexure P-1, dated 23.4.2003 affirming the punishment order is also called in question. Shri D.S. Raghuvanshi, learned counsel for the petitioner submits that against the charge sheet dated 24.1.2001 the petitioner submitted his detailed reply. The respondents were not satisfied with the reply and, therefore, appointed enquiry officer. Certain prosecution witnesses deposed their statements. The enquiry officer, in turn, submitted his report dated 4.6.2002, which was supplied to the petitioner along with show cause. The petitioner filed his reply to the show cause on 7.6.2002 (Annexure P/6). The petitioner filed his reply, which is basically based on his detailed reply to the charge sheet. Shri D.S. Raghuvanshi submits that the enquiry officer's report is perverse in nature and if the entire evidence is reappraised, it will be clear that nothing is established against the petitioner. He submits that second show cause proposing the punishment has not been issued against the petitioner. Lastly, it is submitted that the appellate authority has passed a cryptic order, which is liable

to be interfered with.

2. Smt. Sangita Pachauri, learned Deputy Government Advocate supported the disciplinary proceedings and the impugned order.

3. Before dealing with the matter on merits, it is apt to mention that the scope of interference under Article 226 of the Constitution in a disciplinary proceeding is limited. The interference is done mainly on the decision-making process and not on the decision itself. This view is taken by the Supreme Court in catena of judgments including Apparel Export Promotion Council Vs. A.K. Chopra, followed in State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, . If there is a palpable procedural irregularity which has resulted into any prejudice to the petitioner, interference can be made in the decision-making process. If the punishment is extremely disproportionate and hits the conscience of the Court, interference can be made. However, this Court is not obliged to act as an appellate authority to reweigh or reappraise the evidence. The petitioner has not established any procedural impropriety or violation of the principles of natural justice. The main contention is that in the reply the petitioner has stated in extenso as to how the amount was utilized. However, a bare perusal of the enquiry report shows that the enquiry officer has considered each and every aspect in detail. For example, considering the reply of the petitioner regarding charge no. 3 the enquiry officer stated that although the petitioner in his reply has stated that vouchers against the expenditure of Rs. 1,16,220/- are there in the record, the vouchers were not found in the record. If vouchers were very much there, the petitioner should have provided those vouchers to the audit team. Similar finding is given with regard to charge no. 2. Charges no. 3 and 4, in the considered opinion of this Court, are very grave and related with financial irregularity/ embezzlement. In petitioner's reply with regard to charge no. 3 it is only mentioned that the vouchers are on record. The enquiry officer gave a categorical finding that the vouchers were not found in the record and petitioner has not produced any material to show that vouchers were very much available. The enquiry officer considered the statements of witnesses and based his report on the basis of those statements of witnesses. No perversity could be established nor a case of "no evidence" is made out. Accordingly, this Court is not required to sit as an appellate authority to reappraise and reweigh the evidence.

4. As per the inquiry officer's report, charges no. 1 and 2 are fully proved and charge no. 3 and 4 are partly proved. Charges No. 2 and 3 are related with fiscal irregularity/embezzlement. If these charges are even partly proved, in my opinion, the respondents have dealt with the petitioner very leniently. The Supreme Court in its recent judgment reported in Niranjana Hemchandra Sashittal and Another Vs. State of Maharashtra, opined as under with regard to the corruption and the amount involved in a matter of corruption:-

26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the

glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality.

5. Thus, in a case of misappropriation or embezzlement, quantum of amount involved is not material but the conduct of the delinquent employee is the basis on which punishment can be imposed.

6. I am unable to hold that the findings of the enquiry officer are either perverse or based on no evidence and, therefore, no interference is required on this finding. The disciplinary authority has passed a detailed order considering all aspects of the matter which needs no interference. The appellate authority has based his order on the enquiry officer's report and the punishment order of the disciplinary authority. There is no infirmity in this order also which warrants interference of this Court. In nutshell, petition is meritless and is hereby dismissed. No costs.