
(2004) 02 MP CK 0058
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6076 of 2003

Y.A. Bapat

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 9(2)

Citation : (2004) 3 MPHT 210 : (2004) 2 MPLJ 521

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Pankaj Soni, for the Appellant; Rahul Jain, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The original petitioner, an Overseer/Sub-Engineer in the Public Health Engineering Department, was put under suspension while he was working at Samnapur, District Mandla in the year 1973 on the basis of initiation of a departmental proceeding against him. As the enquiry proceeding did not see its ripeness, he approached the M.P. Administrative Tribunal, Jabalpur (in short) in O.A. No. 524 of 90. After abolition of the Tribunal, the matter has been transferred to this Court.

It is contended in the petition that despite his sincere and unblemished service in the post of Overseer (as at the relevant time the post of Sub-Engineer was designated as Overseer) he was put under suspension on 27-8-1973 vide Annexure A-1. No charge-sheet was submitted within a period of 45 days nor was it approved by the State Government within 90 days as contemplated under Rule 9 (2b) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (in short "the Rules"); and for that reason, the order of suspension had lost its force. It is urged that as the order of suspension became non-est, the original

petitioner was entitled to be automatically reinstated in service. After the charge-sheet was supplied to him, he submitted his explanation putting forth the real position how his acts did not invite the wrath of departmental proceeding. Despite the said show cause, an Enquiry Officer was appointed and the enquiry continued in spite of the fact that there are certain circulars issued by the State Government to conclude the Departmental Enquiry within a period of one year. In the year 1977, the original petitioner was issued a notice to show cause for the purpose of proposed punishment and he was given 15 days time for submitting his explanation. The original petitioner filed his show cause but no final order was passed and the original petitioner waited for the result of the departmental enquiry. The original petitioner was expecting that the fortune would visit him by conclusion of the departmental enquiry or by revocation of the order of suspension but nothing substantial happened. The original petitioner submitted series of representations but the disciplinary authority maintained a sphinx like silence. As time rolled by, in the month of August, 1981, the original petitioner was summoned for an oral enquiry. For reasons best known to the authority, nothing fruitful happened with the passage of time and in the year 1987, the original petitioner was transferred from Manendragarh Division to Samnapur, District Mandla. It is contended in the petition that from the order of the transfer, it transpires as if he was treated as a regular employee and not as a suspended employee. It is urged in the petition that on 27-12-1989, the original petitioner was directed to remain present before the disciplinary authority for the purpose of oral hearing. The original petitioner in obedience of the aforesaid command remained present but he was not given hearing by the respondent No. 3. Thus, in essence, the grievance of the petitioners is that the respondents had not yet concluded the departmental enquiry and the original petitioner remained in a state of suspension for a period of 17 years at the time of the filing of the original application.

It is relevant to state here that at the time of filing of the original application, the original petitioner sought quashment of the departmental enquiry on the ground that there had been inordinate delay in completion of the enquiry. At this juncture, it is seemly to state that during the pendency of the petition, the original petitioner breathed his last and his legal representatives got themselves impleaded in the petition. In this backdrop, prayer has been made for grant of arrears of salary and other reliefs.

A counter affidavit has been filed by the official respondents contending, inter alia, that the original petitioner was served with the charge-sheet on 12-2-74 and he never represented before the authorities at any appropriate time for revocation of order of suspension and only approached the Court for the first time on 16-1-1990. Justification has been shown how the order of suspension was legally alive and did not meet its end with the efflux of time. It is contended that the original petitioner remained under suspension throughout the departmental enquiry in which a penalty of recovery of sum of Rs. 14,068.44/- has been imposed. Various other recoveries have been pressed into service to

show that there has been proof of allegations made against the original petitioner. It has also been highlighted that the original petitioner was posted as Sub- Engineer in the office of Assistant Engineer, P.H.E., Samnapur. After the revocation of the order of suspension, the said order of suspension, the said order of posting dated 5-6-1990 has been brought on record as Annexure R-1. It is set-forth that the petitioner was regularly paid the subsistence allowance during his period of suspension as per the rules. The further stand of the respondents is that prayer made by the petitioners has been rendered infructuous as the penalty in question has been imposed.

After hearing Mr. Pankaj Soni, learned Counsel for the petitioner, and Mr. Rahul Jain, learned Counsel for the State and on a perusal of the documents brought on record, two aspects become clear as plain day that the original petitioner was suspended on the foundation of initiation of a disciplinary proceeding in the year 1973 and it culminated in the punishment in the year 1990. There is no allegation in the counter affidavit that late Y.A. Bapat was responsible for the delay in the departmental proceeding. The return is absolutely silent why there had been such delay in concluding the departmental proceeding. At this juncture, I think it condign to reproduce the charge-sheet, which has formed a part of the order passed by the disciplinary authority. It reads as under R-1 :--

"1.1. While discharging his duties as Mechanical Overseer-in-Charge, Water Works, Manendragarh, Shri Y.A. Bapat misappropriated Government funds out of revenue collection of Water Works, Manendragarh to the tune of Rs. 14,000/-.

2. That he contravened Financial Code Vol. I Rule 3 and M.P. Treasury Code Vol. I, S.R. 486 and failed to deposit revenue collection of Rs. 14,633.55 realised during 4-5-1973 to 24-7-1973 and further indulged in late remittance of Government funds during the period 1-3-1973 to 18-7-1973.

3. That he deliberately neglected his duties and caused disruption of water supply to Manendragarh town during 13-7-1973 to 15-7-1973.

4. That he absented from duty during 8-8-73 to 13-8-973 and 18-8-1973 to 22-8-1973 without prior permission from competent authority in contravention of Government servant conduct rule.

5. That he failed to produce imprest account of Rs. 300/- in contravention of Para 6.6.11 of C.P.W.A. Code.

6. That he did not return measurement book Nos. 31113 & 31114 and blank musters No. 155, dated 2-9-72 and Nos. 173, 174 and 175, dated 23-1-1973 in contravention of Rules 629 and 621 of M.P. P.W.D. Vol. I.

7. That he made irregular purchases worth Rs. 799.72 without prior sanction of competent authority and failed to maintain M.A.S. Accounts for the same.

8. He delayed payment of electric energy bill of Water Works, Manendragarh for July, 1973 accruing surcharge of Rs. 305.36 paise thereon and caused

unnecessary loss to Government."

The disciplinary authority on consideration of material on record has directed recovery of the amount which is approximately Rs. 16,000/-. It also transpires that apart from recovery, what has been stipulated in the order passed by the disciplinary authority is that the original petitioner would not be entitled to any amount on account of grant of increments and he would also not be entitled to promotion. Stating thus, the proceeding has been concluded. It is relevant to state here that the original application was filed on 28-2-1990 and the order of punishment was passed on 5-6-1990. The sixty four thousand million dollar question that arise for consideration is whether for such enquiry, the period of 17 years was required by the Department. Unequivocal and categorical answer to the said question has to be in negative. The disciplinary authority is expected to be a responsible officer and is required to keep control on the proceeding. In the case at hand, the disciplinary authority did not bother even for a single moment that the deceased petitioner was suffering humiliation of suspension, and allowed the proceeding to continue for 17 years. A period of 17 years by no stretch of imagination could be regarded as a short period. Judged by any statistics, it covers a considerable span of life, but, a pregnant one the employer totally became oblivious to the same and passed an order in the year 1990. The allegation, which has been made in the petition, if I allow myself to say so, has not been replied to by the respondents in an appropriate manner, except stating that the order of punishment has been passed which rendered the petition infructuous. True it is, the order of punishment is not a subject-matter of assail in the petition, but it baffles the sense of logic and one fails to fathom, why the enquiry officer as well as the disciplinary authority became so lethargic and lackadaisical in their attitude to carry the proceeding to its logical end within a reasonable period of time. Mr. Pankaj Soni has submitted that the proceeding was allowed to continue and proceeded at a snail's speed. I am inclined to think, the submission of Mr. Soni has force. On an analysis of the action of the respondents, the irresistible conclusion is that the disciplinary authority paved path of total deviancy and treated the original petitioner as an unperson. In my considered opinion Government circulars are very clear that an enquiry should be concluded within a period of one year. There can be no justification in a case of this nature to prolong it for 17 years. In addition, the explanation given in the return that the original petitioner did not submit any representation is absolutely unacceptable. A suspended employee always hopes that the enquiry would be over and he would know his fate but in the instant case, the respondents have the impertinence to put forth that the petitioner did not represent earlier. One can only say that the respondents have lost their sense of time, concern for the employees and have developed a proclivity as if they are the masters in a predatory State. If I permit myself to say so the respondents have totally brushed aside the human conception and marginalised feelings of an employee. It is not appreciated. In a welfare State, the employer is expected to conduct and behave like a model employer but not in a manner as which the present factual

scenario frescoes the picture. It is expected, the State shall rise to the occasion and able to build the edifice on the real paradigm which is acceptable and intelligible and one may repeat of the cost of repetition "Aware, arise, oh Partha". Let the officers arise from deep slumber.

Coming to the merits of the case, it is patent that the order was passed in 1990 but the original writ petitioner chose not to prefer any appeal. The legal representatives have been substituted and they have reiterated the same reliefs. Though I am not inclined to quash the punishment as far as the recovery is concerned yet I am persuaded to quash the order of punishment which treats the period of suspension as such. I am disposed to do so as the enquiry continued for a considerable length of time. Without any reason, taking note of totality of circumstances, I am inclined to direct the petitioners, the legal representatives of the employee, would be entitled to full salary of the deceased employee for a period of 10 years. As 50 per cent had been paid towards the subsistence allowance, 50% be paid to them. The retiral benefits of the employee be finalised and be paid to the petitioners within three months from the date of the receipt of order passed today. The amount which is supposed to be recovered, be recovered from the amount of gratuity as well as from any other sum due.

Ordinarily with the aforesaid direction, I would have closed the case but a case of this nature creates a stir in one's mind. It shakes one's sensitivity. This Court hopes and trusts, in future the disciplinary authorities shall positively see that the disciplinary proceedings are concluded within a reasonable time keeping in view the Government circulars. Let a copy of this order be sent by registered post with acknowledgment due to the Chief Secretary of the State for appropriate action, and circulation. Be it noted, circulation inspires proper circulation and consequential action and saves the arteries from being atrophied.

The writ petition is allowed to the extent indicated above. There shall be no order as to costs.