AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.584 of 2005

1(A) Rekha Gawade W/o Purushottam Rao, Aged About 55 Years R/o Near Rajkumar College, Dagania, Police Station Aamanaka, District Raipur (Chhattisgarh).
1. (B) Vikash Rao Aged about 29 Years S/o Purushottam Rao, R/o Near Rajkumar College, Dagania, Police Station Aamanaka, District Raipur (Chhattisgarh).
1. (C) Poonam Magar Aged about 35 Years D/o Purushottam Rao, R/o Near Rajkumar College, Dagania, Police Station Aamanaka, District Raipur (Chhattisgarh).
1. (D) Rahul Rao, Aged about 25 Years S/o Purushottam Rao, R/o Near Rajkumar College, Dagania, Police Station Aamanaka, District Raipur (Chhattisgarh).
1. (E) Archana Gawade Aged about 20 Years D/o Purushottam Rao, R/o Near Rajkumar College, Dagania, Police Station Aamanaka, District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Madhya Pradesh Through The Secretary, Home (Police) Department, Vallabh Bhawan, Bhopal (Madhya Pradesh).

2. Director General Of Police, P. H. Q., Bhopal (Madhya Pradesh).

3. Inspector General Of Police, Bhilai Zone, Bhilai, District Durg Madhya Pradesh Now Chhattisgarh.

4. Deputy Inspector General Of Police, Raipur Zone, Raipur, Madhya Pradesh Now Chhattisgarh.

5. Superintendent Of Police, Raipur, Madhya Pradesh Now Chhattisgarh.

---- Respondents

For Petitioner : Ms. Pritha Ghoshal, Advocate
For Respondent/State : Shri Satish Gupta, GA

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/11/2017

Heard.

2. This petition is directed against order dated 28-05-1992 passed by the Director General of Police, Madhya Pradesh, Bhopal, dismissing the Mercy Appeal of the petitioner filed against the order of imposition of penalty of compulsory retirement and confirming the order passed by the Inspector General of Police, Bhilai Zone, Bhilai. Against the impugned order dated 28-05-1992, the petitioner preferred Original Application before the State Administrative Tribunal, Jabalpur. Later on, the Tribunal was abolished and the case was received on transfer to this Court.

3. Facts of the case are that a charge sheet was issued to the petitioner, while he was working as Constable in the Police Department on 27-05-1989 by the Superintendent of Police, Raipur, instituting departmental enquiry, on following three charges:-

> 1. थाना सरसींवा में तैनाती के दौरान थाना क्षेत्र के अपराधियों शेख इस्माइल एवं लक्ष्मीकांत पाण्डेय से दोस्ताना ताल्लुकात रखते हुए पुलिस कर्तव्यों के विपरीत आचरण प्रदर्शित करना।
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> 2. दिनांक 2.04.87 को जनता के लोगो हेमन्त चन्द्रा एवं पीकाक टेलर के साथ शराब पीकर कानून विरूद्व तरीके से एक ही मोटर साइकल में सवारी करना व एक्सीडेंट होने पर थाना सरसींवा के अपने साथी आरक्षको निशामणी मुन्ना, सुन्दरमणी मिश्रा और चन्द्रमा यादव के विरूद्व मारपीट की झूठी रिपोर्ट दर्ज कराना व पेशाबंदी करते हुए इन्हीं कर्मचारियों पर 2620 रूपये चोरी करने का झूठा इल्जाम लगाना।
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> 3. दिनांक 5.3.87 को अपराधी शेख इस्माइल एवं उसके साथियों द्वारा आरक्षक निशामणी मुन्ना को पीटते समय घटनास्थल पर मौजूद होने के बावजूद बचाने का कोई प्रयास न करना व इस प्रकार अपने कर्तव्य के पालन में घोर लापरवाही बरतना।'

The petitioner submitted reply to the charge sheet. The disciplinary authority appointed Enquiry Officer of the rank of Deputy Superintendent of Police, who conducted enquiry. The prosecution examined as many as 9 witnesses. The petitioner, in his defence, examined two witnesses. Delinquent employee/petitioner was also examined. Finally, the Enquiry Officer prepared

the enquiry report, in which, the petitioner was found guilty of all the charges. On the basis of enquiry report, the disciplinary authority passed the order of imposition of penalty of compulsory retirement on 18-04-1990. The petitioner filed an appeal, which was dismissed on 05-11-1990. Thereafter, one mercy appeal was filed by the petitioner which was dismissed on 20-03-1991 by the Inspector General of Police, Bhilai. Another mercy appeal was made to the Director General of Police, which was also dismissed vide order dated 28-05-1992.

4. Assailing correctness and validity of the impugned order of penalty and the order passed in appeal/mercy appeal, learned counsel for the petitioner would submit that the entire departmental enquiry and the consequent order of penalty is vitiated because of serious illegalities and irregularities and violation of principles of natural justice. It is submitted that the impugned order is in utter violation of the provisions contained in Regulation 230 of the Police Regulations, which mandates supply of enquiry report along with penalty orders. The enquiry report was not supplied to the petitioner along with penalty order, which seriously prejudiced him in effective exercise of right of appeal, which is statutory remedy under the law. It is next submitted that the order of penalty passed by the disciplinary authority neither discusses any evidence nor records any finding, therefore, the order is without reasons and merely because the disciplinary authority had agreed with the report of Enquiry Officer, he was not absolved of his statutory obligation to record his own independent finding by discussing evidence on record, record satisfaction and if warranted, concur with the finding of the Enquiry Officer and therefore, Rule 15(3) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (In short “the Rules of 1966”) has been violated. Next submission of learned counsel for the

petitioner is that the charge sheet and the charges levelled against the petitioner were quite vague. It is argued that though there are allegations of commission of certain acts, under the provisions of service regulations, such an act would amount to misconduct, has not been mentioned, therefore, the charges were vague and could not be made a basis to hold departmental enquiry against the petitioner. In the absence of clear mention of the rules relating to conduct, the petitioner was prejudiced in his evidence. It is then submitted that as far as charge No.1 is concerned, no specific details have been given regarding criminal case said to be pending against Sheikh Ismile and Laxmi Kant Pandey and merely because the petitioner did not dispute these allegations, the Enquiry Officer was not absolved of his duty to collect concrete material before holding the charges proved. Next submission is that the petitioner was deprived of his right to cross-examine R.I., who was a important prosecution witness. It is next submitted that the petitioner in exercise of right of defence, had submitted list of as many as five defence witnesses, but only two of them were examined and others were not allowed to be examined, which also caused serious prejudice to the petitioner. Referring to the averments made in the petition, it is submitted that the evidence was recorded in the closed room, which vitiated the enquiry. It is submitted that no show cause notice was issued to the petitioner before initiating departmental enquiry; before passing final order, second show cause notice and penalty order was not given and request for examination of two prosecution witnesses was arbitrarily rejected. It is further submitted that the petitioner was not subjected to fair treatment. The petitioner had also made a report against the police officials, who had manhandled him, but proper and fair enquiry was not made and it was that incident, which constituted one of the charges against the petitioner leading to imposition of penalty. It is lastly submitted that the petitioner's appeal was dismissed in mechanical manner

without considering the grounds raised in appeal. Placing reliance in the case of ***Ghasiram Kosariya vs. State of M.P. and Others,2011(2) CGLJ 147,*** it is submitted that such an order in appeal is not sustainable in law, therefore, the same is liable to be set aside. It is also submitted even mercy appeal was also dismissed mechanically without adverting to any of the grounds raised in the appeal by the petitioner. Learned counsel for the petitioner also placed reliance on a decision of the Supreme Court in the case of ***Pritam Singh vs. Union of India and others, (2005) 9 SCC 748*** as also decisions of this Court in the case of ***Soniram Dhruv vs. State of Madhya Pradesh and others, W.P.(S)No.1367 of 2005, decided by this Court on 05-02-2010 and Dhanpati Barik vs. State of Madhya Pradesh (now Chhattisgarh) & Others, WPS No.935 of 2005, decided by this Court on 31-10-2017.***

5. Per contra, learned State counsel would submit that in the present case, the only requirement under Rule 230 of the Police Regulations was to supply the copy of Enquiry Report along with penalty order. He submits that the impugned order clearly shows that the copy of enquiry report was also supplied to the petitioner. In any case, it is argued, there is no foundational fact to raise this argument as there is no specific averment in the writ petition that the along with the penalty order, enquiry report was not supplied. It is next submitted that the disciplinary authority having fully agreed with the finding of the Enquiry Officer, was not required to again independently assess the evidence and record his own finding. For this purpose, reliance has been placed on the judgment of Division Bench of High Court of Madhya Pradesh in the case of ***S. B. Bhargava vs. State of M.P. And another, 2011(5) MPHT 168 (DB).*** Learned State counsel placed before the Court the complete records of enquiry for perusal and submitted that proper opportunity was afforded to the petitioner

to examine prosecution witnesses as also to cross-examine those witnesses. There is no averment that any particular prosecution witness, despite admission, was not allowed to be examined. The petitioner himself did not examine some of the prosecution witnesses, which has been recorded in the enquiry report, to which, no specific allegations of fact has been made in the petition. It is next submitted that out of five witnesses proposed to be examined by the petitioner, the petitioner examined only two witnesses and did not produce other witnesses. Non-examination of those left witnesses did not prejudice the petitioner. The petitioner never pressed into service his request for examination of remaining three witnesses. In any case, it is argued, non-examination did not prejudice the petitioner's case as relevance of the witnesses with reference to charge sheet has not been stated much less demonstrated, therefore, only on this ground, no prejudice is caused to the petitioner.

6. As far as challenge to the penalty order, which was in violation of Regulation 230 of the Police Regulation is concerned, there are no foundational facts stated in the petition in this regard. Regulation 230 of the Police Regulations reads as under:-

> **230. D.E.- Copies of finding in**-- “In very case a verbation copy of the original or appellate finding and order will be given at once to a police officer against whom an order of punishment is passed, and a note that this has been done will be made on the record. In cases in which the original order is based on the report of a subordinate authority, the copy of the report should be given as well as the order. If the accused wishes for a copy of the rest of the record, he can be supplied with it on payment at the district rates, or on providing his own paper and copyist. If the accused is not present in person to receive the copy of the order, it should be sent to him by registered post, registration fees being paid to cover a

> postal acknowledgement from the appellant. The postal and the appellant's acknowledgments of the registered letter should be filed with the record."

7. A perusal of the aforesaid provision would reveal that there is statutory obligation cast on the disciplinary authority to supply copy of enquiry report along with the penalty order. At this juncture, it needs to be noticed that as in the present case, enquiry was completed and final order in the departmental enquiry was passed by the disciplinary authority on 18-04-1990, which is prior to the judgment of the Supreme Court in the case of ***Union of India & Ors. Vs. Mohd. Ramzan Khan***, (1991) 1 SCC 588, therefore, only on the ground of non-supply of enquiry report, departmental enquiry cannot be said to be vitiated. As far as the statutory obligation of supplying copy of enquiry report is concerned, the stage of supplying copy of enquiry report is at the time of communicating the order of penalty and not before that.

8. In the entire petition, there is no specific allegation of fact that at the time of communicating order of penalty, copy of enquiry report, as required under the Regulation 230 of the Police Regulations, was not supplied to the petitioner. In the absence of any such specific averment in the petition, allegations of the petitioner is liable to be rejected at the threshold. Moreover, in the order of penalty itself, there is footnote for supply of copy of enquiry report along with the order. Therefore, the argument that the provision of Regulation 230 of the Police Regulations have been violated, does not hold water.

9. Other ground of challenge to the enquiry and the penalty order that it does not record independent finding upon discussion of evidence, I am not inclined to accept the argument because it is not a case where the disciplinary authority had disagreed with the findings of the Inquiry Officer on all or any of

the charges so as to require him to record his own reasons in view of Rule 15(3) of the Rules of 1966.

10. Conjoint reading of the Rule 15(2) and 15(3) of the Rules of 1966 would lead to conclusion that in the event, the disciplinary authority disagrees with the finding and conclusion of Inquiry Officer, he is required to record separate reasons. The impugned order of disciplinary authority cannot be challenged on this ground.

11. The three charges reproduced hereinabove would show that there were specific allegations of certain acts of commission or omission by the petitioner. Merely because, relevant provision of the Police Regulations with reference to which, misconduct was not stated, would not vitiate the charges and the enquiry. The purpose and the object of stating charge against delinquent employee is to inform him about the nature of allegations against him, so that he gets an opportunity to rebut those charges by impeaching the credibility of the prosecution witnesses and by leading his own evidence in defence. Once that purpose is served, the requirement of principles of natural justice are fulfilled. True it is that specific rule with reference to which the allegations of misconduct were alleged was not mentioned in the charge sheet. But if these three charges are read carefully, would unmistakably show that the allegations against the petitioner were quite specific with reference to the nature and extent of misconduct alleged.

12. Rule 64 of the Police Regulations provides for general condition of service and lays down the code of conduct of a police officer, who is a member of disciplined force. In clause 1 to 12, it has been elaborately specified as to how police officer should conduct and behave while in service. Allegations levelled

against the petitioner, read in the light of the aforesaid code of conduct, it would definitely amount to misconduct. Therefore, on that ground, no interference is called for. Standard of proof required in departmental enquiry is different from that required in criminal charges. While in criminal matters, result of which may affect personal liberty of an individual, departmental enquiry is action taken in the matter of service conditions of an employee which affects his service. Therefore, standard of proof required in both the proceedings are different. While in a criminal case, required standard of proof/degree of proof is beyond reasonable doubt, in departmental enquiry, the charges can held proved by applying lesser degree of proof i.e. preponderance of probability. Once there is some evidence, relevant and admissible to sustain the charges, the disciplinary authority is fully justified in holding the charges proved and impose appropriate penalty. With regard to Charge No.1, argument has been advanced that there was no clear proof of the fact that two persons namely Sheikh Ismile and Laxmi Kant Pandey were persons of such criminal record and that association of the petitioner with such persons having been found frequently, would tantamount to misconduct. This Court has perused the enquiry report. The Enquiry Officer with reference to charge No.1, upon admission of the petitioner, has recorded a finding of fact that against two persons, criminal cases were registered. The petitioner, while admitting that these persons had criminal antecedents, sought to justify by saying that one of them Sheikh Ismile was Journalist and Laxmikant Pandey was politician, therefore, he managed cordial relations with them. Therefore, if the fact that two persons namely Shiekh Ismile and Laxmi Kand Pandey were persons of criminal antecedents and offence under Section 307 IPC was registered and criminal case was pending against them and allegation that the petitioner being a member of disciplined force has been frequently sitting with them and sharing drink would certainly amount to misconduct.

Finding has been recorded on oral evidence and more particularly on petitioner's admission of the fact that these two persons were having criminal antecedents.

13. Learned counsel for the petitioner contended that unless the charges were proved against two persons, they could not be branded as criminals. It is not a case that those two persons are criminal or not but it is a matter of conduct of a police officer and his association with persons, against whom, the charges were registered in the police station where the petitioner was working.

14. Serious exception has been taken by the petitioner in the petition that the petitioner was not afforded opportunity of right to cross-examine, one of the prosecution witness D. K. Arya, who had conducted preliminary enquiry. At the first place, in the entire petition, there is no such allegation that in the departmental enquiry, though the petitioner was willing, he was not allowed to cross-examine D. K. Arya. On perusal of enquiry report, it is revealed that the petitioner voluntarily did not examine prosecution witness D. K. Arya. Against the statement/finding recorded in the enquiry report, in the absence of categoric averment of fact in the writ petition that the petitioner was deprived of cross-examination and that the petitioner was willing to cross-examine this witness and statement made in the enquiry report was factually incorrect, this Court has to hold that the grievance put forth in this regard has no substance.

15. One of the objections taken by the petitioner in the matter of affording opportunity of hearing is that though the petitioner cited as many as five witnesses, out of them, only two witnesses were allowed to be examined. This Court had perused the records of enquiry. Order sheets recorded by the Inquiry Officer would show that on 26-12-1989, witness of the petitioner had not

remained present. Even the petitioner was not present and the enquiry was adjourned, by allowing the petitioner to keep present and examine the witnesses. On 03-01-1990, the Enquiry Officer has recorded presence of two witnesses of the petitioner, who were present and examined. The other three witnesses were not present and not examined. Either in this order sheet or in subsequent order sheets, till preparation of enquiry report, there is nothing to show that the petitioner, raised any demand for granting permission to keep present other three witnesses for examination. There is no application in writing filed by the petitioner, found in the enquiry records that on 03-01-1990 or thereafter, the petitioner insisted for examination of other witnesses. One Sukh lal was examined as prosecution witness, therefore, it was the burden of the petitioner to demonstrate how non-examination of other witnesses of defence in any manner prejudiced in his defence and denial of opportunity of hearing. On the contrary, records would show that the petitioner was willing to examine other witnesses. In fact, a perusal of order dated 03-01-1990 would show that the petitioner sought re-examination of two witnesses mainly Picock Taylor and Sukh lal. There is nothing in writing in this regard showing reasons warranting re-examination of witnesses. The petitioner merely insisted time and again for re-examination of witnesses without any basis, therefore, the Enquiry Officer rightly rejected his prayer.

16. Reliance placed on the decision in the case of ***Dhanpati Barik*** (supra) is misconceived on facts. It is not a case where any charge sheet was issued against Picock Taylor and Hemant Chandra. In the case of ***Dhanpati Barik*** (supra), this Court had taken strong exception to the manner of enquiry and examination of witnesses in view of peculiar circumstance that three delinquent employees against whom three separate charge sheets were issued, were

made as witnesses in each other's case. Present is not a case of such a nature.

17. Learned counsel for the petitioner also relied upon the judgment of Supreme Court in the case of ***Pritam Singh (supra),*** submitting that while imposing penalty of compulsory retirement, public interest was required to be kept in mind and the order does not reveal that it had became necessary in public interest to compulsory retire the petitioner, therefore, the petitioner could not be subjected to such penalty.

18. An employee can be compulsorily retired either by way of penalty on certain allegations of misconduct or in public interest, once he has completed minimum period of service and has attained minimum service. In Regulation 214 of the Police Regulations, it has been clearly stated that compulsory retirement is one of the penalties and it can be imposed on the basis of proved misconduct.

19. Even in a matter, when there is no allegation of misconduct, an employee can be compulsorily retired in public interest, if he has outlived his utility and became deadwood and if the service rules so permit. Present is a case of imposition of penalty of compulsory retirement by way of punishment. Reliance placed in the case of ***Pritam Singh*** (supra) is distinguishable on facts and nature of allegations, in which, it was found that imposition of penalty of compulsory retirement was disproportionate to the gravity of misconduct.

20. This Court, however, has to hold that in so far as the exercise of appellate and mercy jurisdiction is concerned, none of the authorities have applied their mind to the grounds raised by the petitioner in appeal and mechanically dismissed the appeal which is contrary to the verdict of this Court in the case of ***Soniram Dhruw*** (supra)**.** However, as this Court had examined number of

grounds to assail the order of compulsory retirement in this petition and considering that the petitioner died during the pendency of the petition and is an old matter where the penalty was imposed 25 years before and that it is only an order of compulsory retirement, under which, the deceased employee must have received pension and various retiral dues, therefore, no further orders are required to be passed in this matter.

21. In the result, the petition is dismissed.

SD/-
(**Manindra Mohan Shrivastava)**
Judge

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