

WIP(S) 1364/05

IN THE STATE ADMINISTRATIVE TRIBUNAL AT JABALPUR.

O.A. No. 1788/95.

WP 10616/93 J  
WP 1388/96

Petitioner-

Prakash Chand Jain s/o Shri

aged about                      years, Constable

No. 114, Radio Station - Police Deptt,

Raipur ( since removed from service).

- V e r s u s -

Respondents-

1. State of M.P. through the Secretary,  
Ministry of Home Affairs, Vallabh  
Bhavan, Bhopal.
2. In s p e c t o r General of Police, ~~Raipur~~  
Headquarters, Bhopal ( M.P.).
3. Sr Suprintendent of Police ( Radios),  
M.P. Bhopal.
4. Suprintendent of Police ( Radios),  
Bhilai Zone, Bhilai ( M.P.).

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Details of application-



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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 1364 of 2005**

Prakash Chand Jain

---- Petitioner

**Versus**

State And Ors.

---- Respondents

For Petitioner : Mr. Vishnu Koshta, Advocate  
For State : Mr. R.K. Gupta, Dy. A.G.

**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**11/01/2017**

Heard.

1. The petitioner had initially filed an Original Application before the Madhya Pradesh State Administrative Tribunal, Jabalpur. After abolition of the Tribunal, the case was transferred to this Court.

2. By this petition, the petitioner seeks to assail the correctness, legality and validity of departmental enquiry and penalty order as well as order in appeal. Vide order dated 07.05.95, the petitioner was dismissed from service by holding the charges proved against him. Upon appeal being preferred, the appeal of the petitioner was also dismissed vide order dated 06.06.95.

3. The petitioner, at the relevant time, was posted and working as constable in police department at Bhilai. A charge-sheet was issued to the petitioner on 10.05.94 on the allegation of misconduct that the petitioner remained unauthorizedly absent from duty from 05.11.93 and despite service of notice, the petitioner did not join his duties and thus exhibited gross negligence, indiscipline and reluctance to his duty rendering the petitioner unfit and unsuitable for continuing in service. The departmental enquiry culminated in order dated 07.05.95 passed by

Senior Superintendent of Police (Radio), Madhya Pradesh, Bhopal by which, major penalty of dismissal from service was imposed on the petitioner. The petitioner, thereafter, preferred an appeal which was also dismissed by the Appellate Authority vide order dated 06.06.95.

4. Learned counsel for the petitioner argued that the departmental enquiry was held without affording due and proper opportunity of hearing to the petitioner. It is contended that due to his own illness as also illness of his son, the petitioner could not attend duties from 05.11.93 which was a reason beyond his control. It is further submitted that the petitioner at times, had informed the higher authorities requesting for grant of leave and he had also submitted relevant medical certificates before the higher authority but without considering those applications and medical certificates, charge-sheet was issued. As the petitioner was already preoccupied in connection with treatment of his son, the petitioner prayed for grant of sufficient time to enable him to file reply but thereafter a very short time was granted and then disciplinary authority appointed enquiry officer vide order dated 24.05.94 and directed him to submit ex-parte report of enquiry. It is next contended that when the enquiry officer gave the petitioner notice of appearance, again the petitioner, for the reasons stated herein above, was unable to attend the enquiry and therefore, he prayed for sufficient time to appear before the enquiry officer but the enquiry officer granted him a short time upto 02.08.94 only. On 02.08.94, the petitioner could not appear before the enquiry officer again because of reasons beyond his control but thereafter enquiry officer instead of giving sufficient opportunity, proceeded to examine prosecution witnesses on 02.08.94 and submitted enquiry report on 20.08.94 holding charges proved against the petitioner. Disciplinary Authority gave show cause notice to the petitioner on 07.01.95 which was communicated to the petitioner vide memo dated 15.01.95 of Deputy Superintendent of Police (Radio), Raipur. That notice was received by the petitioner on 17.01.95 and the petitioner again sought time stating his own difficulties that he may be granted time till 25<sup>th</sup> of February, 95. He was granted time till 25<sup>th</sup> of February, 95. On 26.02.95, the petitioner appeared in the office of Senior Superintendent of Police (Radio), Bhilai and requested that he may be again granted time upto 28.02.95. This request was not



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forwarded to the Senior Superintendent of Police (Radio), Bhopal and in this manner without affording him any opportunity of hearing, the penalty was also imposed vide order dated 07.04.95. Thus, it is urged, the petitioner throughout the enquiry was never afforded due and proper opportunity of hearing. Therefore, the impugned order of penalty was rendered illegal. It is next submitted that when the petitioner preferred an appeal before the Appellate Authority, the Appellate Authority did not appreciate the ground raised by the petitioner in their proper perspective and failed to consider that before imposition of penalty of extreme nature, the petitioner ought to be given a reasonable opportunity of hearing.

5. Learned counsel for the petitioner made his last effort to satisfy the Court that the petitioner's son was acutely ill, therefore, it is a case where a sympathetic approach ought to be adopted in case of the petitioner. This Court has gone through medical certificate which have been placed on record. This certificate do no indicate that the condition of the petitioner's son was so critically ill that it was not possible for the petitioner to participate in the process of enquiry. In fact in respect of the period of enquiry, there is no medical certificate and all the certificates are prior to the date of initiation of departmental enquiry. Moreover, there is no material on record to show that these medical certificates were ever submitted before the authority along with any application for grant of leave bearing acknowledgment of receipt.

6. On the other hand, learned counsel for the State submits that absence of the petitioner from service since 05.11.93 continued despite giving various notices, institution of departmental enquiry, notice given by enquiry officer, disciplinary authority speaks volume of petitioner's conduct. He submits that at every stage of enquiry from issuance of charge-sheet till passing of the final order, opportunity was afforded to the petitioner but every time the petitioner avoided to appear before the competent authority at various stages of enquiry proceedings. Therefore, the respondents were left with no option but to proceed against the petitioner in departmental enquiry *ex parte* and pass orders. It is next contended that the continuous absence of the petitioner from duty ever since 05.11.93 is proved from the evidence on record before the enquiry

officer which were duly considered by the disciplinary authority, the petitioner neither submitted any application for grant of leave nor submitted any medical certificate along with any such application. He being a member of disciplined force was duty bound to first apply for grant of leave and proceed on leave only upon due sanction and not otherwise.

7. The charge-sheet was issued to the petitioner on 10.05.94 as the petitioner had remained absent from duty for about 6 months. The charges against the petitioner was that without any permission he remained unauthorizedly absent. The charge-sheet was duly served upon the petitioner, which is not in dispute. However, the case of the petitioner is that he was over occupied in the treatment of his son, therefore, he could not appear before the disciplinary authority to submit his reply to the charge-sheet. In the present case, the petitioner has placed on record certain medical certificates. None of these documents show that after issuance of charge-sheet, the petitioner was suffering from any disability beyond his control because of which he could not appear to submit his charge-sheet. After expiry of period for filing of reply to charge-sheet, the disciplinary authority appointed enquiry officer to submit report by holding an enquiry. The petitioner, in his own appeal, has stated that he had received a notice from the enquiry officer and on his prayer, the enquiry officer had adjourned the enquiry and fixed date on 28.02.95. Again, the petitioner did not appear before the enquiry officer. Therefore, the enquiry officer was left with no option but to proceed with the matter. The petitioner could not satisfy this Court with any concrete and clinching evidence that on 02.08.94, with all efforts of the petitioner, for reasons beyond his control, he could not appear before the enquiry officer. The ground taken in his appeal for non-appearance before enquiry officer on 02.08.94 is that because of heavy rains, he could not reach the enquiry office. This ground is absolutely vague and without any basis. It was open for the petitioner to approach enquiry officer or disciplinary authority with the same prayer but it was not done. This ground was raised by the petitioner for the first time before the appellate authority which appears to be an afterthought.

8. Even after submission of enquiry report, the disciplinary authority issued a notice to the petitioner to show cause against penalty vide notice dated 07.01.95 which admittedly was served on the petitioner on 17.01.95. The petitioner again sought time and he was granted time by the authority till 26.02.95. The petitioner again started seeking time and sought adjournment till 28.02.95. It, therefore, clearly appears that the petitioner, through out the enquiry, avoided to participate in the enquiry and did nothing except seeking time on every occasion. The disciplinary authority was left with no option but to proceed to pass final order in the enquiry on 07.04.95.

9. The appeal filed by the petitioner was considered by the Appellate Authority. A copy of the same has been placed on record by learned counsel for both the parties. A perusal of the order passed in appeal shows that the Appellate Authority has very meticulously examined the ground raised by the petitioner in his appeal to come to the conclusion that despite fresh opportunity granted to the petitioner, did not appear in the departmental enquiry.

10. In view of the above consideration, I do not find any ground to interfere with the order of penalty in exercise of my extraordinary jurisdiction under Article 226 of the Constitution of India particularly when it is floating on the surface of the case that on several occasion opportunity of hearing was afforded to the petitioner but the petitioner did not avail and only kept on asking for adjournment one after the other.

11. The petition is therefore dismissed.

Sd/-  
**Manindra Mohan Shrivastava**  
Jude