

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 263 of 2016**

Kamlesh Kumar, Aged about 55 years, S/o G. Singh, R/o village Teka Haldi,
Post Office Bankal, Tahsil Dongargaon, Thana Lalbag, District Rajnandgaon
(Chhattisgarh).

---- Appellant

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Police (Home) Naya Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
2. Deputy Inspector General of Police, Raipur Range, Raipur, Chhattisgarh.
3. Superintendent of Police, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellant	: Shri Vinod Deshmukh, Advocate.
For Respondent/State	: Shri A.S.Kachhwaha, Additional Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Pritinker Diwaker, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****24/03/2017**

1. This appeal is against the judgment by which the learned Single Judge declined to interfere with the disciplinary proceedings against a police constable.
2. Heard the learned counsel for the Appellant and the learned Additional Advocate General.

3. It is not disputed that at the relevant point of time, the Madhya Pradesh Police Regulations (hereinafter referred to as the 'Regulations') governed the field and with the passage of time, Chhattisgarh Police Regulations are in place.
4. The delinquent police constable was alleged to have committed gross indiscipline while on duty. It is alleged that a victim of an offence punishable under Section 376 IPC went to the police station to lodge FIR in relation to that incident. She and her husband were required by the police to go over to the hospital for examination. The delinquent was directed to escort them. The allegations against the delinquent is that in the hospital, he prevailed upon the victim women and her husband and forced them to pay him Rs. 20/- which was followed by repeated demand for further amounts the next day. Show cause notice was issued by the Superintendent of Police who is the Controlling Authority. The delinquent replied. Considering that, the Superintendent of Police imposed a minor penalty of deprivation of one increment for one year. The Deputy Inspector General of Police (hereinafter referred to as 'the DIG') exercised *suo moto* revisional power in terms of Regulation 270(4) of the Regulations and remitted the matter directing the Original Authority to proceed further having regard to the gravity of the offence. It is not in dispute that the delinquent was not heard by the DIG of Police at that stage. It is also not in dispute that after the remand, the Original Authority proceeded as if action was being taken for imposing a major penalty. The Original Authority thereafter imposed the penalty of removal from service. This was challenged before the learned Single Judge.
5. The learned Single Judge held that the plea of the delinquent that the Revisional Authority had exceeded its jurisdiction in terms of Regulation 270(4) is not sustainable. It was further held that having regard to the

gravity of the allegations, particularly in relation to the victim of an offence punishable under Section 376 IPC, the conduct of the delinquent is unbecoming of a member of a disciplined uniformed service and the benchmark of discipline that is expected from the police force. The writ petition was accordingly dismissed. Hence, this writ appeal.

6. It appears from the paper-book in this writ appeal that at an earlier point of time, the Bench had formulated a question as to whether the Presenting Officer and the Adjudicating Authority can be the same person. This was on the plea of the delinquent that after the remittance of the matter by the DIG of Police, the proceedings were held by the Original Authority himself without even having a Presenting Officer and without providing the delinquent an opportunity to be represented by a co-worker. That position notwithstanding, the further plea of the delinquent, and the pivotal argument of his learned counsel, is that there is clear infraction of the mandate contained in the proviso to clause (4) of Regulation 270 of the Regulations. If the second among these contentions find favour with us, the matter may have to be remitted for re-consideration at the hands of the DIG of Police. The first question would be relevant only if there has to be a further examination of the quality of the findings and also the procedure adopted by the Original Authority after the order of remand made by the DIG of Police. Therefore, we first proceed to decide on the plea based on the proviso to Regulation 270(4) of the Regulations.
7. Regulation 270 is among a set of Regulations which fall under the section "Appeals" in Chapter 10 of the Regulations, which deals with "Appeals and Petitions". Regulation 270 provides the authority of the superior to *suo moto* revise any order of punishment or exoneration. Clause (4) of Regulation 270 provides that the Revising Authority may, for reasons to be recorded in

writing, exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or taking of further evidence in the case; provided that, it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard. The effect of such a proviso, insofar as the delinquent is concerned, is that where an order exonerating the delinquent is proposed to be revised or where the penalty order is proposed to be revised adverse to the interest of the delinquent, either by enhancing the penalty or by remitting the matter to the Original Authority to enable enhancement of penalty, the delinquent is entitled to notice before such variance or reversal is made. In the realm of administrative law and service law principles, there are different shades for the concept of the rule of notice and hearing. Pre-decisional notice and hearing as well as post-decisional notice and hearing are concepts which have been understood on the basis of different rules in such manner as may suit the content and context of the particular rule, which is being construed. It is also a settled position of law that if the statutory provision or condition of service does not provide for a rule of hearing, the basic principles of natural justice would draw itself into the process of adjudication in the disciplinary regime and thereby the rule of hearing will be read into such situations; the only exception that has been recognized to that, being instances where there is a clear and specific statutory exclusion of the rule of hearing. Maintaining these principles in mind, the contents of the proviso noted above, particularly the portions which we have highlighted would show that the inhibition imposed on the Revising Authority is that it shall not vary or reverse an order unless notice has been served. The use of the phrase "shall not vary or reverse" in conjunction with the word "unless" in the instant proviso amounts to a statutory mandate forbidding any action under Regulation 270(4) otherwise than in obedience to the command contained in that proviso. The object sought to be achieved is clearly reflected by the

use of the emphatic assertion of the invariable and inexcusable requirement that unless notice is issued, an order shall not be varied or reversed. Therefore, the said provision is an absolute interdiction which cannot be watered down by any rule of interpretation. This principle of rule of notice, as enjoined by the proviso to Regulation 270(4) of the Regulations, would apply in all cases where a delinquent is likely to be, or proposed to be, visited by reversal of an order of exoneration or by a proposal to enhance the penalty and, still further, a proposal to vary or reverse an order of an Original or Appellate Authority and to direct further proceedings against the interest of the delinquent in cases where the delinquent is satisfied with the order which is attempted to be interfered with in exercise of the *suo moto* revisional power under Regulation 270 of the Regulations. In this view of the matter, we cannot but hold that the DIG of Police acted without authority and jurisdiction in making the order of remit of the proceedings to the Superintendent of Police without notice to the delinquent.

8. The learned Single Judge has, in our view, assimilated the facts and factors and has concluded that the conduct attributed to the delinquent is something which is unbecoming of a member of the police force. We have no doubt about it. That is the quality of the attribute made on the delinquent. The question would be whether that attribute has been sustained in any mode of enquiry that ought to have been carried out in terms of the regulations. In the initial round, the Superintendent of Police dealt with the matter so casually that he did not perform his statutory and public duty to carry out appropriate disciplinary proceedings, particularly in a case where a woman had alleged that the delinquent had taken not only bribe from her but had also forced her and her husband to pay further amounts on the day subsequent to the day on which she was obliged to go for medical examination in connection with her lodgment of an FIR for an offence

punishable under Section 376 IPC. The learned Single Judge's observation that the conduct attributed to the delinquent is an affront to womanhood cannot be in any manner diluted. But at the same time, there is a sphere of distinction between the "allegations" and "findings". The quality of findings in service law sector, particular in disciplinary proceedings, need not necessarily be at par with proof in criminal trials or civil litigations. It has its own set norms under which the disciplinary proceedings and resultant decision shall be governed. But, there has to be a "decision" following the due procedure in disciplinary jurisdiction. That has unfortunately not been obtained in the case in hand. The action taken by the Superintendent of Police, pursuant to the order of remit made by the DIG of Police can never be given the cloak of a curative procedure, to enable it to be sustained.

9. For the aforesaid reasons, on a pure interpretation of the proviso to Regulation 270(4) of the Regulations, we cannot but hold that the order of remit made by the DIG of Police is unsustainable, without jurisdiction and is ultra vires the Regulations. It is therefore arbitrary. It is hence void and inoperative in terms of Article 14 of the Constitution. It is so declared.
10. The result of the aforesaid is that further proceedings have to be carried from the stage at which the DIG of Police thought it appropriate to consider the case of the delinquent and the conduct attributed to him for exercise of *suo moto* revisional powers in terms of Regulation 270 of the Regulations. We direct that such proceedings shall be carried following this judgment most expeditiously, having regard to the fact that the delinquent was facing the proceedings for more than two decades by now, and because he cannot, straightway, be granted any order for re-admission to duty or for backwages since conduct in the uniformed service with expected benchmark of discipline are underlying doctrines which would govern re-

admission to duty and grant any part of back-wages.

11. Directions for reinstatement in service and payment of back-wages is not always a matter of course in such cases, particularly, when the issue relates to a member of uniformed service. Such a relief is not available to the Petitioner in this case, as a result of this judgment, particularly, because in exercise of discretionary jurisdiction, on the scales of justice, we are not inclined to hold that he is eligible for grant of such relief while we exercise authority under Article 227 of the Constitution of India.
12. For the aforesaid reasons, we set aside the entire proceedings on and from the final decision rendered by the DIG of Police remitting the delinquent's case to the Original Authority, that is to say, from 19.09.1991 (Annexure A/3). We further direct that the DIG of Police will ensure that further proceedings are carried in strict conformity with Regulation 270 of the Madhya Pradesh Police Regulations as it stood at the relevant time, as noticed hereinabove, and, if any further proceedings are directed to be held after hearing the delinquent, those proceedings shall also be held in strict conformity of those Regulations which were applicable. Either way, let a final decision be taken by the DIG of Police, Raipur Range within an outer limit of three months from the date of receipt of a copy of this judgment. If any further proceedings are directed by the DIG of Police through any order of remit, that shall also be concluded within a period of six months. To facilitate early disposal of the matter, the delinquent-Appellant is directed to mark appearance in the office of the Inspector General of Police, Raipur Range, Raipur, on 20th April, 2017 during the forenoon office hours. The said officer will hold further proceedings in view of the fact that the post of DIG of Police has been abolished. For such purpose, it is clarified that the use of the term 'DIG' or 'DIG of Police' in this judgment, on the basis of the

extant Regulations shall be understood to include the IG of Police.

13. As a result of the aforesaid conclusions, all proceedings subsequent to decision of the DIG of Police dated 19.09.1991 including the enquiry held in the second round by the Superintendent of Police, are also quashed hereby.

14. The writ appeal is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE