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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3920 of 2005

- Narayan Singh Lange S/o Durjan Singh, Aged About 43 Years Ex Head Constable No. 384 P. S. Chhuriya, District Rajnandgaon R/o Village Katuwahi, Tahsil Ambagarh Chowki, District Rajnandgaon (Chhattisgarh).

---- Petitioner

Versus

1. State Of Madhya Pradesh Through Principal Secretary Home Department, Mantralaya Bhopal, Madhya Pradesh.

2. State Of Chhattisgarh, Through Secretary, Home Department, Mantralaya D. K. S. Bhawan, Raipur (Chhattisgarh).

3. (A) Inspector General Of Police And Director General Of Police, P. H. Q., Bhopal (Madhya Pradesh).

3. (B) Director General Of Police, Chhattisgarh, Police Headquarter, Raipur, Chhattisgarh.

4. Inspector General Of Police, Balaghat Range, Balaghat, Madhya Pradesh.

5. Superintendent Of Police, District Rajnandgaon, Chhattisgarh.

---- Respondent

And

WPS No. 3939 Of 2005

- Bharatlal Kausik S/o Devilal Kausik, Aged About 33 Years Ex-Constable No. 47 P. S. Chhuria District Rajnandgaon, Gram Parikhurd Thana Lalbag, District Rajnandgaon.

---- Petitioner

Vs

1. State Of Madhya Pradesh Through Principal Secretary Home Department, Mantralaya Bhopal

2. State Of Chhattisgarh, Through Secretary, Home Department, Mantralaya D. K. S. Bhawan, Raipur (Chhattisgarh).

3. (A) Inspector General Of Police And Director General Of Police, P. H. Q., Bhopal (Madhya Pradesh).

3. (B) Director General Of Police, Chhattisgarh, Police Headquarter, Raipur, Chhattisgarh.

4. Inspector General Of Police, Balaghat Range, Balaghat, Madhya Pradesh.

5. Superintendent Of Police, District Rajnandgaon, Chhattisgarh.

---- Respondent

And

WPS No. 3954 Of 2005

- Kailash Sharma S/o Thakur Prasad Sharma, Aged About 33 Years Ex-Constable No. 605, P. S. Chhuriya Gram Rengakhutera (Bakhat) Tahsil-Distt. Rajnandgaon (Chhattisgarh)

---- Petitioner

Vs

1. State Of Madhya Pradesh Through Principal Secretary Home Department, Mantralaya Bhopal.

2. State Of Chhattisgarh, Through Secretary, Home Department, Mantralaya D. K. S. Bhawan, Raipur (Chhattisgarh).

3. (A) Inspector General Of Police And Director General Of Police, P. H. Q., Bhopal (Madhya Pradesh).

3. (B) Director General Of Police, Chhattisgarh, Police Headquarter, Raipur, Chhattisgarh.

4. Inspector General Of Police, Balaghat Range, Balaghat, Madhya Pradesh.

5. Superintendent Of Police, District Rajnandgaon, Chhattisgarh.

---- Respondent

And

WPS No. 3955 Of 2005

- Loman Lakara S/o Lalu Lakra, Aged About 45 Years Ex- Constable No. 792 P. S. Chhuria Gram Kukurgaon, Tahsil Pathalgaon District Jashpur

---- Petitioner

Vs

1. State Of Madhya Pradesh Through Principal Secretary Home Department, Mantralaya Bhopal
2. State Of Chhattisgarh, Through Secretary, Home Department, Mantralaya D. K. S. Bhawan, Raipur (Chhattisgarh).
3. (A) Inspector General Of Police And Director General Of Police, P. H. Q., Bhopal (Madhya Pradesh).
3. (B) Director General Of Police, Chhattisgarh, Police Headquarter, Raipur, Chhattisgarh.
4. Inspector General Of Police, Balaghat Range, Balaghat, Madhya Pradesh.
5. Superintendent Of Police, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Petitioners : Shri PKC Tiwari, Sr. Advocate with Shri Devesh G. Kela, Advocate.
For Respondent/State : Shri Satish Gupta, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

01/05/2017

1. Regard being had to the commonality of the legal issue raised in all the 4 writ petitions, they are heard analogously and being disposed of by this common order.

2. Petitioners Narayan Singh Lange, Bharatlal Kaushik, Kailash Sharma

and Loman Lakra have assailed the order of termination passed by the SP, Rajnandgaon as well as the appellate order and the order on their mercy petitions whereby they have been dismissed from service as Head Constable and Constable respectively. One more Head Constable namely, Bholaram Yadav has also been dismissed by the same impugned order, however, the said Bholaram Yadav is not before this Court because his Writ Petition being WPS No.4222/2005 stood dismissed for non-compliance of the Court order.

3. Out of the present petitioners, Narayan Singh Lange is the Head Constable whereas 3 others are Constable at the relevant point of time. They were charge sheeted for showing the act of cowardice during their posting at PS Chhuriya, District Rajnandgaon on 7.8.99 when at about 6 pm 50-60 Naxalites attacked the Police Station with intent to injure and murder the policemen and commit loot of their arms and ammunitions. In the departmental enquiry, the charges were proved against each of the petitioners, therefore, they were visited with the penalty of dismissal from service.

4. Assailing the order of dismissal, learned Senior Counsel for the petitioners would submit that in case of joint enquiry against the Policemen holding different ranks, compliance of Rule 18 of the CG Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules, 1966') is mandatory, which has not been complied with, therefore, the whole enquiry is vitiated. It is further argued that

petitioner Narayan Singh Lange was promoted as Head Constable under the orders passed by the DIG, therefore, his removal by the SP is contrary to the constitutional provisions under Article 311 (2) of the Constitution of India. It is further argued that the petitioners were not afforded full and proper opportunity of hearing to defend their case in the departmental enquiry, therefore, for all these reasons, the writ petitions deserve to be allowed.

5. Learned State Counsel would submit that there is absolutely no illegality either in constituting enquiry or in conducting the same, therefore, the writ petitions deserve to be dismissed. According to him, even if two delinquents were Head Constable and the remaining 3 were Constables, the fact remains that under the circular dated 14.11.1960, the SP of the district is the appointing authority for both the posts, therefore, Rule 18 of the Rules, 1966 has no application. For the same reason, there is no violation of Article 311 (2) of the Constitution of India.

6. Before proceeding to dwell on the issue concerning validity of the order of dismissal from service viz. a viz. conduct of departmental enquiry in illegal manner opposed to the principles of natural justice, I shall examine the first ground of challenge concerning violation of Rule 18 of the Rules, 1966.

7. Rule 18 of the Rules, 1966 relevant for deciding the issue is quoted

hereunder:-

> "**18. Common proceedings**. - (1) Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.
>
> **Note**. - If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.
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> (2) Subject to the provisions of sub-rule (3) of rule 12, any such order shall specify:
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> (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
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> (ii) the penalties specified in rule 10 which such disciplinary authority shall be competent to impose; and
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> (iii) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding."

8. A plain reading of the above-quoted rule would manifest that the order for common or joint enquiry is required to be made by the Governor or any other authority competent to impose penalty of dismissal from service on all such Government servants, meaning thereby that when Government servants holding different rank or belonging to different cadre are required to be proceeded jointly in one common departmental enquiry, the authority competent to remove them shall pass an order

directing joint enquiry against all of them. In the absence of such order, joint enquiry against the persons holding different rank or belonging to different cadre is not permissible. The mandate of Rule 18(1) becomes very clear with the aid of note appended to the sub-rule which says that if the authorities competent to impose penalty of dismissal on such Government servants are different, an order for taking disciplinary action in any proceeding may be made by the highest of such authorities with the consent of others. Therefore, when the persons are holding different ranks or belonging to different cadre, consultation between the competent authorities qua different posts is necessary so that order of dismissal is passed by one authority and not by different authority even though enquiry was common.

9. There is no denial of the fact that out of 5 delinquents, Narayan Singh Lange and Bholaram Yadav were working as Head Constable whereas 3 others were Constable, therefore, they belong to different rank or cadre and as such, an order under Rule 18 directing joint enquiry was necessary and violation thereof entails consequences vitiating the entire enquiry. The legal issue to this effect is no longer *res integra*, as held by the Madhya Pradesh High Court in the matters of **Mahesh Kumar Shrikishan Tiwari Vs. State of Madhya Pradesh and Others** {1985 MPLJ 516}, **Premchandra Dhalpuria, Ex-Sub-Inspector, Police Vs. The State through the I.G. Police, Bhopal** {1970 MPLJ 430}.

10. In **Premchandra Dhalpuria, Ex-Sub-Inspector, Police** (Supra), the

Madhya Pradesh High Court held thus in paras-23 & 24:-

> "**23**. There is no express provision in the Police Regulations for common proceedings against delinquent servants. Rule 18 of the Control & Appeal Rules is in these terms:-
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> "Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding."
>
> There is no such order by the Deputy Inspector General who is the competent authority. In the decision in **Ashok Y. Naik Vs. The Administrator, Goa**, 1979 Ser.L.J. 84, it has been held that where there is no order by the competent authority for common proceedings, the entire proceeding is vitiated being without jurisdiction irrespective of the question of proof of prejudice which must be implied. The decision in **Tripura Charan Vs. State of West Bengal**, 1979 (1) Serv. L.R. 878, is also pertinent. As it is clear that rule 18 of the Control & Appeal Rules has been violated, the Departmental Enquiry is vitiated.
>
> **24**. From the foregoing discussion it is clear that in the instant case the impugned order is not only in utter disregard of the principles of natural justice but is also violative of Rule 18 of the Control & Appeal Rules."

11. Yet again same view was expressed by the Madhya Pradesh High Court in the matter of **Shyamkant Tiwari Vs. State of M.P. and Others**, {1986 MPLJ 37} wherein it was held thus:-

> "**14**. In the decision in **Ashok Y. Naik Vs. The Administrator Goa**, it has been held that where there is no order by the competent Authority for common proceedings, the entire proceeding is

> vitiated being without jurisdiction irrespective of the question proof of prejudice which must be implied. The decisions in **Tripura Charan Vs. State of West Bengal** and **Mool Chand**'s case are also pertinent. As it is clear that rule 18 of the Control & Appeal Rules has been violated the Departmental Enquiry is vitiated."

12. In the matter of **Sardar Badeo Singh Vs. State of M.P. and others** {1989 MPJR 510} also, it was categorically held that violation of Rule 18 would vitiate the proceedings rendering the order for punishment as null and void.

13. The coordinate Bench of this Court in **Ghasiram Kosariya Vs. State of M.P. and Others** {2011 (2) CGLJ 147} has followed the ratio of law declared by the M.P. High Court to take similar view when there is violation of Rule 18 of the Rules, 1966.

14. Another Single Bench of the Madhya Pradesh High Court in the matter of **Balveer Singh Vs. State of M.P. and Others** {2010 (2) MPHT 374} has followed the earlier decisions.

15. Therefore, the law is well settled that when there is violation of Rule 18, the entire enquiry is vitiated because the enquiry was conducted without there being any order from the competent authority permitting joint enquiry against the Government servants holding different ranks or cadre.

16. In view of the above, this Court is not considering other grounds of challenge because the entire enquiry is vitiated.

17. Accordingly, for the foregoing, the Writ Petitions are allowed. The original impugned order of termination and all subsequent orders by the higher authorities stand quashed. The petitioners are directed to be reinstated in service with consequential benefits like continuation of seniority and payment of 50% back wages without interest. It is made clear that it will remain open for the respondents to proceed in accordance with law.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve