

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 709 of 2013

B.R. Dhruv S/o Late S.R. Dhruv, Aged About 54 Years R/o House No. 371, Ward No.29, Ambedkar Nagar, Near Ayyappa Mandir, Police Station Bodhghat, Jagdalpur, District Bastar, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Department Of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Director General Of Police Police Head Quarters, Raipur, Raipur, Chhattisgarh
3. Inspector General Of Police, Bilaspur Range, Bilaspur, District Bilaspur, Chhattisgarh
4. Superintendent Of Police Bilaspur, District : Bilaspur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. N. Naha Roy, Advocate
For State	:	Mr. R.N. Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/11/2018

1. The challenge in the present writ petition is to the two orders collectively marked as Annexure P/1. There are two orders marked as Annexure P/1, first being order dated 20.12.2008, whereby the petitioner has been inflicted with a punishment of withholding of five increments with cumulative effect. The second order being the order dated 06.09.2010, whereby the Appellate authority has rejected the departmental appeal preferred by the petitioner against the punishment order.
2. The facts which lead to the filing of the present writ petition is that the petitioner working as a Sub Inspector and posted as the Station

House Officer, Police Station Kota was issued with a charge sheet on 13.06.2007 (Annexure P/2).

3. Perusal of the charge sheet would reveal that it was a common charge sheet issued in respect of two persons i.e. the petitioner, the Station House Officer of Police Station Kota and another lady constable Khurshid Ahmed posted in the same Police Station. The allegation pertains to a case under NDPS, where the accused Makhan Gupta was found to be in possession of 2 kgs. of Ganja. The allegation is that the petitioner and the lady constable, whose names reflect in the charge sheet, have jointly acted in a manner favouring the said accused Makhan Gupta. The allegation being that the lady constable assisted in the concealment of the contraband seized and the allegation against the present petitioner is that he had not brought the said act of the lady constable to the notice of the authorities by mentioning it in the Rojnamcha. At the same time he also did not take any step for proceeding against the said accused Makhan Gupta. The petitioner thereafter gave a reply to the charge sheet and the same not being satisfactory, the department thought of conducting departmental enquiry and finally the Inquiry Officer submitted his report on 27.08.2008. Thereafter the second show cause notice was issued to the petitioner, to which he replied on 28.09.2008 and the Disciplinary authority finally vide order Annexure P/1 dated 20.12.2008 imposed the punishment of withholding of five annual increments with cumulative effect. The said order was subjected to challenge before the departmental Appellate authority

and the Appellate authority also vide his order dated 06.09.2010 rejected the appeal leading to the filing of the present writ petition.

4. The foremost contention of the petitioner challenging the order dated 20.12.2008 and 06.09.2010 is that the entire disciplinary proceedings initiated by the department is bad in law for the reason that the same has been in total violation of Rule 18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. According to the petitioner, it is the requirement under Rule 18 that a specific and reasoned order be passed, if the department thinks of conducting a joint inquiry. In the instant case, the charge sheet itself reflects that the department intended to proceed jointly, but there was no specific order passed under Rule 18 as is otherwise required.
5. The counsel for the petitioner in addition to the judgments passed by this Court reported in **2007(9) SCC 63 (Vijay Singh v. Union of India & Others)**, **2011(2) CGLJ 147 (Ghasiram Kosariya v. State of M.P. and Ors.)** as also **ILR 2017 Chhattisgarh 1342 (Narayan Singh Lange & Others v. State of Madhya Pradesh & Others)** submitted that the issue so far as the joint inquiry is concerned and the consequence of non-compliance of Rule 18 stand fully decided by the aforesaid judgments and thus prayed for the quashment of the proceedings initiated against the petitioner in this regard on this ground alone.
6. So far as the merit is concerned, it is the contention of the petitioner that on a comparative reading of the charges that were leveled against the present petitioner and the charges which were leveled

against the lady constable Khurshid Ahmed, it would reveal that the allegation against the said lady constable were far more graver than what was alleged against the present petitioner. It was further contended that inspite of the charge being graver, the Disciplinary authority for reasons best known has inflicted the said lady constable with a lesser punishment of only withholding of one annual increment with cumulative effect, whereas with less graver charge, the petitioner has been inflicted with withholding of five annual increments with cumulative effect. As such there is a great element of disparity in the awarding of punishment by the respondents and the order on this ground also is liable to be interfered.

7. The State counsel, per contra, opposing the petition submits that since there is a common charge sheet issued against the two erring officers, it has to be presumed that the inquiry also would be conducted jointly. There was no further necessity for issuance of a separate order and the common charge sheet itself has to be accepted to be a proceeding drawn in consonance to Rule 18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. It was also the contention of the State counsel that even if, for argument sake, it is assumed that the proceeding under Rule 18 was not initiated or complied with by the department at the relevant point of time, but ultimately the fact remains, no prejudice as such has been caused to the interest of the petitioner in any manner much less having adversely affected the interest of the petitioner. For this reason also the State counsel submits that the contention put forth by the petitioner deserves to be rejected. He submits that the

matter has been duly considered by the Disciplinary authority taking into consideration the entire factual aspect, as also the evidence, which had come on record and the matter has further been scrutinized at the appellate level in the department, where also taking into consideration the gravity of the charge and the evidence which have come on record, the Appellate authority has decided the appeal and for this reason also the State counsel prays for rejection of the petition.

8. Having heard the contentions put forth on either side and on perusal of the record, this Court is of the opinion that it would be relevant at the outset to decide the first issue first, so far as the non-compliance of Rule 18 is concerned and only in case if necessary, the second objection could be considered, so far as entering into the merits of the contentions put forth by the petitioner.
9. So far as Rule 18 under Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 is concerned, this Court in the case of ***“Ghasiram Kosariya v. State of M.P. & Ors.”*** reported in ***2011(2) CGLJ 147*** examined the applicability of Rule 18 in a joint inquiry matter and after examining the statutory scheme, the High Court in paragraph No.8 reached to the following conclusion:-

“8. Thus, it would be clear that in reply to specific pleadings that no orders were passed regarding conducting common departmental enquiry proceedings as required under Rule 18 of the Rules of 1966, all that has been stated in the return is that the same is denied and the enquiry was held according to the provisions of Police Regulations.

There is no even an averment that order as required under Rule 18 of the Rules of 1966 was passed by the competent authority. Before this Court, the Respondent did not produce any order or any other material to demonstrate that a valid and proper order as envisaged under Rule 18 of the Rules of 1966 was ever passed either by the Superintendent of Police or by the Deputy Inspector General of Police. Submission of learned Counsel for the State that pleading in this regard are very vague and not specific and as there is no averment that Superintendent of Police, who issued charge sheet and competent to act as a disciplinary authority, did not pass any order as required under Rule 18 of the Rules of 1966, the said question could not taken up for consideration, deserves to be rejected. Under the statutory scheme of Police Regulations, the Superintendent of Police as well as Deputy Inspector General of Police, both are empowered under Regulations 221 and 222 respectively to impose penalty on Constable/Head Constable. Thus, averment made in this petition cannot be said to be vague or unspecific. The object and purpose of specific pleadings is to enable the other party to reply to specific issues raised and not to be left with surprise at subsequent stages of proceeding or at the time of hearing. If the pleadings made in Clause 13 of the grounds raised in the petition are looked into in its totality, a just, fair and logical reading shows that Petitioner has specifically raised this issue, that the entire departmental enquiry is vitiated on account of violation of provisions contained in Rule 18 of the Rules of 1966 as no order for conducting common proceedings have been passed. The Respondents having failed either to make specific pleading as to when and by whom order of

holding joint enquiry has been passed and in any case, having failed to produce any order or any other material to that effect, this Court is left with no other option but to hold that common proceedings of enquiry have been drawn against the Petitioner and Mohd. Raseed without there being any order as contemplated in Rule 18 of the Rules of 1966. So far as applicability of Rule 18 of the Rules of 1966 is concerned, this Court in the case of Soniram Dhruv v. State of Madhya Pradesh and Ors. (W.P.(S) No. 1367 of 2005, decided on 05-02-2010) relied upon the judgment of High Court of Madhya Pradesh in the matter of Krishnanarayan Shivpyare Dixit v. State of M.P. and Ors. 1985 MPLJ 343, and taking into consideration the provisions contained in Regulation 213 of the Police Regulations, held:

10. Clause 213 of the Chhattisgarh Police Regulations provides that the provisions contained in C.G. Civil Services (Classification, Control and Appeal) Rules 1966 shall regulate penalty and appeal in respect of police officers, it has been held by the High Court of Madhya Pradesh in the matter of Krishna Narayan Shivpyare Dixit v. State of M.P. and Ors. 1985 M.P.L.J. 343 that Regulations 213 does not exclude the operation of M.P. Civil Service (Classification, Control & Appeal) Rules, 1966. As no specific provisions had been made in Police Regulations to prescribe the manner in which the appeal against the order of punishment shall be decided by the Appellate Authority, the provisions contained in C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 prescribing mode and manner of

exercise of appellate power by the Appellate Authority are applicable.”

10. The same view has further been taken by the High Court in a bunch of writ petitions, which were analogously decided on 14.01.2013, the leading case of which is WP No.8675/2003, whereby this Court again relying upon the judgment of “Ghasiram Kosariya” (supra) and other judgments passed on the subject matter, allowed the writ petition and held that the entire inquiry and the consequent order of punishment and the order passed in the appeal stands vitiated and had set-aside/quashed the same.
11. This Court again in the case of ***“Narayan Singh Lange & Others v. State of Madhya Pradesh & Others”*** reported in ***ILR 2017 Chhattisgarh 1342***, vide its judgment dated 01.05.2017 allowed the writ petition under similar circumstances and relying upon the same judgments referred to in the preceding paragraphs had set-aside the impugned order of punishment as well as the subsequent orders thereto.
12. In the instant case also, when we look into the proceedings, there does not appear to be any proceedings initiated by the department showing compliance of Rule 18. In the absence of any such compliance in the light of the aforesaid judgments referred to in the preceding paragraphs, the entire action of the State Government stands vitiated.
13. One must not forget the fact that it is the statutory requirement for the department to act in a particular manner, there does not appear to be any provision of law, by which the department could have

relaxed or ignored such compliance. In the event of non-compliance of a mandatory statutory provision, the entire action or the decision taken on that gets vitiated. The impugned two orders dated 20.12.2008 and 06.09.2010 in the given circumstances would not be sustainable and the same deserves to be set-aside/quashed and it is ordered accordingly.

14. As a natural consequence, since the impugned action of the department stands vitiated on the technical ground of non-compliance of the statutory provisions, this Court reserves the right of the department, if they feel so, to proceed further, in case if they so want, against the petitioner in accordance with the Rules & provisions.
15. The writ petition accordingly stands allowed. The impugned orders dated 20.12.2008 and 06.09.2010 stand set-aside/quashed with consequences to follow.

Sd/-
(P. Sam Koshy)
Judge

Ved