

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 3709 of 2009

Mahesh Verma S/o Johan Lal Verma, aged about 45 years, Constable No. 417, presently posted in Police Lines, Raipur (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department of Home Affairs (Police), D.K.S. Bhawan, Raipur (C.G.).
2. The Director General of Police, Police Headquarter, Raipur (C.G.).
3. The Superintendent of Police, Raipur (C.G.).

---Respondents

WPS No. 5633 of 2009

Punaaram Daharia S/o Late Shri Bodhram Daharia, aged about 50 years, Head-Constable No. 1337, Police Lines, Raipur (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department of Home Affairs (Police), D.K.S. Bhawan, Raipur (C.G.).
2. The Director General of Police, Police Headquarter, Raipur (C.G.).
3. The Superintendent of Police, Raipur (C.G.).

---Respondents

WPS No. 4606 of 2009

Rohit Kumar Verma S/o Shri Ramlal Verma, aged about 45 years, Constable No. 243, Rakshit Kendra, Raipur, Permanent R/o village Kodwa, Police Station Palari, District Raipur (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department of Home Affairs (Police), D.K.S. Bhawan, Raipur (C.G.).
2. The Director General of Police, Raipur (C.G.).
3. The Inspector General of Police, Chhattisgarh, Raipur (C.G.).
4. The Superintendent of Police, Raipur (C.G.).

---Respondents

For petitioners	:	Shri Malay Kumar Bhaduri along with Shri Rajkumar Pali, Advocates.
For State	:	Shri Salim Kazi, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

22/01/2019.

1. These are three Writ Petitions assailing the common proceedings drawn by the respondents. The challenge in the present set of the Writ Petitions is to the order of the Appellate Authority dated 20/02/2009 – Annexure-P/4 whereby the departmental appeal preferred by the petitioner against an order of dismissal from service dated 29/12/2007 – Annexure-P/3 has been modified to the extent that the punishment of dismissal from service was modified and converted into reduction to the lowest grade and fixing the petitioner and bringing the scale of the petitioner to the lowest in the time-scale.
2. The brief facts relevant for the adjudication of the instant Writ Petitions are that all the three Writ Petitioners before this Court are working as a Constable and Head-Constable under the respondents. At the relevant point of time, they were posted at Police Station, Suhela, District Balodabazaar. It is a case that the petitioners alongwith the other officers posted in the Police Station had illegally taken into confinement one Shri Ram Kumar Dhruw on charges of theft. It is said that the said Ram Kumar Dhruw was illegally kept in custody by the petitioner and the other officers posted in the Police Station on the intervening night of 12th and 13th of August, 2004. Later on the said

Ram Kumar Dhruw is said to have committed suicide while remaining in the Police Station by hanging himself on the window inside the toilet of the Police Station, Suhela.

3. The petitioners for the same crime were also charge-sheeted for the offense under Sections 330, 343, 206 & 201 of the I.P.C. and Section 3 (2) (5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (In short “the Act of 1966”).

4. So far as the criminal case is concerned, it was registered as Special Case no. 141/2004 and the matter stood on trial before the Court of Special Judge (Atrocities), Raipur. At the same time, the petitioners were also proceeded with for a departmental enquiry. A charge-sheet was issued to the petitioners on 14/07/2007 to which the petitioners replied and denied the charges which were levelled. Later on, the department not being satisfied with the reply filed proceeded to hold a departmental enquiry, and a departmental enquiry was convened in which as many as 7 witnesses were examined on behalf of the department and the Enquiry Officer gave a report to the Disciplinary Authority holding that the charges levelled against the petitioners stood either not proved or partially proved.

5. Based on the enquiry report, the Disciplinary Authority initially vide order dated 29/12/2007 inflicted the petitioners with a punishment of dismissal from service (Annexure-P/3). The petitioners immediately preferred a departmental appeal to the Appellate Authority against the order of punishment. The Appellate Authority, vide the impugned order – Annexure-

P4 dated 20/02/2009 partly allowed the appeal and held that the order of dismissal from service to be an excessive punishment and therefore the Appellate Authority setting aside the order of dismissal from service modified the punishment and converted it into reduction in the scale and bringing down to the lowest in the time-scale and further held that the intervening period i.e. the date of dismissal dated 29/12/2007 till the petitioners stands reinstated would be treated as no-work-no pay. It is this order which is under challenge in the instant Writ Petitions.

6. The contention of the counsel for the petitioners is that, the entire finding of the Enquiry Officer as well as by the Disciplinary Authority so also by the Appellate Authority is unjustified and unsustainable for the reason that, the same is without any substantial cogent evidence brought before the Enquiry Officer proving the charge levelled against the petitioner. It was further the contention of the petitioners that, the entire enquiry proceedings and the punishment order is bad in law for the reason that, there was a clear violation of the statutory provision in as much as there was a clear non-compliance of the mandatory provision of Rule 18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rule, 1966. It was the further contention of the petitioner that, even on merits, none of the witnesses examined on behalf of the management have stated anything against the petitioners with which the authorities could reach to the conclusion that the petitioners had played an active role in the commission of the alleged misconduct. It was also the contention of the counsel for the petitioner that, the finding of the Enquiry Officer so also by the Disciplinary Authority is

apparently a perverse finding without any evidence whatsoever and for all these reasons the impugned order deserves to be set aside and the petitioners are entitled for all consequential benefits.

7. The State counsel on the contrary opposing the petitions submits that, it is a case where the petitioners were involved in a serious misconduct in as much as the petitioners in the capacity of Head-Constable and Constable while working at Police Station Suhela, District Balodabazaar have acted in excess of their powers in as much as they have illegally taken into custody one Ram Kumar Dhruw and have allegedly tortured the said person which ultimately led to the said Ram Kumar Dhruw committing suicide on the intervening night of 12th and 13th August, 2004 and thus considering the gravity of the offense committed by the petitioners, the State Counsel prayed for rejection of the Writ Petition. The State counsel also referring to the findings of the Enquiry Officer submitted that, the finding is of the petitioners having played an active part in the commission of the misconduct and therefore the said finding does not warrant interference by this Court at this stage.

8. Having heard the contentions put forth by either side the admitted position as it stands is that the 3 petitioners are the police officials working at Police Station Suhela, District Balodabazaar at the relevant point of time. The petitioners are low-ranked officials working on the post of Constable and Head-Constable. On the intervening night of 12th and 13th of August, 2004, a person who was taken in custody by the police personnels at Police Station Suhela committed suicide within the Police Station premises. The

petitioners who were on duty on the said evening were prosecuted both departmentally as well as in a criminal case. The criminal case was put to trial before the Special Judge (Atrocities), Raipur through special case no. 141/ 2004. The said criminal case resulted in the honorable acquittal of each of the petitioners vide judgement dated 25/01/2006. The respondents at the same time proceeded with the departmental enquiry by issuance of a charge-sheet and thereafter adducing evidences before the Enquiry Officer.

9. From perusal of the records what clearly reflects is that, none of the witnesses examined on behalf of the prosecution before the Enquiry Officer has specially named any of the petitioners for the commission of the said misconduct. The entire averments made by each of the witnesses are only on presumption and assumption. The statements made are also all omnibus and general in nature. There is no specific pin-pointed evidence led by any of the witnesses on behalf of the prosecution with which it could be conclusively assumed that the petitioners also had played an active role in the commission of the offence. Moreover, there is an evidence of PW-5 who has stated that, the petitioners had been sent on VIP duty on the said date.

10. Thus, on the merits, this Court does not find any substantive materials collected in the Courts of the departmental enquiry with which it could be said that the charges levelled against the petitioner stands proved.

11. Another objection raised by the petitioner worth mentioning at this juncture is the non-compliance of Rule 18 of the Rules of 1966. It is said that there were in all 6 persons who were prosecuted departmentally by the

respondents and the departmental enquiry conducted against all 6 persons was a joint-enquiry.

12. So far as joint-enquiry is concerned, the rules governing the field i.e. Rule 18 of Rules of 1966 is very clear. This Court, in the case of **Ghasiram Kosariya v. State of M.P. & Ors. [2011 2 CGLJ 147]** as relying upon a couple of decisions of the M.P. High Court have held that, in the event if there is no formal orders issued under Rule 18 by the Government for holding joint-enquiry, the entire departmental enquiry stands vitiated on this aspect. For ready reference, paragraphs 9-13 has been reproduced herein under:-

“9. Applying the aforesaid principles, as there is no specific provision dealing with the aspect relating to common proceedings, the provisions contained in Rule 18 of the Rules of 1966 relating to common proceedings in case of more than one delinquent employee would also apply with equal force in the case of departmental enquiry in respect of officials of the Police Department. Therefore, while holding departmental enquiry, Respondents were obliged under the law not only to hold enquiry in accordance with the provisions contained in Police Regulations but also in compliance of the provisions of Rules of 1966, wherever applicable.

10. Rule 18 of the Rules of 1966 reads thus:

“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.

(2) ***

11. Consequences of violation of provisions contained in Rule 18 of the Rules of 1966, in holding common proceeding have been considered in plethora of decisions and it is no longer res Integra. In the case of Mahesh Kumar Shrikishan Tiwari v. State of Madhya Pradesh and Ors. [1985 MPLJ 516], the issue with regard to requirement of passing specific order, order as required under Rule 18 and its consequences came up for consideration. That was also a case relating to an official of the Police Department. While holding that the applicability of the Rules of 1966 is not altogether excluded, relying upon the judgment in the case of Premchandra Dhalpuria, Ex-Sub-Inspector, Police v. The State through the I.G. Police, Bhopal [1970 MPLJ 430], it was held that where the Police Regulations are silent; the provisions of the Rules of 1966 would apply in departmental enquiries against sub-ordinate Police Staff. Relying upon the judgments in several cases on the point, it was held thus:-

“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:-

“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 v. 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 v. 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.”

12. The aforesaid view was reiterated in the case of Shyamkant Tiwari v. State of M.P. and Ors. [1986 MPLJ 37], and it was held:-

“14. In the decision in Ashok Y. Naik v. 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 v. 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.”

13. In the case of Sardar Badeo Singh v. State of M.P. and Ors. [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 said view of this Court has been further reiterated in a couple of further decisions rendered by this Court.

14. In the instant case also, the State Counsel on perusal of the records fairly admits that, there does not seem to be any formal order by the respondents passed for a joint-enquiry.

15. In the aforesaid factual matrix, the entire enquiry proceedings initiated against the petitioners gets vitiated on this ground also.

16. It is also necessary to mention at this juncture that, the petitioners were prosecuted for the same charge in a criminal case i.e. in special case no. 141/2004 and the Special Judge (Atrocities), Raipur vide judgement dated 25/06/2006 honourably acquitted the petitioners from the said charges.

17. It is relevant to note that, the judgment of acquittal was one which was passed prior to the order of Disciplinary Authority dated 29/12/2007. In that event, the Disciplinary Authority was duty bound to have considered the judgment of acquittal.

18. At this juncture it would be relevant to refer to the regulation 241 of the Chhattisgarh Police Regulation which envisages that the police authorities if they have been acquitted in a criminal case, they should not be prosecuted in a departmental proceedings as a matter of routine.

19. In the instant case, the authorities does not seem to have taken into consideration the judgment of acquittal, nor have the authorities discussed anywhere both in the order passed by the Disciplinary Authority as well as by the Appellate Authority so far as the judgment of acquittal in favour of the petitioners.

20. Thus, there seems to be a clear omission of the provision of regulation 241 by the authorities concerned while passing an order of punishment.

21. For all the aforesaid reasons, the impugned order passed by the Appellate Authority as well as by the Disciplinary Authority is not sustainable and the same deserve to be and are accordingly set-aside/quashed with

consequences to follow.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit