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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

ON THE 22nd OF JANUARY, 2024

WRIT PETITION No. 6230 of 2015

BETWEEN:-

**BRIJESH KUAMR DEVARIYA S/O SHRI RAMDEEN
DEVARIYA, AGED ABOUT 35 YEARS, OCCUPATION:
HEAD CONSTABLE VILL.KASHI POST AMOLA DIST.
SHIVPURI (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ARUN KATARE - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THR
PRINCIPAL SECRETARY VALLABH BHAWAN
(MADHYA PRADESH)**
- 2. THE DIRECTOR GENERAL OF POLICE POLICE
HEADQUARTERS JAHANGIRABAD BHOPAL
(MADHYA PRADESH)**
- 3. THE INSPECTOR GENERAL OF POLICE GWALIOR
ZONE GWALIOR (MADHYA PRADESH)**
- 4. THE SUPERINTENDENT OF POLICE SHIVPURI
SHIVPURI (MADHYA PRADESH)**
- 5. SHRI RAMESH KUMAR, HEAD CONSTABLE NO.
205 THROUGH SUPERINTENDENT OF POLICE
SHIVPURI SHIVPURI (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI S.S. KUSHWAH - GOVERNMENT ADVOCATE)

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*This petition coming on for hearing this day, the court passed the
following:*

ORDER

The present writ petition under Article 226 of the Constitution of India

has been preferred by the petitioner being aggrieved by the order dated 01.07.2014 (Annexure P/1), whereby the respondent No.3 reversed the order dated 21.04.2014, by which the petitioner was exonerated from the charges on the basis of enquiry report and imposed the punishment of stoppage of one annual increment with cumulative effect. Even the impugned order has been passed by respondent No.3 without giving any opportunity of hearing to the petitioner, which is contrary to the law and violation of Police Regulation 270(4).

2. The relevant facts, leading to controversy briefly are that, the petitioner being member of Scheduled Tribe category was appointed on the post of Constable on 10.10.2003 in Police Line Shivpuri and in the year 2010 the petitioner was promoted from the post of Constable to the post of Head Constable. Charge sheet was issued to the petitioner on 07.09.2013 alleging that the petitioner has taken Rs.4000/- from one Rajendra Singh s/o Than Singh Rawat for taking action on the report, which is highly objectionable and contrary to the Police Regulation 64(2). Thereafter, the petitioner had submitted his reply and after conducting the departmental enquiry, on the basis of evidence and documents on record it was found that the charges leveled against the petitioner were not proved. Thereafter Superintendent of Police passed an order dated 21.04.2014 and closed the enquiry against the petitioner, but respondent No.3 without giving any finding and without giving any opportunity of hearing to the petitioner reviewed the order dated 21.04.2014 and passed the impugned order dated 01.07.2014, whereby a penalty of stoppage of one annual increment with cumulative effect was imposed on the petitioner. Due to the order dated 01.07.2014 the case of the petitioner for promotion from the post

of Head Constable to the post of ADI was not considered and juniors to the petitioner were promoted.

3. It is contention of the petitioner that under the provisions of Regulation 270 (1) of the Madhya Pradesh Police Regulations (hereinafter shall be referred to as the Police Regulations), the Inspector General of Police could not have passed the impugned order inasmuch as the revision lies only against the order of punishment and not against the order of exoneration. He further submits that in terms of Regulation 270 (4) of the Police Regulations, the Inspector General of Police was not entitled to enhance the punishment imposed on him. His another contention is that there is non-application of mind inasmuch as the petitioner's 35 years bright career and the services of the petitioner was outstanding except the punishment order dated 01.07.2014 was not taken into consideration by the Inspector General of Police.

4. At the outset learned counsel for the petitioner placed the order dated 30.10.2017 passed in Writ Appeal No.404/2017 (Sant Lal Vs. State of M.P. and ors.) and submits that the matter is covered by the aforesaid order passed by this Court. He seeks parity viz a viz the said order.

5. Learned Government Advocate for the respondents could not dispute the said fact.

6. A relevant discussion of the said order is as under:-

'The question is as to whether it is incumbent upon the Reviewing Authority to afford an opportunity of personal hearing to the appellant/petitioner, after issuing show cause notice for enhancement of punishment ?

Evident it is from Clause 4 of Regulation 270 of MP Police Regulation that the revising authority may for reason to be recorded in writing exonerate

or may remit, vary or enhance the punishment imposed or may order a fresh enquiry of the taking of further evidence in the case. It is further provided that the Reviewing Authority shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard.

Thus, it is clear that any order which is to be passed in suo motu review should be passed only after affording an opportunity and after giving hearing. A similar question came up for consideration in the case of *Fazal Bhai Dhala Vs. The Custodian-General, Evacuee Property, New Delhi and another and The Custodian Evacuee Property, Madras* AIR 1961 SC 1397, wherein it is held that :-

"The proviso secures the requirements of the principles of natural justice when it says that any order prejudicial to any person shall not be passed without giving such person a reasonable opportunity of being heard. No specific provision for service of notice in order that such a reasonable opportunity of being heard be given has however been made by any rule. It goes without saying that in the large majority of cases, the Custodian "will, in order to give the party concerned a reasonable opportunity of being heard, first give him a notice of his intention to examine the records to satisfy himself as to the legality or the propriety of any order passed by the subordinate officer and require such person to show cause if any why the order should not be revised or modified, and then if and when the party appears before him in response to the notice, the Custodian has also to allow him, either personally or through counsel, a reasonable opportunity of being heard. In suitable cases it may be proper and necessary for the Custodian to allow the party concerned even to adduce evidence. There may be cases however where the party concerned is already before the Custodian, so that all that is necessary for the Custodian to do is to inform such party of his intention to examine the records to satisfy himself whether a particular order should be revised, and then to give him a reasonable opportunity of being heard. There would be no necessity in such a case to serve a formal notice on the party who is already before the Custodian and the omission to serve the notice can be of no consequence. What the law requires is that the person concerned should be given a reasonable opportunity of being heard before any order prejudicial to him is made in revision. If this reasonable opportunity of being heard cannot be given without the service of the notice the omission to serve the notice

would be fatal; where however proper hearing can be given without service of notice, it does not matter at all, and all that has to be seen is whether even though no notice was given a reasonable opportunity of being heard was given."

Admittedly, in the case at hand, no opportunity of personal hearing was afforded to the appellant/petitioner and the reviewing authority, after taking into consideration only the reply to show cause notice passed the order, which when tested on the anvil of Clause 4 of MP Police Regulation 270 and the decision in **Fazal Bhai Dhala (Supra)** cannot be given the stamp of approval.

In view whereof, the impugned judgment cannot be given a stamp of approval. Consequently the same is set aside. The order dated 07.06.2013 passed by the Reviewing Authority without affording any opportunity of personal hearing is also set aside.

The appeal is allowed to the extent above. No costs.'

7. In view of the aforesaid, this petition also stands disposed of in the manner as directed by this Court in case of ***Sant Lal Vs. State of M.P. and ors(supra)*** and that order shall apply *mutatis mutandis* in the present case also. Hence, the impugned order dated 01.07.2014 Annexure P/1 is set aside. Consequently, the petition is hereby allowed with a further direction to convene a review DPC for consideration of the case of the petitioner for his promotion at par with his juniors.

8. With the aforesaid, the petition stands disposed of.

(MILIND RAMESH PHADKE)
JUDGE

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