



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

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

WRIT PETITION No. 28403 of 2022

NAND KISHORE CHOUDHARY

Versus

HIGH COURT OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Saket Agrawal, learned counsel for the petitioner.

Shri Shobhitaditya, learned counsel for the respondent nos.1 and 2.

Reserved on : 13.05.2025

Post for : 19.06.2025

ORDER

Per: Justice Vinay Saraf

1. By the instant petition, the petitioner has assailed the order dated 06.12.2021 passed by the High Court of M.P., whereby the appeal preferred by the petitioner under Rule 23 of the *Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966* (for short, 'the

Rules 1966') was partly allowed and the penalty of withholding of two increments with cumulative effect inflicted by order dated 01.06.2018 passed by the disciplinary authority in departmental enquiry was modified to the extent that the increment has been withheld without cumulative effect.

2. With the consent of parties, the arguments are heard for the purposes of final disposal of the petition.

3. The short facts of the case are that the petitioner was appointed on the post of Process Writer and transferred to the Court of Smt. Sonal Chourasia, Judicial Magistrate First Class, Deosar, District Singrauli as Executant Clerk by order dated 28.03.2016. When the petitioner joined the duties on 29.03.2016, the Presiding Officer was on maternity leave. The letter dated 22.06.2016 was received in the Court by which the direction was issued to submit the quarterly information in respect of the pending cases pertaining to crimes against the women, children, handicapped and people belonging to weaker section of the society for the period of 01.04.2016 to 30.06.2016. After receipt of the letter, the petitioner collected all the relevant information and forwarded the information to the office of District Judge, Singrauli on 02.07.2016. As per petitioner, the petitioner came to know regarding the requirements to forward the said information again in Format B on 05.07.2016, however the petitioner was not having any knowledge regarding the said format,

he sought information on telephone and later on with the help of colleagues arranged the format and prepared the information for the purpose of forwarding to the office of District Judge, Singrauli. The Presiding Officer was on leave therefore, he obtained the approval and signatures of In-charge Judicial Officer and thereafter forwarded the information through E-mail and WhatsApp as well as by physically. Thereafter, he was placed under suspension upon the allegation that information which was sought by High Court for the purpose of utilizing in the Chief Justice's Conference by the Hon'ble Chief Justice, was not forwarded by the petitioner timely.

4. Thereafter, the charge-sheet was served upon the petitioner and the departmental enquiry was initiated. The enquiry officer was appointed. The enquiry officer conducted the enquiry and after securing the reply from the petitioner recorded the statements of witnesses on behalf of the department as well as the defense and prepared the enquiry report and submitted the same before the disciplinary authority. After serving the enquiry report to the petitioner and securing his reply, by order dated 01.06.2018 the disciplinary authority i.e. District & Sessions Judge, District Singrauli held the petitioner guilty and passed the impugned order inflicting the penalty of withholding two increments with cumulative effect.

5. The order of punishment was challenged by the petitioner in appeal preferred before the High Court, which was partly allowed and the penalty imposed on the petitioner was modified to the extent of stoppage of two yearly increments without any cumulative effect. The aforesaid orders have been put to challenge in the present petition by the petitioner.

6. Learned counsel appearing on behalf of the petitioner submits that the charges levelled against the petitioner for not supplying information in proper format within time do not make out a case of misconduct under the Rules, 1966 and the same may be considered at the most negligence. He further submits that department has failed to prove the allegation against the petitioner in the enquiry and the petitioner has forwarded information in Format B at the earliest and therefore, he has not committed any misconduct. He further submits that in the absence of any misconduct, the petitioner could not be punished. As per the petitioner, it has been proved on record that the said Format was not available with the petitioner and therefore, the information could be supplied on 06.07.2016 instead of 05.07.2016. However, the same was not accepted by the enquiry officer by holding that if the petitioner was not having any knowledge or experience in preparation of information of Format B, the petitioner ought to have informed to the office of District Judge, but on

the basis of lack of knowledge and experience, the petitioner cannot be exonerated.

7. Learned counsel for the petitioner submits that petitioner has been punished only on the ground that required information was not supplied on time and the punishment awarded to the petitioner is disproportionate to the charge of misconduct. To bolster his arguments, he relied on the judgment delivered by the Apex Court in the matter of ***Union of India & Ors. Vs. J. Ahmad, 1979 (2) SCC 286*** wherein the Apex Court has held that misconduct means misconduct arising from ill motive and acts of negligence, errors of judgments or innocent mistakes do not constitute such misconduct. In that matter, the charges against the public servant was related to the efficiency of the delinquent, lack of quality of leadership, foresight, firmness and indecisiveness and under these circumstances, the Supreme Court has held that competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge the functions attached to the post or things different from some acts or omission of the holder of post, which may be styled as misconduct so as to incur the penalty under the rules.

8. The facts of the instant case are entirely different and in the present matter the allegation against the petitioner was that despite repetitive instructions by the office of District Judge, the petitioner did not comply

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with the directions promptly and failed to supply the information in proper format in time and the allegations against the petitioner was of non supplying the required information despite repetitive demand from the office of District Judge, which cannot be considered as mere negligence or lack of ability. Consequently, the judgement delivered by the Apex Court in the matter of **J. Ahmad (Supra)** is not helpful to the petitioner.

9. *Per contra*, learned counsel appearing on behalf of respondent submits that the allegations were duly proved against the petitioner as admittedly he did not supply information required for the purpose of Chief Justice's Conference in time despite repetitive directions of District Judge, Singrauli. Petitioner was provided full opportunity to defend his case. After serving the charge-sheet and securing the reply, the petitioner was provided the opportunity to cross examine the departmental witnesses and to adduce the oral evidence in support of his defense and thereafter when the enquiry officer submitted the report, the same was forwarded to the petitioner along with the show cause notice and after granting the opportunity to submit the reply, the disciplinary authority i.e. District and Sessions Judge, Singrauli passed the impugned order dated 01.06.2018 by which the petitioner was found guilty and penalty was imposed.

10. He further submits that the enquiry officer, disciplinary authority and appellate authority have already applied their mind during the proceedings of enquiry and also considered the defense raised by the delinquent. The scope of interference under Article 226 of the Constitution of India is limited and this Court can examine only the procedure adopted during the enquiry, adherence to the principles of natural justice and cannot act as an appellate authority. He relied on the judgment of Apex Court delivered in the matter of ***State Bank of Bikaner & Jaipur Vs. Prabhudayal Grover, AIR 1996 SC 320***, wherein the Apex Court has held that the scope of interference by the High Court in the departmental proceedings or the order of punishment is very limited and when the concurrent findings with regard to the misconduct of delinquent have been recorded by the enquiry officer and accepted by the disciplinary authority, the High Court should not strike down the same ordinarily. He further relied on the judgment delivered by the Division Bench of this Court in the matter of ***Dr. Yogiraj Sharma Vs. State of M.P., 2016 (1) MPLJ 537*** wherein it has been held that once enquiry has been properly conducted in accordance with the rules, no prejudice has been caused to the delinquent and there is no violation of principles of natural justice and under these circumstances, power of judicial review cannot be exercised and no interference can be made in the matter.

11. The Relevant paragraph of the judgement reads as under:

"33. Once we find that the enquiry has been properly conducted, in accordance to the requirement of rules, no prejudice has been caused to the appellant and there is no violation of the principles of natural justice, we cannot exercise any further power of judicial review and interfere into the matter. That apart, it has been held by the Supreme Court in the case of SBI v. Ram Lal - (2011) 10 SCC 249 that while exercising powers of judicial review in administrative matters pertaining to disciplinary action being taken, this Court does not sit as a appellate authority over a finding of the disciplinary authority. In para 12 and 13 the matter has been so dealt with by the Hon'ble Supreme Court in the aforesaid case:—

"12. This Court has held in State of Andhra Pradesh v. Sree Rama Rao (AIR 1963 SC 1723):

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and

yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no. 1 do not constitute any misconduct and that the respondent no. 1 was not guilty of any misconduct."

That being the legal position and scope of judicial review in a petition under Article 226 of the Constitution, we see no reason to interfere into the matter. That apart, in the judgment relied upon by Shri R.N. Singh, learned Senior Counsel i.e. in the case of B. Venkataramani v. C.J. Ayodhya Ram Singh -(2006) 13 SCC 449 in para 11 the powers of the Division Bench in an Intra Court Appeal has been discussed in the following manner:—

In an intra-court appeal, the Division Bench undoubtedly may be entitled to re-appraise both questions of fact and law, but the following dicta of this Court in Umabai v. Nilkanth Dhondiba Chavan (Dead) By Lrs. [(2005) 6 SCC 243], could not have been ignored by it, whereupon the learned counsel for Respondents relied:

"It may be, as has been held in Asha Devi v. Dukhi Sao, (1974) 2 SCC 492 that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint."

And finally after considering various judgments on the same issue in para 25 it has been held by the Division Bench should be slow in interfering with the finding of fact arrived at by the Writ Court. If we analyze the judgment rendered by the learned Writ Court in the backdrop of the aforesaid legal principle, we find that learned Writ Court has gone into each and every aspect of the matter in detail and has recorded a finding to say that the order passed by the Disciplinary Authority and findings recorded by Enquiry Officer is legal and proper. Therefore, we see no reason to interfere with the reasonable judgment and decree passed by the learned Writ Court."

12. With the aid of the aforesaid judgment, learned counsel appearing on behalf of the respondent submits that there is no scope of interference in the present matter and the petition is liable to be dismissed.

13. After consideration of the arguments advanced by the counsel for the parties, we are of the considered view that the charges against the petitioner were duly proved in the departmental enquiry and the defense put up by the petitioner is not acceptable.

14. During the enquiry, the department examined Smt. Maya Singh, who was posted in the office of District Judge and who received the E-mail of the High Court dated 04.07.2016, whereby the High Court directed to supply information in Format B in respect of the criminal cases relating to offences against women, children, differently abled persons, senior citizens, marginalized section of society and Prevention of Corruption Act, 1988. She further stated that she put up the note sheet before the District Judge and thereafter forwarded the E-mail to all the courts within the district for forwarding the aforesaid information in format till 11:00 am of 05.07.2016. The information supplied on 22.06.2016 was defective, therefore, the court situated at Deosar directed to supply correct information in proper format and the format was dispatched on 04.07.2016 through messenger and receipt was obtained in

the Dak Book. In addition, the format was forwarded through E-mail with instructions to submit the information till 11:00 am of 05.07.2016. She further deposed that on 04.07.2016 petitioner, Nand Kishor Choudhary was called by her on mobile and requested to forward the required information in time. When the information was not received in the office of District Judge till 11:00 am, she again called to petitioner on mobile and sent E-mail also. She proved all the E-mails and documents of correspondence during the enquiry. She further stated that whenever she called to petitioner, he always assured to supply the information but did not bothered to supply the same. The District Judge was demanding the information and asking for the same again and again but the petitioner was not obeying the directions of the District Judge therefore, she intimated to Office Superintendent, who also called petitioner, but petitioner did not adhere to the request. Accountant, Shri Akhil Pandya also called him however, the petitioner disobeyed the instructions and when no information was received, a note sheet was prepared and put up before the District Judge intimating to the District Judge that petitioner despite several requests did not forward the information. The District Judge asked the other employees of the Court to talk to the petitioner on phone to forward the required information, but the petitioner did not provided the same, therefore, the District Judge suspended the

petitioner. In the cross-examination, She explained that the information was required to be forwarded to the High Court for the purposes of producing in the Chief Justice's Conference but as the petitioner did not forward the information in time, the same could not be submitted to the High Court. She further explained in the cross examination that on 06.07.2016 the information was forwarded by the petitioner and received through dispatch after the suspension of petitioner.

15. The department examined Vivek Ranjan Shrivastava, who was posted in the post of Office Superintendent and he also narrated that on 04.07.2016, petitioner was directed to supply the information in format as demanded by the High Court, but the same was not supplied by the petitioner, therefore, he himself called to the petitioner at 04.:30 pm on 05.07.2016 but the petitioner did not forward the information therefore, at 06:00 pm he called to Additional District Judge, Deosar and informed him regarding the conduct of the petitioner. The department examined another witness Amarjeet Rawat, who was posted as Assistant SW in the office of District Judge, Singrauli and was assisting to Smt. Maya Singh at the relevant time. He also supported the case of the department before the enquiry officer. Similarly, Shri Akhil Pandya, who was posted as Accountant in the office of District Judge also supported the case of the department. The department examined the Shri Gopal Singh Netam,

Additional District and Sessions Judge, Deosar, District Singrauli, who confirmed that Smt. Maya Singh and others repeatedly called the petitioner for supplying the information and when the petitioner was not complying with the instructions, they called him for issuance of necessary directions to the petitioner. As many as five witnesses were examined by the department to prove the allegation against petitioner and all the witnesses supported the charges levelled against the petitioner.

16. The sole defense of the petitioner was that he was not aware of the Format B and had no knowledge in that respect and after consulting with his colleagues, he prepared the information in format and forwarded the same to the office of District Judge on 06.07.2016. However, he was already suspended on 05.07.2016 by the District Judge. He examined Smt. Manu Khushre, Assistant Grade III posted in the invert section in the office of District Judge, who stated that monthly statements received from the Court of Smt. Sonal Chourasia JMFC dated 02.07.2016 was put up before Smt. Maya Singh on 04.07.2016. Defense witness Kamlesh Bahadur Singh, who was posted as Execution Clerk in the Court of Additional Civil Judge, Class I, Deosar did not support the defense of the petitioner. Another witness examined by the petitioner in his defense Khem Raj Gautam has also not stated anything and did not produce any material in support of the petitioner. Petitioner also examined himself as

witness and repeated the contents of the reply only. It is accepted by the petitioner in his statement that the instructions were issued from the office of District Judge on 04.07.2016 for supplying the information on format and the information was demanded till 11:00 am of 05.07.2016 and the same was not forwarded by the petitioner in time. It is also admitted by petitioner in his statement that the information was forwarded on 06.07.2016 and he was suspended in the evening of 05.07.2016 by the District Judge.

17. Under these circumstances, the findings recorded by the Enquiry Officer, wherein he considered the entire evidence and found proved the charges against the petitioner, are not erroneous. The findings have been recorded on the basis of material available on record and the same cannot be subject matter of judicial review. The disciplinary authority also considered the evidence in detail and thereafter, the appellate authority once again considered the material available on record. In view of the aforesaid, no case for interference under Article 226 of the Constitution of India is made out. We are in full agreement with the findings of misconduct recorded by the disciplinary authority. The disciplinary authority inflicted the punishment of withholding of increments with cumulative effect and the appellate authority reduced the punishment to

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the extent that the increment has been withheld without any cumulative effect.

18. For the aforesaid reasons, we uphold the findings of the misconduct as well as the order of modification of the penalty passed by appellate authority and in the facts and circumstances of the present case, the punishment of withholding of two increments without cumulative effect is just and proper.

19. With the aforesaid, the present petition is dismissed. There shall be no order as to costs.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

(VINAY SARAF)
JUDGE

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