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WP-11412-2008

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

WRIT PETITION No. 11412 of 2008*VIJAY SINGH BHADAURIYA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Shailendra Pandey - Advocate, Shri Vineet Kumar Pandey -
Advocate and Shri Sanjeev Kumar Chaturvedi - Advocate for the petitioner.*

Shri Vivek Sharma - Deputy A.G. - for the respondent/State.

Shri Brijesh Nath Misra - Advocate for the respondent No.3.

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Reserved on : 29.04.2025

Pronounced on : 06.05.2025
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ORDER

Per. Justice Vinay Saraf

Petitioner, who was working on the post of Peon (Class IV) in the office of District and Sessions Judge, District Court, Bhopal has preferred the present petition assailing the order of punishment dated 24.02.2007, whereby the petitioner was removed from the service by the Disciplinary Authority after conducting the Departmental Enquiry.

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

3. Brief facts suffice for disposal of the present petition are that the



petitioner was initially appointed on the post of Driver on temporary basis in the contingency establishment of District & Sessions Judge, District Court, Bhopal and later on he was appointed in the regular pay scale from 04.01.2004. Petitioner was placed under suspension and charge sheet dated 20.11.2006 was served to the petitioner in respect of certain misconduct allegedly committed by him. As per the charge sheet, petitioner was discharging the duty of Driver and was posted in VIP duty. He was assigned the duty of Driver between the period 18.11.2006 to 20.11.2006 to attend Justice Shri S.K. Singh of Allahabad High Court during his visit at Bhopal and duty was assigned to the petitioner to take Justice Shri S.K. Singh from VIP Guest House Bhopal to Railway Station in the night of 19.11.2006 to board the train for Allahabad at 1.30 AM. The petitioner did not reach VIP Guest House along with car at the designated time and later on reached at 2.15 AM and by the time they reached Railway Station, the train for Allahabad had already departed. Justice S.K. Singh made a written complaint to the Assistant Protocol Officer Bhopal Shri Santosh Singh Bias in the night of 19.11.2006 itself, wherein it was stated that the petitioner besides being late was in a drunken state.

4. Inquiry Officer was appointed, who recorded the statement of the witnesses of both the sides and thereafter submitted his report to the Disciplinary Authority i.e. District & Sessions Judge, Bhopal. The Disciplinary Authority by order No.126/07 dated 24.02.2007 held the petitioner guilty and after affording opportunity of hearing to the petitioner, passed the impugned order inflicting the penalty of "removal from the



service" upon the petitioner under Rule 10 (viii) of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966. This order is put to challenge by the petitioner in the instant petition.

5. Leaned counsel for the petitioner submits that the petitioner was not sent for medical examination and no witness was examined during the inquiry to prove the allegation that the petitioner was in a drunken state. He further submits that only on the basis of written complaint of High Court Judge of Allahabad, this allegation cannot be accepted. He further submits that so far as reaching to VIP Guest House belatedly, the petitioner has offered his explanation that between his residence and the place where the vehicle was parked, the tyre of his bicycle was punctured and therefore, he could not reach on time. The counsel further submits that the High Court Judge of Allahabad was annoyed as petitioner failed to reach on time, therefore, he made the written complaint to APO stating that the petitioner was in drunken state. He further submits that the department failed to prove the allegation against the petitioner and petitioner had already examined defence witness to explain the delay, but the same was not considered either by the Investigating Officer or by the Disciplinary Authority. He further submits that the findings of the enquiry report are incorrect, unjust, illegal and liable to be quashed.

6. As per the counsel for the petitioner, no act of misconduct could be proved by the department and the order of dismissal is disproportionate to the charge and alleged misconduct.

7. Learned counsel appearing on behalf of respondents submit that



the allegations were duly proved against the petitioner as admittedly he could not reach at VIP Guest House on time and consequently, the Guest i.e. High Court Judge of Allahabad could not board the train for Allahabad. He further submits that written complaint handed over by the High Court Judge keeps importance and in the complaint, allegation of drunken state was leveled against the petitioner. He further submits that the department has examined concerned APO and proved the charges by adducing cogent and reliable evidence. He further submits that proper procedure was adopted during inquiry and the inquiry was conducted in fair and impartial manner and full opportunity was afforded to the delinquent and after securing written reply, granted opportunity to cross examine the witnesses of department and examine the defence witnesses, the enquiry report was prepared on the basis of available material and evidence.

8. Learned counsel for the respondents further submits that when there is no flaw in the decision making process and the process was not contrary to the principle of natural justice, no interference is warranted under Article 226 of the Constitution of India. He relied on the judgment delivered by this Court in the matter of *Nirbhay Singh Suliya vs. State of M.P. and others* in Writ Petition No.8623/2016 on 25.07.2024, wherein this Court has held that a reasonable finding arrived at by the Inquiring Authority based on material available on record, no interference can be made by the Court under Article 226 of the Constitution of India. He prays for dismissal of the petition.

9. After consideration of the arguments advanced by the counsels for



the parties, we are of the considered view that the charges leveled against the petitioner were duly proved in the Departmental Enquiry by examining relevant witnesses. The defence put up by the petitioner was duly considered by the Inquiry Officer in his enquiry report. Shri Suresh Singh, Railway Magistrate, Bhopal categorically stated before the Inquiry Officer that High Court Judge of Allahabad could not reach to Railway Station on time as the petitioner came late at VIP Guest House and was in drunken state. In the cross examination, he clarified that petitioner was not in the normal condition when he met to the petitioner at Railway Station. Another witness Santosh Singh Mess, APO narrated the entire incident in detail and stated that petitioner was directed to reach VIP Guest House at 1.30 AM on 19.11.2006 but when he did not reach on time, Judge of Allahabad High Court called him at 2.45 AM and asked him to reach at Railway Station, where he handed over a written complaint to APO. This witness proved the complaint, which was written and signed by the Judge of Allahabad High Court in his presence. Department examined another witness Smt. Chunamma Nath, Accountant of District Court, Bhopal, who stated that earlier also when the petitioner was posted in Family Court, Bhopal the complaint was received and he was reverted.

10. The petitioner himself has accepted in his examination that he was directed to reach VIP Guest House on 19.11.2006 at 1.30 AM, however, he denied the allegation that he was in drunken state. He submitted the explanation that between his home and Shyamla Hills, where the vehicle was parked, tyre of his bicycle was punctured therefore, he could not reach on



time. He examined Sunil Kumar, Home Guard Sainik, who was performing night security guard duty in the Judges Enclave of Shyamla Hills Bhopal where the vehicle was parked and supported the contention of petitioner that his bicycle was punctured.

11. The Inquiry Officer considered the entire material and thereafter submitted his enquiry report dated 15.01.2007. After consideration of the evidence in detail, the Inquiry Officer found proved the charge against the petitioner. After issuance of show cause notice to the petitioner as to why enquiry report be not accepted, the impugned order was passed by the District & Sessions Judge, Bhopal.

12. So far as the findings of Inquiry Officer are concerned, the same has been recorded on the basis of material available on record and inadequacy of evidence cannot be subject matter of judicial review and the High Court can interfere with the order of punishment only in case of violation of the provisions of rules or principles of natural justice are proved.

This court cannot exercise its jurisdiction in a petition under Article 226 of the Constitution of India as appellate authority. This court can interfere only if statutory rules or regulations are found to be violated. When the law permits the competent authority to take action against the delinquent person for his misconduct, no interference in the finding is called for. Consequently, so far as the finding of misconduct is concerned, we are in agreement with the Disciplinary Authority.

13. However, looking to the charge of misconduct, the punishment of dismissal appears to be disproportionate. The allegation against the



petitioner was that he failed to reach at VIP Guest House on time and therefore, the Judge of Allahabad High Court could not board the train as scheduled. In our considered opinion allegation is not sufficient for dismissal of the delinquent from the service.

14. The punishment of removal from the service is in outrages defines of logic and is shocking and if the punishment imposes by the Disciplinary Authority shocks the conscious of the Court, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed and to impose appropriate punishment with cogent reasons in support thereof.

15. For the aforesaid reasons, though we uphold the findings of misconduct but set aside the quantum of punishment and remit the matter to the disciplinary authority to reconsider the quantum of punishment in the light of allegation of misconduct proved against the petitioner. Said exercise be completed within a period of three months from the date of receipt of certified copy of this order. Petitioner will be reinstated with immediate effect, however, he will not be entitled for back wages applying the principle of "no work no pay".

16. With the aforesaid, present petition is disposed of to above extent. No order as to costs.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE