IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 6529 of 2015

BETWEEN:-

SUNIL S/O BHERULAL JI DHAMAN, AGED ABOUT 36 YEARS, OCCUPATION: POORV SAHAYAK UPNIRIKSHAK (POLICE) R/O H.NO. 133, ARIHANT PARISAR, RATLAM (MADHYA PRADESH)

.....PETITIONER

(SHRI ARIHANT KUMAR NAHAR – ADVOCATE FOR THE PETITIONER.)

AND

1. **THE STATE OF MADHYA PRADESH HOME DEPARTMENT, PRINCIPAL SECRETARY, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **INSPECTOR GENERAL OF POLICE, POLICE HEADQUARTERS, BHOPAL (MADHYA PRADESH)**
3. **INSPECTOR GENERAL OF POLICE, POLICE HEADQUARTERS, UJJAIN RANGE (MADHYA PRADESH)**
4. **DEPUTY INSPECTOR GENERAL, POLICE HEADQUARTERS, VIGILANCE, BHOPAL (MADHYA PRADESH)**
5. **DEPUTY INSPECTOR GENERAL, RATLAM RANGE, RATLAM (MADHYA PRADESH)**
6. **SUPERINTENDENT OF POLICE, NEEMUCH (MADHYA PRADESH)**
7. **ADDITIONAL SUPERINTENDENT OF POLICE, SHRI PANKAJ PANDEY, NEEMUCH (MADHYA PRADESH)**

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8. ADDL. INSPECTOR GENERAL OF POLICE, C.I.D., POLICE HEADQUARTERS, BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(SHRI MANISH NAIR – GOVERNMENT ADVOCATE FOR THE RESPONDENT.)

Reserved on : 19.01.2023
Delivered on : 14.02.2023

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

ORDER

Petitioner has filed this present petition being aggrieved by the order dated 30.03.2015 whereby he has been dismissed from service and vide order dated 22.06.2022 whereby the appeal has been dismissed.

The facts of the case in short are as under:

[1] Vide order dated 30.06.1998 the petitioner was appointed as a Constable in the year 2004, he was promoted to the post of Head Constable and thereafter in the year 2011 he was promoted to the post of Assistant Sub-Inspector. On 06.04.2011 he was posted at Police Station Manasa. On 09.02.2012 the petitioner received discreet information that Maruti Alto Car bearing registration No. RJ-09-GA-2982 is coming from Rajasthan to deliver the narcotic contraband and if the vehicle is apprehended, the contraband can be recovered in the said car.

[2] The petitioner after recording the said information in the daily diary and proceeded with the force to the location given by the informant at the given location the barricades was erected and after ten

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minutes one car was found coming which was apprehended and one person was found sitting in the driver seat of the case, upon asking he disclosed his name as Dhanraj @ Dhannalal aged about 50 years. Dhanraj as well as the vehicle was searched after compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act. A grey colour bag was found below the driver's seat and after opening it 8 kg 40 grams of opium was found. Since the Dhanraj @ Dhannalal failed to produce any license or permission to carry the contraband, therefore, accused was arrested and the investigation was completed. On the basis of the statement of Dhanraj @ Dhannalal, Mangilal Patidar has also been added as an accused with the aid of Section 29 and the charge-sheet was filed against Dhanraj @ Dhannalal and Mangilal Patidar under Section 8/18, 29 of NDPS Act.

[3] The petitioner registered an FIR under Section 8/18 of the NDPS Act at Crime No.35/2012 at police station Manasa against Dhanraj @ Dhannalal. After completing the investigation charge-sheet was filed before the Special Court on 03.08.2012. During the said investigation a complaint was made to the Superintendent of Police that this petitioner has illegally taken Rs.21,00,000/- from their house . One Omprakash S/o Dhanraj @ Dhannalal made a complaint and on the complainant, the Additional Superintendent of Police conducted an inquiry and submitted the report to the S.P. Neemuch that the allegations are baseless and false.

[4] Superintendent of Police, Neemuch issued a charge-sheet dated 20.09.2014 to R.C. Sawaliya Sub-Inspector and this present petitioner and directed them to submit a reply. A joint departmental inquiry was

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conducted and Inquiry Officer submitted an enquiry report that one or two charges have been found proven. The petitioner submitted a reply to the aforesaid inquiry report and vide order dated 31.10.2014, the then S.P. has punished him by the penalty of stoppage of one increment with one year cumulative effect.

[5] The petitioner did not challenge the aforesaid punishment. The DIG issued a show-cause notice to the petitioner as well as R.C. Sawalia as less punishment has been imposed as compared to the seriousness of the offence. The petitioner submitted a detailed reply dated 06.03.2015 and vide order dated 30.03.2015 the DIG imposed a punishment of compulsory retirement to R.C. Sawalia and a penalty of dismissal to this present petitioner. Being aggrieved by the aforesaid punishment, the petitioner preferred an aforesaid departmental appeal as well as approached this Court by way of this writ petition. During the pendency of the writ petition, the appeal has been dismissed vide order dated 31.08.2015 which the petitioner has challenged by way of amendment in this petition.

[6] The petitioner has assailed the impugned punishment given by the revisional authority only on the ground that the revisional authority exercised the revisional power only on the direction issued by the Additional DGP Vigilance, Police Headquarters which is not the intention of Regulation 270 of M.P. Police Regulation. If the higher officer was not satisfied with the punishment then he can revise the punishment in the exercise of power under Regulation 270 of M.P. Police Regulation but not at the behest of the higher officer. It is further submitted by Shri Nahar learned counsel that from the language of

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Section 270 of M.P. Police Regulation, it can be construed that the power of review can be exercised *suo-motu* by the authority who is competent to decide the appeal against the original order or appellate order but in this case, the DIG has not passed the order in *suo-motu* exercise of power to review, in fact, the DIG Ratlam initiated the proceedings in pursuant to the dictate of respondent Additional DGP, Vigilance and IG Ujjain.

[7] It is further submitted by the learned counsel that the Additional DGP of Vigilance is not an appellate authority and is not a superior authority in terms of paragraph No.270 of M.P. Police Regulation hence impugned action taken at his behest is per se illegal . In support of his contention, learned counsel for the petitioner has placed reliance on following judgments: [i] ***Joint Action Committee of Air Line Pilots Assn. of India v/s Civil Aviation*** reported in ***(2011) 5 SCC 435***. [ii] ***B.R. Surendranath Singh v/s Department of Mines and Geology*** reported in ***(2011) 5 SCC 449***. [iii] ***Mahesh Singh Sikarwar v/s Union of India and others*** reported in ***2022 (4) JLJ 183***. [iv] ***Mansukhlal Vithaldas Chauhan v/s State of Gujarat*** reported in ***(1997) 7 SCC 622***.

[8] *Per contra*, the learned Government Advocate for the respondent/State contended that this issue is no more *res-integra*, the DIG issued a notice in the exercise of the power conferred under paragraph No.270 of the regulation as he found that the penalty imposed to the petitioner was disproportionate to the gravity of the charges. The procedure adopted by the revisional authority is well within the jurisdiction and there is no illegality. Learned Government Advocate has placed reliance on two judgments, *firstly*, ***Govind Mane v/s State of***

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M.P. and others reported in ***(2009) 3 M.P.L.J.***, *secondly*, ***Mahendra Prasad Ojha v/s State of Madhya Pradesh and another in Writ Petition No.8601/2021*** decided on ***05.01.2022***.

Appreciations & Conclusion

[9] The facts of the case as narrated above are not in dispute. A departmental inquiry was conducted against the petitioner and in pursuant to the charge-sheet dated 29.09.2014 the petitioner participated in the departmental inquiry ,the Inquiry Officer found two charges proved against him. Vide order dated 31.10.2014, the S.P. Neemuch imposed the punishment of stoppage of one increment which the petitioner did not challenge the findings, as well as penaulty on merit and the same, has attained finality. The case of the petitioner was taken in Police HQ by the DIG (vig) and instruction was issued to take up the matter in the exercise of power under Regulation 270 of M.P. Police Regulation, hence a show-cause notice dated 23.02.2015 was issued by DIG Ratlam Range to the petitioner that the punishment imposed is on a lower side as compared to the gravity of the charges. The petitioner submitted a reply but it was not found satisfactory and the punishment of dismissal has been passed on 30.03.2015 and in this order, the revisional authority has mentioned that the Additional DGP, Vigilance, Police Headquarter, Bhopal examined the matter and DIG Ujjain directed for taking up this matter under paragraph No.270. The regulation under Paragraph No.270 of M.P. Police Regulation is reproduced below:

> "270. (1) Every order of punishment or exoneration, whether original or appellate shall be liable to revision suo-motu by any authority superior to the authority making the order.

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> (2) Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority on application made in that behalf by the person
> against whom the order has been passed.
> **Explanation** :-For the purpose of this clause the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.
> (3) The provisions of Regulation 266k, 267, 268 and 271 shall be as nearly as may be apply to an application for revision.
> (4) The revising authority may for reason to be recorded in writing exonerate or may remit vary of enhance the punishment imposed or may order a fresh enquiry of the taking of further evidence in the case: Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard."

[10] The aforesaid provision says that every order of punishment or exoneration whether original or appellate shall be liable to be revision suo-motu by the authority or superior to the authority making the order. Clause 2 also provides that every appellate order by a final Appellate Authority shall be liable to be a revision by the such final appellate authority. The Additional Police DGP, Vigilance is a post created in a Police headquarters to examine the conduct of the police officer who is not working as per the police regulations. The job of the Vigilance Officer is to monitor the conduct of the officers whether they have committed any misconduct and be awarded an appropriate punishment. In such scrutiny, the case of the petitioner was taken up and found that he was not adequately punished looking at the gravity of the misconduct found proved hence, the DIG issued a show-cause notice to the petitioner under paragraph No.270 of the regulation.

[11] The learned counsel for the petitioner has placed strong reliance

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on a judgment passed by this Court in ***Suresh Pal Singh v/s State of M.P.*** reported in ***ILR M.P. 2395*** in which the Coordinate Bench has considered the scope of Regulation 270 of the M.P. Police Regulation and held that one authority may start action under Regulation 270 of the M.P. Police Regulation proceeded to some extent and then interest the work to another authority. In the aforesaid case, the Additional DGP himself set aside the punishment order of imposition of a fine of Rs.5,000/- and then directed the IG to review the matter under Regulation 270 hence, in such circumstances this court deprecated the procedure adopted under Section 270 but in the present case the matter was taken by the Vigilance and found that the punishment was on a lower side, therefore, by way of an internal working and set up in the police department, the competent authority initiated the proceedings under Regulation 270 of the M.P. Police Regulation, therefore, there is no error in the procedure adopted by the authorities under Regulation 270 of the M.P. Police Regulation. So far as charges and findings recorded by the authorities are not challenged and argued, as the petition is filed only on the limited ground i.e. power and manner in which the revisional authority exercised the power under Regulation 270 of M.P. Police Regulation.

In view of the above discussion, Writ Petition being devoid of substance and merit is dismissed.

No order as to cost.

(VIVEK RUSIA)
J U D G E

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