

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

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 4426 OF 2021

ROOP SINGH

Versus

STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Smt. Smarti Sharma, Advocate for the petitioner.

Ms. Ekta Vyas- PL for the respondents/State.

RESERVED ON: 19/09/2025

ORDER PASSED ON: 24/09/2025

O R D E R

Petitioner has invoked Article 226 of the Constitution of India challenging the order dated 31/5/2017 (Annexure P/3), whereby, respondent no.4 has inflicted punishment of withholding of one increment with cumulative effect on account of his unauthorized absence for 99 days. Petitioner has also challenged the order dated 16/1/2018 (Annexure P/2) and order dated 17/7/2018 (Annexure P/1) passed by respondents no.3 & 2 respectively, whereby, his appeal and mercy appeal, filed against the punishment order, have been dismissed.

2. The petitioner at the relevant time was working as Head Constable and was posted at Police Station Banmore, District Morena. He proceeded for leave from 1/4/2015 to 10/4/2015, however, did not resume his duties on expiry of leave period. He remained absent for the period from 10/4/2015 to 20/6/2015 for a period of 72 days. Again, he was granted leave from 23/9/2015 to 28/9/2015, however, again, he overstayed the leave period and resumed his duty only on 20/10/2015. Thus, he remained absent for 27 days from duty.

3. The department took a decision to conduct a departmental enquiry for unauthorized absence of petitioner for 99 days. Accordingly, the Deputy Superintendent of Police (Traffic), Morena was appointed as Enquiry Officer while Assistant Sub Inspector, Police Line, Morena was appointed as Presenting Officer. The Enquiry Officer conducted the departmental enquiry, wherein, 4 prosecution witnesses were examined in addition to 12 documents exhibited in support of charges. The petitioner cross-examined each of the prosecution witnesses. The Enquiry Officer, thereafter, submitted his report on 31/3/2017, wherein, he found the charge proved against the petitioner. The disciplinary authority, issued a show cause notice to the petitioner on 11/4/2017 (Annexure P/5) forwarding thereunder copy of enquiry report and asking him to give his explanation to the findings recorded by the enquiry officer. The petitioner failed to submit his explanation. Accordingly, respondent no.4 passed the impugned order dated 31/5/2017 (Annexure P/3), thereby, imposing punishment of withholding of one increment with cumulative effect on the petitioner. The period of absence from 10/4/2015 to 20/6/2015 (72 days) and from 23/9/2015 to 20/10/2015 (27 days) was regularized as per Rule 24 of the M.P. Civil Services (Leave) Rules.

4. The petitioner being aggrieved challenged the punishment order before respondent no.3 by filing an appeal, which was dismissed vide order dated 16/1/2018. Thereafter, the mercy appeal filed by petitioner was also dismissed by respondent no.2 vide order dated 17/7/2018. Challenging these orders, petitioner has filed the present writ petition.

5. The learned counsel for the petitioner has challenged the impugned orders primarily on the ground that the presenting officer was not appointed, and instead, the enquiry officer himself not only examined the prosecution witnesses but also cross-examined the petitioner and has thus, acted as a prosecutor as well as a judge. She further submitted that the role of enquiry officer has to be impartial and the fact that he has acted on behalf of prosecution seriously doubts his impartiality. In support of her submissions,

she has relied upon the Apex Court decision in the case of *Union of India & Ors. Vs. Ram Lakhan Sharma, reported in (2018)7 SCC 670* as also the orders passed by this Court in the case of *Santosh Kumar Daharia vs. Union of India & Ors., passed in W.P. No.1399/2000* as well as *Lal Singh Jatav vs. State of M.P. & Ors., passed in W.P. No.5062/2010*.

6. The learned counsel for the petitioner also submitted that the petitioner remained absent from duty on account of illness of his father and of his own illness. The petitioner duly submitted sickness as well as fitness certificates for both the occasions, however, the respondent no.2 to 4 have completely escaped consideration of these certificates while passing the impugned orders. She submitted that the documents with regard to illness filed by petitioner during course of enquiry were also not considered. She also pointed out that the petitioner has an unblemished service record consisting of 28 prizes for honest and dedicated service. It is her submission that because of his good performance, petitioner was recently promoted as Head Constable on 1/4/2025. Thus, the respondents failed to take note of the past service of the petitioner. The learned counsel also submitted that the respondent/authorities erred in taking into account the minor punishment of censure imposed upon the petitioner without realizing the fact that the petitioner has already been punished for the aforesaid absence. She, thus, submitted that the consideration of past service of the petitioner without putting him to notice, is illegal.

7. On the other hand, counsel for the State supported the impugned orders and submitted that the petitioner remained absent for 99 days without sanctioning of leave by the competent authority. She submitted that the petitioner is a member of disciplined force and remaining absent unauthorisedly for 99 days amounts to gross indiscipline on his part and therefore, imposition of minor punishment on the petitioner, in fact, shows the lenient view adopted by the authorities. The learned counsel further submitted that the punishment has been imposed upon the petitioner after appreciation of evidence collected during course of enquiry and this Court

in exercise of powers of judicial review would not sit as appellate authority over the view taken by the departmental authorities. She also raised an objection with regard to delay and laches on the part of petitioner inasmuch as present litigation has been filed after lapse of about 3 years. She therefore, prays for dismissal of the petition.

8. Considered the arguments and perused the record.

9. The objection raised by respondents' counsel regarding delay of about three years in filing the present writ petition needs to be considered first. It is seen that the order on his mercy appeal was passed by respondent no.2 on 17.07.2018 and, the present writ petition was filed on 19.02.2021. The petitioner has stated in para 4 of writ petition, that initially he could not understand the effect of punishment imposed on him. When the increment was not added to his salary and he was informed that the increment is stopped for all times to come, he could realize the permanent loss caused to him. He then took steps for filing of present writ petition. However, countrywide lockdown was imposed due to CORONA pandemic and, therefore, there occurred delay in filing the petition.

10. The explanation given by petitioner for delay in filing the writ petition may not perfectly justify the delay. However, it is a fact that a permanent financial loss is caused to the petitioner because of impugned punishment. Further, from March' 2020, a countrywide lockdown was imposed due to CORONA pandemic. Therefore, this Court does not find it proper to dismiss this petition on the ground of delay and laches. The objection raised by respondents' counsel is, therefore, rejected.

11. The petitioner has also raised an objection that the presenting officer was not appointed in the enquiry and the enquiry officer himself assumed the role of presenting officer. The submission of learned counsel for the petitioner that the presenting officer was not appointed, is found to be contrary to the record inasmuch as one Shri Shivraj Singh Chauhan, Assistant Sub Inspector, Police Line, Morena was appointed as presenting officer. The question thus remains as to whether the questions asked by

enquiry officer to the petitioner would vitiate the enquiry proceedings or not?

12. The learned counsel for the petitioner has placed heavy reliance upon the Apex Court decision in the case of **Ram Lakhan Sharma (supra)**. In that case, the Apex Court has held that there is no requirement of appointment presenting officer in every case. Whether, non-appointment of presenting officer vitiates the enquiry, would depend upon the facts of each case. Para 34 of the aforesaid decision being relevant, is reproduced hereunder for ready reference:-

“34. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context, reference is made of a case of this Court in Punjab National Bank v. Kunj Behari Misra [Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783] . In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in para 10 of the judgment is as follows: (SCC p. 90)

“10. ... ‘7. Action on the enquiry report.—(1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and

record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.”

13. The same legal position is reiterated by this Court in the cases of ***Santosh Kumar Daharia (supra)*** and ***Lal Singh Jatav (supra)***.

14. Considering the aforesaid legal position, if the facts of the present case are seen, it is found that firstly the charge levelled against the petitioner and his defence, both are based upon the documentary evidence, therefore, even if, the enquiry officer has put certain questions to the petitioner, same may not vitiate the enquiry procedure. Further, if the questions put-forth by the enquiry officer to the petitioner are seen, they are general in nature and do not amount to rigorous cross-examination of the petitioner by enquiry officer. It is worth to mention here that the questionnaire in relation to petitioner has been captioned as कूट परीक्षण (cross-examination), however, the questions putforth by the enquiry officer to the petitioner may not amount to cross-examination in strict sense. Therefore, the objection raised by petitioner's counsel regarding non-appointment of present officer is hereby rejected.

15. Coming on to merits of the case, the absence of petitioner for a period of 99 days in aforesaid two spells is not in dispute. Petitioner in his defense submitted the sickness/fitness certificates for both occasions in addition to the documents regarding illegal of his father as well as his own illness. As many as four prosecution witnesses were examined during the course of enquiry. Their deposition has been reproduced in the enquiry report. Apart from Head Constable Chandan Singh Jadon (PW/1), no

witness has stated anything about the material submitted by the petitioner in support of his absence. Shri Jadon in his submission has duly confirmed that the petitioner has submitted the medical prescriptions and the medical certificate for his absence from 8/4/2015 to 17/6/2015. He further stated that the petitioner had also submitted the medical certificate for his subsequent absence. Enquiry Officer submitted his report on 31/3/2017. A perusal of the report goes to show that after reproducing the deposition of four prosecution witnesses as well as the statement of the petitioner, the enquiry officer has narrated the defense of the petitioner and thereafter jumped to the conclusion that the petitioner remained unauthorizedly absent for 99 days, which shows his negligence and indiscipline towards service. Two paragraphs in which, he has given his findings, being relevant, are reproduced hereunder:-

"विभागीय जाँच में उपलब्ध साक्ष्य का विश्लेषण"

अपचारी प्र० आ० 43 रूप सिंह तत्कालीन पुलिस लाईन मुरैना हाल थाना बामौर के विरुद्ध लगाया गया आरोप दिनांक 10.04.2015 से 20.06.2015 तक 72 दिवस तथा दिनांक 23.09.2015 से 20.10.2015 तक 27 दिवस कुल 99 दिवस अनाधिकृत रूप से अनुपस्थित होकर सेवा शर्तों का उल्लंघन कर स्वेच्छाचारिता एवं अनुशासन हीनता प्रदर्शित करना। जाँच के दौरान कथन अभियोजन साक्षी क्रमांक -01 प्र० आ० 0 मोहरि 385 चन्दन सिंह जादौन पुलिस लाईन मुरैना, अभियोजन साक्षी क्रमांक 02 उ० नि० (अ) आ० एस० राजौरिया पुलिस अधीक्षक कार्यालय मुरैना, अभियोजन साक्षी क्रमांक -03 स० उ० नि० (अ) विनय ठाकुर पुलिस अधीक्षक कार्यालय मुरैना, अभियोजन साक्षी क्रमांक -04 भारत सिंह यादव रक्षित निरीक्षक पुलिस लाईन मुरैना के कथन लिये गये एवं अपचारी प्र० आ० 0 को कूट परीक्षण के दौरान बचाव का युक्तियुक्त अवसर प्रदान किया गया। प्र० आ० 0 द्वारा संतोषजनक जवाब नहीं दिया गया एवं बचाव दस्तावेजों में भी किसी प्रकार का कोई ठोस दस्तावेज पेश न करते हुए मात्र औपचारिक मेडीकल सर्टीफिकेट प्रस्तुत किये गये हैं जो चिकित्सालय जिला शहडोल के हैं अभियोजन साक्षी गणों के कथनों में आई साक्ष्य एवं अभियोजन दस्तावेज 01 लगायत 12 तक के आधार पर अपचारी प्र० आ० 43 रूप सिंह के विरुद्ध लगाया गया आरोप पूर्णतः प्रमाणित पाता हूँ।

जांच निष्कर्ष:

विभागीय जांच के दौरान लिये गए अभियोजन साक्षियों के कथन एवं संलग्न दस्तावेजी साक्ष्य से स्पष्ट है कि अपचारी प्र० आर० 43 रूप सिंह गोण्ड के विरुद्ध आरोपित आरोप- "दिनांक 10.04.2015 से 20.06.2015 तक 72 दिवस तथा दिनांक 23.09.2015 से 20.10.2015 तक 27 दिवस कुल 99 दिवस अनाधिकृत रूप से अनुपस्थित होकर सेवा शर्तों का उल्लंघन कर स्वेच्छाचारिता प्रदर्शित करना"। को पूर्णतः पाता हूँ।

उपरोक्त विभागीय जांच में जांच के दौरान अपचारी प्र० आर० को बचाव का पूर्ण अवसर प्रदान किया गया। उक्त विभागीय जांच प्राकृतिक न्याय के सिद्धांत के आधार पर की गई है।

अतः विभागीय जांच प्रतिवेदन वैधानिक कार्यवाही हेतु कृपया प्रेषित है।"

16. Bare perusal of findings recorded by the enquiry officer reveals that the documents, including the medical certificates, submitted by the petitioner, have not been referred to in the findings recorded by the enquiry officer. The order passed by the disciplinary authority dated 31/5/2017 is also placed on record as Annexure P/3. Disciplinary authority also after referring to the proceedings of the enquiry, has referred to the petitioner's previous absence for which he was inflicted punishment of censure, directly passed the impugned order of stoppage of one increment with cumulative effect. The disciplinary authority also failed to take into account the specific defence taken by the petitioner with regard to illness of his father as also his own illness. The documents in support of his defence are also not considered by the disciplinary authority.

17. The appellate authorities while considering the appeal as also the mercy appeal, have also not considered this important aspect of the matter.

18. Remaining absent from duty may not in itself be a misconduct unless such absence is intentional and willful. In other words, if the delinquent furnishes sufficient explanation for his absence, same may not construe a misconduct entailing imposition of punishment. Thus, it was

mandatory for the enquiry officer as also by the disciplinary/appellate authority to have considered the specific defence taken by the petitioner alongwith the documents submitted by him. However, the authorities have miserably failed to consider this important aspect and have imposed the impugned punishment presuming the absence of petitioner itself as a misconduct.

19. Considering the aforesaid, this Court is of the view that the impugned orders passed by respondent no.2 to 4 suffer from the defect of non-application of mind for want of consideration of the defence of the petitioner as also the documents submitted by him in support thereof.

20. Consequently, orders dated 17/7/2018 (Annexure P/1), 16/1/2018 (Annexure P/2) & 31/5/2017 (Annexure P/3) are hereby set aside. The matter is remitted to respondent no.4 to reconsider the entire matter keeping in view the observations made hereinbefore and pass fresh orders in relation thereof. It is further clarified that if the fresh order is passed in favour of petitioner, the increment which was stopped pursuant to the order dated 31/5/2017 shall be restored in favour of petitioner.

21. With the aforesaid, petition stands allowed and disposed of.

(ASHISH SHROTI)
JUDGE

JPS/-