

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 4259 / 2009 (s)

Rajendra Nagar s/o Late R V Nagar

Vs.

M P Road Transport Corporation,
Bhopal

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[O R D E R]

09/12/2010

The petitioner before this Court has filed the present petition being aggrieved by order dt. 25/11/2008 passed by the M P Road Transport Corporation dismissing the petitioner from service and directing recovery of Rs.214051/-. The contention of the petitioner is that he was appointed on 28/8/1974 in the services of the respondent Corporation and was posted as Depot Manager, Dewas on 27/4/04. The petitioner has further stated that while he was serving as Depot Manager, Dewas two conductors working under him namely Ramprasad Verma and Shankar Patel assaulted a fellow conductor on 29/3/99 and a criminal case was registered against them. The petitioner has further stated that both the conductors were convicted for offences u/Ss. 324/34 and 506 of the IPC and thereafter appeal was also preferred by them before this court. It has also been

stated that their conviction was not stayed. Resultantly an order was passed on 25/4/2000 dismissing Ramprasad Verma and Shankar Patel from service. The petitioner has further stated that the orders of dismissal were challenged by the aforesaid two persons before the Labour Court and by an order dt. 28/7/04 an award was passed in their favour setting aside the dismissal orders and directing reinstatement. The petitioner has further stated that the respondent M P Road Transport Corporation preferred an appeal before the Industrial Tribunal and the appeals preferred by Ramprasad Verma and Shankar Patel were allowed meaning thereby the order of the Labour Court was set aside. The petitioner has further stated that after an award was passed by the labour court on 28/7/04 Ramprasad Verma and Shankar Patel were reinstated at Dewas Depot and one of the aforesaid persons namely Shankar Patel was transferred to Alirajpur Depot. As already stated earlier an appeal was preferred before the Industrial Court and finally by an order dt. 24/6/05 the award of the Labour Court was set aside meaning thereby the dismissal of Ramprasad Verma and Shankar Patel was upheld. Petitioner has further stated that he has received a communication dt. 9/7/05 (Annexure P/ 5) issued by Regional

Office, Indore directing the petitioner to terminate the service of Ramprasad Verma and Shankar Patel by virtue of the order passed by the Industrial Court dt. 6/7/05. The petitioner has further stated that in the aforesaid communication he was also directed to inform other offices in case the employees in question have been transferred out of Dewas depot. The petitioner's contention is that keeping in view the instruction received from the department dt. 9/7/05 he has immediately passed an order on 13/7/05 terminating Ramprasad Verma and in respect of Shankar Patel as Shankar Patel was transferred to Alirajpur depot, information was send through registered post. The petitioner has further stated that the office peon was directed to send information through registered post and a postal receipt was also received from the registering officer of the post office. The contention of the petitioner is that a registered letter was despatched on 20/7/05. The petitioner has further stated that Shankar Patel who was transferred to Alirajpur was subsequently transferred to Shajapur and submitted an application for grant of voluntary retirement under the VRS Scheme on 7/7/05 and the same was accepted by respondent No.1 on 29/8/05. Shankar Patel also received all his dues in the

matter. The contention of the petitioner is that there was no lapse at any point of time on his part in respect of taking a prompt action in the matter and inspite of this a show cause notice was issued on 22/11/05 (Annexure P/ 13) directing the petitioner to file a reply as to why he has not informed the Shajapur depot ie., the place where Shankar Patel was transferred from Alirajpur. The petitioner did submit a reply to the aforesaid show cause notice on 15/12/05 and categorically stated that information was forwarded to Alirajpur depot and being a Depot Manager at Dewas he was certainly not aware of the fact that Shankar Patel has subsequently been transferred to Shajapur depot. The petitioner has further stated that the disciplinary authority not being satisfied with the reply of the petitioner issued a charge sheet on 7/1/06 (Annexure P/ 15) and the petitioner did submit a reply denying all the charges levelled against him. A detailed and exhaustive enquiry took place in the matter and the enquiry officer has held the petitioner guilty of the charges levelled against him. The disciplinary authority based upon the findings arrived at by the enquiry officer has passed the impugned order dt. 25/11/08 terminating the petitioner from service and directing recovery of Rs.214051/- ie., the amount which was

paid to Shankar Patel by virtue of his voluntary retirement under the VRS Scheme. Learned sr. counsel for the petitioner has vehemently argued before this court that the findings arrived at by the enquiry officer are perverse findings. He has drawn attention of this court towards the postal receipt as well as towards endorsement of the post master on letter dt. 30/6/06 wherein it is reflected that a letter was despatched on 20/7/07 to the Alirajpur depot. The contention of the learned counsel for the petitioner is that immediately after receiving the information from the Indore Regional Office vide letter dt. 9/7/05 a prompt action was taken by him and Ramprasad Verma was terminated on 13/7/05 and information was communicated to Alirajpur depot ie., to the place where Shankar Patel was transferred from Dewas. He has stated that the petitioner has not committed any misconduct and by no stretch of imagination the petitioner could have been punished in the peculiar facts and circumstances of the case. Learned counsel for the petitioner has also argued before this court that Shankar Patel was later on transferred from Alirajpur to Shajapur depot and the Depot Manager at Alirajpur was also charge sheeted vide charge sheet dt. 27/1/06 and he was punished only with the punishment of censure by the

competent disciplinary authority whereas in case of the petitioner he has been made a scapegoat and the order of dismissal has been passed. Learned counsel for the petitioner has also argued before this court that transfers / postings of employees were never done by the petitioner at any point of time and the transfer orders were issued either by the Managing Director at Bhopal or by the Regional Manager, posted at Indore and both the authorities were well aware of the legal proceedings pending in the case of Ramprasad Verma and Shankar Patel, therefore, the Regional Office could have communicated the judgment of the Industrial Court directly to Shajapur Depot. Learned counsel for the petitioner has stated before this court that for a lapse which has not been committed by the petitioner and for a lapse which has been committed by the Managing Director / Headquarter in accepting the VRS without verifying the service record of the employee is now being attributed to the petitioner and therefore as he has not committed any misconduct the impugned order (Annexure P/ 1) deserves to be set aside.

Learned counsel for the respondent M P Road Transport Corporation has argued before this court that the petitioner was

guilty in not forwarding the information to Shajapur depot and was also guilty in submitting an incorrect postal receipt as the letter was despatched on 28th whereas the date 16/7/05 finds place in the receipt. He has further argued that principles of natural justice and fair play were followed while conducting departmental enquiry and the petitioner was extended all possible opportunity to defend himself during the departmental inquiry proceedings. He has also argued that on account of lapse committed by the petitioner the respondent corporation has suffered a financial loss of about 2.00 lacs and therefore by impugned order dt. 25/11/08 the petitioner has rightly been dismissed from the services and recovery of 214051/- has rightly been ordered in the facts and circumstances of the case. He has prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record.

In the present case the petitioner at the relevant point of time was posted as Depot Manager, M P Road Transport Corporation, Dewas and two conductors namely Ramprasad Verma and Shankar Patel assaulted a fellow conductor on 29/3/99. They were finally convicted in the criminal case and an

order of dismissal was passed on 25/4/2000. The labour court has directed their reinstatement vide order dt. 28/7/04 and they were reinstated back in service. The respondent Corporation has preferred an appeal before the Industrial Tribunal and during the pendency of appeal Shankar Patel was transferred out of Dewas to Alirajpur Depot and was subsequently transferred to Shajapur from Alirajpur depot. The Industrial Court vide order dt. 24/6/05 has set aside the order passed by the labour court meaning thereby the order of dismissal dt. 25/4/2000 was revived. The Regional Office vide letter dt. 9/7/05 has informed the petitioner to take appropriate action in the matter meaning thereby to terminate Ramprasad Verma and Shankar Patel and the same communication also reveals that the petitioner was directed to inform the other offices in case the employees have been transferred out of Dewas. The petitioner in response to the aforesaid information immediately terminated Ramprasad Verma on 13/7/05 who was posted at Dewas depot and information was forwarded to Alirajpur as directed by the Regional Office as Shankar Patel was transferred to Alirajpur depot. The postal receipt is also on record as well as endorsement of the post master is also on record and the

endorsement of the post master reveals that the letter was despatched on 20/7/05. The Alirajpur depot has not denied receipt of the aforesaid letter and the record is also silent about the date of receipt of the letter at Alirajput depot. The employee in question Shankar Patel as was transferred from Alirajpur to Shajapur, Alirajpur depot has also forwarded the information to Shajapur depot and while all these was going on Shankar Patel submitted an application for VRS on 7/7/05 and the same was accepted by the Headquarter on 29/8/05. It is really strange that the Head Office without verifying the service record of an employee, without verifying the place of posting and without verifying the other details in a most mechanical and casual manner has accepted the voluntary retirement on 29/8/05. In the present case, the record reveals that the other Depot Manager who was posted at Alirajpur was also charge sheeted for a similar lapse vide charge sheet dt. 27/6/06 and a minor punishment of censure has been inflicted upon him on 28/6/08 whereas in the case of the petitioner charge sheet was issued on 7/1/06 and after holding a detailed enquiry the service of the petitioner have been put to an end. This court has carefully scanned the enquiry report as well as other documents and is of

the considered opinion that the findings arrived at by the enquiry officer are perverse warranting interference by this court. It is a case where the department wanted to fasten the liability upon some individual as they have accepted voluntary retirement of Shankar Patel and the petitioner has been made an scapegoat. The petitioner who was posted at Dewas was certainly not having the knowledge of transfer of Shankar Patel from Alirajpur to Shajapur. Not only this, nothing prevented the Regional Manager posted at Indore to inform the Alirajpur depot and Shajapur depot directly as the Office at Indore is also aware of all transfers and posting of the employees working under the Indore Region. The respondents have passed the order of dismissal in the case of petitioner whereas in case of other employee a punishment of censure has been inflicted. In the present case, the order of dismissal clearly shows that the respondents have conducted a departmental enquiry and have passed the order of dismissal and have discriminated the petitioner in the matter of award of punishment also. An act which was not committed by the petitioner as he was not the person who has gone to the post office to despatch the letter, has been made the basis of issuance of charge sheet and a capital

punishment has been imposed upon the petitioner.

Resultantly the impugned order dt. 25/11/08 is hereby quashed. The respondents are directed to reinstate the petitioner in service forthwith. However, the petitioner shall not be entitled for full backwages and shall be entitled for 25% backwages and all other consequential benefits. With the aforesaid this petition stands allowed. No order as to costs.

(S C SHARMA)
J U D G E