

Virmani Singh Tomar Vs. State of M.P. & Ors.

30.11.2017

Shri Jitendra Sharma, learned counsel counsel for the petitioner.

Shri Abhishek Mishra, learned Govt. Advocate for the respondents/State.

With consent heard finally.

Present petition has been preferred by the petitioner against the order dated 21-04-2017 (Annexure P/1) passed by the Commandant, 5th Battalion, Special Armed Forces -respondent No.3 herein, whereby the petitioner has been placed under suspension. Petitioner is also aggrieved by issuance of charge sheet vide order dated 25-04-2017 (Annexure P/2) passed by the same authority whereby the departmental enquiry has been initiated against the petitioner.

Precisely stated facts of the case are that petitioner is working as Assistant Sub Inspector (ministerial) in 5th Battalion, Special Armed Forces (SAF), Morena. It appears that one constable Jhamlal substantively posted in 5th Battalion, SAF, Morena, but later on sent on deputation in Economic Offence Wing (EOW) in 1996 and sought promotion at par with his junior colleague constable Sarmanlal who by the time promoted in the battalion and rose upto the post of Platoon Commander. The order of promotion was to be taken by the Commandant, 5th Battalion, SAF, Morena because promotion of the said constable from the post of constable to Head Constable was required to be considered by respondent No.3 and further promotions were required to be issued by the Inspector General and therefore, office of Additional Director General, SAF, Bhopal directed the Inspector General, SAF Gwalior to give proforma promotion to the said constable through respondent No.3. It further appears that the said constable Jhamlal preferred a writ petition

No.5014/2015 in which the respondents department submitted through Government counsel that in view of the order dated 21-03-2016 passed by the Dy. Inspector General, EOW Bhopal, petitioner Jhamal is going to be promoted shortly and then petition was disposed of accordingly. It appears that respondent No.3 directed the petitioner to prepare a note sheet for considering promotion of said Jhamlal and order has been passed. Meanwhile on some complaint, promotion of aforesaid constable was questioned wherein the question regarding competence of respondent No.3 was put to doubt to issue promotion order and therefore, one inspector was appointed as enquiry officer and issued a memo dated 22-04-2017 to the petitioner alleging therein that at the relevant point of time petitioner did not place GOP 75/97 and other relevant provisions for promotion of constable before respondent No.3 and therefore, erroneously respondent No.3 passed the order of promotion. It appears that suspension order preceded and thereafter impugned charge sheet has been issued.

According to learned counsel for the petitioner, it was the duty of respondent No.3 to duly vet the documents and authority who is assigned the power, must know its power and jurisdiction. Being ministerial staff, it was not his responsibility to apprise the authority about jurisdiction or power. He has to apply the directions. Therefore, no arbitrariness has been caused by him and not violated any service rules. Thus, suspension and issuance of charge sheet are bad in law and arbitrary exercise of power.

Learned counsel for the respondents opposed the prayer made by the petitioner and placed the order dated 11-05-2017 in which respondent No.3 revoked the suspension order, therefore, grievance of petitioner regarding suspension no longer subsists. As far as grievance regarding departmental enquiry is

concerned police headquarters written a letter dated 18-04-2017 in which it was found that mistake was on the part of petitioner and therefore, proceedings have been initiated against the petitioner and promotion order of constable Jhamlal has been set aside. Petitioner prepared note sheet on 07-04-2016 without mentioning provisions of GOP 75/97 and without examining eligibility of Jhamlal for promotion, therefore, he committed mistake. Note sheet initiated by the petitioner is placed as Annexure R/2. Petitioner concealed the provisions of GOP in preparation of note sheet and misled the competent authority. He prayed for dismissal of petition.

Heard learned counsel for the parties and perused the documents appended to the petition.

Scope of judicial review in departmental enquiry is very limited. Right from the Hon'ble Apex Court to this Court, it is consistent view that scope of judicial review in departmental enquiry is very limited. Here, in the present case, petitioner has received the charge sheet with specific allegations as referred in the charge sheet. Petitioner can plead and prove his innocence by filing reply and by submitting evidence in his support and contending that he was not responsible for any misconduct as imputed by the respondents. If petitioner can plead and prove about scope of his duty then submission as advanced by petitioner would stand vindicated.

The issuance of charge-sheet was also considered by the Division Bench of this Court in the matter of **Jagdish Baheti vs. High Court of M.P. and others, 2015 (3) MPHT 172**. In the said case, the question of interference just after initiation of departmental enquiry has been dealt with elaborately by the Court. Arguments advanced by the petitioner were in respect of alleged innocence of petitioner which was on merits but not in respect of scope of judicial review in departmental enquiry.

Employer is best judge in such type of matter. Let employer take call first regarding role of petitioner *vis a vis* alleged misconduct.

No case for interference is made out at this stage. Petition is hereby dismissed.

Anil*

(Anand Pathak)
Judge

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