



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT
ON THE 21st OF AUGUST, 2025
WRIT PETITION No. 4093 of 2012

P.K.JAIN

Versus

STATE OF M.P. AND OTHERS

Appearance:

Shri Alok Katare – learned counsel for the petitioner.

Shri B.M. Patel – learned Government Advocate for the respondents/State.

ORDER

With the consent of the parties, the matter is heard finally.

2. This petition, under Article 226 of Constitution of India, has been filed seeking the following relief (s):

- (i) "That, the present petition filed by the petitioner may kindly be allowed;
- (ii) That, the order Annexure P/1 dated 23.5.2012 issued by the respondent No.1 may kindly be directed to be quashed.



(iii) That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner.”

3. It is submitted by the learned counsel for the petitioner that the petitioner was initially appointed on the post of Assistant Audit Officer in the year 1976. Subsequently the petitioner was promoted on the post of Assistant Director M.P. Life Insurance Corporation on 20.3.1991. Earlier M.P. Life Insurance Corporation was a part of Finance Department and thereafter, it has been merged in the Finance Department. The petitioner was working in the said cadre since 1991 and he became entitled for senior scale and selection scale but the same was not given to the petitioner; therefore, the petitioner submitted the representation to the respondents which is pending consideration whereas the benefit of senior pay scale has been extended to the juniors to the petitioner on 1.1.2005 but the senior selection pay scale has not been given to the petitioner due to some reason. The petitioner was not allowed to assume the duty on the post of treasury officer. Petitioner, after obtaining permission on 27.9.2008 from Collector, Chattarpur, went to Bhopal on 28.9.2008 and assumed the duty on post of Treasury Officer at Chattarpur and thereafter, he submitted a T.A. Bill for Rs.880/- which was not sanctioned to the petitioner. It is further submitted that petitioner, after obtaining due permission of Collector, is entitled for TA Bill of Rs.880/- . It is further submitted that on 10.11.2009, a show cause notice was issued by the Collector to the petitioner, proposing the imposition of the punishment of withholding two annual increments without cumulative effect. Subsequently, the petitioner submitted a reply to the aforesaid show cause notice, vide Annexure P/3 dated 23.01.2010. After



submission of the said reply, the matter was referred to the Public Service Commission on 28.07.2011, after a delay of more than one year and six months which was kept pending by the Public Service Commission and verge of retirement of the petitioner the Public Service Commission has given his reply on 18.1.2012 wherein it was proposed to recover an amount equal to two annual increments from the petitioner as no annual increments are payable to the petitioner in view of the fact that he is superannuating on 31.5.2012. It is further submitted that before passing impugned order dated 23.5.2012 (Annexure P/1), no show cause notice has been issued to the petitioner regarding recovery of an amount equal to two annual increments from salary. The order of punishment could not have been passed without issuing a proper notice and without affording the petitioner an opportunity of being heard. It is further submitted that by the impugned order the respondents have converted the punishment of withholding two increments to the punishment of recovery and as per M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 sub rule (3) of Rule 10, recovery of his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order is not applicable in the present case because in the present case there is no loss caused by the petitioner to Government and there is no breach of any order or there is no negligence on the part of the petitioner. Petitioner has submitted his T.A. Bill in a *bona fide* manner. It is further submitted that impugned order dated 23.5.2012 has been served on 1.6.2012 to the petitioner deliberately after his retirement i.e. after 31.5.2012. The said impugned order is non-speaking and unseasoned order, without considering the facts and ground mentioned in his reply. He relied on the judgment



passed by the Supreme Court in the case of **ORYX Fisheries Private Limited v. Union of India and others** (2010) 13 SCC 427.

4. Per contra, the learned Government Advocate opposed the prayer made by the learned counsel for the petitioner and supported the impugned order. It is further submitted that the petitioner retired on 31.05.2012, and therefore, the punishment was rightly converted into a recovery of Rs.34,268/- It is further submitted that the petitioner was afforded a proper opportunity of hearing, and therefore, the impugned order has been passed in accordance with law; therefore, he prays for dismissal of the petition.

5. Heard the learned counsel for the parties and perused the record.

6. The Rule 10 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 reads as under:

10. Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor penalties:-

- (I) Censure;
- (II) Withholding of his promotion,
- (III) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;
- (IV) withholding of increments of pay or stagnation allowance;

7. The relevant paras 36 and 37 in the case of **ORYX Fisheries Private Limited (supra)** reads as under:

36. The appellant gave a reply to the show-cause notice but in the order of the third respondent by which registration certificate of



the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The cancellation order is totally a non-speaking one. The relevant portion of the cancellation order is set out:

“Sub. : Registration as an Exporter of Marine Products under the MPEDA Rules, 1972.

Please refer to Show-Cause Notice No. 10/3/MS/2006/MS/3634 dated 23-1-2008 acknowledged by you on 28-1-2008 directing you to show cause why the certificate of registration as an exporter, No. MAI/ME/119/06 dated 3-3-2006 granted to you as merchant exporter should not be cancelled for the following reasons:

- 1. It has been proved beyond doubt that you have sent sub-standard material to M/s Cascade Marine Foods, LLC, Sharjah.*
- 2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of the defective cargo sent by you and have now evaded from the responsibility.*
- 3. This irresponsible action has brought irreparable damage to India's trade relation with UAE.*

Your reply dated 4-2-2008 to the show-cause notice is not satisfactory because the quality complaint raised by M/s Cascade Marine Foods, LLC, Sharjah have not been resolved amicably. Therefore, in exercise of the power conferred on me vide Rule 43 of the MPEDA Rules, read with Office Order Part II No. 1840/2005 dated 25-11-2006, I hereby cancel Registration Certificate No. MAI/ME/119/06 dated 3-3-2006 issued to you. The original



certificate of registration issued should be returned to this office for cancellation immediately.

In case you are aggrieved by this order of cancellation, you may prefer an appeal to the Chairman within 30 days of the date of receipt of this order vide Rule 44 of the MPEDA Rules.”

(emphasis supplied)

37. Therefore, the bias of the third respondent which was latent in the show-cause notice became patent in the order of cancellation of the registration certificate. The cancellation order quotes the show-cause notice and is a non-speaking one and is virtually no order in the eye of the law. Since the same order is an appealable one it is incumbent on the third respondent to give adequate reasons.

8. The impugned order dated 23.5.2012 is a non-speaking and unreasoned order. Before issuing the impugned order, a proper show cause notice mentioning why the amount equal to the withholding of two annual increments without cumulative effect will not be recovered from the petitioner was not issued. Even in the reply dated 23.1.2010, the petitioner mentioned in detail the facts and grounds, which were not considered before issuing the impugned order dated 23.5.2012. Without considering the grounds and facts mentioned, it was only stated that the reply given by the petitioner is not satisfactory. The para-2 of the impugned reads as under:

2. श्री जैन द्वारा अपना प्रतिवाद उत्तर दिनांक 23.01.2010 को विभाग को प्रस्तुत किया गया। प्रतिवाद उत्तर में लेख किया गया है कि उनके द्वारा की गई यात्रा के लिये कलेक्टर द्वारा मौखिक निर्देश दिये गये थे। इस संबंध में कलेक्टर छतरपुर की टीप के आधार पर श्री जैन से प्राप्त उत्तर में वर्णित तथ्यों को पूर्णतः असत्य एवं समाधानकारक नहीं पाये जाने के कारण श्री जैन की दो वेतनवृद्धियां असंचयी प्रभाव से रोके जाने का अनंतिम प्रशासकीय निर्णय लेकर प्रकरण सचिव मध्यप्रदेश लोक सेवा आयोग इंदौर को सहमति हेतु दिनांक 28. 07. 2011 को भेजा गया।



It is evident that before issuing the impugned order, proper show cause notice has not been given by the respondent and no provision of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 sub rule (3) of Rule 10 has been mentioned for converting the punishment of withholding two annual increments to recovery. The petitioner has already been retired on 31.3.2012 and there is no pecuniary loss caused to the government as they have not paid the TA bill amount of Rs.880/- to the petitioner.

9. Considering the aforesaid and circumstances of the case, the impugned order dated 23.5.2012 is hereby quashed by allowing the petition.

10. If any amount has been recovered by the respondent/concerned authority from the petitioner, the same will be returned to him within a period of one month from the date of receipt of certified copy of this order.

11. With the aforesaid observation, the petition is allowed.

(Anand Singh Bahrawat)
Judge

Ahmad