



W.P. No. 23677 of 2021

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

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

WRIT PETITION No. 23677 of 2021

BRAHM KISHORE DIXIT

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Raghvendra Dixit – Advocate for petitioner.

Shri B.M. Patel – learned counsel for respondent/State.

Reserved on : 06.8.2026

Pronounced on : .01.09.2026

ORDER

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

“i-That, the impugned orders (Ann. P/1 to P/3) passed by respondents no. 2 to 4 may kindly be quashed.

That, cost and other relief which may deem fit may also be granted.

2. Learned counsel for petitioner submits that petitioner is serving as an Assistant Sub-Inspector in the Police Department and is presently posted at Police Line, District Gwalior. It is further submitted that on the basis of a

**W.P. No. 23677 of 2021**

complaint published in the newspaper *Daily Sandhya Sudarshan Express*, petitioner and two other officials were placed under suspension and attached to the Police Line, Gwalior, vide order dated 22.10.2018. Thereafter, a charge-sheet dated 06.12.2018 was issued alleging that petitioner had cooperated with Sub-Inspector Kripa Shankar Awasthi in his illegal act, failed to report the incident to the superior officers and acted in violation of Para 64(4) of the Police Regulations. Thereafter, petitioner submitted his reply to the charge-sheet on 14.12.2018 and also sought certain documents for the purpose of the departmental enquiry. The Superintendent of Police, Gwalior, appointed the Enquiry Officer and the Presenting Officer vide order dated 29.12.2018 and the suspension of petitioner was subsequently revoked. During the departmental enquiry, statements of the witnesses were recorded and petitioner was afforded an opportunity to cross-examine them. After conclusion of enquiry, a final show-cause notice dated 11.10.2019 was issued on the basis of the enquiry report to which petitioner submitted his reply on 24.10.2019. Thereafter, the disciplinary authority passed the impugned punishment order imposing the penalty of withholding one annual increment with cumulative effect. Aggrieved by the punishment order, the petitioner preferred a departmental appeal before respondent No. 3 which was dismissed vide order dated 24.06.2020. Thereafter, petitioner filed a mercy petition before respondent No. 2, which was also dismissed vide order dated 04.06.2021.

3. Learned counsel for petitioner further submits that the Enquiry Officer did not find any charge proved against petitioner except to the

**W.P. No. 23677 of 2021**

limited extent that he failed to inform his superior officers about the incident. The allegations relating to bribery and misconduct were found proved only against Sub-Inspector Kripa Shankar Awasthi. Despite the findings of the Enquiry Officer, the disciplinary authority imposed the same punishment upon petitioner without assigning any valid reason. It is further submitted that the disciplinary authority disagreed with the findings of the Enquiry Officer without recording reasons or following the procedure prescribed under Rule 15(2) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. No fresh show-cause notice or opportunity of hearing was granted to petitioner before imposing the punishment. Thus, the impugned order is in violation of the principles of natural justice. The punishment imposed upon petitioner is wholly disproportionate. Although the serious charges were proved against Sub-Inspector Kripa Shankar Awasthi and not against the petitioner yet both were awarded the same punishment. The appellate and revisional authorities failed to consider this material aspect and passed non-speaking orders. That, the findings recorded by the disciplinary authority are contrary to the enquiry report. The appellate and revisional authorities also failed to consider the grounds raised by the petitioner and mechanically affirmed the punishment. Therefore, it is prayed that the petition may be allowed and the impugned orders may be quashed.

4. *Per contra*, learned counsel for respondent/State submits that departmental enquiry was conducted strictly in accordance with the prescribed procedure after affording full opportunity of hearing to the

**W.P. No.23677 of 2021**

petitioner. It is further submitted that petitioner was charged with failing to report the illegal act of Sub-Inspector Kripa Shankar Awasthi to the superior authorities and for violation of the Police Regulations. The Enquiry Officer found Charge No. 1 partly proved to the extent that petitioner failed to inform his superior officers about the incident. The disciplinary authority has rightly imposed the punishment of withholding one annual increment with cumulative effect. Piqued, petitioner preferred a departmental appeal and thereafter a mercy petition, both of which were rightly dismissed after due consideration, affirming the punishment order. There is no violation of Rule 15(2) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, or of the principles of natural justice, as petitioner was afforded adequate opportunity during the departmental enquiry. It is further submitted that the punishment order, as affirmed by the appellate and revisional authorities, is legal, proper and based on the evidence available on record. Hence, no interference by this Court is warranted.

5. Heard learned counsel for the parties and perused the record.
6. The charges levelled against Sub Inspector Kripashanker Awasthi and Brahm Kishore Dixit are quoted below for ready reference and convinience:

“आरोप

उप निरीक्षक कृपाशंकर अवस्थी के विरुद्ध अधिरोपित आरोप—

1— दिनांक-18-10-2018 को प्रातः 10:42 बजे दुर्गा माता विसर्जन में रायपुर तालाब पर डियूटी हेतु रवाना किये जाने के उपरांत थाना प्रभारी के संज्ञान में लाये बिना स्वेच्छा पूर्वक एमपी 07/सीबी-2715 की चैकिंग करना तथा आचार संहिता का भय दिखाकर व्यवसायी रवि अग्रवाल के पास रखे



W.P. No.23677 of 2021

दस लाख रुपये में से तीन लाख (300000/-) रुपये अपने पास बिना किसी विधिवत जप्ती के रखना तथा शिकायत होने पर आवेदक को वापस कर संदिग्ध आचरण प्रदर्शित करना।

2- थाना प्रभारी को बिना बताये डियूटी स्थान रायपुर तालाब छोड़कर टोल बैरियर पर पहुंचकर वहां ट्रैफिक डायवर्ट हेतु लगे सउनि ब्रम्हकिशोर दीक्षित एवं आरक्षक भारत खत्री को नियम विरुद्ध तरीके से अपने साथ ले जाकर वाहन चैकिंग कर स्वेच्छाचारिता प्रदर्शित करना।

3- पदीय कर्तव्यों का दुरुपयोग कर भ्रष्ट आचरण प्रदर्शित करना।

सउनि बी० के० दीक्षित, के विरुद्ध अधिरोपित आरोप

1- दिनांक-18-10-2018 को उप निरीक्षक कृपाशंकर अवस्थी के अवैध कृत्य में सहयोग कर संदिग्ध आचरण प्रदर्शित करना तथा घटनाक्रम की जानकारी वरिष्ठ अधिकारियों को न देना।

2- सउनि जैसे जिम्मेदार पद पर रहते हुये एवं नियमों की जानकारी होते हुये दिनांक-18-10-18 को उप निरीक्षक कृपाशंकर अवस्थी के अवैध आदेश का पालन कर पुलिस रेग्युलेशन के पैरा क्र० 64(4) के विपरीत कार्य करना।
जाँचकर्ता अधिकारी द्वारा अपचारी उनी० कृपाशंकर अवस्थी के विरुद्ध आरोपित उक्त तीनों आरोप प्रमाणित पाये गये तथा अपचारी स०उ०नि० बी० के० दीक्षित के विरुद्ध अधिरोपित आरोप क्रमांक-01 प्रमाणित पाया गया तथा आरोप आरोप क्रमांक-02 प्रमाणित नहीं पाया गया।”

7. The relevant paras of impugned punishment order dated 28.11.2019 passed by the Disciplinary Authority is quoted below for ready reference and convenience:

“अपचारी सउनि बी०के०दीक्षित के विरुद्ध जाँचकर्ता अधिकारी द्वारा आरोप क्रमांक-1 के अंशभाग “घटनाक्रम की जानकारी वरिष्ठ

**W.P. No.23677 of 2021**

अधिकारियों को न देना “जब प्रमाणित पाया गया है. तो उसका आरोपी कमांक 1 के अवैध कृत्य में सम्मिलित होना स्वाभाविक है तथा उसकी घटना स्थल पर उपस्थिति भी प्रमाणित है। साथ ही अपचारी के द्वारा प्रस्तुत जवाब में ऐसे कोई नवीन तथ्य उल्लेखित नहीं किये गये हैं, जिससे उसके विरुद्ध आरोप का प्रमाणित अंशभाग प्रभावित होता हो । अतः प्रस्तुत जवाब समाधानकारक नहीं है।

अतः विभागीय जाँच नस्ती एवं आरोपीगण उप निरी० कृपाशंकर अवस्थी एवं सउनि बी०के०दीक्षित द्वारा प्रस्तुत जवाब के अध्ययन उपरांत उनके विरुद्ध प्रमाणित पाये गये आरोपों की गंभीरता को ध्यान में रखते हुए आरोपीगण उप निरी० कृपाशंकर अवस्थी एवं सउनि बी०के०दीक्षित को “एक-एक वेतनवृद्धि के बराबर राशि की कमी संयची प्रभाव से किये जाने” के दण्ड से दण्डित किया जाता है। उप निरी० कृपाशंकर अवस्थी एवं सउनि बी०के० दीक्षित की निलंबन अवधि दिनांक 23.10.18 से 18.12.18 तक निलंबन में शुमार की जाती है। इस अवधि में आरोपीगण जो प्राप्त कर चुके हैं, उसके अतिरिक्त कुछ भी देय नहीं होगा।”

8. Perusal of record reveals that petitioner was serving as an Assistant Sub-Inspector in the Police Department and was posted at Police Line, District Gwalior. On the basis of a complaint published in the newspaper *Daily Sandhya Sudarshan Express*, petitioner and two other officials were placed under suspension and attached to Police Line, Gwalior, vide order dated 22.10.2018. Charge-sheet dated 06.12.2018 was issued against

**W.P. No. 23677 of 2021**

petitioner alleging that he had cooperated with Sub-Inspector Kripa Shankar Awasthi in his illegal act, failed to inform his superior officers about the incident and acted in violation of Para 64(4) of the Police Regulations. Petitioner submitted his reply to the charge-sheet on 14.12.2018 and also sought certain documents for the purpose of the departmental enquiry. It is evident from the record that the Superintendent of Police, Gwalior, appointed the Enquiry Officer and the Presenting Officer vide order dated 29.12.2018. The suspension of petitioner was thereafter revoked. During the departmental enquiry, statements of the witnesses were recorded and petitioner was given an opportunity to cross-examine them. After completion of the enquiry, a final show-cause notice dated 11.10.2019 was issued to petitioner along with the copy of enquiry report. Petitioner submitted his reply on 24.10.2019. Thereafter, the Disciplinary Authority passed the impugned order imposing the penalty of withholding one annual increment with cumulative effect. Thereafter, petitioner preferred an appeal which was dismissed by respondent No. 3 vide order dated 24.06.2020. Being aggrieved, petitioner submitted mercy petition before respondent No. 2 which was also dismissed vide order dated 04.06.2021.

9. On careful perusal of the enquiry report, it is found that the Enquiry Officer did not find the main allegations against the petitioner proved. The allegation relating to bribery and misconduct was found proved against Sub-Inspector Kripa Shankar Awasthi. So far as the petitioner is concerned, the Enquiry Officer found only that he had failed to inform his superior officers

**W.P. No. 23677 of 2021**

about the incident. Despite the aforesaid finding of the Enquiry Officer, the disciplinary authority imposed the penalty of withholding one annual increment with cumulative effect upon the petitioner. However, no proper reason has been assigned for differing from the findings of the Enquiry Officer. It is also clear from the record that the disciplinary authority, while differing from the findings of the Enquiry Officer, did not follow the procedure contemplated under Rule 15(2) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. No fresh opportunity was given to petitioner to explain the proposed disagreement before the punishment was imposed. The punishment imposed upon the petitioner also appears to be disproportionate, particularly when the serious allegations relating to bribery and misconduct were found proved against Sub-Inspector Kripa Shankar Awasthi and not against the petitioner. Despite this distinction, the same punishment was imposed upon both. The appellate and revisional authorities have also not properly considered the aforesaid material aspects and have mechanically affirmed the punishment imposed upon the petitioner. Their orders do not deal with the specific grounds raised by the petitioner and therefore, the orders cannot be said to be reasoned and speaking orders.

10. The principal question which arises for consideration is whether the punishment imposed upon the petitioner can be sustained when the Enquiry Officer itself found that the serious allegations relating to bribery and misconduct were proved against co-delinquent Sub-Inspector Kripa Shankar



W.P. No. 23677 of 2021

Awasthi, whereas, so far as the present petitioner is concerned, only the allegation of failure to inform his superior officers about the incident was found proved. Despite this material distinction in the nature and gravity of the misconduct and the respective role of the two delinquent employees, the same punishment of withholding one annual increment with cumulative effect was imposed upon both.

11. The Enquiry Officer found the allegations of bribery and misconduct proved against Sub-Inspector Kripa Shankar Awasthi. However, against the petitioner, the Enquiry Officer found only that he had failed to inform his superior officers about the incident. The serious allegation of bribery was not found proved against the petitioner.

12. Despite this clear difference, the Disciplinary Authority imposed the same punishment of withholding one annual increment with cumulative effect upon both employees. The order does not give any proper reason why a person against whom the serious allegation of bribery was proved and a person against whom only failure to report the incident was proved should receive the same punishment.

13. The Hon'ble Supreme Court in ***Rajendra Yadav v. State of Madhya Pradesh, (2013) 3 SCC 73***, has held that the principle of equality also applies between co-delinquents. The punishment should be considered by comparing the involvement of the employees in the same incident. A person who has committed a more serious act cannot be given a lesser punishment while a person having a lesser role is given a more severe punishment.



W.P. No.23677 of 2021

14. The same principle has been applied by the ***Karnataka High Court in Sri M.S. Kadkol v. State of Karnataka, W.P. No.110912/2017 (S-KAT)***, decided on 31.01.2022. In that case, two employees were involved in the same incident and both were given the punishment of compulsory retirement. However, one employee had played the main and active role, while the role of the petitioner was only passive. The Karnataka High Court held that the two employees could not be treated alike when their roles were materially different. The Court held that treating two unequals equally in the matter of punishment violates Article 14 of the Constitution. The punishment imposed upon the petitioner was therefore set aside and the matter was sent back for reconsideration of a lesser punishment.

15. The facts of the present case are similar. Here also, the main allegation of bribery and misconduct was proved against the co-delinquent, whereas the petitioner was found guilty only of failing to inform his superior officer. Therefore, the petitioner had a much lesser role in the incident.

16. The Hon'ble Supreme Court has also explained in *Administrator, Union Territory of Dadra and Nagar Haveli v. Gulabhia M. Lad*, (2010) 5 SCC 775, that while deciding the punishment, the authority has to consider several factors, including the seriousness of the misconduct, the nature of duties, the responsibility of the employee and other relevant circumstances. Therefore, the role and responsibility of each delinquent employee are important while deciding punishment.



W.P. No. 23677 of 2021

17. Similarly, in the case of *Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372*, the Supreme Court held that parity in punishment can be claimed where the employees are similarly placed. At the same time, where their role, responsibility or conduct is different, those differences have to be considered while deciding the punishment.

18. Thus, merely because two employees were involved in the same incident or were proceeded against in the same departmental enquiry does not mean that they must necessarily receive the same punishment. Their individual role, responsibility and degree of misconduct have to be considered separately.

19. In the present case, the Disciplinary Authority failed to consider this important difference. The petitioner was not found guilty of the main act of bribery or misconduct. Nevertheless, he was given the same punishment as the employee against whom those serious allegations were proved. This Court is conscious that normally the High Court does not interfere with the punishment imposed in a departmental enquiry. However, interference is justified where the punishment is clearly disproportionate or where the authority has failed to consider a relevant and important circumstance.

20. In the present case, the difference in the role of the petitioner and the co-delinquent was a very important circumstance. The disciplinary authority, appellate authority and revisional authority failed to properly consider it. Their orders therefore cannot be sustained.

21. There is also another serious defect in the matter. The Enquiry Officer



W.P. No. 23677 of 2021

did not find the main allegations against the petitioner proved. The Disciplinary Authority differed from the Enquiry Officer but did not follow the procedure under Rule 15(2) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 and did not give the petitioner a proper opportunity to explain the proposed disagreement.

22. Therefore, the punishment imposed upon the petitioner suffers from both procedural illegality and disproportionality. The petitioner cannot be treated in the same manner as the co-delinquent when his role and proved misconduct were substantially lesser.

23. The Karnataka High Court in the case of **Sri M.S. Kadkol (supra)** has held as under:

*21. Based on the finding in the departmental enquiry the appointing authority has decided to impose a penalty of compulsory retirement. Then the question is, to what extent the High Court can interfere in the decision taken by the appointing authority in punishing the delinquent employee? Law in this regard is more than well-settled is an understatement. The ratio laid down in the case of **Union of India and Others vs. P. Gunasekaran reported in (2015) 2 SCC 610** and the ratio laid down in the judgments cited by the learned Government Advocate for the respondents, needs to be borne in mind while considering the legality of punishment imposed.*

22. In terms of the ratio laid down in the judgments referred above, the High Court can interfere with the quantum of punishment imposed only in a situation where the punishment shocks the conscience of the Court or if it is disproportionate to the offence committed.



W.P. No.23677 of 2021

23. *The disciplinary authority while punishing the petitioner has exercised the powers vested under Rule 8 of the Karnataka Civil Services (C.C.A.) Rules, 1957. The said Rule would read as under:*

“8. Nature of penalties.- One or more of the following penalties for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely:-

(i) Fine in the case of Government servants belonging to State Civil Services, Group-D;

(ii) Censure;

(iii) "Withholding of increments;

(iii-a) Withholding of promotion"

(iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the State Government or the Central Government, any other State Government, any person, body or authority, to whom the service of the Officer had been lent;

(iv-a) Reduction to a lower stage in the time scale of pay for a period with a specific direction as to whether or not the Government servant will earn increments of pay during the period of such reduction with reference to the reduced pay or whether the pay shall remain constant and with a further direction whether on the expiry of the period of penalty the reduction will or will not have the effect of postponing the future increments of his pay;

(v) "Reduction to a lower time scale of pay, grade, post or service which shall, unless otherwise directed, be a bar to the promotion of the



W.P. No.23677 of 2021

Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding:-

(a) Seniority and pay in the scale of pay, grade, post or service to which the Government servant is reduced;

(b) Conditions of restoration to the scale of pay grade or post of service from which the Government servant was reduced and his seniority and pay on such restoration to that scale of pay, grade, post or service;

(vi) Compulsory retirement;

(vii) Removal from service which shall not be a disqualification for future employment;

(viii) Dismissal from service which shall ordinarily be a disqualification for future employment:

[Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the order of the disciplinary authority, no penalty other than those specified in clauses (vi) to (viii) shall be imposed for an established charge of corruption.]

[Explanation 1.-For purposes of this proviso the expression "corruption" shall have the meaning assigned to the expression "Criminal misconduct by a public servant" in section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).]

[Explanation 2.-The following shall not amount to a penalty within the meaning of this rule:-

(i) Withholding of increments of a Government servant for failure to pass a departmental



W.P. No. 23677 of 2021

examination in accordance with the rules or orders governing the Service or post or the terms of his appointment;

(ii) Stoppage of a Government servant at the efficiency bar in the time scale on the ground of his unfitness to cross the bar;

(iii) Non-promotion, whether in a substantive or officiating capacity, of a Government servant, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

(iv) Reversion to a lower Service, grade or post of a Government servant officiating in a higher Service, grade or post on the ground that he is considered, after trial to be unsuitable for such higher Service, grade or post or on administrative grounds unconnected with his conduct (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer and the like);

(v) Reversion to his permanent Service, grade or post of a Government servant appointed on probation to another Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation:

(vi) Compulsory retirement of a Government servant in accordance with the provision relating to his superannuation or retirement;

(vii) Termination of services:-

(a) Of a person employed under an agreement, in accordance with the terms of such agreement; or

(b) Of a Government servant appointed in

**W.P. No.23677 of 2021**

probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or

(c) Of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Karnataka State Civil Services (Temporary Services) Rules, 1967.”

24. The expression ‘One or more of the following penalties for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely’ on plain reading seems to suggest that the power on the disciplinary authority is very wide. However, it is to be borne in mind that every wide power has its own inherent or inbuilt limitations. The limitations may be either express or implied. When it comes to provisions dealing with the power to impose a penalty conferring power to impose any one or more of the wide range of penalties provided in the provisions, as found in Rule 8 referred above, then the limitation on the exercise of such power is to be read into the provisions keeping in the mind the doctrine of proportionality of punishment. Merely because statute invests the authority with the power to choose any of the several prescribed punishments, it cannot be said that the authority has the unfettered power to impose any of the prescribed punishments. When the statute confers a wide range of choices while imposing punishment, the authority imposing punishment should exercise discretion with utmost caution. While the authority is deciding on the punishment, the doctrine of proportionality should be the background score till the exercise is completed. If punishment imposed is disproportionate to the offence alleged, then it violates the right guaranteed under Article 21 of the Constitution of India.

25. The expression ‘good and sufficient reasons’ found in rule 8 referred to above, is an express limitation imposed on the power

**W.P. No.23677 of 2021**

that unerringly leads to the conclusion that the punishment imposed necessarily has to be, proportionate to the offence committed, logical and convincing.

*26. From the records, it is apparent that delinquent government official No.1 in the departmental enquiry paid Rs.50/- to the petitioner. Admittedly, the demand of Rs.150/- for dispatching the file of Mr Chandragiri was made by delinquent No.1. The complainant has not paid any amount to the petitioner. Admittedly, the petitioner did not demand money from the complainant. From the finding arrived at by the enquiry officer, it is apparent that the role of the petitioner was passive. It is only delinquent No.1 who played an active role in demanding the bribe. It is also not forthcoming from the evidence that the petitioner demanded the bribe from delinquent No.1. It is not even alleged by the complainant that the petitioner demanded the money. Moreover, it is borne out from the record that no work of the complainant was pending with the petitioner. It is also an admitted fact that the complaint is not lodged against the petitioner. The PW1-the complainant in his evidence has not stated anything against the petitioner. No word is uttered by the complainant about the role of the present petitioner. The entire evidence of the complainant was against DGO-1 H.R.Naikar. Nevertheless, the fact that the petitioner has received Rs.50/- from DGO No.1 is admitted by the petitioner. The circumstances under which the money is received as stated earlier, facts that the money was traced in the socks worn by the petitioner by themselves speak a few things which can be easily termed as misconduct. And this misconduct cannot escape punishment. What would be the appropriate punishment for this misconduct? Though it is not for the high court to decide on the quantum of punishment, the high court can nevertheless review the quantum on the doctrine of proportionality. If punishment imposed is disproportionate to the misconduct or if it shocks the conscience of the Court same can be interdicted as held in the case of **Ranjit Thakur v/s. Union of India. (1987) 4 SCC 611***

**W.P. No.23677 of 2021**

27. *Does the punishment of compulsory retirement imposed on the petitioner pass the test of doctrine of proportionality is the question? As noted above, the complaint was against DGO-1. The trap laid was intended to catch DGO-1. Petitioner was found with part of the tainted money in the circumstances already discussed supra. Both delinquent employees are found guilty and have been retired compulsorily. However, what is strikingly evident is role and involvement of both differed significantly. Under these circumstances, the question is whether the punishment to both the employees should be the same or should it differ? The main accused against whom the complaint is filed has met with the punishment of compulsory retirement. When the present petitioner whose role appears to be extremely passive in the entire episode and more particularly in a situation where there is no complaint against the petitioner, he could not have been saddled with the same punishment imposed on another delinquent employee against whom there was a complaint regarding the demand for illegal gratification of Rs.150/-.*

28. *In the backdrop of these facts and discussions referred above on the scope and ambit of rule 8 of Karnataka Civil Services (C.C.A.) Rules, 1957 referred above, this Court finds that the punishment of compulsory retirement imposed on the petitioner is disproportionate to the nature and gravity of the offence. The said punishment treats the offence committed by the present petitioner on par with the offence committed by DGO-1 despite circumstances that are glaringly different.*

29. *The Hon'ble Apex Court in the matter of **Rajendra Yadav vs. State of Madhya Pradesh, (2013) 3 SCC 73**, has held that if the role of a person in the commission of an offence is less and passive in comparison with another playing an active role in its commission, then the person playing lesser role should not be imposed higher penalty than the one imposed on a person whose role and involvement is active. The logical corollary of the said ratio would mean punishment should be imposed*

**W.P. No.23677 of 2021**

considering the involvement of the accused in the commission of the offence. Applying the said ratio, the petitioner whose involvement in the commission of the offence is extremely passive, awarding the same punishment as awarded on delinquent government official No.1 who is the main accused, does not stand to reason. The involvement of the petitioner in the commission of the offence in comparison to the involvement of DGO-1 is significantly less. Thus, two un equals have been treated equally by imposing the same penalty. This violates the protection guaranteed under Article 14 of the Constitution of India. If the administrative action of punishment imposed, violates rights guaranteed under Article 14 of the constitution of India and the court finds it discriminatory and irrational then the order of punishment needs to be set aside in exercise of jurisdiction under Article 226. It is also borne out from the record that the petitioner was having 15 years of service as on the date of compulsory retirement. Thus this Court is of the view that the punishment is shockingly disproportionate. This Court has come to this conclusion keeping in mind the involvement of the petitioner in the entire episode discussed supra. Since the punishment imposed violates, the fundamental right guaranteed to the petitioner, this Court would step in and exercise its discretionary jurisdiction under Articles 226 and set aside the order of penalty of compulsory retirement.

30. It is the well-settled proposition of law that the Court cannot decide on the quantum of punishment to be awarded. This power exclusively lies with the appointing authority. The court can only say whether the punishment is disproportionate to the offence committed. If it is shockingly disproportionate then the Court can only remit the matter back to the disciplinary authority to enable it to impose appropriate punishment which necessarily has to be less than the punishment imposed earlier which is interdicted by this Court.

31. It is not the case of the respondents that the petitioner's service record is tainted. As already observed the petitioner's

**W.P. No.23677 of 2021**

right under Article 14 of the Constitution of India is violated. By setting aside the penalty of compulsory retirement, the matter is remitted to the disciplinary authority to decide on the quantum of punishment to be imposed on the petitioner. The remaining portion of the impugned orders is upheld.

32. Accordingly, the writ petition is allowed in part. Order dated 01.06.2016 in Application No.5791/2004 passed by the Karnataka Administrative Tribunal is set aside. The finding dated 14.08.2003 returned by the enquiry officer on the charges on the petitioner is confirmed. The punishment of compulsory retirement imposed on the petitioner under order bearing No.----231 ---- 2001, ---- dated 07.09.2004 is set aside and the matter is remitted to the disciplinary authority to pass appropriate order of punishment on the petitioner, which necessarily has to be lesser than the punishment imposed in terms of order dated 07.09.2004 in the light of what is discussed above.

33. Since the disciplinary enquiry was initiated in the year 2002, the disciplinary authority shall pass the appropriate order of punishment within two months from the date of receipt of the copy of the order. No order as to cost.

24. The Apex Court in the case of **Rajendra Yadav Vs. State of Madhya Pradesh and others** reported in **(2013) 3 SCC 73** has held as under:

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-

**W.P. No.23677 of 2021**

delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in a few judgments of this Court. The earliest one is DG of Police v. G. Dasayan [(1998) 2 SCC 407 : 1998 SCC (L&S) 557] wherein one Dasayan, a police constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In Shaileshkumar Harshadbhai Shah case [(2006) 6 SCC 548 : 2006 SCC (L&S) 1486] the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view that the principle laid down in the abovementioned judgments would also apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted

**W.P. No.23677 of 2021**

in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. The appellant is, therefore, to be reinstated from the date on which Arjun Pathak was reinstated and be given all consequential benefits as were given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

25. It is apposite to take note of the test laid down by Hon'ble Supreme Court for the purpose of deciding similarity of charges and proportionality of punishment. In the case of ***Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad (2010) 5 SCC 775*** it was laid down as under:-

“14. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts.

15. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many

**W.P. No.23677 of 2021**

factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination.”

(Emphasis Supplied)

26. The Apex Court in case of ***Lucknow Kshetriya Gramin Bank Vs. Rajendra Singh*** reported in (2013) 12 SCC 372 has held as under:

“19.3 Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the codelinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”

(emphasis supplied)



W.P. No.23677 of 2021

27. It cannot be doubted that the imposition of punishment depends upon nature and duties of each delinquent employee, role allegedly played by them, gravity of charges, loss caused, past record etc. If there is similarity of allegations which was established in the enquiry, the punishment should be similar and commensurate to the misconduct. If the charges established against delinquent employees are similar and some of them are inflicted with severe punishment whereas others were put to a comparatively advantageous position, it will be a fit case for interference by the Court in exercise of power under Article 226 of the Constitution.

28. With regard to parity in the matter of punishment with co-delinquents, the Hon'ble Apex Court in **Pawan Kumar Agarwala Vs. General Manager-II and Appointing Authority, State Bank of India and others** reported in **(2015) 15 SCC 184**, has held as under:

“17. The charge-sheet was issued on 28-10-2004 against the appellant making 6 allegations against him and it is undisputed fact that list of witnesses and the copies of the documents were not furnished to the appellant. Further, the disciplinary authority has reversed the findings on Charges 3 and 5 without giving an opportunity to the appellant to show cause in the matter, and thereafter, the order of removal was passed by the appointing authority on the advice of the CVO vide his opinion dated 1-2-2006 and further it is brought on record that similarly placed person, namely, Mr Pradeep Kumar Das, the Manager of Hallydayganj Branch, who has loaned the loan to one Mr Tapan Kumar Sangma, in his case they have imposed lesser punishment of withholding on increment thereby making



W.P. No.23677 of 2021

discrimination in differently treating the appellant herein, which is violation of Article 14 of the Constitution of India.”

29. Having carefully gone through the enquiry report as it is not a case of misappropriation or siphoning of funds on the part of the petitioner, the punishment awarded to petitioner is shockingly disproportionate to the guilt of petitioner and it deserves to be set aside as discriminatory attitude has been adopted by the Disciplinary Authority as well as by the Appellate Authority.

30. This Court is conscious of the fact that the High Court, while exercising its jurisdiction under Article 226 of the Constitution, while dealing with disciplinary proceedings, should restrict itself to the *Wednesbury Test* and not interfere in the orders of a disciplinary authority, which is quasi-judicial in nature, unless the punishment imposed is grossly disproportionate to the charges levelled. In the present case, the disparity in imposition of punishments would require judicial review.

31. The Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs Union of India** reported in **(1995) 6 SCC 749** has held as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings

**W.P. No.23677 of 2021**

*or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. **The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry** or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

32. Judicial review in disciplinary matters is limited to examining the

**W.P. No. 23677 of 2021**

fairness and legality of the inquiry, not re-appreciating evidence like an appellate court. The Court may interfere only where there is violation of natural justice, statutory rules, no evidence, perversity, or patent error in the findings. The disciplinary authority is generally the sole judge of facts.

33. Having considered the record and the submissions made by both sides, this Court finds that the Enquiry Officer found the serious allegations of bribery and misconduct proved against the co-delinquent Sub-Inspector Kripa Shankar Awasthi. **So far as the petitioner is concerned, only the allegation that he failed to inform his superior officers about the incident was found proved. Thus, the role of the petitioner was clearly lesser than that of the Sub-Inspector. Despite this difference, the same punishment of withholding one increment with cumulative effect was imposed upon both. The Disciplinary Authority also differed from the findings of the Enquiry Officer without following the procedure under Rule 15(2) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.** The appellate and revisional authorities also failed to consider these material aspects. In view of the law laid down by the Hon'ble Supreme Court in *Rajendra Yadav (supra)*, the punishment imposed upon co-delinquents has to bear a reasonable relationship with their respective roles and gravity of misconduct. **A person having a lesser role cannot be subjected to the same or a harsher punishment than the person whose role and misconduct were more serious.** Therefore, the punishment imposed upon the petitioner cannot be sustained and the matter



W.P. No. 23677 of 2021

deserves to be reconsidered by the competent authority in accordance with law. In these circumstances, the punishment imposed upon the petitioner cannot be sustained. The matter, therefore, deserves to be sent back to the Disciplinary Authority for reconsideration of the punishment.

34. Accordingly, the writ petition is allowed in part and disposed of with the following directions:

- (i) The punishment order dated 28.11.2019, appeal rejection order dated 24.06.2020 and the order dated 04.06.2021 passed in the mercy petition, insofar as they relate to the punishment imposed upon the petitioner, are hereby quashed;
- (ii) The matter is remitted to the Disciplinary Authority to reconsider the punishment of the petitioner and to pass a fresh, reasoned and speaking order, after giving the petitioner an opportunity of hearing and following the procedure prescribed under the Rules;
- (iii) While reconsidering the punishment, the Disciplinary Authority shall take into consideration that the role of the petitioner was lesser than that of co-delinquent Sub-Inspector Kripa Shankar Awasthi. The serious allegations of bribery and misconduct were found proved against the said Sub-Inspector, whereas only the failure to inform the superior officers was found proved against the petitioner;



W.P. No. 23677 of 2021

- (iv) In view of the difference in the role and gravity of misconduct, the punishment imposed upon the petitioner, if any, shall necessarily be lesser than the punishment imposed upon co-delinquent Sub-Inspector Kripa Shankar Awasthi;
- (v) The fresh order shall be passed within a period of two months from the date of receipt of a certified copy of this order;
- (vi) This Court has not expressed any opinion regarding the exact punishment to be imposed upon the petitioner. The same shall be decided by the Disciplinary Authority in accordance with law and in the light of the observations made above; and
- (vii) Pending interlocutory application, if any, shall stand disposed of.
35. Pending interlocutory application, if any, are disposed of.

**(ANAND SINGH BAHRAWAT)
JUDGE**

Ahmad