

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

BEFORE

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE PUSHPENDRA YADAV**

WRIT APPEAL NO. 1140 of 2025

ON THE 11th OF SEPTEMBER, 2025

ASHOK KUMAR TRIPATHI

Vs.

STATE OF MADHYA PRADESH & ORS.

APPEARANCE:

Shri Prashant Sharma – Advocate for the appellant.

*Shri Vivek Khedkar - Additional Advocate General/Senior
Advocate with Shri Sohita Mishra – Government Advocate for the
respondents/State.*

JUDGMENT

Per: Justice Anand Pathak,

1. The present appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant being crestfallen by the order dated 02-04-2025 passed by learned Single Judge in Writ Petition No.2907 of 2012 whereby the petition preferred by appellant (hereinafter referred to as “the petitioner”) has been dismissed.
2. Matter pertains to reinstatement of services of petitioner who has been given compulsory retirement by the respondents. A charge-sheet was issued to the petitioner with the allegation that on 04-08-2007 at 6:00 am when he was posted in guard duty at the bungalow No.16, Gwalior while on duty, he was found sleeping under the influence of alcohol. In departmental enquiry the charge was proved against the petitioner,

therefore, vide order dated 31-12-2007, the punishment of compulsory retirement was imposed upon the petitioner by the Commandant, 5th Battalion, SAF, Morena. Petitioner challenged the said order before Dy. Inspector General of SAF but failed and thereafter he preferred mercy petition before the Director General of Police, Bhopal but the same was also dismissed. Thereafter, learned Writ Court also dismissed the writ petition preferred by the petitioner, therefore, petitioner is before this Court.

3. It is the submission of learned counsel for the petitioner that without conducting any medical examination or breathe test merely on the basis of smell test, the doctor opined that liquor was consumed by the petitioner and on the basis of evidence of doctor, the charge of consumption of liquor was found proved. Merely on the allegation that petitioner did not respond to the call, he was found guilty of taking liquor while on duty and sleeping. The evidence surfaced on record has been totally discarded while passing the order of punishment against the petitioner. If the statement of doctor is seen then from his statement, it is not established that petitioner was in drunken condition but the doctor found him fit. It is further submitted that learned Writ Court did not consider the controversy in correct perspective and without considering the material aspects of the matter, dismissed the writ petition of petitioner. Thus, prayed for setting aside the impugned orders.
4. Learned counsel for the respondents while supporting the order passed by learned Writ Court, opposed the prayer and submits that since petitioner was in a disciplined force and posted in guard duty,

therefore, he was expected to remain more vigilant and serious towards his duty but he failed to do so, therefore, rightly he has been given compulsory retirement. Thus, prayed for dismissal of writ appeal.

5. Heard learned counsel for the parties and perused the documents appended thereto.
6. In the instant case, petitioner called in question the order dated 02-04-2025 passed by learned Writ Court in writ petition No.2907/2012. In writ petition petitioner challenged the order of his punishment passed by the authority vide order dated 31-12-2007 and later on confirmed vide order dated 18-03-2008 and again confirmed by the Director General of Police vide order dated 09-08-2011. Departmental enquiry was conducted against the petitioner in which evidence of Dr. A.K. Saxena was recorded. He specifically stated that his breathe contained fragrance of liquor.
7. An employee that too in police department if performs duties while in influence of liquor or in inebriated condition, is a recipe for law and order problem or dereliction of duty where many things are at stake. Therefore, conduct of police officer/employee is to be seen in that way. If police constable/employee is guilty of such misconduct then it is to be construed seriously. However, in the present case petitioner has been compulsorily retired and that is not disproportionate to the charge levelled against the petitioner.
8. The Apex Court in the case of **Union of India and Another Vs. K.G. Soni, (2006) 6 SCC 794**, discussed the disproportionate punishment as under:

“14. The common thread running through in all these

decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. *To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.*

16. *The above position was recently reiterated in Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain [(2005) 10 SCC 84 : 2005 SCC (L&S) 567].”*

- 9.** So far as scope of departmental enquiry is concerned, it is well

settled by the Apex Court in the case of **Kanwar Amninder Singh Vs. The Hon'ble High Court of Uttarakhand at Nainital Through its Registrar General, 2021 SCC OnLine SC 3338, State of Rajasthan and others Vs. Heem Singh, (2021) 12 SCC 569, State of Karnataka and another Vs. N. Gangraj, (2020) 3 SCC 423 and State Bank of India and another Vs. Ramesh Dinkar Punde, (2006) 7 SCC 212.**

10. Apart from the present departmental proceedings, earlier also petitioner was punished for remaining absent on the duty for which he was punished for stopping one increment with cumulative effect vide order dated 30-04-2007. Thus, the conduct of petitioner also assumes importance as he appears to be habitual of dereliction of duty.
11. Petitioner was the member of guard duty at the residence of a Protectee, therefore, he was required to be more vigilant for the purpose he was deputed and this intoxication may breed indiscipline and may cause accident/mishap at the hands of guard himself who is meant to protect the person for whose security he is deputed as guard.
12. Considering the rival submissions and also the discussion surfaced in the impugned order as well as looking to the facts situation, no case for interference is made out. Accordingly, the order passed by learned Writ Court is hereby affirmed and the writ appeal preferred by the petitioner is hereby dismissed.
13. Before parting, this Court craves attention of Senior Police Officers of Police Department about other Intoxication prevailing in the uniform clad departments like Police, said Intoxication is of

Mobile/Social Media. In the present case, where a police constable was posted on Guard Duties at the residence of a Protectee where he was found in dereliction of duties because of consumption of liquor but nowadays it is commonly observed that Guards on Bungalow duties, Court duties, Law and Order duties or duties *inter alia* where Police Personnel posted at a place where they have to do sedentary jobs, are involved in observing Mobile and Social Media. This creates indiscipline, casualness in duties and at times incriminating Social Media clips, pollutes the mind and affects disposition of policeman. This issue deserves attention of Senior Police Officers and remedial measures as well.

14. Senior Police Officers may think of incorporating sensitization programmes in police training centers for Constables, Sub Inspectors and other officers and a mechanism or constant supervision of police personnel and their presence on Social Media can be checked and verified when Police Personnel are on duty. This is the food for thought and Senior Police Officers may discuss and frame a mechanism as per their Rules, Regulations and Guidelines.
15. Copy of this order be sent to the Director General of Police, Police Headquarters, Jahangirabad, Bhopal, Addl. Director General of Police (Administration), Bhopal and Addl. Director General of Police (Training), Bhopal for information and contemplation.

(ANAND PATHAK)
JUDGE

(PUSHPENDRA YADAV)
JUDGE