

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

BEFORE

**HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 19th OF JANUARY, 2023**

WRIT PETITION No. 11310 of 2020

BETWEEN:-

**NARENDRA PRASAD AWASTHI S/O
JAMNAPRASAD, AGED ABOUT 54 YEARS,
OCCUPATION: EXCISE SUB INSPECTOR OFFICE
SAHAYAK AYUKT ABKARI VIBHAG INDORE
(MADHYA PRADESH)**

.....PETITIONER

(SHRI ANAND AGRAWAL, LEARNED COUNSEL FOR THE PETITIONER)

AND

**1. STATE OF MADHYA PRADESH THROUGH
COMMERCIAL TAX DEPARTMENT
PRINCIPAL SECRETARY MANTRALAYA
VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)**

**2. EXCISE COMMISSIONER COMMERCIAL
TAXES DEPARTMENT M.P. MOTIMAHAL,
GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI BHUWAN DESHMUKH, LEARNED GOVERNMENT ADVOCATE FOR
THE RESPONDENT/STATE)**

WRIT PETITION No. 11318 of 2020

BETWEEN:-

NARENDRA PRASAD AWASTHI S/O JAMNA

**PRASAD AWASTHI, AGED ABOUT 54 YEARS,
OCCUPATION: EXCISE SUB INSPECTOR OFFICE
OF ASSISTANT COMMISSIONER EXCISE
DEPARTMENT INDORE (MADHYA PRADESH)**

....PETITIONER

(SHRI ANAND AGRAWAL, LEARNED COUNSEL FOR THE PETITIONER)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
COMMERCIAL TAX DEPARTMENT
PRINCIPAL SECRETARY MANTRALAYA
VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)**

- 2. EXCISE COMMISSIONER COMMERCIAL
TAXES DEPARTMENT M.P. MOTI MAHAL,
GWALIOR (MADHYA PRADESH)**

....RESPONDENTS

**(BY SHRI BHUWAN DESHMUKH, LEARNED GOVERNMENT ADVOCATE
FOR THE RESPONDENT/STATE)**

*This petition coming on for admission this day, the court passed
the following:*

ORDER

The petitioner has filed the Writ Petition No. 1130 of 2020 being aggrieved by the order dated 29.01.2015 whereby a penalty stoppage of one increment with non-cumulative effect was imposed and also against the order dated 15.11.2019 whereby the appeal has been dismissed.

2. At the relevant point in time, this petitioner was posted as Excise Sub Inspector. He was served with show cause notice under Rule 16 of the M.P.Civil Services (Classification, Control and Appeal) Rules,

1966 seeking an explanation that in the year 2007 upto the month of August, 40 Court Cases were registered, but in the year 2008 upto August, only 9 court cases have been registered which is 80% less to the preceding years. The petitioner submitted his explanation to the show cause notice in detail and prayed for closure of the proceedings. The reply of the petitioner was not found satisfactory and vide order dated 29.01.2015 the punishment has been imposed with a stoppage of one increment with a non-cumulative effect. Being aggrieved by the aforesaid order, he preferred an appeal which has also been dismissed vide order dated 15.11.2019. Hence, this present petition.

3. The petitioner has assailed the impugned orders *interalia* on the ground that the reply submitted by him has not been considered properly while imposing the punishment. According to him, in the year 2007-2008 he registered 40 court cases and due to the said strict action there was a reduction in crime in the year 2008, hence, fewer cases were registered. If there was no crime and less criminal cases were registered, then that should be a matter of reward rather than punishment. Hence, the punishment is not justified, as no misconduct has been committed. Hence, prays that the impugned orders are liable to be set aside.

3. The respondents have filed a reply to the grounds taken in the writ petition raising objection regarding the territorial jurisdiction of this petition that the charge sheet was issued to the petitioner when he was posted at Sidhi, hence, no cause of action accrued within the territorial jurisdiction of this Bench of the High Court. After following due procedure and the principle of natural justice, minor punishment was imposed. The same is not liable to be interfered with by the High Court under Article 226 of the Constitution of India. The appellate authority has also considered the dereliction of duty by the petitioner, hence,

rightly upheld the order of punishment. No ground for interference is made out. The petition is liable to be dismissed.

Appreciation & conclusions

4. The petitioner was served with a show cause notice dated 03.03.2011. In the year 2007-2008 also he was posted in Devsar Circle, district Sidhi where five country-made liquor shops were there. As per the allegations in the charges levelled in the show cause notice that in the year 2007 upto the month of August 2007, 30 departmental cases and 46 Court cases in total 59 cases were registered, but in the year 2008, only 46 departmental cases and 9 Court cases were registered in total 58 cases. As per the comparative assessment, the registration of 9 Court cases is less than 80% of the cases registered in the previous year, which amounts to dereliction of duty. The petitioner has been served with a charge sheet only on the comparative assessment of the data taken in two years i.e. 2007 and 2008. No material has been collected or provided to the petitioner to show that in the year 2008, apart from 9 cases more crime under the Excise Act was committed and he did not register the cases. Merely, the cases registered in the year 2008 are less than 80% of the cases registered the previous year, it cannot be said that there was a crime, but no action was taken by the petitioner. The registration of less cases draws the inference that there was a strict supervision control of an officer, therefore, there was less crime in that year. It is a matter of rewarding the officer rather than punishing him.

5. It appears that the Excise department is insisting upon the registration of more and more excise cases by giving a target to their officers. This negative approach of the department increases the litigations in the Courts also. The petitioner can be held responsible for the registration of fewer criminal cases if there is the material that a large number of crime was reported to the Police Station but he did not

take any action. In show cause notice as well as in the impugned orders, no such material has been discussed; therefore, the very basis of issuing a charge sheet is unfounded and based on surmises. Hence, even the charges / show cause notice is not liable to be sustained, hence impugned order of punishment and order rejecting appeal appellate authority is liable to be quashed.

5. Resultantly, W.P.No.11310/2020 is allowed and the impugned orders dated 29.01.2015 and 15.11.2019 are hereby set aside.

WRIT PETITION NO.11318/2020

6. The petitioner has filed Writ Petition No.11318/2020 on the grounds that because of the above punishment imposed on him, the respondents have not considered his case for a grant of the first-time pay scale in the year 2009 and second-time pay scale in the year 2019 which became due to him. He was also denied the promotion in the year 2014 and his juniors have been promoted.

7. The respondents have filed the reply by submitting that the representation of the petitioner has been dismissed. It is further submitted that the petitioner was appointed in the year 1999. He completed his ten years of service to get the first time pay scale in the year 2009, but as per the Annual Confidential Reports of the last five years, he was not found eligible to get first time pay scale in the year 2009. The criteria for a grant of this benefit is the same as for a grant of promotion. The punishment imposed upon the petitioner vide order dated 29.01.2015 was pending till 2016, thus, he has been granted a first time pay scale on 01.07.2016.

8. Shri Agrawal, learned counsel appearing for the petitioner submits that the fate of this petition depends upon the final outcome of W.P.No.11310/2020.

9. Since the aforesaid writ petition has been allowed and the order of punishment has been quashed, this petition is allowed and the impugned order dated 29.04.2019, Annexure P-1 is also quashed. The case of the petitioner be considered afresh for grant of the first and second time pay scale and the promotion in accordance with law within 90 days from the date of production of the Certified Copy of this order.

(VIVEK RUSIA)
JUDGE

RJ