

(2011) 02 SHI CK 0102
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9200 of 2008

Basant Lal

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 12(2),
14(18), 15, 24(1), 9(2)
Constitution of India, 1950 — Article 14, 16

Citation : (2011) 02 SHI CK 0102

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing of office order dated 7.11.2001 Annexure A-2, Annexure A-4 copy of letter dated 25.2.2002 from Conservator of Forest, Shimla to Divisional Forest Officer, Rohru which was endorsed to Petitioner on 1.3.2002 by Divisional Forest Officer, Rohru informing the Petitioner dismissal of his appeal and office order dated 20.9.2002 Annexure A-6, with further prayer to grant all consequential benefits to Petitioner including promotion from due date with interest on the arrears of pay at the rate of 18% per annum.

2. The facts, in brief, are that the Petitioner was chargesheeted on 19.7.1999. The Petitioner submitted his written statement of defence. The Respondents without considering the defence of the Petitioner proceeded further with inquiry. In the inquiry, principles of natural justice and rules governing the same were not observed. The Inquiry Officer submitted the inquiry report on 7.11.2001 to Respondent No. 4 Divisional Forest Officer, who on 7.11.2001 itself imposed penalty of stoppage of one increment with cumulative effect.

3. The Petitioner filed appeal before the Conservator of Forest, who rejected the same as per letter dated 25.2.2002 which was endorsed by Respondent No. 4 on 1.3.2002 and communicated to Petitioner. The Petitioner filed review petition

before Principal Chief Conservator of Forests, who partly allowed the review petition vide office order dated 20.9.2002 and modified the penalty stoppage of one increment without cumulative effect. It has been alleged that office order dated 20.9.2002 is also not legally sustainable. The impugned orders Annexure A-2, Annexure A-4 and Annexure A-6 are illegal and have been passed in violation of Articles 14 and 16 of the Constitution, dehors the rules and regulations and against the principles of natural justice. The Petitioner did not examine himself nor Inquiry Officer examined the Petitioner under Rule 14 (18) of the CCS (CCA) Rules, 1965 (for short "Rules"). The Respondents did not supply the copy of inquiry report to Petitioner nor issued show cause notice to the Petitioner before imposing penalty. The Inquiry Officer submitted his inquiry report on 7.11.2001 and the Respondent No. 4 without waiting and application of mind imposed penalty on 7.11.2001 vide Annexure A-2.

4. The appointing authority of the Petitioner is Conservator of Forest. The Respondent No. 4 Divisional Forest Officer was not competent to impose penalty which has vitiated. The Petitioner has been wrongly superseded for promotion since January, 2001, others have been let off and only the Petitioner has been penalized.

5. The Respondents have contested the petition and have filed joint reply. It has been stated that charges against the Petitioner were proved during inquiry as per inquiry report submitted by the Inquiry Officer. The inquiry was conducted as per procedure. The inquiry report was not supplied to the Petitioner as the same was not demanded by the Petitioner. The appeal filed by the Petitioner before Respondent No. 3 was considered and was rejected. The revised petition filed before Respondent No. 2 was considered and a lenient view was taken by altering the penalty to that of stoppage of one increment without cumulative effect. The Divisional Forest Officer, Rohru being the disciplinary authority has issued order on 7.11.2001 on which date the Inquiry Officer submitted the inquiry report. It has been denied that the appointing authority of the Petitioner is Respondent No. 3 and not Respondent No. 4. The Petitioner has not filed any rejoinder.

6. I have heard the learned Counsel for the parties. It has been submitted by the learned Counsel for the Petitioner that Inquiry Officer submitted the inquiry report on 7.11.2001. The copy of the inquiry report was not supplied to the Petitioner nor any show cause notice was issued to the Petitioner in terms of sub rule (2) of Rule 15. The Respondent No. 4 in haste without application of mind, imposed penalty of stoppage of one increment with cumulative effect on 7.11.2001. The order dated 7.11.2001 Annexure A-2 is illegal and is liable to be set-aside. The appointing authority has not considered the case of the Petitioner and the appeal of the Petitioner has been disposed of by non-speaking order. The revisional order dated 20.9.2002 is also not sustainable in view of basic defect in the order dated 7.11.2001 and the communication dated 25.2.2002/1.3.2002 vide which the Petitioner was informed dismissal of his appeal.

7. It has also been submitted on behalf of the Petitioner that Conservator of Forest is the appointing authority of the Petitioner, therefore, Respondent No. 4-Divisional Forest Officer, has erred in imposing the penalty vide order dated 7.11.2001. Therefore, on this ground alone the disciplinary proceedings have vitiated.

8. The learned Counsel for the Petitioner has relied the Himachal Pradesh Deputy Forest Rangers and Forest Guards Class-III (Executive Section) Recruitment, Promotion and Certain Conditions of Service Rules, 1978 (for short "Recruitment Rules") in support of his contention that as per recruitment rules the Conservator of Forest is the appointing authority of Forest Guards. The learned Counsel for the Petitioner has relied Chapter 29.2 (8) of Government of Himachal Pradesh, Department of Personnel Handbook on Personnel Matters, Vol-III (Second Edition) which is as follows:

(8) Rule 12 -Disciplinary Authorities: Rule 12 prescribes the disciplinary authorities. Sub-rule (1) provides that the President (Governor, H.P. for H.P. Services) may impose any of the penalties specified in Rule 11 on any Govt. servant. Sub-rule (2) provides that, subject to the provisions of Sub-rule (4) any of the penalties specified in Rule 11 may be imposed on a Government servant by the appointing authority or the authority specified in the schedule or by any authority empowered in this behalf by general or special order of the President (Governor in the case of H.P.). Sub-rule (4) is important as it provides that no penalty specified in Clauses (v) to (ix) of Rule 11 shall be imposed by any authority subordinate to the appointing authority. Further where a Govt. servant substantively appointed to a post is temporarily appointed to any other service or post, the authority competent to impose any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall not impose any such penalty unless it has consulted such authority, not being an authority subordinate to it, as would have been competent to impose any of the said penalties had he not been appointed to such service or post.

Explanation 2 below Rule 12 provides that where a Govt. servant holding a post is promoted on probation or temporarily to the post of the next higher class, he shall be deemed for the purposes of this rule to belong to the service or holding a post of such higher class.

The State Government have prescribed the disciplinary authorities under this Rule as per para 29.4 read with Appendix 20.I and II.

The Appendix 29.1 is as follows:

State Government's orders prescribing the Appointing, Disciplinary and Appellate Authorities under Central Rules (Referred to in para 29.2 (5), 29.2 (8), 29.2(18) and 29.4) Copy of H.P. Govt. Deptt. Of Personnel Notification No. 88-45/56-DP (Apptt-II) (I) dated 18.5.1974. In exercise of the powers conferred by Sub-rule (2) of Rule 9, Sub-rule (2) of Rule 12 and Sub-rule (1) of Rule 24 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 and all other

powers enabling him in this behalf in so far as the officers governed under the Central Rules, are concerned the Governor, Himachal Pradesh is pleased to direct that in respect of the services and posts in Class I, Class II, Class III and Class IV specified in column No. 1 of the schedule annexed hereto, the authorities specified in column No. 2 thereof shall be the appointing authorities and the authorities specified in columns No. 3 and 5 shall be the disciplinary authorities in respect of the penalties specified therein and the authorities specified in column No. 4 and 6 shall be the appellate authorities in regard to the penalties specified in columns No. 3 and 5 respectively.

2. This supersedes all earlier orders issued by the Government of Himachal Pradesh from time to time.

Note: The Schedule as annexed to this Notification has been suitably amended so as to incorporate upto date orders of the Government.

9. The learned Counsel for the Petitioner has relied item No. 6 of Schedule referred to in Appendix 29.1, which is as follows:

Schedule showing up-dated position of Appointing, Disciplinary and Appellate Authorities under the Central Civil Services (CCA) Rules, 1965

Description	Appointing authority	Competent authority to impose	Appellate authority	Competent authority to impose	Appellate authority	of posts
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Items No. 1 to 5	Specified in column No. 1	Penalties specified in column No. 2	Reference to items No. 3 (v) to (ix) of CCS(CC&A) Rules, 1965.	Specified in column No. 3	Penalties specified in column No. 4	Reference to items No. 5
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of CCS(CC&A) of Rule 11

Rules, 1965. of the CCS

(CC&A) Rules, 1965.

1 2 3 4 5 6

1 to 5-B xx xx xx 6. All Class III Head of Head of Head of Head of State and Class IV Deptt. Office Department Department Govt. services in all Deptt. (where the appointing authority is the Head of Deptt. under the relevant recruitment rules or declared otherwise

10. It has been contended by the learned Counsel for the Petitioner that in view of item No. 6 of the schedule read with Appendix 29.1 Conservator of Forest being the appointing authority of the Petitioner is the disciplinary authority to impose the penalty. The learned Counsel for the Petitioner has submitted that Respondent No. 4 was not the disciplinary authority of Petitioner, he could not impose penalty vide Annexure A-2. It has been contended that in these circumstances penalty imposed under Annexure A-2 by Respondent No. 4 has vitiated. The learned Counsel for the Petitioner has relied Rule 11 and Rule 12 in

support of his submissions. There is no substance in the submission of learned Counsel for the Petitioner that Conservator of Forests is the disciplinary authority of the Petitioner for imposing penalty of with-holding of increment.

11. Rule 11 provides minor penalties and major penalties, with-holding of increments of pay a minor penalty is provided in Rule 11 (iv). Sub-rule 4 of Rule 12 provides that no penalty specified in Clause (v) to (ix) of Rule 11 shall be imposed by any authority subordinate to the appointing authority. The recruitment rules provide Conservator of Forests to be the appointing authority of Forest Guards. The appointing authority has been defined in Clause (a) of Rule 2 whereas disciplinary authority has been defined in Clause (g) of Rule 2. It is clear from the schedule extracted above that under item No. 6, competent authority to impose penalties with reference to item No. (i) to (iv) of Rule 11 is the Head of Office. It is not the case of the Petitioner that at the relevant time Respondent No. 4 Divisional Forest Officer, Rohru was not the Head of Office of Petitioner. Thus, it cannot be said that penalty imposed by Respondent No. 4 vide order dated 7.11.2001 has vitiated on the ground that Respondent No. 4 was not competent to impose penalty of with-holding of increment with cumulative effect against the Petitioner. Thus, the contention of the learned Counsel for the Petitioner to this effect is rejected.

12. The Inquiry Officer submitted the inquiry report on 7.11.2001, the copy of inquiry report was not supplied to the Petitioner nor any show cause notice was given to Petitioner nor his version was asked why appropriate penalty should not be imposed on Petitioner on the basis of inquiry report. The Respondent No. 4 was duty bound to supply the copy of inquiry report to the Petitioner and comply Rule 15 after receiving the inquiry report dated 7.11.2001. It is no defence that since inquiry report was not demanded by the Petitioner, therefore, copy of inquiry report was not supplied to him. It is not the case of the Respondents that Petitioner in fact was aware that inquiry report has been submitted by the Inquiry Officer to Respondent No. 4 on 7.11.2001. It appears Respondent No. 4 has acted in haste and without following due procedure of law imposed penalty of stoppage of one increment with cumulative effect vide order dated 7.11.2001. The appellate authority has just communicated the rejection of the appeal to the Petitioner without supplying him the copy of actual decision of dismissal of appeal. Once the order of imposition of penalty dated 7.11.2001 and the appellate order are not sustainable for not following due process of law, therefore, office order dated 20.9.2002 is also not sustainable.

13. In view of the above, order dated 7.11.2001 Annexure A-2, letter dated 25.2.2002 Annexure A-4 and office order dated 20.9.2002 Annexure A-6 are quashed. The case is remitted to Respondent No. 4 to proceed further from the stage of receipt of copy of inquiry report dated 7.11.2001 after complying Rule 15 and conclude the inquiry in accordance with law within three months from the date of receipt of copy of this judgment. The Petitioner shall co-operate for the disposal of the inquiry proceeding by Respondent No. 4 as directed above.