
(2012) 12 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : CWP No. 4827 of 2012

Giteshwar Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Forest Act, 1927 — Section 41, 42

Penal Code, 1860 (IPC) — Section 120B, 201, 379

Citation : (2013) LabIC 2126

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Tarlok Chauhan, for the Appellant; Vinod Thakur, Dy. A.G., for the Respondent

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J.—Aggrieved by the order dated 19.3.2011 Annexure P-2 imposing penalty of dismissal from Government service and order dated 31.3.2012, Annexure P-6 rejecting thereby the service appeal, the petitioner has approached this Court with the following prayer: (a) That charge-sheet dated 22/6/2010 (Annexure P/1), order of dismissal dated 19/3/2011 (Annexure -P/2), and order dated 31/3/2012 (Annexure-P/6) be quashed and set aside and the petitioner be ordered to be re-instated in service with all consequential benefits.

At the relevant time, when the petitioner was removed from service vide impugned order Annexure P-2, he was posted as Deputy Ranger, Gohach Block of Kotkhai Forest Range under Theog Forest Division. On a complaint qua illicit felling received by the D.F.O. Theog, a team headed by the Range Officer, Kotkhai was constituted for conducting inspection of forest and to find out the illicit felling. After inspection, the said Committee submitted internal report that during the checking of the forest 60 illicit stumps of Deodar and Kail were found to be felled. On this FIR No. 15/10 under Sections 41 and 42 of the Indian Forest Act, Ss. 379 and 120-B of the Indian Penal Code and 13-B of the Prevention of

Corruption Act, 1988 came to be registered in the State Vigilance and Anti-Corruption Bureau, Shimla. The petitioner is one of the accused persons. 2. On the other hand, simultaneously following charges came to be framed against the petitioner and one Rattan Chand, Forest Guard vide Annexure P-1 (Colly.):

Articles of Charges

1. Gross Dereliction and negligence in the discharge of official duties with a dishonest motive.

2. Un-becoming of a Government servant causing a financial loss to Government amounting to Rs. 89,62,083/- due to illicit felling of 164 trees of Deodar/Kail.

3. It seems that without asking for reply to the memorandum of charges Annexure P-1 Shri H.K. Gupta, Assistant Conservator of Forest was appointed as Inquiry Officer and he proceeded with the inquiry. He completed inquiry and submitted the inquiry report Annexure P-4 to the disciplinary authority i.e. the Conservator of Forests, Shimla circle Shimla. The disciplinary authority without forwarding the inquiry report Annexure P-4 enabling thereby the petitioner to submit written representation, if any, and without due consideration, straightway imposed the penalty of dismissal from service with immediate effect upon the petitioner vide impugned order Annexure P-2. It is on the representation dated 18.4.2011 made by the petitioner to the 2nd respondent Annexure P-3, the copy of inquiry report was supplied to him by the 3rd respondent.

4. Aggrieved by the imposition of penalty of dismissal from service, the petitioner had made representation Annexure P-5 to the 2nd respondent. The said respondent while upholding the penalty of dismissal imposed upon the petitioner by the 3rd respondent had rejected the same vide impugned order dated 31.3.2012, Annexure P-6.

5. The challenge to the impugned order Annexures P-2 and P-6 and also the memorandum of charge Annexure P-1 is on the grounds inter alia that the same are against all canons of the principle of natural justice and the result of non-application of mind. Without supplying the copy of inquiry report and affording an opportunity to show-cause, no penalty, what to speak of dismissal from service, could have been imposed upon him, that too immediately on receipt of the inquiry report and without taking on record the version of the petitioner qua findings recorded against him by the inquiring authority and forming an opinion that in view of the findings recorded by the inquiring authority a major penalty like dismissal from service is warranted. This has resulted in serious prejudice to the petitioner, as he has been denied reasonable opportunity of being heard. Other procedural irregularities such as reliance on the statements of officials of the Vigilance Department or the other witnesses whose version being still under judicial scrutiny in the criminal case against the petitioner and co-accused has resulted in serious prejudice to his case. It is only the petitioner and one Forest Guard who have been singled out for initiating departmental proceedings against them, leaving the office-in-charge of the ranges concerned, who owed high duty

and responsibility to check all kinds of loss to the forests. The grounds that the order passed by the Appellate Authority allegedly is non-speaking and the penalty imposed upon is harsh and excessive have also been highlighted. It is submitted that the penalty of removal from service imposed upon the petitioner and the rejection of the appeal, he preferred before the 2nd respondent is in complete defiance to the judgment passed by the Apex Court in *Kranti Associates Pvt. Ltd. and another v. Masood Ahamad Khan and others* (2010) 9 SCC 496 : (2010 All SCW 5715).

6. In reply which runs in 10 pages, the only response to the contentions in the writ petition, on which I could lay hand reads as follows:

That the contents of this para are wrong, hence denied. It is necessary to submit here that inquiry report along with all enclosures was furnished to Sh. Giteshwar Singh petitioner after passing the final order. It is also submitted that it has been clearly mentioned in Rule 15(4) of CCS (CCA) Rules, 1965 that "It shall not be necessary to give the Govt. servant any opportunity of making representation on the penalty proposed to be imposed." Therefore no show-cause was issued to the petitioner.

7. The rest of the averments in reply pertains to forming a team on receipt of the complaint to check illicit felling, registration of FIR, the joint inspection of forests by the Vigilance Department and Forest Department, finding illicit felling during the inspection by the joint Committee and treating this matter suo motu as Public Interest Litigation by this Court and its registration as CWPIIL No. 3/10 as well as the orders passed in that writ petition etc. etc.

8. No doubt, an effort has been made to justify the imposition of penalty of removal from service vide impugned order Annexure P-2 and the rejection of the appeal vide impugned order Annexure P-6, however, without touching the alleged irregularities i.e. non-supply of the inquiry report to the petitioner and taking on record his version before imposition of penalty upon him and the impact of non-compliance of sub-rule (2) of Rule 15 of CCS (CCA) Rules.

9. It is in this backdrop, during the course of hearing this Court on being apprised that a criminal case against the petitioner and his co-accused is still pending disposal before the learned Special Judge-Forest, Shimla and having confronted with a situation that a criminal case is yet pending adjudication against the petitioner and his co-accused, whereas, in departmental proceedings imposition of penalty of dismissal from service by the disciplinary authority and the apprehension that the observations, if any, in the judgment to be rendered in this writ petition may not have, any reprobation in the criminal trial, on 11.10.2012, following order came to be passed in this writ petition:

Heard for sometime. In view of the peculiar situation that the criminal case against the petitioner is still pending disposal in the Court of Special Judge (Forest), Shimla whereas in departmental proceedings initiated against him, he has been imposed the penalty of dismissal from service and observations, if any,

in the judgment to be delivered in this case may have some reprobation in the criminal trial, irrespective of the Apex Court has held in State of Rajasthan Vs. B.K. Meena and others, that where the proceedings in the criminal case being unduly delayed, the same itself is a ground to go ahead with the disciplinary inquiry, there is need to go deep while examining the issue in controversy.

Learned counsel seeks more time to look into the matter meticulously and make further submissions on the next date. Learned Assistant Advocate General also to find out the present status of the criminal case pending against the petitioner.

10. Consequent upon the written instructions, learned Additional Advocate General obtained from the respondent-department, it transpired that FIR is still under investigation. The order passed on the previous date reads as follows:

Learned Additional Advocate General on written instructions, informed this Court that FIR No. 15/2010, registered under Sections 41, 42 of Indian Forest Act, Ss. 379, 201 & 120B, IPC and S. 14 of HPPSCP Act, 1983 is still pending under investigation. The FIR was registered on 6.5.2010. The period of over two years has elapsed from its registration. However, the case is still under investigation. The present being a case of undue delay on the part of the investigating agency occurred in the investigation of the case, this Court in view of the judgment of Apex Court in D.K. Mani's deems it appropriate to proceed further in the matter.

11. On hearing further arguments and in view of the law laid down by a Coordinate Bench (s) of this Court in Basant Lal Vs. State of H.P. and Others and Sita Ram Vs. Bank of India and Others, (2) Shim LC 371 : (2007 Lab IC (NOC) 804 (HP)), having identical facts, it would not be improper to conclude that the present is a fit case where the impugned order Annexure P-2 whereby the penalty of dismissal from service has been imposed upon the petitioner by the 3rd respondent and Annexure P-6 whereby the appeal, he preferred, was rejected by the 2nd respondent deserves to be quashed and set aside with further direction to the disciplinary authority i.e. the 3rd respondent to conduct de novo inquiry from the stage of serving the delinquent i.e. petitioner with the copy of inquiry report and taking on record his version, as required under Rule 15 of CCS (CCA) Rules. The inquiry report Annexure P-4 now stands supplied to the petitioner, pursuant to his representation Annexure P-3, which was made to the 2nd respondent. He is thus now required to be given opportunity to make representation against the inquiry report. Rule 15 of CCS (CCA) Rules is extracted below:

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the

Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

12. It is implicit from the provisions *ibid* that the inquiry report, whether favourable or not to the delinquent Government servant is required to be served upon him with an opportunity to make written representation, if any, within 15 days. The disciplinary authority can proceed further only after considering the representation, if any, submitted by the delinquent and recording its findings.

13. The defence of the respondents in the reply extracted *supra* that the disciplinary authority under sub-rule (4) of Rule 15 was competent to impose penalty without affording an opportunity to the delinquent for making representation against the penalty proposed to be imposed is hardly of any help to their case. Firstly, in this case, it is not the disciplinary authority but the inquiring authority also. Above all, sub-rule (4) deals with a situation where the disciplinary authority forms an opinion to impose penalty upon the delinquent after taking into consideration the written representation made by the delinquent in terms of sub-rule (2) of Rule 15 and record its own finding to form an opinion *qua* the legality and validity of the findings returned by the inquiring authority on each and every charge and it is only thereafter an opinion to impose major penalty as specified in Clauses (v) to (ix) of Rule 11 can be formed. Thus there is no need to go into the other grievances of the petitioner in this writ petition at this stage, which he can agitate in due course, if the necessity to do so arises on culmination of the *de novo* inquiry in the manner hereinabove and if he still feels aggrieved by any action taken pursuant to that.

14. In view of what has been stated hereinabove, this writ petition succeeds and the same is accordingly allowed. The impugned order Annexure P-2 dated 19.3.2011 whereby the petitioner has been dismissed from service with immediate effect and impugned order Annexure P-6 dated 31.3.2012 whereby the 2nd respondent while upholding the penalty of removal from service imposed upon the petitioner has rejected the appeal, are quashed and set aside. The respondents shall re-instate the petitioner forthwith on the receipt of the copy of this judgment. Thereafter, the 3rd respondent being the disciplinary authority shall permit the petitioner to make representation against the inquiry report dated 21.4.2011, Annexure P-4 and after taking into consideration the representation so made by him, pass an appropriate orders in accordance with law and in the light of the observations made hereinabove in this judgment. The said respondent may place the petitioner under suspension after re-instatement

during the pendency of the de novo inquiry, if so advised. With these observations, the writ petition is disposed of, so also the pending applications, if any.