
(2011) 03 SHI CK 0187
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 7999 of 2008

Hori Lal

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 14, 16

Citation : (2011) 03 SHI CK 0187

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing of charge sheet dated 1.2.1996 Annexure A-1 issued under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short Rules), memo dated 23.5.2001 Annexure A-10 whereby the Petitioner was given an opportunity of making representation on the proposed penalty, order dated 3.9.2001 Annexure A-12 imposing penalty of withholding three annual increments with cumulative effect with immediate effect. The connected prayer is for a direction to the Respondents to release his arrears of pay after re-fixing his pay in accordance with law along with interest.

2. The brief facts of the case are that Petitioner is serving as Superintendent Grade-II. The Petitioner was charge sheeted vide memo dated 1.2.1996 under Rule 14 for not preparing the arrears bills of Smt. Nirmal Kanta Lecturer and Vipin Chand Assistant Librarian while working as Senior Assistant, Govt. Senior Secondary School, Paonta Sahib. He was in the habit of going on leave frequently with the prior permission of Head of the Office. The Petitioner denied the charges in his reply. The arrears bills of Smt. Nirmal Kanta, Pritam Singh and Vipin Chand were received in the office of Principal, Govt. Senior Secondary School, Taruwala in the year 1995 and thereafter the same were marked to him. The arrears

related to the period for more than two decades. He prepared the bills of Pritam Singh in the month of June, 1995 and Smt. Nirmal Kanta in the end of July, 1995. The arrears bill of Vipin Chand related to the year 1966, the old record was searched by Petitioner but he proceeded on casual leave on 13.10.1995 and thereafter he fell ill and remained under treatment till 25.11.1995. The leave of the Petitioner was sanctioned. He resumed his duties as Superintendent Grade-II on 27.11.1995 after handing over the charge of Senior Assistant to Kartar Singh on 7.12.1995. The Petitioner was not negligent in performing his duties.

3. On 18.4.1996, the Joint Director of Physical Education, Directorate of Education, H.P. was appointed as Inquiry Officer. The Petitioner participated in the inquiry. On 11.5.1999 the Petitioner informed the Inquiry Officer that he had not received any intimation through dak regarding the date but the date was informed to him by Sukh Ram Thakur, Superintendent at about 10.30. The Petitioner thereafter informed the Inquiry Officer that he does not expect a fair hearing from the Inquiry Officer. The Petitioner expressed his unwillingness to get inquiry conducted from him. The Inquiry Officer misbehaved with the Petitioner and Petitioner immediately informed Respondent No. 2 on 12.5.1999 that the Inquiry Officer had misbehaved with the Petitioner and therefore, Inquiry Officer may be changed. The Petitioner did not hear anything from the Respondents.

4. On 23.5.2001 the Petitioner came to know that Respondent No. 2 is proposing to impose on the Petitioner a penalty of stoppage of three increments with cumulative effect. The Petitioner had filed detailed representation against the proposed penalty but without application of mind Respondent No. 2 imposed the penalty of withholding three annual increments with cumulative effect on the Petitioner vide order dated 3.9.2001. The Petitioner has filed the petition on the grounds that inquiry against the Petitioner is violative of Articles 14 and 16 of the Constitution of India.

5. There is no delay on the part of the Petitioner to prepare the bills. The entire inquiry has been conducted against the principle of nature justice. The Petitioner had written to Inquiry Officer not to conduct the inquiry as he has no faith in him with further telegraphic communication to Respondent No. 2 regarding the misbehaviour of the Inquiry Officer but no action was taken for changing the Inquiry Officer. The Inquiry report was not given to the Petitioner before imposing the penalty. The penalty imposed is wrong and illegal. The Respondents contested the petition and have submitted that inquiry was conducted in accordance with law and penalty imposed is just and proper. The Respondents have defended the punishment imposed on the Petitioner.

6. I have heard learned Counsel for the parties. It is not necessary to consider the points raised in the petition in view of the fact that it has not been denied at the time of hearing of the petition that impugned order of imposing penalty is appealable under the Rules and no appeal has been filed by the Petitioner against the order of imposing penalty. It has been submitted that the petition is now

pending since 2001; therefore, this Court should hear the petition on merits, even though the Petitioner has not filed appeal against impugned order.

7. No doubt the petition was filed in the year 2001 but the Petitioner was well aware that impugned order is appealable. It is not the case of the Petitioner that he was not aware that the impugned order is appealable. The appeal provided in the Rules is effective remedy and appellate authority has the jurisdiction to consider the grievance raised by the Petitioner regarding the alleged irregularity committed by the Inquiry Officer during inquiry or the Disciplinary Authority before imposing penalty. The alternative efficacious remedy is available to the Petitioner; hence the petition is not maintainable.

8. It is made clear that this Court has not considered the case of the Petitioner on merits. The Petitioner is at liberty to approach the Appellate Authority by filing appeal against inquiry and penalty order of course after explaining the delay. The appellate authority shall take into consideration the fact that matter remained pending in this Court till today.

9. No other point was urged.

10. The result of above discussion, the petition is dismissed with liberty to Petitioner to approach the Appellate Authority against inquiry and impugned order for imposing penalty after explaining the delay.