

(2012) 04 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Civil Write Petition (T) No. 11105 of 2008

Karam Chand

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 14

Citation : (2012) 2 ShimLC 613

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Rajinder Dogra, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as Manager, DIC, Department of Industries, H.P. Govt. at Kullu on 30.10.1989. He was transferred to DIC, Chamba on 28.04.1993. He made representations against the same on 25.05.1993 and 11.06.1993. On the basis of letter dated 03.07.1993, the petitioner approached the General Manager at Kullu to permit him to join his duties on 14.07.1993. The same was not accepted. Petitioner made a representation on 30.07.1993. However, the fact of the matter is that the representation made by the petitioner was rejected and vide memorandum dated 28.08.1993, the petitioner was directed to report for duty at Chamba. Petitioner was placed under suspension on 12.11.1993. He made a representation for revoking suspension and also claimed salary w.e.f. 01.06.1993 to 11.11.1993. He also prayed for the release of subsistence allowance w.e.f. 12.11.1993 to 04.08.2004. Disciplinary proceedings were initiated against the petitioner under Rule-14 of the CCS(CCA) Rules, 1965 on 29.03.1994. He submitted reply to the same on 11.04.1994. The inquiry officer submitted the report to the disciplinary authority on 29.07.1995. Petitioner was supplied the copy of inquiry report with memorandum dated 14.12.1995. Petitioner made a representation on 10.04.1996. The disciplinary authority imposed the penalty of stoppage of five

increments with cumulative effect for a period of five years upon the petitioner on 27.10.1997 vide Annexure P-1C. The period between 12.11.1993 to 26.10.1997 was directed to be treated as "dies non" vide office order dated 29.04.1998. Petitioner was further posted at DIC, Chamba on 26.03.1998. A fresh charge sheet was issued to the petitioner under Rule-14 of the CCS (CCA) Rules, 1964 on 06.04.2000 to which he filed the reply on 17.04.2000. The inquiry officer submitted the report to the disciplinary authority on 23.12.2003. He was served with a memorandum on 31.03.2004. He filed reply to the same on 12.05.2004. The penalty of removal was imposed upon the petitioner on 04.08.2004 vide Annexure P-2. It is in these circumstances that the petitioner has approached this Court for quashing of orders Annexures P-1A to P-1E and Annexure P-2 and also for releasing the full pay and allowances for the period he was placed under suspension. Respondent State has filed the reply.

2. Petitioner, namely, Shri Karam Chand has argued the matter personally. He has strenuously argued that he could not be forced to join his duties at Chamba in view of letter dated 03.07.1993. He further argued that the disciplinary authority has provisionally come to the conclusion to impose the penalty upon him without supplying the copy of inquiry report. He further argued that the order, whereby five increments were withheld with cumulative effect for a period of five years, dated 27.10.1997 (Annexure P-1C) is a non-speaking order. He then argued that the inquiry has not been conducted in accordance with the provisions of Rule-14 of the CCS (CCA) Rules, 1965. He further argued that the disciplinary proceedings could not be initiated against him on 6th April, 2000. He also argued that he has not been supplied with the copy of inquiry report by the disciplinary authority, which has prejudiced his case. He further argued that the office order dated 04.08.2004 (Annexure P-2) vide which the penalty of removal has been imposed upon him is laconic and it is a non-speaking order. He further argued that he has not been paid the subsistence allowance for the period w.e.f. 12.11.1993 to 04.08.2004. He lastly contended that the period w.e.f. 12.11.1993 to 26.10.1997 could not be treated as "dies non".

3. Mr. Rajinder Dogra, learned Additional Advocate General has supported the imposition of penalties upon the petitioner. According to him, the petitioner has disobeyed the orders of his superiors, which led to the initiation of disciplinary proceedings against him. He has justified the orders dated 27.10.1997, 29.04.1998 and 04.08.2004.

4. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

5. In this case, the records were summoned. The same has been produced and perused. Petitioner has been transferred from DIC, Kullu to DIC, Chamba vide office order dated 28.04.1993. He was relieved on 25.05.1993 as per the averments made in the reply. He made a representation on 11.06.1993. The Commissioner-Cum-Secretary (Personnel) has issued the following order on 03.07.1993 on the transfers made in the State:

Subject: ORDER ON THE RECENTLY MADE TRANSFERS:

On the above subject. I am directed to say that in the last few months many employees have been transferred and that it has been brought to the notice of the Government that some of these transfers have not been implemented as yet and the affected employees have not been relieved or they have not joined at their new station of posting. After considering the whole matter, the Government has decided that those transfers which have not been implemented as yet be cancelled immediately and orders to this effect be issued immediately. This order shall not apply to those officials/employees who have been transferred to or from remote stations.

In the implementation of the above orders, may be in some stations more than one official/employee have remained appointed against a single post.

All such matters be deemed fit for the orders of the Hon"ble Governor and be presented immediately. Please ensure strict compliance with these orders.

6. In view of the expressed language employed in letter dated 03.07.1993, the petitioner could not be forced to join at Chamba. What is mentioned in the letter dated 03.07.1993, is that in the last few months, many employees have been transferred and it was brought to the notice of the Government that some of these transfers have not been implemented as yet and the affected employees have not been relieved or they have not joined at their new station of posting. In these circumstances, after considering the whole matter, the Government has decided that those transfers which have not been implemented as yet be cancelled and orders to this effect be issued immediately. However, there was a rider that this order dated 03.07.1993 would not apply to those officials/employees who have been transferred to or from remote stations. As noticed above, the petitioner was relieved on 25.05.1993, but he has not joined his duties at Chamba. In other words, the transfer order was not implemented in its entirety. The transfer order has not yet been implemented and the same was required to be cancelled.

7. On the strength of letter dated 03.07.1993, the petitioner approached the General Manager at Kullu to permit him to join his duties on 14.07.1993. The same was not accepted. Petitioner made a representation on 30.07.1993. However, the representation made by the petitioner was rejected without taking into consideration the letter and spirit of letter dated 03.07.1993.

8. It is evident from the noting portion of the records produced by the respondent-State that on the basis of letter dated 03.07.1993 issued by the Department of Personnel, the transfer order of the petitioner could be cancelled. It is further stated therein that since the petitioner has been relieved on 25.05.1993, it was incumbent upon him to join at the new place of posting.

9. Respondent-State instead of implementing letter dated 3rd July, 1993, has decided to initiate disciplinary proceedings against the petitioner by issuing

charge sheet on 29.03.1994. Petitioner has filed reply to the same on 11.04.1994. The inquiry officer furnished the report to the disciplinary authority on 29.07.1995. According to the report submitted by the disciplinary authority, all the three charges levelled against the petitioner were proved. The first charge levelled against the petitioner was that he did not obey the orders of the Government dated 28.04.1993, whereby he was transferred to DIC, Chamba and order dated 16.07.1993. Further charge levelled against the petitioner was that while performing the duties as Manager, District Industries Centre, Kullu, he remained on unauthorized leave w.e.f. 25.05.1993 to 14.07.1993, which was against the Central Civil Services (Conduct) Rules, 1964 and did not maintain absolute devotion to his duties. The third charge levelled against the petitioner was that while performing duties as Manager, District Industries Centre, Kullu, he absconded himself from office without any intimation and informing about his whereabouts and thus mis-conducted himself which was unbecoming of a Govt. servant and is also against Rule 3(iii) of the Central Civil Services (Conduct) Rules, 1964.

10. The Court is of the considered view that disciplinary proceedings could not be initiated against the petitioner in view of letter dated 03.07.1993 and the transfer order dated 28.04.1993 was liable to be cancelled. Petitioner has also submitted the medical certificate of his illness w.e.f. 15.06.1993 to 13.07.1993 to the disciplinary authority.

11. The disciplinary authority has not supplied the copy of the inquiry report to the petitioner. The same has been supplied to the petitioner for the first time with memorandum dated 14.12.1995. The disciplinary authority without supplying the copy of the inquiry report to the petitioner has provisionally come to the conclusion that the petitioner was not a fit person to be retained in service and proposed the imposition of penalty from removal from service upon the petitioner. Petitioner has been permitted to make a representation against the imposition of penalty vide memorandum dated 14.12.1995. He has filed a representation against the same on 10.04.1996. The disciplinary authority has imposed the penalty of stoppage of five increments with cumulative effect for a period of five years upon the petitioner vide office order dated 27.10.1997. The representation made by the petitioner against the memorandum dated 14.12.1995 on 10.04.1996 has not been taken into consideration. It is settled law by now that once the inquiry report is furnished by the inquiry officer to the disciplinary authority, the disciplinary authority has to supply the copy of the same to the incumbent to enable him to make a representation against the same by pointing out the shortcomings, deficiencies or breach of any mandatory provisions of CCS (CCA) Rules. In this case, the disciplinary authority without supplying the copy of the inquiry report to the petitioner has provisionally come to the conclusion that the penalty of removal be imposed upon the petitioner. It was not permissible under the law. Petitioner has also made a representation against the memorandum dated 14.12.1995 on 10.04.1996. The same has not been taken into consideration by the disciplinary authority while imposing the

penalty on 27.10.1997. The order dated 27.10.1997 passed by the disciplinary authority is laconic and non-speaking. It is now well settled that the orders passed by the disciplinary authority must be speaking and should show due application of mind.

12. Their Lordships of the Hon"ble Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, have held that the copy of inquiry report has to be supplied to an employee before the disciplinary authority makes up his mind to impose penalty. The purpose of supplying the copy of inquiry report is to enable an individual to represent against the short-comings, deficiencies and violation of mandatory rules during the course of departmental inquiry. Their Lordships have held as under:--

The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary, authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary, authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the

report of the Inquiry Officer and the representation of the employee against it.

13. Respondent-State, after imposition of penalty on 27.10.1997, has passed the order on 29.04.1998, whereby the suspension period w.e.f. 12.11.1993 to 26.10.1997 was treated as "dies non".

14. Since the initiation of disciplinary proceedings against the petitioner has been declared bad in law, the period w.e.f. 12.11.1993 to 26.10.1997 is required to be regularized for all intends and purposes.

15. Petitioner has again been transferred on 26.03.1998 to DIC, Chamba. A memorandum was issued to the petitioner on 06.04.2000 under Rule-14 of the CCS (CCA) Rules, 1964. He filed reply to the same on 17.04.2000. The inquiry officer submitted the report to the disciplinary authority on 23.12.2003. He was served with a memorandum on 31.03.2004 (Annexure P-17). In this case also, the copy of the inquiry report was not supplied to the petitioner before the disciplinary authority has provisionally come to the conclusion that the petitioner was not fit to be retained in Government service. Copy of the inquiry report was furnished to the petitioner with office memorandum dated 31.03.2004. He filed reply to the same on 12.05.2004. The penalty of removal was imposed upon the petitioner on 04.08.2004 vide Annexure P-2. As noticed above, the petitioner was required to be supplied with the copy of inquiry report before the disciplinary authority has made up its mind to impose penalty upon him. This was not permissible under the law. The disciplinary authority was required to supply the copy of the inquiry report to the petitioner to enable him to make a representation against the inquiry report and only after considering the representation made by the petitioner, the disciplinary authority could make up its mind to impose penalty upon him. The procedure adopted by the disciplinary authority is wholly contrary to law. The inquiry report has been furnished by the inquiry officer to the disciplinary authority by inquiry officer, namely, Shri Rajender Singh, This inquiry report is no inquiry in the eyes of law. He has only quoted the list of exhibited documents and list of witnesses. He has not discussed the documents. The inquiry officer has not at all even discussed the statements of witnesses. He has abruptly come to the conclusion in a very perverse manner that the charges stood proved against the petitioner. The inquiry officer has not recorded any reasons. The report is laconic and the same is vitiated on this count also. The charge levelled against the petitioner was that he has failed to maintain absolute integrity and devotion to duty, since he did not join his duties at Chamba pursuant to order dated 26.03.1998 and has willfully absented himself from duties without any intimation and without permission from his superiors, which has rendered him liable for disciplinary action under Rule-3(i)(ii)(iii) of the CCS (Conduct) Rules, 1964. The disciplinary proceedings are quasi judicial in nature. The oral as well as documentary evidence was required to be led and discussed and only thereafter the findings could be given by the inquiry officer. The inquiry officer has made the assessment of findings in seven lines only, that too, abruptly. This inquiry report is liable to be set aside being perverse

and not in accordance with law.

16. In the instant case, the petitioner has relied upon letter dated 03.07.1993, on the basis of which, the transfer order dated 28.04.1993 ought to have been cancelled. Petitioner has also submitted medical certificate w.e.f. 15.06.1993 to 13.07.1993. The same has been overlooked by the disciplinary authority. Petitioner has also not been paid salary w.e.f. 01.06.1993 to 11.11.1993 and subsistence allowance from 12.11.1993 to 04.08.2004. The same has not been allowed to the petitioner only on the pretext that he has not given certificate that he was not gainfully employed during this period. However, the petitioner has submitted the certificate that he was not gainfully employed during the period of suspension on 08.04.1994. This aspect has also been overlooked by the respondents.

17. Petitioner could not be forced to join his duties at Chamba on the basis of letter dated 03.07.1993 issued by the Department of Personnel. It was not a case of willful absence of duties as held by the inquiry officer.

18. Petitioner was prejudiced by non-supply of the copy of the enquiry reports in both the departmental proceedings.

19. Their Lordships of the Hon"ble Supreme Court in Union of India (UOI) and Others Vs. Prakash Kumar Tandon, have held that if the disciplinary proceedings have not been conducted fairly, presumption can be drawn that this caused prejudice to the charged employee. Their Lordships have held as under:

13. From the evidence of another Assistant Engineer who had taken part in the raid, it is evident that the alleged loss caused to the Railways was negligible and mere marginal allowances are permitted for measurement of "scantlings and planks".

14. In the aforementioned situation, we are of the opinion that the Tiribunal as also the High Court cannot be said to have erred in holding that the said Mr. Walia should have been examined as a witness.

15. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasijudicial authority. He, therefore, must perform his functions fairly and reasonable which is even otherwise the requirement of the principles of natural justice.

17. If the disciplinary proceedings have not been fairly conducted, an inference can be drawn that the delinquent officer was prejudiced thereby.

18. In *S.L. Kapoor v. Jagmohan* this Court has held that non-compliance with the principles of natural justice itself causes prejudice. We are not oblivious of the fact that the said principle has since been watered down but in a situation of this nature, we are of the opinion that the concurrent findings of the Tribunal, as also the High Court cannot be said to be unreasonable or suffering from any legal infirmity warranting interference.

20. Their Lordships of the Hon''ble Supreme Court in *Roop Singh Negi Vs. Punjab National Bank and Others*, have held that a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. Their Lordships have further held that the disciplinary authority and appellate authority must pass reasoned orders. Their Lordships have further held that the enquiry report based on conjectures and surmises, cannot be sustained. Their Lordships have also held that suspicion howsoever high cannot be a substitute for legal proof and though the Evidence Act, 1872 is not applicable, the inquiry has to be conducted according to principles of natural justice.

21. Their Lordships of the Hon''ble Supreme Court in *Union of India and others v. Cyan Chand Chattar*, (2009) 12 SCC 78 have held that an enquiry has to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. The finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against that the charges are vague, that does not save the enquiry from being vitiated for the reason that there must be fair play in action, particularly, in respect of an order involving adverse or penal consequences.

22. Their Lordships of the Hon''ble Supreme Court in *G. Vallikumari Vs. Andhra Education Society and Others*, have held that the disciplinary authority must record reasons while removing an employee, if reasons are not recorded, the order is vitiated due to violation of the statutory rules and the principles of natural justice.

23. Their Lordships of the Hon''ble Supreme Court in *Mohd. Yunus Khan Vs. State of U.P. and Others*, have held that the enquiry is to be conducted fairly and reasonably and enquiry report must contain reasons for reaching the conclusion that charge framed against delinquent stood proved against him. It cannot be ipse dixit of enquiry officer. Their Lordships have held as under:

16. We have to proceed keeping in mind the trite law that holding disciplinary proceedings against a government employee and imposing a punishment on his

being found guilty of misconduct under the statutory rules is in the nature of quasi-judicial proceedings. Though the technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Evidence Act, 1872 do not apply in a domestic enquiry, however, the principles of natural justice require to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and the enquiry report must contain reasons for reaching the conclusion that the charge framed against the delinquent stood proved against him. It cannot be an ipse dixit of the enquiry officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. (See *Bachhittar Singh v. State of Punjab*, *Union of India v. H.C. Goel*, *Anil Kumar v. Presiding Officer*, *Moni Shankar v. Union of India* and *Union of India v. Prakash Kumar Tandon*.)

24. Their Lordships of the Hon"ble Supreme Court in *Krushnakant B. Parmar v. Union of India* and another, JT 2012 (2) SC 352 have held as under: 13. The Inquiry Officer noticed the aforesaid facts and held the appellant was unauthorisedly absent between 3rd October, 1995 and 7th November, 1995; 9th November, 1995 and 10th December, 1995; 10th December, 1995 and 2nd August, 1995. However, while coming to such contention, the authority failed to decide whether such absence amounted to misconduct. The evidence led by the appellant in support of his claim that he was prevented to sign the attendance register and to perform duty though noticed the Inquiry Officer on presumption and surmises, held the charge proved.

14. Rule 3(1)(ii) and Rule 3(1)(ii) of Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a Government servant and reads as follows:

Rule 3-General. (1) Every Government servant shall at all times-

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

15. In the case of appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant.

22. In the present case, the disciplinary authority failed to prove that the absence from duty was willful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palampur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressed to Shri K.P. Jain, J.D., SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such

defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.

Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexure P-1C, dated 27.10.1997, Annexure P-1D, dated 29.04.1998 and Annexure P-2, dated 04.08.2004 are quashed and set aside. Petitioner is directed to be reinstated with all consequential benefits, within a period of eight weeks from today. Since the petitioner had been appearing in person, the Registry is directed to supply copy of the judgment to him within a period of one week from today. The pending application(s), if any, also stands disposed of.