
(2012) 03 SHI CK 0411
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11515 of 2008

Madan Lal

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0411

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Ranjan Sharma, for the Appellant; Rajesh Mandhotra, D.A.G., for the Respondent

Judgement

Deepak Gupta, J.—The petitioner filed an Original Application before the erstwhile H.P. State Administrative Tribunal. On abolition of the Tribunal, the said Original Application was transferred to this Court in terms of the Himachal Pradesh Administrative Tribunal (Transfer of Decided and Pending Cases and Applications) Act, 2008 and registered as CWP(T) No. 11515 of 2008. The petitioner by means of this petition has challenged the order dated 16.1.2001 whereby penalty of stoppage of three increments with cumulative effect has been imposed upon him. The petitioner is a school teacher and a compliant was made against him that while teaching girl students of Class-VI he had pinched their private parts and had given sexual connotations while teaching the students. The petitioner denied these allegations. Thereafter an enquiry was held and as per the findings given by the enquiry officer, the charges were proved. Thereafter memo was issued to the petitioner on 5th October, 2001 along with copy of the enquiry report and the disciplinary authority provisionally came to the conclusion that it was a fit case where major penalty should be imposed upon the petitioner. The petitioner filed reply to this memo and challenged the correctness of the enquiry report and raised various objections with regard to the manner in which the enquiry was conducted. Thereafter the impugned order was passed on 16th January, 2002 whereby the reply to the show cause notice was stated to have

been considered and the penalty of stoppage of three increments with cumulative effect was imposed.

2. The grievance of the petitioner is that the disciplinary authority has not considered the reply filed by the petitioner and has not taken into consideration various objections raised by him, the main being that the statements of the witnesses were not properly recorded and that he was not given proper opportunity to cross-examine these witnesses. The other main objection is that the enquiry officer brushed aside the testimony of PWs 7, 8, 9, 10, 11 and 13. There is no manner of doubt that the disciplinary authority was bound to consider these objections. It having not considered the same, the order has to be set aside. Having set aside the order, the next question which arises what relief should be granted to the petitioner. The allegations made against the petitioner are extremely serious and if they are true then the penalty imposed on him was extremely lenient and he deserves to be dealt in a more severe manner. However, if the allegations are not proved then the petitioner must be given the entire benefits. Since the petitioner had raised questions about the correctness of the enquiry report, the disciplinary authority was bound to deal with these objections. Therefore, though the petition is being allowed the increments which are withheld will not be paid to the petitioner for a period of six months from today and the disciplinary authority is directed to ensure that the reply of the petitioner is considered and appropriate speaking order passed on or before 30th June, 2012. In case the matter is decided in favour of the petitioner, then he will be entitled to all consequential benefits. In case it is decided against the petitioner then all consequences shall follow. It is made clear that merely because earlier a lenient view was taken does not mean that now the disciplinary authority has to take the same view and he may impose punishment which is commensurate to the offence, if proved. No costs.