
(2010) 05 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 4217 of 2008

Man Singh

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 18, 18(2)

Citation : (2010) 05 SHI CK 0005

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that while the Petitioner was posted as Patwari at Patwar Circle, Basal, Tehsil and District Solan, he submitted an application, seeking permission to purchase land measuring about 0-16 biswas from one Shri Padam Singh. Since the application was incomplete, the Deputy Commissioner directed the Tehsildar, Solan on 23.03.1986 to get certain clarifications from the Petitioner. Petitioner submitted application to purchase the land afresh on 05.08.1986. The consideration for purchasing the land was Rs. 10,000/-. He was accorded permission by the competent authority on 04.08.1987 to buy only 0.6 biswas of land for consideration of Rs. 10,000/-. A complaint was received by the Deputy Commissioner, Solan, whereby certain allegations were levelled against the Petitioner. The matter was got enquired by the Deputy Commissioner, Solan from the Naib Tehsildar, Solan. The S.D.M., Solan furnished the report to the Deputy Commissioner vide Annexure A-9. Thereafter, regular disciplinary proceedings were initiated against the Petitioner under Rule 14 of the CCS(CCA) Rules, 1965 and the following charges were framed against the Petitioner:

(i) That the Patwari Shri Man Singh when he was working in Patwar Circle Basal bought 0-16 biswas of land without permission of the competent authority for Rs. 10,000/- and then sold it for Rs. 29,000/- without permission of the competent

authority and thus violated the provisions of Civil Service Conduct Rules, 1964 Rule 18(2).

(ii) That the Patwari Shri Man Singh entered the mutation No. 325 of transfer of land in which he showed false transfer of some land to Shri Padam Singh and got his land transferred to himself. In reality he did not transfer any land to Shri Padam Singh and got his 155 sq. meters of land transferred to himself defrauding Shri Padam Singh and also misusing his official position for his own gain, in his patwar circle.

(iii) Shri Man Singh while working at the headquarters (DC Office, in Solan) tampered with the record of the office and changed the application and noting and other relevant record by changing 0.06 to 0-16 biswas of land in connection with his permission to purchase of land case.

2. The inquiry officer furnished the report to the disciplinary authority. The disciplinary authority imposed the penalty of removal from service upon the Petitioner on 21.10.1993. Petitioner preferred an appeal before the Commissioner, Shimla against the imposition of penalty. The appeal was rejected by the Commissioner, Shimla on 29th April, 1994. Thereafter, the Petitioner filed an appeal before the F.C. cum-Secretary (Revenue) to the Government of Himachal Pradesh. He took a lenient view and the order dated 21.10.1993 was set aside by him and he imposed the penalty of stoppage of five increments with cumulative effect. Thereafter, the Petitioner made a representation to the Secretary to the Governor. Petitioner was informed by the Additional Secretary (Revenue) that the representation made by him was considered by the Government and rejected in order to maintain discipline in public service and moreover, the then Financial Commissioner (Revenue) had already taken a lenient view and reduced the penalty of the Petitioner.

3. Mr. P.P. Chauhan, learned Counsel for the Petitioner has strenuously argued that the case of his client was squarely covered under the Government of India's decision appended in the Central Civil Services (Conduct) Rules, 1964. According to him, his client has submitted an application in the year, 1985 and since no communication was received for a period of 30 days, it was rightly assumed by his client that the permission has been granted. He then contended that whole proceedings are vitiated because the Petitioner was not given the reasonable opportunity as required under the rules and documents shown in the list attached to the charge-sheet were not supplied to his client. He lastly contended that his client was not permitted to cross-examine the witnesses produced by the department.

4. Mr. R.K. Sharma, learned Senior Additional Advocate General has supported the decision of the Respondent-State. He then contended that the Petitioner in fact has never moved any application in the year, 1985 and according to him, the application for the first time was moved in the month of March, 1986 and the same was returned to him to supply certain information/classification. He further

contended that disciplinary proceedings have been held against the Petitioner strictly in conformity with law. He lastly contended that the Petitioner has never raised the issue of violation of principles of natural justice, including the non-supply of documents and non-cross examination of all the witnesses before the inquiry officer and the appellate authorities, thus he is precluded from raising the same before this Court for the first time.

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

6. According to the Petitioner, he has submitted an application seeking permission to purchase land measuring about 0-16 biswas from one Shri Padam Singh in the month of September, 1985. However, the Petitioner has not placed any material on record to suggest that he has submitted an application in the month of September, 1985. It is apparent from the record that the Petitioner has submitted the application seeking permission to purchase land in the month of March, 1986. He was informed to supply certain information on He submitted an application thereafter on 05.08.1986 (Annexure A-4). The necessary permission was accorded to him to purchase 0-6 biswas of land for a consideration of Rs. 10,000/- on However, fact of the matter is that the Petitioner had already purchased the land vide a sale deed on 04.11.1985 and the mutation No. 236 stood attested. Petitioner has submitted an application in the month of March, 1986 and the same was returned to him, as noticed above, on 23.03.1986. He had applied afresh on 05.08.1986, which led to the permission being accorded to him only to purchase 0-6 biswas of land on 04.08.1987.

7. It will be apt at this stage to take note of Rule 18 of the Central Civil Services (Conduct) Rules, 1964. Sub-rule (2) of Rule 18 reads thus:

(2) No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:

Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is with a person having official dealings with him.

8. The Government of India has taken a decision framing time-limits beyond which permission can be assumed to have been granted by the competent authority in the absence of any communication, which reads thus:

Attention is invited to Department of Personnel and Administrative Reforms, O.M. No. 11013/17/77-Ests.(A), dated 19.4.1978 (not printed), wherein time limits for granting or refusing permission in respect of some of the provisions of the Central Civil Services (Conduct) Rules, 1964, were prescribed. The matter has been reviewed and it has been decided to prescribe the following time-limits in super session of the earlier order, with immediate effect:

Sr. No. Rule Nos. Provisions relating to
Time-limit For grant of Permission.

1. 8(2) Connection with press or radio }

13(4) Gifts } 30 days.

18(2)} Transactions in movable and

18(3)} Immovable property }

2. 19(1) Vindications of acts and character of Government servant. ? 6 weeks.

3. 18-A Transactions in immovable property outside India with foreigners. 60 days.

9. In the instant case, Petitioner was working as Patwari in Patwar Circle, Basal and he intended to purchase the land in the same circle. In these circumstances, it was necessary for him to seek permission from the competent authority to purchase the land. Since the Petitioner has failed to establish that he had moved an application in the month March, 1985 seeking permission to purchase land, the decision quoted hereinabove, was not applicable to him. It is intriguing to note that how the Petitioner could purchase the land on 04.11.1985 when the application to purchase the land for the first time was moved by him in the month of March, 1986.

10. Now, the Court will advert to the other submissions made by Mr. P.P. Chauhan, learned Counsel of the Petitioner. According to him, his client has not been supplied with the documents annexed with the charge-sheet. What is required under the law, is that the delinquent official is to be supplied with the list of documents and witnesses by which the articles of charges are required to be proved along with the charge-sheet. The delinquent official is always allowed the opportunity to inspect the documents and ask for the documents. It is equally true that the documents mentioned in the charge-sheet, if asked for, are required to be supplied and if the record is voluminous, the delinquent could be permitted to inspect the same. However, in this case, the Petitioner has taken this plea for the first time before this Court that he was not supplied the documents annexed with the charge-sheet. The disciplinary proceedings have been initiated against the Petitioner after the receipt of report Annexure A-9. Petitioner has not placed any tangible material on record to suggest even remotely that he has ever asked for the supply of documents before the inquiry officer or he has taken this ground in appeals preferred before the Divisional Commissioner, Financial Commissioner or at the time when he made a representation on 20th May, 1995. This plea cannot be permitted to be taken by the Petitioner for the first time before this Court. Petitioner has also failed to point out in what manner he was prejudiced.

11. Mr. P.P. Chauhan has also contended that his client was not permitted to cross-examine the witnesses. There is no material placed on record to suggest

that the Petitioner has ever brought to the notice of the inquiry officer that he wanted to cross-examine the witnesses. In case he was not permitted to do so, he could bring it to the notice of inquiry officer in writing or he could take this ground in his appeals preferred against the imposition of penalty. Petitioner has failed to substantiate this plea and moreover, this plea cannot be permitted to be raised for the first time before this Court.

12. The Court has gone through the material placed on record. The inquiry officer has conclusively come to the conclusion that Petitioner has not sought permission of the competent authority before purchasing the land and selling it thereafter. Petitioner has violated the conduct rules by not seeking the sanction of the competent authority before purchasing the land. He has also prepared a wrong Tatima in mutation No. 325. Though the mutation No. 325 was subsequently cancelled by the Collector, however, fact of the matter is that the inquiry officer had come to a definite conclusion that the Petitioner has prepared a wrong Tatima to benefit himself.

13. In view of the observations made hereinabove, the inquiry officer has conducted the inquiry in accordance with law. The orders passed by the appellate authorities are reasoned and detailed. The Petitioner has already been dealt with leniently by the Financial Commissioner-cum-Secretary (Revenue).

Accordingly, there is no merit in this petition and the same is dismissed. No costs.