
(2010) 07 SHI CK 0026
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 15344 of 2008

Narinder Kumar Sharma

APPELLANT

Vs

Dr. Y.S. Parmar University and Others

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Citation : (2010) 2 ShimLC 588

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Disciplinary proceedings were initiated against the Petitioner and charge sheet was served on him on 4th October, 2002. Shri O.P. Sharma was appointed as Inquiry Officer. He submitted report to the disciplinary authority on 10.11.2004. Copy of the inquiry report was supplied to the Petitioner on 15th December, 2004. He filed reply to the same vide Annexure A-10, dated 19th January, 2005. The disciplinary authority imposed the following penalty vide order dated 23rd March, 2005 (Annexure A-11) upon the Petitioner:

NOW, THEREFORE, in exercise of the powers delegated to the undersigned vide Sr. No. 16 of the schedule of delegation of administrative powers, it is ordered that the pay of Shri Narinder Kumar Sharma, Personal Assistant, Office of the Director of Research, UHF, Nauni (Solan) be reduced by 22 stages from Rs. 9,200 (which he will get as on 1.12.2004 after taking into account the period from 13.3.2002 to 15.4.2002, 18.4.2002 to 18.8.2002 as dies-non and also the period from 13.11.2002 to 9.4.2003 treated as dies-non separately vide Order No. UHF. Reg. Estt-I/2-339/ 86/11/-373-74 dated 5.4.2002) to Rs. 6,400 in the time scale of pay for a period of four years with effect from the date of issue of this order. It is further directed that Shri Narinder Kumar Sharma, PA will not earn increments or pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

2. The Petitioner preferred an appeal against order dated 23rd March, 2005 to the Chancellor of the Respondent-University on 8th April, 2005. Same was rejected by the Chancellor on 4th July, 2006. The orders passed by the disciplinary authority and the appellate authority are non-speaking orders.

3. The disciplinary authority has supplied copy of the inquiry report to the Petitioner on 15th December, 2004. He filed detailed reply to the same. The reply/representation made by the Petitioner to the inquiry report was required to be taken into consideration by the disciplinary authority in depth. The purpose of supply of the inquiry report to the delinquent is to enable him to point out deficiencies, flaws and shortcomings in the inquiry. Their Lordships of Hon'ble Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., 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.

4. In the present case, the disciplinary authority has not considered all the points raised by the Petitioner in his representation made against the inquiry report.

5. The order passed by the disciplinary authority is non-speaking order. It is settled law by now that the disciplinary authority is required to pass reasoned/speaking orders. Their Lordships of the Hon'ble Supreme Court in *Roop Singh Negi Vs. Punjab National Bank and Others*, have held as under:

Furthermore, the order of disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the Appellant, there was no reason as to why the order of discharge passed by the criminal Court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inference drawn by the enquiry officer apparently were not supported by any evidence. Suspicion as is well known, however high may be, can under no circumstances be held to be substitute for legal proof.

6. The Petitioner has filed an appeal against the imposition of penalty to the appellate authority. The appellate authority has not taken into consideration while considering the appeal, the grounds/pleas raised in the memorandum of appeal. It is necessary for the appellate authority to take into consideration all the pleas raised in the memorandum of appeal and thereafter to apply independent mind. The purpose of passing a detailed/reasoned order is to enable the Court to see whether there is due application of mind or not. Their Lordships in *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*, , have held that the appellate authority must give reason while affirming the order of lower authority.

7. Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexure A-11, dated 23.3.2005 and Annexure A-15 dated 5th July, 2006 are quashed and set aside. The disciplinary authority is directed to pass speaking and detailed orders after taking into consideration the reply filed by the Petitioner to the inquiry report dated 19th January, 2005. The Petitioner shall also be heard in person. The disciplinary authority is directed to take final decision within a period of six weeks from today. There will be no order as to costs.