
(2011) 09 SHI CK 0118
In the High Court Of Himachal Pradesh
Case No : CWPT No. 10130 of 2008

Nirmal Chander

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 29

Citation : (2011) 09 SHI CK 0118

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Petitioner was working as Inspector, Cooperative Societies, in the year 1994, when he was transferred from Mandi to Moorang in District Kinnaur. On 1.9.1994, before he was relieved, on account of his transfer, he alongwith the staff of his office, went to collect his monthly salary at a place different from the place of his office and got himself admitted there in a hospital, feigning sickness, as a result of which order of relieving, on account of his transfer, could not be served upon him. He remained absent from duty from 2.9.1994 to 30.4.1995. Order of transfer was recalled and he was posted back at Mandi. Petitioner was then charge sheeted for wilful absence from duty from 2.9.1994 to 30.4.1995. There were three counts of charge. Inquiry Officer, vide Inquiry Report, Annexure A-3, exonerated him of all the counts of charge and submitted his report to the Disciplinary Authority, i.e. Registrar, Cooperative Societies, who vide order dated 17.6.1996, copy Annexure A-4, reversed the findings of the Inquiry Officer and held the Petitioner guilty of wilful absence from duty and imposed penalty of stoppage of one increment, without cumulative effect and also passed the order treating the period of absence from 2.9.1994 to 30.4.1995, as dies non.

2. Petitioner filed an appeal against the order, Annexure A-4, which was dismissed. He then filed a review petition before the Financial Commissioner,

under Rule 29 of CCS (CCA) Rules, and the Financial Commissioner, in review, vide order dated 21.9.2002, copy Annexure A-1, set aside the penalty of stoppage of one increment, but kept intact the order of treating the period of absence from 2.9.1994 to 30.4.1995, as dies non. Petitioner is aggrieved by this order of upholding the penalty of treating the period of absence as dies non. He assails the action of the Disciplinary Authority in disagreeing with the report of exoneration, submitted by the Inquiry Officer, as he has specifically stated in ground "C" of the petition that the charges had not been proved and, therefore, penalty of dies non could not have been imposed.

3. Respondents, in their reply, have stated that Disciplinary Authority, after proper appreciation of evidence adduced during course of inquiry, reversed the findings of the Inquiry Officer and concluded that the Petitioner was guilty of wilful absence from duty.

4. I have heard Learned Counsel for the Petitioner as also the learned Assistant Advocate General and gone through the record.

5. Undoubtedly, the Disciplinary Authority had the power and the jurisdiction to disagree with the findings of the Inquiry Officer and record his own findings, after scrutiny and perusal of the evidence, adduced during the course of inquiry, but before doing so, it was required to have afforded an opportunity to the Petitioner to make a representation against his proposed action of reversing the findings of the Inquiry Officer and while doing so, it was also obligatory for it to have recorded tentative reasons for reversing the findings of the Inquiry Officer and to have conveyed those reasons to the Petitioner. Admittedly, this was not done by the Disciplinary Authority. Therefore, the impugned order of Disciplinary Authority (Annexure A-4), reversing the finding of the Inquiry Officer and imposing the penalty is quashed. Consequently, order passed in review, Annexure A-1, is also quashed. Disciplinary Authority may, in case it so desires, proceed against the Petitioner for reversing the findings of Inquiry Officer and imposing the penalty, after affording him an opportunity to make representation against the proposed action of reversing the findings of the Inquiry Officer, in the aforesaid manner.

Disposed of.