
(2010) 07 SHI CK 0066
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 4721 of 2008

Ram Chander

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Citation : (2010) 07 SHI CK 0066

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—The petitioner by means of this petition has challenged the order dated 11.11.1997 whereby he was suspended and has also laid challenge to the order dated 20th October, 1997 whereby Shri Ashok Kumar was promoted as Naib Tehsildar (Election).

2. Briefly stated the facts of the case are that the petitioner was working as Election Kanungo. He was posted at Shimla. He was promoted as Naib Tehsildar (Election) on 3.5.1997 and posted as such in the office of the District Election Office, Kangra at Dharamshala. According to the petitioner he was not relieved of his duties in the office of the District Election Office, Shimla. The case of the petitioner is that on 26.6.1997 he proceeded on half day casual leave to get himself medically examined since he was not feeling well. The doctor advised him rest and therefore, the applicant proceeded on medical leave. The case of the petitioner is that he remained on medical leave from 26.6.1997 to 25.10.1997. The petitioner submits that on 26.6.1997 he had informed the District Election Officer, Shimla regarding his illness and applied for medical leave and again on 14.10.1997 he sent a telegram praying for extension of his leave.

3. The petitioner rejoined duty on 27.10.1997 and submitted his joining report to the Deputy Commissioner, Shimla. It was only then he came to know that he had been relieved in absentia and was informed that his promotion orders had been cancelled since he had not joined at Dharamshala where he had been posted and Shri Ashok Kumar had been promoted and posted in his place. Ashok Kumar is

admittedly junior to the applicant. On 1.11.1997 the applicant was again asked to join his original posting at Shimla and he was suspended vide order dated 11.11.1997 and his head quarter fixed at Paonta Sahib.

4. Thereafter the petitioner filed the original application before the Tribunal and prayed that the order of suspension and the order promoting Shri Ashok Kumar be set-aside. It may be pertinent to mention that Shri Ashok Kumar has not been arrayed as a party to the proceedings and no order setting aside his promotion can be passed in his absence. Even otherwise I find that there is no merit in the petition. In fact the conduct of the petitioner shows that he is a totally irresponsible officer who decided not to join at Dharamshala and has made false averments in the petition and is, therefore, not entitled to any relief.

5. A perusal of the record indicates that on 3rd May, 1997 on the recommendation of the DPC the petitioner was promoted as Naib Tehsildar (Election) and posted to Dharamshala against a vacant post. He admittedly did not join there. The petitioner in his petition has tried to indicate that he was in fact not relieved to join at Dharamshala. However, the record shows that on 11.6.1997 the petitioner sent a representation to the Chief Electoral Officer praying therein that he be not relieved for 2-3 months and may be granted extension of time for joining the post of Naib Tehsildar (Election) at Dharamshala. The only reason given in this application was that the petitioner was constructing a house and required time to complete the construction. On 21st June, 1997 the Chief Electoral Officer rejected the prayer of the petitioner and the District Election Officer i.e. Deputy Commissioner, Shimla was directed to relieve the petitioner immediately and further directed him to join the vacant post at Dharamshala. It was pointed out that Kangra is the biggest district in the State of Himachal Pradesh consisting of 16 assembly constituencies and the post of Naib Tehsildar (Election) could not be kept vacant for such a long time. Thereafter on 26th June, 1997 the Deputy Commissioner issued orders relieving the petitioner from service. On the same day, the petitioner decided to get a check-up and go to the hospital and took casual leave for the second half of 26.6.1997.

6. The case of the petitioner is that from 26.6.1997 till 27.10.1997 he could not attend duties since he was unwell. However, this is belied from annexure P-6 which is a representation dated 28.6.1997 sent by the petitioner wherein he again prayed that he may not be relieved for another period of 2-3 months. He has not mentioned in this representation that he was unwell. In fact, the record shows that the petitioner was relieved on 26.6.1997 and the relieving order was handed over to him but after reading the same he went away from the office. In fact in his letter dated 26.6.1997 whereby the petitioner has prayed for grant of half day's casual leave to go to the hospital he has clearly stated that he will be able to hand over the charge only after he gets relieved after check-up. This clearly shows that the petitioner was aware that relieving order has been issued and thereafter went for a check up. He has not mentioned anything about his

illness. Even thereafter when he made the representation on 28th June, 1997, he did not say a word that he was unwell. In fact, as per the record the first information sent by the petitioner that he was unwell was on 3rd July, 1997 when a telegram was sent by him to the effect that he is unwell and his leave may be extended.

7. From the aforesaid facts it is more than clear that the petitioner purposefully avoided to join at Dharamshala and put up false pleas and avoided to hand over charge as directed to him by his superior officer. He has withheld material facts from the Court and is not entitled to any relief. Therefore, the petition is dismissed with costs assessed at Rs. 10,000/-.