

(2010) 11 SHI CK 0430
In the High Court Of Himachal Pradesh
Case No : CWP No. 4379 of 2009

Ravinder S. Jinta

APPELLANT

Vs

H.P. State Civil Supplies Corporation

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2010) 11 SHI CK 0430

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Petitioner, who had been working as Sales Depot Incharge, under the Respondent, from April to July, 1986, is aggrieved by the order, dated 29.11.1990, copy Annexure P-8, whereby he has been dismissed from service, after holding departmental inquiry, in which he was held to be guilty of misconduct of misappropriating stock worth Rs. 1,13,147.26.

2. An audit inspection was conducted by Shri K.K.Sharma, Accountant, and T.R. Verma, Assistant Area Manager of Respondent No. 1, in August, 1986 and it was found that stock entrusted to Petitioner, in his capacity as Sales Depot Incharge, was short and various goods worth Rs. 1,13,147.26 were missing for which the Petitioner offered no explanation. Matter was reported to the police. A case was registered; vide FIR No. 74/1986 at Police Station, Rohru. Petitioner was challaned by the police, on completion of investigation. Simultaneously, departmental proceedings were also initiated against him. Regular inquiry was conducted, in accordance with the provisions of CCS (CCA) Rules, 1965. Inquiry Officer, vide report Annexure P-7, submitted sometime in the year 1990, found the Petitioner guilty of the charge of misappropriation of stock. On the basis of that inquiry report, Petitioner was dismissed from service, vide impugned order dated 29.11.1990, copy Annexure P-8.

3. Criminal case, instituted against the Petitioner, was still pending, when the impugned order, copy Annexure P-8, was passed by the Disciplinary Authority. That case was decided in the year 1993 and the Petitioner was acquitted, vide judgment dated 28.6.1993, copy Annexure P-10. After his acquittal by the Criminal Court, Petitioner filed a writ petition (CWP No.916/1994) in this Court in the year 1994, which was withdrawn in November, 1994, because by that time, H.P. State Administrative Tribunal had been established and that Tribunal was assigned the jurisdiction, in respect of service matters of the employees of Respondent-Corporation. Petitioner then filed an OA (Original Application) before H.P. State Administrative Tribunal, in the year 1998 or say four years after withdrawing the writ petition from this Court.

4. Tribunal was scrapped in the year 2008. OA filed by the Petitioner was still pending, when Notification of scrapping was issued. So, it came to be transferred to this Court, which was registered as CWP No. 5036/2008. It was disposed of by this Court, vide order dated 29.7.2009, with a direction to the Managing Director of Respondent-Corporation, to decide the pending representation of the Petitioner by a speaking order in the light of judgment, delivered by the Supreme Court in G.M. Tank Vs. State of Gujarat and Another, Managing Director of Respondent-Corporation has, in compliance with the order of this Court, passed the order dated 22.9.2009, copy Annexure P-12, by which representation of the Petitioner has been rejected. It is against this order, copy Annexure P-12, that the Petitioner has come to this Court. He seeks quashing of this order as also the order of his dismissal, copy Annexure P-8.

5. Respondent, in its reply, has refuted the claim of the Petitioner for his reinstatement in service.

6. Petitioner's contention is that copy of inquiry report had not been supplied to him before the decision to impose penalty was taken and, thus, there is violation of statutory rules, providing for supply of copy of inquiry report, before report is accepted and decision to impose punishment is taken. According to the Petitioner, this is not a case of mere violation of statutory rules, but also of Article 311 of the Constitution of India.

7. Another contention raised by the Petitioner is that when Criminal Court had acquitted him, findings returned by the Inquiry Officer cannot be allowed to remain, and if that is so, the order of dismissal passed on such findings of Inquiry Officer automatically goes.

8. I have heard learned Counsel for the parties and gone through the record.

9. It is not in dispute that copy of Inquiry Report had not been supplied to the Petitioner before the Respondent accepted the inquiry report and took the decision to impose penalty. This stands demonstrated from the order of punishment, copy Annexure P8 itself, because the order reads that copy of inquiry report was supplied alongwith this order only and not before that.

10. Learned Counsel, representing the Respondent, submits that unless it is shown by the Petitioner that some prejudice has been caused to him, on account of non-supply of copy of inquiry report, order of punishment cannot be quashed. In support of the contention, reliance has been placed upon a judgment of Supreme court in Union of India (UOI) and Others Vs. Bishamber Das Dogra, wherein it has been held (vide Para 21) that non-supply of inquiry report does not ipso facto vitiate the disciplinary proceedings, as it would depend upon the facts and the circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him, by not furnishing the inquiry report to him.

11. In the instant case, not only that Petitioner has not alleged that any prejudice, muchless real prejudice, has been caused to him, on account of non-supply of inquiry report, but from the facts and the circumstances of the case, it can legitimately be concluded that no prejudice has been caused to him, on this score. Reasons are that the charge-sheet, which was served upon the Petitioner, was based upon the record maintained/kept by him and it is on the basis of such record that deficiency in stock was noticed, which remained unaccounted. Petitioner does not deny that he was Incharge of Sales Depot. In that capacity he was supposed to have been entrusted with stock. He did not offer any explanation, during the course of inquiry, for the deficiency in stock nor did he lead any evidence. Witnesses of the Department (Presenting Side) were examined, in the course of inquiry, in his presence and he cross-examined those witnesses.

12. Another submission made on behalf of the Petitioner is that when the Criminal Court held the Petitioner innocent, vide judgment, copy Annexure P-10, findings of the Inquiry Officer cannot be sustained. In support of the contention, learned Counsel for the Petitioner places reliance upon a judgment of the Hon"ble Supreme Court in G.M. Tank v. State of Gujrat and Ors. (2006) 5 SCC 44.

13. From a reading of the precedent, relied upon by the learned Counsel for the Petitioner, it is clear that it is only in those cases where set of witnesses/evidence adduced by the prosecution is the same, as adduced during departmental inquiry, that the delinquent official, when acquitted by the Criminal Court, cannot be punished on the basis of findings returned by the Inquiry Officer, in the course of departmental inquiry conducted subsequent to acquittal.

14. In the present case, three witnesses were examined during the course of inquiry. They were Shri K.K. Sharma, Shri T.R. Verma and Shri Lakshman Singh, all employees of the Respondent-Corporation. Two of these witnesses, namely Shri T.R. Verma and Shri Lakshman Singh had not been examined in the criminal case. One of the grounds for acquittal of Petitioner, per judgment, copy Annexure P-10, is that though audit/inspection was conducted by two persons, namely Shri K.K.Sharma and Shri T.R. Verma, only one of them had been examined and no explanation for not examining the other had been offered. However, during the departmental inquiry both the above named persons, who conducted audit/

inspection, had been examined.

15. Moreover, judgment of acquittal, copy Annexure P-10, shows that acquittal of the Petitioner was on account of the prosecution having not "properly proved" the entrustment and the misappropriation. Criminal Court did not say that the two facts were not at all proved. It observed that it appeared a case of disappearance of stock, on account of carelessness, negligence or malpractice of some other kind. Petitioner was given benefit of doubt and acquitted.

16. Para 35 of a judgment rendered by the Hon''ble Supreme Court in Union of India (UOI) and Others Vs. Naman Singh Sekhawat, indicates that where a delinquent employee is acquitted by the Criminal Court, by being given the benefit of doubt, it is permissible for the employer to initiate departmental action and to hold departmental inquiry, and on the basis of finding recorded during the course of such inquiry, punish the delinquent employee. It has also been held in the aforesaid judgment, vide para 19, that there cannot be any doubt whatsoever that initiation of departmental proceedings is permissible, even after the judgment of acquittal is recorded by the Criminal Court.

17. Now, if departmental action can be initiated against a delinquent employee, even after his acquittal by a Criminal Court, his punishment by the department, based on departmental inquiry and proceedings, concluded prior to judgment of acquittal rendered by the Criminal Court, cannot be quashed merely for the reason that Criminal Court has acquitted him, especially when acquittal is based on benefit of doubt and the finding by the Criminal Court, as in the present case, is that the charge is not "properly proved".

18. For the foregoing reasons, writ petition is dismissed.