
(2011) 08 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 8685 of 2010

R.L. Saklani

APPELLANT

Vs

Himachal Pradesh Horticulture Produce and Marketing
Processing Corporation Limited and Another

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Citation : (2011) 3 ShimLC 358

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Memorandum of charge was issued to the petitioner on 26.6.1982. He filed detailed reply to the same on 2.7.1982. Inquiry Officer was appointed. He submitted the report to the Disciplinary Authority dated 9.6.1983. Thereafter, the Disciplinary Authority passed orders on 11/12.8.1983 vide Annexure P-1. Penalty of stoppage of three annual increments with cumulative effect was imposed upon the petitioner. His suspension with effect from 23.11.1981 till 12.8.1983 was treated as non-duty period but converted into leave of the kind due and admissible at the request of the petitioner. Petitioner preferred an appeal before the Disciplinary Authority. The same was rejected on 1.3.1986. The appellate order dated 1.3.1986 was set aside by the erstwhile Himachal Pradesh Administrative Tribunal in T.A. No. 1 of 1996 on 30.8.1999 and the Appellate Authority was directed to decide the appeal preferred by the petitioner within six weeks. The same was rejected by the respondents on 5.11.1999. Petitioner filed O.A. No. 3611/1999 assailing the order whereby the appeal of the petitioner was rejected. The same was transferred to this Court and was assigned CWP (T) No. 6278 of 2008. The appellate order being non-speaking was set aside by this Court on 5.4.2010 with a direction to the Appellate Authority to decide the appeal fresh by a speaking order. Thereafter, fresh order was passed by the Appellate Authority on 4.9.2010. Mr. K.D. Sood has

strenuously argued that the disciplinary proceedings have not been conducted in accordance with law. According to him, the copies of documents, as mentioned in the memorandum of charges, have not been supplied to his client. He then contended that the copies of the statements of the witnesses were also not supplied to his client. He further contended that the copy of the inquiry report was not supplied to the petitioner. He lastly contended that the penalty imposed upon the petitioner is disproportionate to the misconduct.

2. Mr. Ajeet Singh Saklani has supported the impugned orders.

3. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

4. The detailed procedure has been prescribed under the Service Bye-Laws framed by the respondent-Corporation the manner in which disciplinary proceedings are initiated and concluded. Regulation 6.17 defines the minor and major penalties and the manner in which these can be imposed. Petitioner has failed to point out infraction of Regulation 6.17. He has been offered ample opportunity to defend himself. The copies of the documents have been supplied to the petitioner on 21.3.1983. He has also not objected to proceed with the inquiry, as is evident from Annexure R-7 dated 21.3.1983. He had been permitted to cross-examine the witnesses produced by the prosecution.

5. Mr. K.D. Sood has also argued that material witnesses have been withheld by the Department to prove its case. It was always open to the petitioner to produce these witnesses in his defence. Petitioner has not applied for the copy of the inquiry report. He has failed to show that prejudice has been caused to him. Their Lordships of the Hon'ble Supreme Court in Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, have held that non-furnishing of report does not by itself renders punishment invalid.

6. Appellate order dated 4.9.2010 is speaking order. All the contentions and pleas raised by the petitioner, in his memorandum of appeal, have been addressed by the Appellate Authority.

7. Mr. Ajeet Singh Saklani has also taken the Court through the inquiry report, which is at page 63 of the paper book. It is clear from the statement of PW-1 Madan Sharma that he weighed truck No. HPA 1028 in which 77 bags of apples were unloaded weighing 3800 kgs after deducting spoilage. The records of weighment were handed over to the petitioner, who was working as Junior Accountant on the same day. PW-2 Shiv Kumar Thakur has also stated that he used to maintain register of fruit received in the Plant. He has proved register Ex.P-2, which he used to maintain. The register could be checked either by the Security Officer or by the staff of Accounts Branch. He has admitted that 77 bags were written in his handwriting. The factory used to operate even on Sundays and holidays. In his cross-examination he has admitted that he has allowed PW-3 R.K. Jain to see the register and it was found that in Ex.P-2 there was some over writing. Statement of PW-3 Sh. R.K. Jain, who was working as Assistant Chemist

in the factory, was most material. He had knowledge of truck No. HPA 1028 being unloaded at the Plant 14.11.1981. Ms Sarbjeet Kaur Tester was on duty. He was sitting in the laboratory on 17.11.1981 when the petitioner approached Ms. Sarbjeet Kaur at about 3.00 P.M. and requested her to change the number of bags 177 instead of 77 bags as well as spoilage record. This conversation between petitioner and Ms. Sarbjeet Kaur took place in his presence. He has proved Ex.P-3 and P-4. He found that the changes have been made in the security register Ex.P-2 and unloading register Ex.P-5. Petitioner requested him not to report the matter to the management. He again requested him at 7-8 P.M. not to bring the matter in the knowledge of the General Manager since he wanted to contact the consignee. He handed over the documents to the General Manager in the evening. Petitioner again visited his house at about 8.00 A.M. Petitioner told him that he has contacted the party in the mid-night and told that bags were 177 instead of 77. He again requested that the matter may not be reported to the higher authority.

8. Petitioner had changed figure "77" to "177". He had also changed the weight of the apples from 3800 kgs to 12800 kgs (38 quintals to 128 quintals).

9. Scope of judicial review in disciplinary proceedings is very limited. The Courts generally interfere if there is infraction of the mandatory provisions of law governing the institution and holding of regular inquiry. In the instant case there is no perversity in the evidence recorded by the Inquiry Officer. Petitioner has been given ample opportunity to defend himself. He was on probation and was required to work diligently to ensure that no loss was caused to the Department. Accordingly, the penalty imposed upon the petitioner is not disproportionate to the misconduct.

10. Their Lordships of the Hon'ble Supreme Court in State Bank of Mysore and Others etc. Vs. M.C. Krishnappa, have held that punishment is primarily a function of management and Courts rarely interfere with quantum of punishment. Their Lordships have held as under:

8. We are unable to agree with the view taken by the High Court. It is well settled that punishment is primarily a function of the Management and the Courts rarely interfere with the quantum of punishment. (See: The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad, paragraphs 9 and 14).

9. In this case the proven charge against the respondent was of financial irregularities and of making fraudulent withdrawals deriving pecuniary gain for himself. In a bank an offence of this kind is one of the most serious offences and the disciplinary authority had passed an order of removal against the respondent. In the facts of the case even that punishment could not be said to be unreasonable or unduly harsh. The Reviewing Authority modified the order of punishment and gave him a lighter punishment instead. At that time the respondent accepted it without ado. In those facts we fail to see any scope for

interference with the punishment on a purely subjective view taken by the High Court.

Consequently, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed. There shall, however, be no order as to costs.

Petition dismissed.