

(1997) 07 SHI CK 0041
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 242 of 1997

Sh. S.N. Mittal

APPELLANT

Vs

Dr. Y.S. Parmar University and Others

RESPONDENT

Date of Decision : 14-07-1997

Acts Referred:

Citation : (1998) 1 ShimLC 331

Hon'ble Judges : M. Srinivasan, C.J.; A.L. Vaidya, J

Bench : Division Bench

Advocate : Rajiv Atma Ram, for the Appellant; Ramakant Sharma and D.C. Jishtu, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The Petitioner is challenging the validity of the show cause notice issued by the Board of Management of the Respondent University, at the conclusion of an inquiry held against him. In the show cause notice, it is stated that on a careful consideration of the Inquiry Report, the Board of Management had agreed with the findings of the Inquiry Officer and held that the article of charge is proved. The Board of Management has, thus, provisionally come to the conclusion that the Petitioner is not a fit person to be retained in service and, therefore, the Board of Management is proposing to impose upon the Petitioner the penalty of dismissal from service. It is also seen from the show cause notice that a copy of the report submitted by the inquiry officer was enclosed therewith. The Petitioner was called upon by the said show cause notice to make representation on the penalty proposed, but only on the basis of the evidence adduced during the inquiry.

2. The grievance of the Petitioner is that the show cause notice does not give an opportunity to the Petitioner to make a representation against the findings contained in the inquiry officer's report. According to learned Counsel for the Petitioner, this goes against the rule of law laid down by the Supreme court in Managing Director, ECIL, Hyderabad v. B. Karunakar JT 1993 (6) SC 1 : 1993 (4)

SCC 727. In that case the Supreme Court framed several questions for consideration. Question No. (iv) reads as follows:

(iv) Whether the law laid down in Union of India and others Vs. Mohd. Ramzan Khan, will apply to all establishments Government and non-government, public and private sector undertakings ?

In paragraph 30, the question had been answered thus:

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules requires an inquiry to be held for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question No. (iv) is answered accordingly.

3. In view of the said ruling of the Supreme court, it is clear that the delinquent must have an opportunity to make his representation as against the findings given by the Inquiry Officer. As far as the University is concerned, the relevant Rule is Rule 8.5 which reads as follows:

8.5(1) After the inquiry against the person has been completed and the disciplinary authority has arrived at a provisional finding and has proposed punishment, the University employee shall, if the penalty, proposed is dismissal, removal, compulsory retirement or reduction in the rank, be supplied with a report of the Inquiry Officer/Committee and be called upon to show cause within a reasonable time which shall not be less than two weeks and not more than one month against the particular penalty proposed to be Inflicted upon him. Reply to the show cause, if any, submitted by the accused employee shall be taken into consideration, before the final orders are passed.

(2) A copy of the orders made by the punishing authority alongwith a copy of the report of the Inquiry Officer/Committee shall be sent to the employee by registered post.

(3) Where two or more employees are concerned, in a case the prescribed authority may direct disciplinary action against all of them in common proceedings.

4. Reading the rule in the light of the judgment of the Supreme Court, the rule shall be understood in the following manner. When the disciplinary authority

issues a notice to the delinquent to show cause against the proposed punishment, it should also be taken as a notice to show cause against the acceptance of the findings given by the inquiry officer in his report.

5. Construed in that manner, the show cause notice which has been issued to the Petitioner would enable him to make his representation as against the findings contained in the inquiry officer's report. If the Petitioner makes his representation against such findings, the disciplinary authority shall consider the same and come to a conclusion with regard to the acceptance of the findings in the light of the representation made by the Petitioner. It is only there that the question of imposing punishment on the Petitioner has to be considered by the disciplinary authority. Instead of having it in two different stages, Rule 8.5 provides for one state, but both the matters will be considered at that stage.

6. Thus, the Petitioner will be in a position to make his representation against the inquiry officer's report as well as the proposed penalty in his reply to the show cause notice. When such a representation is made by the Petitioner, the disciplinary authority shall consider the entire representation and pass appropriate orders, not only with regard to the acceptance of the findings contained in the inquiry officer's report, but also with regard to the penalty to be imposed upon him, if the said findings are accepted.

7. The Petitioner is given time till 4th August, 1997 to make his representation as against the findings contained in the inquiry officer's report.

8. Even though the Petitioner has raised several contentions on the merits of the case, we have not gone into the same, in view of the above decision taken by us. Hence the question of considering the merits has not arisen in this case.

9. With the above observations, the writ petition is disposed of. No costs.

10. CMP 487/1997

Allowed.

CMP 586 1997.

11. In view of the order passed in the main writ petition, this petition does not survive and stands dismissed.