

(2011) 12 SHI CK 0305
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1349 of 2011

Shanti Swarup Bali

APPELLANT

Vs

HPSEB and Another

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2011) 12 SHI CK 0305

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—By means of the present petition, the petitioner sought the following reliefs:

(i) That writ of certiorari may be issued for quashing and setting aside the impugned Annexure P2 enquiry report. Annexure P3 order dated 28.6.1986 and Annexure P7 order dated 19.1.2011, passed by respondent No. 2.

(ii) That writ of mandamus may be issued directing the respondent to make the payment of all consequential benefits arising out of the service in respect of increment as well as the promotional benefits.

(ii). The present case has a chequered history. Succinctly, facts in brief germane to this petition can be stated thus. Petitioner was serving in the respondent-Board as overseer (re-designated as Junior Engineer) in the Electrical Division Jubbal. In the year 1975, he was charge sheeted under Rule 14 of the CCA and CCS Rules vide memorandum SHC/10/19/75-16266-69 (Annexure P1) dated 17.10.1975 by the Superintending Engineer, Shimla Hydrel Circle, on various charges for misusing his position and issuing unauthorized service connections.

(iii) The respondent-Board appointed the Assistant Secretary (Vig.) an enquiry officer vide order No. SHC/10-19/70-3357-62 dated 4.3.1976 but in between he retired and thereafter Under Secretary (Vig.) of the respondent-Board was appointed as enquiry officer vide letter dated 5.6.1981. He submitted his enquiry

report on 27.12.1985. This report was considered by the Disciplinary Authority, i.e., the Whole Time Member of the Board and awarded penalty of stoppage of two increments with cumulative effect vide order dated 28. 6.1986 (AnnexureP3).

(iv). Petitioner preferred an appeal on 29.7.1986. The appellate Authority, i.e., the Board considered the appeal and did not find any reason to differ with it as such dismissed the appeal on 2.9.1987 (AnnexureP4) which was conveyed to the petitioner vide letter dated 1.7.1989 (AnnexureP5).

(v). Petitioner filed representation/appeal to the Secretary MPP & Power to the Government of H.P. which was also rejected on 26.11.1988

(vi). Against the aforesaid orders, petitioner filed Original Application No. 536 of 1996, in the Erstwhile Tribunal and after its abolition, it was transferred to this Court. In view of the observations made in the said order (Annexure P6), allowed the petition and quashed and set aside Annexure A4 dated 28.6.1986 imposing penalty, Annexure A5 dated 2.9.1987 dismissing the appeal and Annexure A6 dated 26.11.1989 the order of dismissal by the Secretary MPP & Power. The "Disciplinary Authority" was further directed to pass fresh orders after taking into consideration the representation made by the petitioner against the inquiry report within a period of eight weeks from the date of passing the said judgment/order.

2. The petitioner informed the Chairman of the respondent-Board in writing to implement the judgment/order passed by this Court. The perusal of the record reveals that the matter was never taken up by the Disciplinary Authority as directed but however, the respondent Board took up the appeal, which was non-existent in view of the judgment/order (Annexure A6) passed by this Court and vide order dated 19.1.2011 (Annexure P7) reproduced the entire facts and rejected the appeal which is wrong and illegal.

3. In fact, as a consequence of the judgment/order Annexure A6, the proceedings would revert back to the stage of deciding the representation of the petitioner to the report of inquiry officer and after taking into consideration the said representation it was required to be decided by the Disciplinary Authority in a time bound manner, which is not done, therefore, the impugned order Annexure P7 dated 19.11.2011 passed in appeal which was non-existent, is unsustainable and is therefore, quashed and set aside with the direction that the "Disciplinary Authority" shall comply with the order Annexure A6 passed by this Court after affording an opportunity of being heard to the petitioner within 8 weeks from the production of the certified copy of this judgment to the Disciplinary Authority. In case, the petitioner would feel aggrieved by the order passed by the Disciplinary Authority, he shall have a right to challenge the same in statutory appeal.

4. The petition stands disposed of with the above directions, so also the pending application(s), if any.