
(2020) 07 SHI CK 0370
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 751 Of 2019

Shiv Ram

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 11, 14

Citation : (2020) 07 SHI CK 0370

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Maan Singh, Arvind Sharma

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Being aggrieved and dissatisfied with the order No. SFC/(1)(B)14)-18/2001/6291, dated 9.6.2005, passed by Managing Director H.P. State Forest Corporation Limited, Shimla (Respondent No.2), whereby statutory appeal having been filed by the petitioner, laying therein challenge to Office order No.14/2004-05, dated 21.06.2004, passed by respondent No.3, Director (South) H.P. State Forest Corporation Limited, Shimla, awarding therein penalty of stoppage of two future increments with cumulative effect against the petitioner, came to be rejected, petitioner approached Erstwhile Himachal Pradesh Administrative Tribunal by way of Original Application No.378 of 2006, praying therein following reliefs:-

(i) In view of the aforementioned submission it is humbly prayed that the impugned orders vide Annexure A-1 & A-2, dated 9.6.2005 and 21.6.2004 may be quashed with immediate effect;

(ii) That the arrears of two increments with interest be released to the applicant with immediate effect;

(iii) That the cost of this petition may kindly be granted in favour of the applicant;

2. Before ascertaining the correctness of the submissions made by learned counsel representing the parties vis-a-vis orders impugned in the instant proceedings, this Court at first instance deems it necessary to go into the question of scope of judicial review as far as departmental proceedings are concerned. It is well settled by now that writ Courts should be loath to interfere with the findings of fact recorded by the departmental authority, but same time it is also settled by now that if findings recorded by the Enquiry Officer are not supported by any evidence or are such as no reasonable person would arrive at, writ court is justified to examine the matter. Similarly, if writ court having heard parties and perused record arrives at a conclusion that there is violation of principles of natural justice, even in that eventuality, it can interfere with Disciplinary enquiry or resultant orders. Besides above, if it comes to the notice of writ court that authority while passing order has not applied its mind; or has not assigned reasons while drawing its conclusion, it can interfere with the orders of punishment.

3. In this regard, reliance is placed upon the judgment rendered by Hon'ble Apex Court in Allahabad Bank and others vs. Krishna Narayan Tewari (2017) 2 Supreme Court Cases 308, wherein it has been held as under:-

"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their

duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand."

4. Aforesaid exposition of law laid down by the Hon'ble Apex Court, clearly reveals that normally writ court should not be very enthusiastic to interfere with the findings of fact recorded by the departmental authority on the basis of the evidence, but if such findings are not supported by any evidence or are as such, that no reasonable person would arrive at, it is justified to examine the matter. In nutshell, it can be safely concluded from the aforesaid judgment rendered by the Hon'ble Apex Court that there is no complete ban for writ Court to interfere in the departmental proceedings, rather in certain circumstances, as have been discussed hereinabove, it can proceed to quash and set-aside the same.

5. Now, in the light of the aforesaid law occupying the field, this Court would make an attempt to test the correctness of the submissions made by learned counsel representing the parties vis-a-vis reasons/ conclusions drawn by the Disciplinary Authority in the departmental proceedings. But before doing so, it would be apt to take note of certain undisputed facts, which are as under:-

(i) The petitioner Shiv Ram had joined the respondent -Forest Corporation as a Timber Watcher in the year, 1984, but subsequently in the year 1996, he was promoted as Deputy Ranger. He was also given an additional charge for the post of Assistant Manager w.e.f. 1996 at regular intervals by the respondent-Department. Between the year 1998-99 applicant was working as officiating Deputy Ranger at Forest working Unit, Nankhari, Tehsil Rampur, District Shimla, Himachal Pradesh and was having control of 12 lots. During aforesaid period, Labour Supply Mate (for short 'LSM'), Sh. Kewal Prashad, was assigned the work of cutting, felling and supply of timber to the authorized Depot at Durah. Since, above named 'LSM' started stacking the aforesaid lot of timber at unauthorized Depot towards Kutal Nallah and not at authorized Depot at Durah, petitioner besides informing higher authorities, also sent notice to above named "LSM" advising him to stack timber at authorized Depot at Durah, but it appears that "LSM" Sh. Kewal Prashad instead of stacking timber at authorized Depot at Durah, stacked the timber at unauthorized Depot and ultimately timber in

question gutted in fire on 21.4.1999, resulting in huge financial loss to the Forest Corporation. In the aforesaid background, respondent-Department charge sheeted the present petitioner along with respondent No.5, Sh. Meena Ram, who at that relevant time was working as Timber Watcher, vide office memo No.3298, dated 22.6.2000 under Rule-14 of the CCS(CCA) Rules, 1965 for serious negligence and dereliction of duty resulting in considerable loss to the Forest Corporation. Though, petitioner denied the allegations contained in the charge sheet in toto vide reply, dated 9.7.2000, but Enquiry Officer on the basis of totality of material adduced before him arrived at a conclusion that only charge vide Article -I of the Memorandum (A-7) i.e. serious negligence of dereliction in performance of official duties, is proved and as such, recommended to the Disciplinary authorities for awarding appropriate penalty (Annexure A-9).

(ii). Respondent No.3, Director (South) H.P. State Forest Corporation Limited at Shimla, accepted the enquiry report and proposed to impose penalty of stoppage of two future increments vide show cause notice dated 13.10.2003 (Annexure A-10). Petitioner vide reply dated 7.11.2003 (Annexure A-11), while praying for reconstitution of enquiry claimed that since Enquiry Officer has failed to take note of several documents adduced on record by him suggestive of the fact that he repeatedly wrote several communications to 'LSM' concerned advising therein to stack timber at authorized depot coupled with the fact that copies of such communications were sent to higher authorities, penalty proposed vide show cause notice cannot be awarded. Petitioner vide aforesaid communication also stated before the Disciplinary authority that penalty proposed to be imposed upon him is harsh, highly unjustified, arbitrary and against the facts of the case. However, fact remains that Disciplinary authority ignoring the aforesaid reply filed by the petitioner imposed penalty of stoppage of two future increments with cumulative effect on the petitioner under Rule 11 of CCS (CCA) Rules, 1985 vide order dated 21.6.2004 (Annexure A-2), but interestingly, no penalty, if any, ever came to be imposed against the delinquent officer Sh. Meena Ram, who alongwith petitioner was also found guilty by the Enquiry Officer.

(iii) Being aggrieved with the aforesaid order of penalty imposed by the Disciplinary authority, petitioner filed statutory appeal before the Managing Director H.P. State Forest Corporation, but he also dismissed the claim of the petitioner and upheld the penalty imposed by the Disciplinary authority. In the aforesaid background, petitioner approached Erstwhile H.P. Administrative Tribunal by way of Original application, as referred above, praying therein relief(s), as have been reproduced hereinabove, but now such petition has come to this Court for hearing after abolishment of Tribunal.

6. Mr. Sanjeev Bhushan, learned Senior Counsel representing the petitioner while making this Court to peruse the various documents adduced on record, vehemently argued that orders passed by the Disciplinary authority and Appellate Authority are not tenable because same are not based upon the proper appreciation of facts as well as documentary evidence adduced on record by the

petitioner. With a view to substantiate his aforesaid plea, Mr. Bhushan, while making this Court to peruse the reply filed by the petitioner to the charge sheet, show cause notice as well as grounds contained in the statutory appeal, strenuously argued that by no stretch of imagination order of imposition of penalty by the Disciplinary authority further upheld by the Appellant authority can be said to be legal and valid, rather same has been passed merely to harass the petitioner.

7. To the contrary, Mr. Arvind Sharma, learned Additional Advocate General while supporting the impugned orders passed by the authorities, contended that since there is no illegality and infirmity in the impugned orders, no interference is called for. Learned Additional Advocate General further contended that since writ court has very limited power to interfere with the findings of the departmental authority, present petition deserves to be dismissed.

8. I have heard learned counsel representing the parties and carefully gone through the record.

9. Precisely, the allegations against the petitioner as well as other delinquent Officer Sh. Meena Ram was that they failed to stop 'LSM,' Kewal Prashad from stacking/carrying timber to unauthorized depot. As per the allegations contained in the charge sheet, it was very much in the knowledge of the petitioner that 'LSM' Kewal Prashad has been awarded work of cutting, feeling and supply of timber to authorized depot at Durah, but despite that he did not take effective steps to prevent transport of timber to unauthorized depot towards Kutal Nallah.

10. Petitioner with a view to demonstrate that he after having come to know wrong stacking of timber by 'LSM' Kewal Prashad took proper action, placed on record various communications suggestive of the fact that petitioner, who was serving as Deputy Ranger at the relevant time besides advising LSM concerned to remove the timber from unauthorized depot also informed higher authorities i.e. Assistant/Divisional Manager Forest Corporation with regard to aforesaid illegalities committed by the 'LSM'. Interestingly, in the case at hand perusal of order dated 9.6.2005 passed by the Appellate Authority i.e. Managing Director Forest Corporation, clearly reveals that Appellate authority having carefully perused the record made available to him virtually concurred with the claim of the petitioner that he had sent various communications advising LSM concerned not to transport/carry timber to unauthorized depot, but surprisingly, Appellant authority upheld the penalty imposed by the Disciplinary authority on the ground that merely writing letters to the 'LSM' was not sufficient, rather petitioner ought to have stopped the work. Having carefully perused the various communications adduced on record coupled with the fact that Appellate authority also agreed with the contention of the petitioner that copies of letters sent to 'LSM' were also sent to the Assistant/ Divisional Manager Forest Corporation, there appears to be considerable force in the arguments advanced by learned Senior counsel representing the petitioner that it cannot be said that the petitioner remained grossly negligent while performing his duties.

11. Perusal of letters dated 22.12.1998 (Annexure A-3/T), 6.1.1999(Annexure A-4/T) 17.3.1999 (Annexure A-5/T) and 5.4.1999 (Annexure A-6/T), which otherwise stand duly mentioned in the reply filed by the petitioner to the charge sheet, show cause notice to the memorandum issued by the Disciplinary authority while proposing penalty and the statutory appeal to the Managing Director, clearly reveal that the petitioner after having noticed illegal act of 'LSM' concerned, not only sent him various letters, but also apprised the higher authorities, so that appropriate action in accordance with law is taken against the 'LSM'. Letter dated 22.12.1998 sent to 'LSM' by the petitioner, clearly reveals that 'LSM' was specifically told that timber of lot No.2/98/99 is required to be taken/transported from Marah Kot Depot to Durah and in case of transportation to some wrong place 'LSM' would be responsible for any kind of damage or shortage.

12. Having taken note of information sent by Deputy Ranger i.e present petitioner, Divisional Manager Forest Working Division, Rampur sent communication dated 17.3.1999 (Annexure A-5/T) to 'LSM' Kewal Prashad, perusal whereof clearly reveals that factum with regard to stacking of timber at wrong Depot was very much in the knowledge of the Divisional Manager, Forest Corporation, Rampur, who vide aforesaid order specifically told 'LSM' Kewal Prashad that he has stacked the timber at wrong site and there is every danger of breaking fire and as such, he should bring the timber back to authorized Depot at Durah, so that it is kept safely. Vide aforesaid communication Divisional Manager working Division, Rampur also directed Sh. Meena Ram, Timber Watcher to keep cleanliness near the timber store, so that same is protected from the fire.

13. Similarly, perusal of communication dated 5.4.1999 (Annexure P-6/T) placed on record, reveals that present petitioner repeatedly brought the matter to the notice of the higher authorities because vide aforesaid communication Divisional Manager working Division, Rampur again after having noticed wrong stacking of timber at unauthorized Depot warned 'LSM' that in the event of any damage caused to the timber, he would be responsible.

14. Having carefully perused the various communications placed on record, which otherwise stand duly mentioned in the report of the Enquiry Officer, this Court has no hesitation to conclude that Enquiry Officer and thereafter statutory authorities while imposing/upholding penalty of stoppage of two future increments, have not applied their mind, rather they merely with a view to fix responsibility of some one in the alleged incident proceeded to hold petitioner guilty. Interestingly, Enquiry Officer though has taken note of various communications adduced on record by the petitioner suggestive of the fact that he repeatedly directed 'LSM' concerned not to stack timber at unauthorized Depot, but yet failed to render plausible reasons in the enquiry report while discarding aforesaid communications and recommending action against the petitioner for serious negligence and dereliction of duties.

15. Enquiry Officer in his report has concluded that that the petitioner has failed to place on record copy of notice issued by him on 22.12.1998 to 'LSM' advising therein not to carry timber to unauthorized Depot, but such finding appears to be totally contrary to the record because communications taken into consideration by the Enquiry Officer, if read in its entirety clearly suggests that on 22.12.1998 petitioner had sent notice to 'LSM', copy whereof was also endorsed to the higher authorities, who in turn also warned 'LSM' that in the event of any loss to the timber, he would be held responsible. Enquiry Officer has recorded in his finding that from the record exhibited during the course of enquiry it emerge that in three months of February, March and April, 1999, the Deputy Ranger, Sh. Shiv Ram toured lot No.2/98-99(Merahkot) first on 3.3.1999 and then second time he visited Merahkot village on 13.3.1999, but since it has been not clearly mentioned in the tour diary that as to timber of which lot did he inspect on that day, it cannot be said that petitioner was not negligent. However, having noticed material available on record, this Court finds aforesaid findings returned by the Enquiry Officer to be highly untenable and contrary to the record. Once factum with regard to tour of the petitioner during February, March and April, 1999 stood recorded in the tour diary, mere non-mentioning of factum with regard to inspection of the particular lot of timber in tour diary is of no relevance.

16. Leaving everything aside, Enquiry Officer in his report has no where concluded that no steps, if any, ever came to be taken at the behest of the petitioner to stop the 'LSM' from carrying timber to unauthorized Depot, rather specific findings against the petitioner and another person returned by him in the enquiry report is that there was an inordinate delay of about three months on the part of both these officials to inform the superior office about the wrong carriage of timber, but as has been discussed hereinabove, such findings is totally contrary to the record and cannot be allowed to sustain.

17. Similarly, perusal of order dated 21.6.2003 passed by the Disciplinary authority, whereby penalty of stoppage of two future increments came to be awarded, nowhere suggests that the Disciplinary authority bothered to verify the correctness of sequence of events narrated by the petitioner in his reply to the show cause notice served upon him intimating therein, penalty proposed to be awarded to him. Perusal of aforesaid reply filed by the petitioner (Annexure A-11) clearly reveals that petitioner while giving complete narration of sequence of events also furnished details of various communications sent by him to the higher authorities intimating therein, continuous default committed by the 'LSM'. Had the Disciplinary authority bothered to look into the reply, penalty imposed in the case of the petitioner perhaps would not have been imposed. Similarly, this court finds that Appellate Authority though having scanned the record found the claim of the petitioner that he repeatedly wrote to the 'LSM' as well as to the authorities to be correct, but still proceeded to uphold the penalty awarded by the Disciplinary authority on the ground that since petitioner was in-charge of the lot, he should have stopped the work. But this court is of the view that such findings recorded by the Appellate Authority is wholly untenable because once

factum with regard to illegalities being committed by the 'LSM' was brought to the notice of the higher authorities and they were seized of the matter, it could not be expected from the petitioner being menial officer to pass order of stoppage of work, especially when at no point of time such directions ever came to be issued by the higher authority. Rather, in the case at hand, higher authorities after having received information from the petitioner started direct communication with 'LSM' and repeatedly advised him not to indulge in illegal activities. It was very much in the knowledge of the Divisional Manager of the concerned Division that 'LSM' concerned had stacked the timber at wrong Depot and there is danger of fire and as such, he should have either himself or should have directed the Assistant Manager/Deputy Manager to get the timber removed from the unauthorized place, so that it could be saved from the fire.

18. Enquiry Officer in his report also held Timber Watcher, Sh. Meena Ram guilty along with the petitioner, but interestingly no plausible reasons, if any, ever came to be rendered on record by the Disciplinary authority while not awarding any penalty against such official.

19. Consequently, in view of the detailed discussion made hereinabove, this Court has no hesitation to conclude that Enquiry Officer has not bothered to look into the evidence properly, as a consequence of which, serious prejudice has been caused to the petitioner. Enquiry report, if read in its entirety certainly compels this Court to draw a conclusion that same is not based upon the proper appreciation of evidence or no reasonable person would have recorded the same. Similarly, Disciplinary authority while awarding penalty and Statutory Authority while upholding the same have failed to apply their mind because no plausible reasons have been assigned by them while awarding/upholding the penalty and as such, orders passed by them in the capacity of Disciplinary authority and appellate authority cannot be allowed to sustain.

20. Accordingly, in view of the above, the present petition is allowed and orders dated 9.6.2005 and 21.6.2004 (Annexures A-1 and A-2) are quashed and set-aside and respondent-Department is directed to release the arrears of two increments with up-to-date interest in favour of the petitioner within a period of two months from today. Pending applications, if any, also stands disposed of.