
(1980) 10 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 36 of 1973

Shri Duni Chand

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 10-10-1980

Acts Referred:

Citation : (1981) ShimLC 91

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : Kamlesh Sharma, for the Appellant; A.G. and H.K. Paul, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gupta, J.—Duni Chand Petitioner has filed this writ petition with a prayer that the order, Annexure B, which was received by the Petitioner on 19th February, 1973, be quashed.

2. The brief facts are that the Petitioner was appointed as a Mail Runner in the Forest Department of Himachal Pradesh Government in December, 1961 and was thereafter promoted as a Chowkidar in the month of April, 1963. It is further alleged that he was promoted by order, dated 29th July, 1970 as a Forest Guard (copy Annexure A), and from 1970 onward he was discharging the duties of a Forest Guard. The Petitioner further alleges that he received a communication on 19th February, 1973, informing him that he has been demoted to the post of a Chowkidar (copy of the said information is Annexure B). The Petitioner has prayed that the order contained in Annexure B by which he has been demoted as a Chowkidar from his post of Forest Guard is without jurisdiction and is in violation of the fundamental rights of the Petitioner. It is also alleged that the said order has been passed in violation of the principles of natural justice in so much so that the Petitioner was not given a hearing before issuance of the order of demotion. The Petitioner has also alleged that the order, Annexure B, is colourable and stinks of mala fide because Shri Ishwar Lal, the person who had

represented against the Petitioner is very much junior to the Petitioner.

3. A return to the writ petition was filed on behalf of the Respondents, and it was alleged that the order of demotion is quite legal and valid. It is further alleged that the promotion of the Petitioner had wrongly been ordered and when this fact came to the notice of the authorities concerned then the order of demotion was immediately passed. It is also stated that the Departmental Promotion Committee upon the recommendation of which the Petitioner had been promoted was not properly constituted because there were only two members instead of the requisite number of three members. It is also stated in the return that the promotion of the Petitioner could not be ordered without the approval of the Cabinet. All other allegations contained in the writ petition were denied.

4. I have heard Miss Kamlesh Sharma learned Counsel for the Petitioner and Shri H.K. Paul, Assistant to the Advocate-General for the Respondents.

5. The learned Counsel for the Petitioner contended that the Petitioner was a Chowkidar in the Forest Department and he was promoted as a Forest Guard on temporary basis by order, dated 29th July, 1970 (copy of which is Annexure A). It was further contended by the learned Counsel for the Petitioner that the Petitioner had been working satisfactorily as a Forest Guard from July, 1970, and that he received a Communication in February 1973 only, by which he was informed that he has been reverted/demoted to the post of a Chowkidar. The learned Counsel contended that the order of February, 1973, has been passed without hearing the Petitioner or without issuing any show cause notice to him. It was vehemently urged by the learned Counsel that a person cannot be reverted/demoted to a lower post without being heard and that the Petitioner has been denied the right of hearing without any sufficient cause. It was also stressed that the Petitioner is a senior man than Ishwar Lal on whose representation the Petitioner was reverted, and as the promotion of Petitioner was regular and had remained effective for a period of about three years, therefore, the Petitioner could not be demoted in a summary way. In support of her contentions, she has relied upon *Dina Nath Sharma etc. v. Director of Public Relations etc.* ILR 1976 (HimSeri) 147, *Abdul Rashid Quadri v. State of Jammu and Kashmir* and Anr. 1973 (2) SLR 184, *Chairman, Cochin Port Trust and Ors. v. M.N. Sukumaran Iteyar and Ors.* 1979(1) SLR 122 and *Hari Bhushan v. The Financial Commissioner* ILR 1980 (HimSer) 85.

6. On the other hand, the learned Counsel for the Respondents contended that the Petitioner had been promoted to the post of a Forest Guard on purely temporary basis, as is apparent from the order, (copy of which is Annexure A), and that the Petitioner had not got a vested right to this post. It was also contended that the Petitioner had been promoted in an illegal manner, in so much so, that a proper Departmental Promotion Committee had not been constituted and, therefore, the order of promotion (copy of which is Annexure A) was illegal and as such the Respondents had full authority to correct this mistake at any time unilaterally. The learned Counsel further contended that by mistake

the order of promotion had been issued and by the subsequent order only this mistake was corrected and as such there was no question of giving any chance of hearing to the Petitioner specially when the post was a purely temporary post.

7. I have considered the contentions of the learned Counsel for the parties and have gone through the relevant annexures.

8. The Petitioner was promoted as a Forest Guard by virtue of the order issued in July, 1970, and he was also informed about this new assignment, as is apparent from the contents of the order, Annexure A. Thereafter the Petitioner was serving as a Forest Guard and it was in February, 1973, that the order of his demotion from the rank of Forest Guard to the rank of Chowkidar was issued. It is mentioned in this order that the promotion of the Petitioner had not been done in accordance with the procedure/rule/instructions, etc. It is further mentioned that one Ishwar Lal Chowkidar had filed a representation against this promotion and that his representation was duly considered before passing the order, contained in Annexure B. It is true that the Petitioner had been promoted as a Forest Guard on purely temporary basis but still he was entitled to hold that post unless and until he was found unfit to hold that post. It is the fundamental law that a person against whom an order is to be passed to his prejudice then in accordance with the principles of natural justice that person must be given a right of hearing and he should be heard in the matter before passing such an order. Even if the appointment/promotion of the Petitioner to the post of Forest Guard was made under a mistake then also before issuing any order of reversion/demotion of the Petitioner, the Petitioner should have been heard in the matter. The right of the Petitioner of being heard cannot be denied to him. This view is supported by a Division Bench of this Court in Dina Nath Sharma's case (supra). Moreover, the order of demotion/reversion seems to have been passed upon the representation of one Shri Ishwar Lal Chowkidar and for this reason also the Petitioner had a right of being heard before his order of demotion could be passed. In Abdul Rashid Qadiri's case (supra) it is stated as follows:

Assuming without deciding, that the order of reversion of the Petitioner was made with a view to rectify the mistake resulting from a mistaken view about his seniority taken earlier which excluded from consideration some of his colleagues otherwise senior to him, as stated by the Respondent State in the reply affidavit filed by it, the Government was not competent to make the order without complying with the principles of natural justice set out above. Not having done so, the order of reversion is a nullity in the eye of law. Equally so the order following whereby the promotion of the Petitioner, has been withheld, founded, as it is, on the main order concerning his reversion.

A similar view has been taken in Chairman, Cochin Port Trust and Ors. case (supra). In Hari Bhushan's case (supra) the Hon'ble V.D. Misra, Chief Justice, also held:

By now it is well settled that the principles of natural justice should be read into

a statute unless these are expressly or impliedly taken away by the statute. These require that before any right of a person is taken away he should be afforded an opportunity of being heard.

Therefore, in view of these facts and the law, referred to above, the order contained in Annexure B is liable to be quashed on the simple ground that the Petitioner was not given any opportunity of being heard before passing this order.

9. In view of the above discussion the petition succeeds and the order demoting the Petitioner, contained in Annexure B, is quashed.

10. This order shall not, however, in any way, debar the Respondents from considering the case of the Petitioner afresh or in passing any order demoting or reverting the Petitioner in accordance with the law and the rules.

11. The Respondents shall pay Rs. 100/- as costs of this petition to the Petitioner.