
(2009) 04 SHI CK 0018
In the High Court Of Himachal Pradesh

Shri Nand Lal

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Citation : (2009) 123 FLR 859 : (2009) 2 ShimLC 269

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The disciplinary proceedings were initiated against the petitioner vide memorandum dated 8.9.1995. The Assistant Commissioner to Deputy Commissioner was appointed as Inquiry Officer. He submitted report to the Disciplinary Authority on 9.9.1996. The petitioner was absolved by the Inquiry Officer. The Disciplinary Authority disagreed with the report of the Inquiry Officer and appointed new Inquiry Officer on 31.10.1996. He submitted report to the Disciplinary Authority. A show-cause notice was issued to the petitioner on 20.8.1997. He filed reply to the same on 10.9.1997. The Disciplinary Authority vide order dated 23.6.1998 imposed the penalty of with-holding of three increments with cumulative effect. He preferred an appeal/representation to the Divisional Commissioner on 27.7.1998. He allowed the same on 21.2.2000. The matter was remanded back to the Disciplinary Authority. The Disciplinary Authority again passed order dated 24.4.2000 whereby penalty of with-holding of three increments with cumulative effect was imposed. He preferred an appeal before the Financial Commissioner on 22.5.2000. The same was rejected by him on 21.3.2001.

2. Mr. Dharamvir Sharma, Advocate has strenuously argued that in the present case, it was necessary for the Disciplinary Authority to record tentative findings at the time of disagreeing with the inquiry report. He was further required to send his tentative opinion to the petitioner for seeking his comments and thereafter, the Disciplinary Authority had to record reasons and only thereafter

the fresh Inquiry Officer could be appointed. He further contended that the Disciplinary Authority had neither recorded any separate reasons nor the petitioner was heard and fresh Inquiry Officer was appointed i.e. Additional District Magistrate on 31.10.1996. He then contended that the Divisional Commissioner has remanded the matter to the Disciplinary Authority on 21.2.2000 and despite that the Disciplinary Authority had re-imposed the punishment of withholding of three increments with cumulative effect. He lastly contended that there is gross violation of the principles of natural justice which has resulted in grave miscarriage of justice.

3. The learned Senior Additional Advocate General has argued that the Disciplinary Authority has acted in accordance with the orders passed by the Divisional Commissioner dated 21.2.2000 and this order was upheld by the Financial Commissioner on 21.3.2001.

4. I have heard the parties and perused the record carefully.

5. The disciplinary proceedings were initiated on 8.9.1995. The Inquiry Officer had submitted the report on 9.9.1996 to the Disciplinary Authority. He had absolved the petitioner. The Disciplinary Authority without recording any separate reasons and without hearing the petitioner had appointed new Inquiry Officer on 31.10.1996. The settled law is that in case the Disciplinary Authority tends to disagree with the findings of the Inquiry Officer, he had to form a tentative opinion and thereafter, the delinquent is to be heard. Immediately after receipt of reply/comments of the person, he has to pass reasoned order disagreeing with the inquiry report. After completing this procedure, he could order the appointment of new Inquiry Officer. This question is no more res-integra in view of the law laid down by their Lordships" of the Hon"ble Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, Their Lordships of the Hon"ble Supreme Court have held as under:

Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment

imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case AIR 1994 SCW 1050.

6. The same principle has been reiterated by their Lordships of the Hon''ble Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, . Their Lordships have held as under:

In the instant case, we have scrutinized the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer. We have also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by the A. C. B., Nagpur against the appellant had failed and was held by the Enquiry Officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non-consideration of the statements of defence witnesses, namely, Dr. Naranje and Mr. Bapat, advocate, by the Disciplinary Committee. This factor in itself was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the Enquiry Officer.

7. In view of the definitive law laid down by their Lordships of the Hon''ble Supreme Court, as cited hereinabove, the procedure adopted by the Disciplinary Authority to appoint new Inquiry Officer was illegal. In fact, it has been ordered by the Divisional Commissioner while remanding the matter on 21.2.2000 to proceed in accordance with law. The Disciplinary Authority without taking into consideration the settled law had again imposed the penalty of with-holding of three increments with cumulative effect upon the petitioner. The Financial Commissioner has also overlooked the grave procedural illegality committed by the Disciplinary Authority, as noticed above.

8. Accordingly, the writ petition is allowed. Annexure A-6 dated 24.4.2000 and Annexure A-8 dated 21.3.2001 are quashed and set aside. The Disciplinary Authority is directed to act in accordance with the observations made hereinabove. No costs.