

(2009) 03 SHI CK 0014
In the High Court Of Himachal Pradesh

Shri Radhey Shyam

APPELLANT

Vs

H.R.T.C. and Another

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Citation : (2009) 122 FLR 256 : (2009) 1 ShimLC 416

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The Disciplinary proceedings were initiated against the petitioner. The Inquiry Officer was appointed. He submitted report dated 30.4.1992 to the Disciplinary Authority. The petitioner was served with a memorandum dated 20.4.1993. Thereafter, fresh show cause notice was issued to him in continuation of memorandum dated 20.4.1993 on 18.1.1994. He was required to file reply within three days from the receipt of letter dated 18.1.1994. The Disciplinary Authority imposed the following penalty on 7.5.1994:

His pay is reduced by 4 stages from Rs. 1500+30 to Rs. 1320+30 in the time scale of pay of Rs. 950-1800 for a period of 4 years with immediate effect. It is further ordered that Shri Radhey Shyam, Conductor will not earn increments of pay during the period of reduction aforementioned and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. He will not get anything more for the period of suspension except the subsistence allowance already paid to him.

2. Ms. Archana Dutt has strenuously argued that copy of the inquiry report dated 30.4.1992 was required to be supplied to her client before the memorandum was issued on 20.4.1993. Her further case is that the replies filed to the memorandum and show cause notice have not been taken into consideration by the Disciplinary Authority.

3. Mr. Adarsh Sharma has argued that though copy of the inquiry report was

supplied to the petitioner for the first time with memorandum dated 20.4.1993, however, no prejudice has been caused to the petitioner.

4. It is settled law by now that copy of the inquiry report is required to be supplied to the delinquent before the Disciplinary Authority makes up its mind to impose the penalty. Their Lordships of the Hon^{ble} Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, have held as under:

The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supported to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

5. In the present case, the petitioner was required to be supplied copy of the inquiry report before issuance of memorandum dated 20.4.1993. The purpose of supplying the copy of the inquiry report to the delinquent is to enable him to

point out the deficiencies/short-comings in the inquiry report. The petitioner had filed replies to the memorandum dated 20.4.1993 and show cause notice dated 18.1.1994. The same have not been taken into consideration by the Disciplinary Authority while imposing the penalty on 7.5.1994. The petitioner has been prejudiced by non-supply of the copy of the inquiry report before issuance of memorandum dated 20.4.1993. There is also violation of principles of natural justice by the Disciplinary Authority by not taking into consideration the reply filed by the petitioner to the memorandum issued to him. Their Lordships" of the Hon"ble Supreme Court in Union of India (UOI) and Others Vs. Prakash Kumar Tandon, have held that in case the (Disciplinary proceedings have not been conducted fairly, an inference can be drawn that this caused prejudice to the charged employee.

6. Accordingly, the writ petition is allowed. Annexure-PK dated 7.5.1994 is quashed and set aside. However, liberty is reserved to the respondent-Corporation to permit the petitioner to make representation against the inquiry report dated 30.4.1992 and thereafter, pass a reasoned order within a period of three weeks. No costs.