
(2010) 11 SHI CK 0383
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6459 of 2008

Shri Suresh Kumar

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 3(2), 3(3), 3(5)

Citation : (2010) 11 SHI CK 0383

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers :

7 (i). That the Respondents may be directed to give the subsistence allowance, due and admissible for the suspension period w.e.f. 30.10.1995 till its revocation on 5.6.1997 (A-8) forthwith.

(ii). That the Respondents may be directed to give the TA/daily allowance for the period w.e.f. 16.6.93 to 10.9.1993 as per A-1, and the TA claims for the period w.e.f. 25.10.1995 to 23.12.1995 and the salary for July and Sept. 1994 to the applicant forthwith.

(iii). That the orders imposing the penalty of stoppage of 4 increments on the basis of an inquiry may kindly be quashed and set aside.

(iv). That the inquiry conducted be quashed and set aside and the 4 increments which were stopped be restored along with arrears forthwith.

(v). That the arrears be given along with interest at the rate of 18% per annum forthwith.

(vi). That the action of stopping increments of 1.1.96 and 1.6.97 prior to passing of final orders of penalty be set aside.

2. Respondents have taken the following stand vide paras 3 (i), 6 (iii) and 6 (vi) of the reply :

3 (i). That after the enquiry the applicant was found guilty and thereafter the penalty imposed to the applicant was sent through registered letter which is clear from the Annexure A/23 as annexed by the applicant with the present application, but however in this annexure the word REGISTERED has been tempered with the applicant. But, for the kind perusal of the Hon'ble tribunal the copy of this letter is again annexed with the reply to the original application in which it has been clearly mentioned that the information regarding the imposition of the penalty has been sent through the registered letter to the applicant and the same is again marked as Annexure R-1. It is further submitted that in para No. of Annexure A/23 now again annexed as R-I it has been clearly mentioned in para No. 4 that "However Shri Suresh Kumar is hereby given an opportunity of making representation on the penalty imposed above, if he so desires. Such a representation if any should be sent in writing and submitted by Suresh Kumar JBT within 15 days from the date of issue of this memorandum". But nothing in this regard has been done by the applicant while shows that the applicant had to say nothing about the penalty imposed and accepted the same as correct. Therefore, now the applicant is estopped to say that the final orders imposing the penalty has not been communicated to him.

6 (iii). That in reply to this para it is submitted that as per information received from the Respondent No. 3 Distt. Primary Education Officer Dharamshala that the applicant did not submit the T.A. Bill for the period w.e.f. 16.6.1993 to 10.9.1993. While the applicant remained on deputation in Govt. Primary School Mehla due to which the T.A. as claimed by the applicant could not be paid. It is further submitted that as per rule the T.A. bill has to submit by the official within prescribed period. But now the T.A. of the applicant has become time barred.

6 (vi). That in reply to this para it is submitted that as per the information received from the Respondent No. 3 Distt. Primary Education Officer, Kangra the pay for the month of 1994 has already been paid as advance pay due to summer vacation in the school. The balance amount of this month i.e. adjustment bill has been prepared and the balance amount of Rs. 245/- was drawn by the Block Primary Education Officer Chadhiar and the same was paid to the applicant through Headmaster of the same school but, as per the information received from the Headmaster the applicant has refused to receive the balance amount of pay for the month of July, 1994. It is further stated that as per the information received the pay for the month of August 1994 was drawn by the Block Primary Education Officer Chadhiar, in regular monthly salary bill and disbursed to the applicant at the time of disbursement of pay for the month of August, 1994, at that time also the Block Primary Education Officer, Chadhiar asked the applicant to take the balance amount of pay for the month of July, 1994, but the applicant refused to take the said amount. It is further stated that the pay for the month of September 1994 of the applicant was drawn by the Block Primary Education

Officer, Chadhiar and asked the applicant to take his pay for this month and balance pay of July 1994 but the applicant refused to take pay for the month of September and balance amount of July pay. Now, the Block Primary Education Officer, Chadhiar has deposited a sum of Rs. 3045/- i.e. the pay for the month of September, 1994 and balance pay for July, 1994 i.e. Rs. 245/- in the Treasury vide Challan No. 5 dated 15.11.1994, the copy of the Treasury Challan is annexed and the same is marked as Annexure R-II.

That in view of the facts and submissions as submitted in the preceding paras no injustice has been done to the applicant by the Respondents. Therefore, the question of making any representation to the Respondent department does not arise at all.

3. Some undisputed facts may be noticed first.

Departmental proceedings were initiated against the Petitioner, who at the relevant time was working as a JBT Teacher on the establishment of the Respondents, particularly Respondent No. 3 and was posted at G.P.S., Salhera on the following charges as per memorandum dated 16.1.1996, Annexure A16/A :

Article of Charge-I.

That there was a complaint against Sh. Suresh Kumar JBT GPS Salhera in the year 1993 and 1994 for disobedience and for indiscipline. This was inquired into and the aforesaid official was given a warning. But, despite the above, Sh. Suresh Kumar JBT has not improved his working and he had been continuously disobeying the orders and directions of the superior officers from time to time. On 25.11.1995 the BPEO Chadhiar conducted an inspection in the school. During the inspection the above official behaved in an uncordial manner and he indulged in acts of snatching and he is alleged to have torn the documents/registers of the school. Thus, keeping in view the continuous disobedience of orders and acts of indiscipline, the above official is required to be proceeded against departmentally as per Rule 14 read with Rule 3 (2) (3) & (5) of the Conduct Rules respectively.

Article of Charge-II.

That Sh. Suresh Kumar JBT did not implement and comply with the orders of the Distt. Primary Education Officer, Kangra issued vide letter No. KGR (PE-4)/Part-time/94 dated 27.9.1995, appointing Smt. Maya Devi as a Part-time water carrier in the said school. The above official refused to accept the joining of Smt. Maya Devi as part time water carrier and he unauthorized allowed his brother Sh. Darshan Singh to work as part time water carrier in the said school. In this regard, the BPEO Chadhiar has submitted a detailed report leveling charges/allegations against the above official which was submitted to the office of the undersigned. Thus, the above official Sh. Suresh Kumar JBT has disobeyed the orders of superior officers which is contrary to Rule 14 and Rule 3 of the Conduct Rules.

4. After the Petitioner submitted reply to the charge sheet, a regular inquiry was

held against him under Rule 14 of the CCS (CCA) Rules, 1965, which culminated into inquiry report dated 30.1.1997, Annexure A-22/A on the following conclusion :

After examining the witnesses and their statements including that of the BPEO Chadhiar, the part-time water carrier, the Sr. Clerk of the BPEO Chadhiar and many Ors. I do hereby conclude that Sh. Suresh Kumar JBT GPS Salhera has not proved himself to be a teacher. He has resulted in acts of indiscipline. He had also disobeyed the Govt./ department directions.

Keeping in view of the above facts on the records, I have come to the conclusion that though as per the Rules the above employee Sh. Suresh Kumar should be given a strict penalty but, keeping in view various circumstances, I request you to exonerate the said employee after exercising and relaxing the powers vested in your good self.

5. Consequently, show cause notice dated 5.6.1997, Annexure A/23 was served upon the Petitioner whereby penalty of imposition of stoppage of four increments with cumulative effect was proposed against him to which he filed reply dated 18.6.1997, Annexure A/24. Thereafter, as per the Petitioner, no formal order of imposition of proposed penalty was ever communicated to him and instead aforesaid show cause notice dated 5.6.1997, Annexure A/23 appears to have been taken to be the final order of imposition of the aforesaid penalty against him.

6. Against the above backdrop, it is apparent from representation dated 28.8.1998, Annexure A/29 addressed by the Petitioner to the Director, Primary Education, HP, Shimla that though he had preferred an appeal dated 30.6.1997 against the aforesaid penalty but the same was yet to be decided. There is nothing on the record to show as to whether the said appeal has been decided or not.

7. Against the above backdrop, it shall be expedient and in the interest of justice to direct Respondent No. 2 to decide the aforesaid appeal dated 30.6.1997 preferred by the Petitioner to him within three months from production of a copy of this judgment by the Petitioner within one month from today. It need not be emphasized that the aforesaid appeal dated 30.6.1997 is in the nature of statutory appeal under the CCS (CCA) Rules, 1965 and Respondent No. 2 is legally duty bound to take a decision thereon in accordance with law. As prayed for by the learned Counsel for the Petitioner, the Petitioner shall be at liberty to submit additional facts for consideration of Respondent No. 2 in addition to the aforesaid appeal dated 30.6.1997 and if it is done within the aforesaid period, the same shall be taken on record as having been filed within the initial statutory period of limitation for filing appeal as per service rules and the same shall also be taken into consideration while deciding the appeal. Needless to say that payment of consequential benefits, if any, shall ensue the decision on the appeal.

8. The petition is disposed of on the above terms, so also the pending

application(s) if any.