(2008) 07 SHI CK 0030

In the High Court Of Himachal Pradesh

State of Himachal Pradesh and Another APPELLANT

Vs

Jawala Dass Sharma RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Citation : (2008) 2 ShimLC 478

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—Petitioners herein have assailed the order dated 24th June, 2002 passed by the Himachal Pradesh Administrative Tribunal, Shimla (hereinafter referred to as the Tribunal) in O.A. No. 243 of 2001, allowing the Original Application filed by Shri Jawala Dass Sharma, respondent herein.

2. For the various acts of alleged misconduct, a preliminary inquiry was got conducted by the State. The respondent, who was working as a Range Officer was charge-sheeted on 5.9.1989 by the Conservator of Forests, Circle Shimla, with the following charges:

1. Gross negligence in the performance of his official duties.

2. Disobedience of orders and acting in a manner unbecoming of a Government servant.

3. Committing serious financial irregularities.

3. The response dated 6.9.1989 filed by the respondent was considered and an inquiry was initiated and after due compliance with the procedure and principles of natural justice, the Inquiry Officer submitted his report dated 11.11.1992 holding the respondent guilty. The report was considered by the Disciplinary Authority and a show-cause notice dated 21.11.1992 was issued to the respondent alongwith inquiry report. The respondent was afforded due opportunity and after considering the material on record vide order dated

29.10.1994, the following penalty was imposed upon the respondent:

...reduction of pay to a lower stage for a period of five years with the stipulation that reduction will have the effect of postponing the future increments of pay.

4. The respondent preferred a statutory appeal, which was rejected by the Financial Commissioner-cum-Secretary (Forests), Government of Himachal Pradesh, in terms of order dated 18.10.2000. While considering the same, the Appellate Authority sought for the comments from the department and also called for the record.

5. Aggrieved by the same, the respondent filed O.A. No. 243 of 2001 before the Tribunal and vide order dated 24th June, 2002, the said Original Application was allowed. While allowing the same, the Tribunal came to the conclusion that the Appellate Authority had relied upon the material which did not form the part of the record and the same was also not supplied to the respondent before considering and relying on the same. Thus the Appellate Authority had referred to and relied upon certain extraneous material. While holding the same, the Tribunal, however, also went into the merits of the matter and quashed the show-cause notice, inquiry report, order imposing penalty passed by the Disciplinary Authority and the order passed by the Appellate Authority.

6. We have heard the learned Counsel for the parties and also perused the material on record.

7. In our view, the approach adopted by the Tribunal is extremely erroneous. Having come to the conclusion that the Appellate Authority had not supplied the material relied upon causing prejudice to the respondent and vitiating the proceedings before the Appellate Authority, the Tribunal ought not to have gone into the merits but remanded the matter back to the Appellate Authority for consideration afresh after due compliance of the principles of natural justice. The Tribunal has proceeded on the assumption that the entire work, which was sought to be executed by the department through the respondent had received budgetary sanction and there were no allegations of financial irregularities/ impropriety against the respondent.

8. We are not going into the merits of the inquiry report but, however, reproduce the findings returned by the Appellate Authority from which it cannot be said that there have been no allegations of financial irregularities against the respondent herein:

1. That in muster roll numbers 280, 279, 296, 297, 289, 316, 317, 345, 318 and 321 maintenance works were carried out but the expenditure incurred was more than the prescribed norms. In muster roll No. 318/88-89 B.L. Planting had been done, but no fencing had been done in the area and the expenditure incurred was more than the prescribed norms. In muster roll No. 51/B-88-89 check dams and 3 spurs had been constructed but no check dam existed on the spot. He had not got provided budget for the above works. Thus he had carried out the works

over and above the budget allotment and excess expenditure incurred had resulted in financial irregularities.

2. That he had not got the expenditure incurred beyond the norms approved from the then DFO Rohroo in writing for carrying out the above works.

9. During the course of hearing, learned Counsel for the petitioners State fairly admitted that material called for by the Appellate Authority had not been supplied to the respondent-herein.

10. In the facts and circumstances of the case, order dated 24.6.2002 passed by the H.P. Administrative Tribunal, Shimla, in O.A. No. 243 of 2001 is set aside. However, we also set aside the order dated 18.10.2000 passed by the Appellate Authority and the matter is remanded back to the Appellate Authority for decision afresh. The appeal filed by the respondent herein is restored and directed to be heard after supplying the entire material to the respondent and also giving him an opportunity of hearing.

11. Considering that the matter pertains to the year dated 1988-89, the Appellate Authority shall decide the appeal within eight weeks from the date of receipt of the order. The entire material shall be supplied by the State or the Appellate Authority to the respondent within three weeks from the date of the receipt of the order.

12. Needless to point out that we have riot adjudicated the present writ petition on the basis of the merits of the alleged allegations made against the respondent herein. We have also not commented on the inquiry report.

13. It shall be open for the parties to raise all pleas and contentions as may be available to them before the Appellate Authority.

14. For the foregoing reasons, the present writ petition is allowed with no order as to costs.

