

(2009) 01 SHI CK 0028
In the High Court Of Himachal Pradesh

State of H.P. and Others

APPELLANT

Vs

Raj Kanwar Singh

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 1 ShimLC 344

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Writ petitioners, i.e. State of Himachal Pradesh, Principal Chief Conservator of Forests and Conservator of Forests, Rampur Circle, have filed the present petition, under Articles 226/227 of the Constitution of India for judicial review of order dated June 22, 2004, passed by H.P. State Administrative Tribunal, whereby original application filed by respondent Raj Kanwar Singh, for the quashing of order of penalty, dated 2nd March, 1994, Annexure P-3, has been allowed.

2. Relevant facts are like this. Respondent, Raj Kanwar Singh, was employed as Forest Ranger in Forest Department of State of Himachal Pradesh. While working in Forest Division, Kotkhai, he allegedly embezzled material and money, the total value of which was Rs. 31,234/-. He was charge-sheeted by the Conservator of Forests. He denied the charge. Inquiry Officer was appointed by the Conservator of Forests. Inquiry was conducted and respondent was found guilty. Matter was referred to the Principal Conservator of Forests, who is the appointing authority of" the respondent. The said Principal Conservator of Forests imposed the penalty of reduction in rank and recovery of Rs. 31,234/-.

3. Respondent challenged the order by filing original application. The grounds on which the order was challenged, inter alia, were (a) Conservator of Forests was not competent to institute the inquiry, he being not the disciplinary authority; (b)

procedure contained in Rule 14 of CCS (CCA) Rules, 1965 had not been followed, inasmuch as on the close of the case of the presenting side, no opportunity was afforded to the respondent to lead evidence nor was he questioned with respect to evidence adduced against him by the presenting side and (c) witnesses of the presenting side were recorded in the absence of the Defence Assistant of the respondent. Respondent took the plea that Conservator of Forests had been authorized by the Principal Conservator of Forests to initiate the disciplinary proceedings against the respondent and other persons, who too were co-delinquent with him. Other grounds pleaded by the respondent were denied.

4. Learned Tribunal has allowed the original application holding that Conservator of Forests was not competent to institute the disciplinary proceedings and there is violation of Sub-rules (16) and (18) of Rule 14 of CCS (CCA) Rules, 1965.

5. We have heard the learned Additional Advocate General as also the Counsel for the respondent.

6. View taken by the learned Tribunal that Conservator of Forests was not competent to initiate the disciplinary proceedings against the respondent, may not be correct because under Rule 13 Sub-rule (2), authority competent to impose penalty specified in Clauses (i) to (iv) of Rule 11 (i.e. minor penalties) may institute disciplinary proceedings against any government servant for imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 11 (i.e. the major penalties). The Government of Himachal Pradesh has prescribed appointing authorities, authorities competent to impose penalties under Clauses (i) to (iv) of Rule 11, authorities competent to impose major penalties specified in Clauses (v) to (ix) Rule 11, as also the Appellate Authorities, both in respect of the minor penalties and major penalties and the detail of such authorities is given in Appendix 29.11 of Volume-III of handbook on personal matters published by Government of Himachal Pradesh, Department of Personnel. According to this Appendix, head of the office is the prescribed authority for imposition of penalties specified in Clauses (i) to (iv) of Rule 11 of CCS (CCA) Rules, while Head of the Department is the authority prescribed for imposition of major penalties specified in Clauses (v) to (ix) of Rule 11 of the aforesaid Rules. Admittedly, Conservator of Forests is the Head of Office of Range Officers and Principal Conservator of Forests is the Head of the Department. Therefore, by virtue of the provision of Rule 13 Sub-rule (2), Conservator of Forests was competent to initiate disciplinary proceedings for major penalty specified in Clauses (v) to (ix) of Rule 11 in respect of the respondent. However, we find no fault with the order of the learned Tribunal insofar as it says that there was violation of Sub-rules (16) and (18) of Rule 14 of the CCS (CCA) Rules, 1965. In the writ petition, the petitioners have challenged the finding of the Tribunal only to the extent that Conservator of Forests was not competent to initiate the disciplinary proceedings for major penalty. Findings of the learned Tribunal that there was violation of Sub-rules (16) and (18) of Rule 14 inasmuch as the respondent was not afforded an opportunity to lead evidence after the close of

the evidence of presenting side and was also not questioned with regard to the evidence adduced against him by the presenting side in the course of inquiry, has not been assailed in the writ petition, meaning thereby that the petitioners do not deny that Sub-rules (16) and (18) of Rule 14 had not been complied with. There can be no denial that noncompliance of Sub-rules (16) and (18) of Rule 14 of the aforesaid Rules have prejudiced the respondent, inasmuch he could not lead defence evidence and also he could not explain the evidence adduced against him by the presenting side. Therefore, the final order of learned Tribunal, allowing the original application of the respondent, does not call for any interference, in exercise of power of judicial review, under Article 227 of the Constitution of India. Consequently, the writ petition is dismissed.