

(2010) 11 SHI CK 0258
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 5370 of 2008

Tilak Raj

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

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

Citation : (2010) 11 SHI CK 0258

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Disciplinary proceedings were initiated against the Petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rule, 1965 on 19th June, 1996. The Executive Engineer, Jabli Division, H.P., PWD was appointed as Inquiry Officer. He submitted his report to the disciplinary authority. The disciplinary authority without supplying the copy of inquiry report to the Petitioner imposed the penalty upon him on 10th October, 1998. Mr. Ashwani K. Sharma, learned Counsel for the Petitioner has brought to the notice of the Court that the Petitioner has already been acquitted by the Court on the same or similar charge as contained in memorandum dated 19th June, 1996. The copy of inquiry report, dated 10th October, 1998 ought to have been supplied to the Petitioner to enable him to point out the short-comings, deficiencies, flaws and violation of mandatory rules, under which the inquiry was held, during the course of departmental inquiry. It was mandatory for the disciplinary authority to supply the copy of inquiry report to the Petitioner before making its mind to impose the penalty upon the Petitioner. Admittedly, the Petitioner was not supplied with the copy of inquiry report by the disciplinary authority.

2. Their Lordships of the Hon'ble Supreme Court have held in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, as under:

The reason why the right to receive the report of the Inquiry 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 Inquiry 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 the 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 Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed 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 Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry 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 Inquiry 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 conclusion. 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 Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

The Petitioner has definitively been prejudiced by non-supply of the copy of inquiry report.

3. Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexure A-1, dated 10th October, 1998 is quashed and set aside. The disciplinary authority is directed to supply the copy of inquiry report to the Petitioner within a period of four weeks from today. Thereafter, the Petitioner shall make a representation to the disciplinary authority and after that fresh final decision shall be taken by the disciplinary authority. While taking the fresh decision, the disciplinary authority shall also take into consideration the fact that the Petitioner has been acquitted of the criminal charge by the competent Court

of law. The disciplinary authority shall pass a speaking order after taking into consideration the reply filed by the Petitioner to the finding of the Inquiry Officer. No costs.