
(2014) 05 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : CWP No. 11741/2011-E

Union of India and Others	Vs	APPELLANT
Sh. Parmanand and Another		RESPONDENT

Date of Decision : 31-05-2014

Acts Referred:

Citation : (2014) LabIC 3060

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Sandeep Sharma, ASGI, Advocate for the Appellant; B.S. Chauhan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. The subject matter of the present writ petition is order dated 3.8.2011 (Annexure P3), passed by the Central Administrative Tribunal, Chandigarh, Bench at Chandigarh in OA No. 1093/HP/2010 titled as Parmanand vs. Union of India and others whereby the removal order dated 24.6.2009 affirmed in appeal vide order dated 30.9.2009, passed by the petitioners herein, were quashed, on the grounds taken in the memo of petition hereinafter referred to as "the impugned order" for short.
2. A brief narration of the conspectus of facts, falling within a short compass will unfold the small issue involved in this petition, revolving around the removal from service of an employee, of the petitioners' department.
3. It appears and is apparent from the face of record that respondent Parmanand, who was working as Gramin Dak Sewak Branch Post Master at Kothipura, B was chargesheeted for misappropriating Rs. 2798/- payable to Smt. Dropti Devi, Rs. 25/- in respect of Sh. Kamal Sharma and Rs. 25/- in respect of Purshotam Dutt. In preliminary hearing/inquiry, he is stated to have admitted the allegations and deposited the misappropriated amount alongwith interest at his

Head Office Bilaspur and rest amount was paid to the complainants concerned vide Annexure R-2 dated 7.5.2008.

4. Respondent Parmanand herein was asked to appear in person in the preliminary enquiry along with defence assistant. He appeared before the Inquiry officer on 23.4.2009 and admitted the allegations leveled against him. However, petitioner No. 3 decided to conduct the inquiry under Rule 10 of the GDS (Conduct & Employment) Rules, 2001.

5. Respondent took up the stand that on the date of preliminary inquiry, he admitted the charge with a view to getting a lenient view. The inquiry Officer on the admission of respondent on 11.5.2009, submitted his report on 11.5.2009 proving all the charges leveled against him. A mandatory show-cause notice was issued on 18.5.2009 requiring respondent to make representation if he so desires. The respondent submitted a representation dated 3.6.2009, again admitted all the charges leveled against him and prayed for a lenient view. However, respondent No. 3, removed him from the service vide order dated 24.6.2009.

6. Respondent Parmanand, feeling aggrieved and dissatisfied by the order dated 24.6.2009, assailed the same by way of appeal on 16.7.2009 before respondent No. 3 which met with dismissal vide order dated 30.9.2009. The respondent thereafter challenged the aforesaid orders before the Central Administrative Tribunal. The Tribunal vide order dated 3.8.2011, quashed the aforesaid orders, which is impugned and subject matter of challenge in this petition.

7. The respondent herein filed reply to the writ petition and has denied all the averments contained in the writ petition in toto, including the fact of admission, save and except passing of removal orders and holding of inquiry, which are otherwise matter of record. However, the respondent contended that the basic principles required for conducting the departmental inquiry have not been followed by the petitioners. The petitioners have not recorded any evidence and respondent was not given any opportunity to cross-examine the witnesses and rebut the documents, on the basis of which the petitioners had passed order dated 24.6.2009, whereby he has been removed from the service, which is against the principle of audi alteram partem.

8. The petitioners have also filed the rejoinder to the reply filed by respondent Parmanand and reiterated the averments contained in the writ petition.

9. We have heard the learned counsel for the parties and have gone through the judgment impugned and record.

10. The moot question germane for consideration in this writ petition is whether the order impugned made by the Tribunal is legally correct in the given circumstances of the case. The answer is negative for the following reasons.

11. Admittedly, the respondent has accepted the charges and admitted his guilt on 23.4.2009, as stated supra, and also deposited the amount embezzled and

some amount was disbursed to the persons entitled to, who had made complaint against respondent Parmanand. When he had admitted the charges leveled against him, in our considered view, there was no need to conduct inquiry and despite that proper inquiry was conducted.

12. The Central Administrative Tribunal in case titled Durga Singh versus Union of India and others decided on 10.8.2009 (Annexure R13) held that when the delinquent officer/employee admits his wrong doings and make payment of the embezzled amount, and thereafter is removed from the service, that order cannot be quashed by the Tribunal. It is apt to reproduce para 6 of the said judgment:-

6. In the present case, the applicant has admitted his guilt that although he had received Rs. 2000/- deposited by Smt. Sankhi Devi and made entry in the pass-book, but had not accounted the same in the ledger/account books of post office. Even though, he had, Later on deposited the money with interest but that would not wipe off the misconduct committed by him. Applicant was working in the Post Office, where people deposit their savings and if such things happen, the public trust will be badly shaken and the institution of Post Office will earn disrepute as a result, no one will be willing to deposit money with them. Keeping in view the seriousness of the matter, we find no infirmity in the impugned order of termination. Thus, punishment is found to be fully proportionate to the gravity of the misconduct. We also find that the appellate authority has applied its mind to the case before rejecting the appeal of the applicant and impugned orders are found to be supported with reasons, calling for no interference.

13. The aforementioned judgment was also brought to the notice of the Administrative Tribunal but despite that it made the impugned judgment and order.

14. The judgment referred to herein above passed by the Administrative Tribunal was also assailed by petitioner Durga Singh before this Court by way of CWP No. 446 of 2010 titled Durga Singh versus Union of India and others which came to be dismissed vide judgment and order dated 8th March, 2010 by this Court. This Court held that when the charge is admitted and embezzled amount is deposited, procedural irregularities cannot be a ground for setting aside the order of the Tribunal. The apex Court in case titled Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, , held that when an employee admits his misconduct which is not disputed, there is no need to give opportunity of hearing to such an employee. The purpose of conducting inquiry is just to give opportunity to officer/ official against whom charge is framed whether allegations are correct or otherwise and asking him to show-cause to explain his conduct. But when he has admitted his guilt, giving of notice is not required and held that no departmental inquiry is required when misconduct is admitted. It is apt to reproduce para 8 of the said judgment:

8.....Giving of opportunity or an enquiry of course is a check and balance concept that no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where the statute require. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations? When she admitted she did not join M. Phil course, she did not report back to her duty which is against her condition of leave and contrary to her affidavit which is the charge, what enquiry was to be made? In a case where the facts are almost admitted, the case reveals itself and is apparent on the face of record, and in spite of opportunity no worthwhile explanation is forthcoming as in the present case, it would not be a fit case to interfere with the termination order.

15. The apex Court in case titled Manoj H. Mishra Vs. Union of India and Others, held that when during departmental inquiry admission of guilt is made by a delinquent, he cannot later on be allowed to probate and reprobate and cannot be permitted to resile from the admission made before the inquiry officer. It is apt to reproduce paras 30 and 34 of the judgment herein:-

30. On 5th July, 1994, respondent No. 2 appointed a Committee to investigate the role of the appellant behind the aforesaid media reports. Based on the preliminary reports, the Disciplinary Authority placed the appellant under suspension, in contemplation of disciplinary proceedings to be initiated against him for major penalty. The statement of imputation of misconduct of misbehaviour in support of charges were served on the appellant on the 4th August, 1994. An Inquiry Officer was appointed on 26th December, 1994. At the primary hearing in the enquiry, the appellant denied all the charges. His choice of Mr. P.B. Sharma as Defense Assistant was accepted. He was given inspection of all the documents, he was also asked to submit his list of witnesses. The appellant had stated that the list of witnesses would be submitted after consulting his Defense Assistant. On 9th October, 1995, the hearing of the inquiry was adjourned on the ground that the appellant had submitted an appeal to NPCIL. On 20th December, 1995, the appellant admitted all the charges leveled against him in toto and accordingly the inquiry was closed on such admission of the charges. 31 to 33.....

34. We have noted in detail the submissions made by Mr. Bhushan, though strictly speaking, it was not necessary in view of the categorical admission made by the appellant before the Enquiry Officer. Having admitted the charges understandably, the appellant only pleaded for reduction in punishment before the High Court. The learned Single Judge has clearly noticed that the counsel for the appellant has only submitted that the punishment is disproportionate to the gravity of the misconduct admitted by the appellant. The prayer made by the appellant before the Division Bench in the letters patent appeal for amendment of the grounds of appeal to incorporate the challenge to the findings of guilt was rejected.

16. Having said so, the Tribunal has fallen in error in quashing the orders dated 24.6.2009 and 30.9.2009.

17. As a sequel to the aforesaid discussion and observation, the writ petition deserves to be allowed and is accordingly allowed. The impugned order dated 3.8.2011 is quashed and set aside and order dated 24.6.2009 affirmed in appeal vide order 30.9.2009 is upheld.

18. With the aforesaid observations, the writ petition is disposed of along with pending applications, if any.