
(2011) 11 SHI CK 0289
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9111 of 2008

Vijay Kumar

APPELLANT

Vs

Himachal Pradesh State Forest Corporation Ltd. and another

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Citation : (2011) 11 SHI CK 0289

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

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petitioner while working as Timber Watcher in respondent No. 1-Corporation was alleged to have misappropriated 10 scants of Cheel. The alleged misconduct against him in this regard was detected pursuant to a raid conducted by respondent No. 2, the Divisional Manager of respondent No. 1-Corporation on a complaint made to him by the Labour Supply Mate. Consequently, the petitioner was served with charge-sheet dated 15.06.1999, Annexure A-1, by respondent No. 2 in his capacity as the Disciplinary Authority. The disciplinary proceedings followed, which culminated into submission of report dated 24.01.2001, Annexure A-3, by the Enquiry Officer indicting the petitioner for the alleged mis-conduct, as above. Resultantly, the following penalty was imposed upon the petitioner by respondent No. 2 vide Office Order dated 20.03.2002, Annexure A-5:

The recovery of Rs. 7902 is hereby ordered to be recovered from Sh. Vijay Kumar, T.W Rs. 500/-per month and last installment will be of Rs. 402/-.

The pay of Sh. Vijay Kumkar-1 T.W. Is hereby reduced by 4 increments from Rs. 3020/-to Rs. 2620/-in pay scale of 2520-4140 for a period of 5 years w.e.f. 1.4.2002. It is further ordered that Sh. Vijay Kumar, T.W. will not earn increments of pay during the period of reductions and that on the expiry of this period will have the effect of postponing his future increments of pay.

2. Thus, it is manifest that respondent No. 2, who was the Appointing/

Disciplinary Authority in respect of the petitioner had himself conducted the above raid and was thus precluded from acting as the Disciplinary Authority against him and instead it was incumbent upon him to have taken up the case with the higher authorities for appointment of adhoc Disciplinary Authority in this matter. Thus, though in the facts and circumstances of the present case, no fault can be found against the disciplinary proceedings held against the petitioner on the basis of the raid conducted by respondent No. 2, yet in view of the law laid down by the Hon'ble Supreme Court in *Cantonment Executive Officer and Another Vs. Vijay D. Wani and Others*, wherein it has been held as under vide para 13 of the judgment, Office Order dated 20.03.2002, Annexure A-5, whereby the aforesaid penalty has been imposed upon the petitioner by respondent No. 2 cannot be sustained for the reason that the very basis of the disciplinary proceedings initiated against the petitioner rested on the outcome of the raid conducted by him on the basis of which charge-sheet dated 15.06.1999 was served upon the petitioner, and is accordingly quashed:

13. Therefore, the ratio of all these cases is that a person cannot be a Judge in his own cause. Once the disciplinary committee finds the incumbent guilty, they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. Objectivity is the hallmark of a judicial system in our country. The very fact that the disciplinary committee which found the respondent (herein) guilty participated in decision-making process for finding the respondent (herein) guilty and to dismiss him from service is bias which is apparent and real. Consequently, the view taken by the Division Bench of the High Court cannot be faulted.

3. In view of the above, the petition is disposed of with a direction to respondent No. 1 that in case Mr. K.S. Kanwar, the then Divisional Manager, Forest Working Division, Dharamshala, of respondent No. 1-Corporation is still continuing in that position, the said respondent shall take steps for appointment of an adhoc Disciplinary Authority in respect of the petitioner for consideration of the matter with regard to imposition of penalty upon him on the basis of enquiry report dated 24.01.2002, Annexure A-3, meaning thereby that the entire matter shall be re-considered by the adhoc Disciplinary Authority afresh from the stage of submission of enquiry report dated 24.01.2002, Annexure A-3, to the Disciplinary Authority. However, it is made clear that in case the said Mr. K.S. Kanwar is no longer holding the post of Divisional Manager, Forest Working Division, Dharamshala, then in that event there shall be no necessity for appointment of adhoc Disciplinary Authority and instead the matter shall be re-considered afresh, as above, by the present incumbent holding that post. It is further directed that the respondents/competent authority shall conclude further disciplinary proceedings in the light of this judgment as expeditiously as possible but not later than three months from the date of production of copy of this judgment by the petitioner before the respondents/competent authority.

4. The petition is disposed of in the above terms, so also pending application(s), if any.