
(2009) 03 SHI CK 0034
In the High Court Of Himachal Pradesh

Yash Paul Goel

APPELLANT

Vs

H.P.M.C. Ltd.

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Citation : (2009) 1 ShimLC 423

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—In the present petition, the petitioner has prayed for the following relief:

(i) that the impugned order dated 29.7.93 (Annexure P-34) and order dated 3.7.1995 (Annexure P-39) may kindly be quashed and set aside.

(ii) That after quashing the impugned orders Annexure P-34 and P-39, the period between the date of his relieving consequent upon the order of removal and now date of his joining i.e. 6.7.1995 and period from 6.1.1990 to 28.8.1991 may kindly be treated as duty period for all service benefits including financial benefits, with interest.

(iii) That after quashing annexure P-39, the respondents may kindly be directed to pay all the consequential including financial benefits with interest.

(iv) That the respondent may be directed to produce all the relevant record pertaining to the case, of the applicant for the land perusal of this Hon'ble Tribunal.

2. While being posted as Senior Accountant, disciplinary action was initiated against the petitioner for his alleged misconduct.

3. The following articles of charges were served upon him vide memorandum dated 9.8.1990:

CHARGE No. I

That Sh. Y.P. Goel, while working as Sr. Accountant at hpmc, Gumma failed to comply with the orders of the management to complete the accounts of Packing House, Guma and handover complete charge of the post on his transfer from that Packing House. He is thus charged with gross negligence and disobedience of orders of the management.

CHARGE No. II

The said Sh. Goel, while posted at hpmc, Gumma has been willfully on unauthorized leave w.e.f. 5.1.1990. No proper application for extension of leave has been submitted and he is thus charged with unauthorized and willful absence from duties.

CHARGE No. III

Sh. Goel, while working as Sr. Account at hpmc, Packing House, Gumma during the year 1989-90 released unauthorized payment on account of commission of cartons by issuing cheque No. AT-213131 dt. 17.10.89 for Rs. 50,000/- in favour of M/s. Swastik Industries in connivance with Sh. Surinder Chauhan AMO. The said Sh. Goel is thus charged with committing gross financial irregularities and negligence in discharge of his official duties with dishonest motive thereby causing huge loss to the Corporation.

4. An Inquiry Officer was appointed to investigate the charges and as desired by the petitioner, Shri Y.P. Kapoor, Divisional Accountant, HPSEB, Mandi was appointed as the Defence Assistant.

5. Inquiry Officer Shri R.M. Sood, fixed the first date of hearing on 5.12.1991 when a request for an adjournment was made by the delinquent officer, on the ground that his Defence Assistant was not available. The matter was adjourned for 9.12.1991 when again a request was made for a short adjournment on the ground that the Defence Assistant was busy with the marriage of his sister. This is so evident from the letter dated 9.12.1991 written by the Delinquent Officer to the Inquiry Officer (Annexure P-25). However, the proceedings were not adjourned and the statement of the Delinquent Officer was partly recorded. The next date of hearing was fixed for 20.3.1992, the intimation of which was sent by the Inquiry Officer to the petitioner through a telegram which was received by him only on 19.12.1991. Since he could not contact his Defence Assistant, an adjournment was requested for, which was also turned down and the Inquiry Officer continued with the recording of the statement of the Delinquent Officer on the said date as also the next date i.e. 21.3.1992.

6. It was only after the statement of the Delinquent Officer was fully recorded that the statement of the department's only witness also recorded.

7. The Inquiry Officer submitted his report, holding the petitioner guilty of all the charges.

8. Before the imposition of penalty, notice to show cause was issued to the petitioner to which he filed a detailed reply bringing out the illegalities which had been committed by the Inquiry Officer and more particularly with regard to the procedure adopted by him. In effect it was pointed out that full and effective opportunity of defending his case had not been afforded to him. He pleaded that principles of natural justice stood violated which by itself vitiated the inquiry report.

9. However, the disciplinary authority vide order dated 29.7.1993 accepted the inquiry report and passed the order imposing penalty of "removal from service of Corporation with immediate effect".

10. The petitioner filed Writ Petition No. 1160 of 1993 which was admitted on 20.8.1993 and interim stay granted. The matter was taken to the Apex Court by the Corporation, where the petitioner undertook to withdraw the said writ petition and file a fresh application before the Tribunal. Accordingly, OA No. 705 of 1995 was filed before the HP. Administrative Tribunal and vide orders dated 28.4.1995, the Tribunal directed that the petition be treated as a representation/appeal to the Board of Directors to be decided within a period of four months.

11. Vide orders dated 3.7.1995, the representation was decided and the order dated 29.7.1993 removing the petitioner from service was modified with the imposition of the following penalty:

The period between the date of his relieving consequent upon the order of removal and new date of his joining and the period of his absence from duty from 6.1.90 to 28.8.91 will be treated as "Extra-Ordinary leave without pay and allowances.

12. Orders dated 29.7.93 and 3.7.1995 have been assailed in the present petition.

13. The grounds mentioned by the petitioner in his response to the notice issued to him, in my considered view, were not dealt with by the Disciplinary Authority while passing the order dated 29.7.1993. The order passed by the Appellate Authority in any event is unreasoned and non speaking.

14. Be that as it may be the fact of the matter is that the Inquiry Officer adopted a procedure totally unknown to law. To begin with, petitioner's request for an adjournment on the ground that his defence assistant was busy with the marriage of his sister, even for 10 days was turned down where as he took more than one year and three months to submit his report.

15. Then, instead of recording the statements of the witnesses of the department he first recorded the statement of the delinquent officer. It was incumbent upon the department to have proved the charges by placing on record such evidence on the basis of which the petitioner was charged and also prove the same. The departmental witness had to be examined first. On the contrary, petitioner was put in the dock and made to prove his innocence which is evident from the fact

that not only was he examined first but also had to submit documents vide letter dated 24.3.1992 (Annexure P-29) and that too after the conclusion of the recording of the statements of all the witnesses. No opportunity to rebut the documentary evidence was afforded to the petitioner.

16. Under the circumstances, it cannot be said that petitioner had been afforded adequate opportunity of representation and hearing. It has seriously prejudiced him.

17. For the aforesaid reasons, the impugned orders dated 29.7.93 (Annexure P-34) and dated 3.7.1995 (Annexure P-39) are quashed.

18. The respondents are directed to hold a fresh inquiry. Since the allegations of misconduct pertain to the year 1989-90, inquiry be completed as early as possible and preferably before 31.8.2009. Needless to add the respondents shall afford adequate opportunity of representation and hearing to the petitioner. A reasoned order shall be passed which shall be communicated to the petitioner.

The writ petition is allowed.