

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP(T) No. 7964 of 2008

Decided on: 30.11.2010.

Virender Singh Thakur

... Petitioner

Versus

H.R.T.C. and others.

...Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹. No

For the petitioner : Mr. Jeevesh Sharma, Advocate vice counsel.

For the respondents : Mr. Adarsh Sharma, Advocate, for respondents No. 1 to 3.

None for respondent No. 4.

Rajiv Sharma, Judge (Oral):

Petitioner was charge-sheeted under Rule 16 of the CCS (CCA) Rules, 1965 on 23.5.1995. He could not file reply to the charge-sheet and was proceeded exparte. The Disciplinary Authority vide office order dated 1.9.1995 has imposed penalty of recovery of ₹ 40,000/- upon the petitioner. The petitioner preferred appeal before the appellate authority and the same was dismissed by the appellate authority on 17.6.2000, without passing a speaking order.

2. It is settled law by now that the appellate order should be speaking/detailed. The averments contained in the memorandum of appeal are required to be discussed in the appellate order.

3. Their Lordships of the Hon'ble Supreme Court in **Roop**

¹ *Whether the reporters of the local papers may be allowed to see the judgment? No*

Singh Negi versus **Punjab National Bank and others** (2009) 2

Supreme Court Cases 570 have held as under:

“Furthermore, the order of disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal Court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inference drawn by the enquiry officer apparently were not supported by any evidence. Suspicion as is well known, however high may be, can under no circumstances be held to be substitute for legal proof.

4. In **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank** versus **Jagdish Sharan Varshney and others, (2009) 4 SCC 240**, their Lordships of the Hon’ble Supreme Court have held that the appellate authority must give reasons while affirming the order of lower authority. Their Lordships of the Hon’ble Supreme Court in **G. Vallikumari** versus **Andhra Education Society and others**, 2010 (2) SCC 497 have held that the

disciplinary authority must record reasons while passing the order.

5. Moreover, the respondent-Corporation has not taken into consideration Annexure-P3 and P4 while imposing the penalty upon the petitioner. Consequently, in view of the observations made hereinabove, Annexure-P2 dated 17.6.2000 is quashed and set aside. The appellate authority is directed to re-hear the appeal by passing a speaking order after taking into consideration Annexure- P3 and P4, within a period of two months after production of certified copy of this judgment by the petitioner. . The petitioner shall also be afforded opportunity of personal hearing.

6. With these observations/directions, the present petition is disposed of. No costs.

Copy **dasti** on usual terms.

**(Rajiv Sharma),
Judge**

November 30, 2010
(K. Attri)