

CASE NO.:
Appeal (civil) 4524 of 2006

PETITIONER:
BOARD OF DIRECTORS, H.P.T.C. & ANR

RESPONDENT:
K.C. RAHI

DATE OF JUDGMENT: 20/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.4524 OF 2006

Aggrieved by the order of the High Court dated 23.12.2004 setting aside the order of the Tribunal dated 28.06.1999 this appeal is preferred by the Himachal Pradesh Transport Corporation.

We have heard the parties.

Briefly stated the facts are as follows :

At the relevant time the respondent was working as Inspector in Himachal Pradesh Transport Corporation. He was charge-sheeted. A notice was sent to him followed by a publication in the Tribune. However, the respondent did not participate in the enquiry proceedings. The enquiry was proceeded ex parte. The Inquiry Officer submitted his report on 22.05.1990 found him guilty of all the charges levelled against him. The disciplinary authority after perusing the inquiry report and after the application of mind terminated the services of the respondent by its order dated 16.06.1994.

Aggrieved thereby, the respondent filed original application before the State Administration Tribunal. One of the contentions raised before the Tribunal was that the inquiry proceeded ex parte and the order of termination is passed without hearing the respondent and, therefore, the order of termination suffered from the non-compliance of principle of natural justice. This contention was repelled by the Tribunal after examining the inquiry report and documents holding that the respondent was served with the notice by publication in the Tribune. The Tribunal also held that from the representation dated 09.08.1993 and 19.10.1993 it would clearly show that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of non-compliance of the principle of natural justice. On that premise the Tribunal dismissed his original application.

Aggrieved thereby, the respondent filed writ petition before the Division Bench of the High Court and by the impugned order his writ petition was allowed solely on the ground that no proper service was effected upon the respondent and, therefore, there was violation of principle of natural justice.

That the respondent was served with a notice recorded by the Tribunal is finding of fact. In our view, therefore, the High Court has exceeded its jurisdiction by reversing the fact recorded by the Tribunal in exercise of its power under Article 226. Power under Article 226 is to interfere only when there is miscarriage of justice or an error of law on the face of the record but not to re-appreciate the evidence recorded by the court of first instance.

The principles of natural justice cannot be put in a straight jacket formula. Its application depends upon the facts and circumstances of each case. To sustain a complaint of non-compliance of the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance of principle of natural justice.

In the instant case we have been taken through various documents and also

from representation dated 19.10.1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance of principle of natural justice. In the representation submitted by him on 19.10.1993 the subject itself reads "DEPARTMENTAL ENQUIRES". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is of no excuse much less by a person who is a law graduate himself.

For the reasons aforesaid, the High Court fell in error in re-appreciating the facts recorded by the Tribunal. The order of the High Court is accordingly set aside. This appeal is allowed. The order of the Tribunal is restored. The writ petition filed by the respondent in the High Court stands dismissed. No costs.

JUDIS