IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.588 of 2019
Decided on: 25.04.2026

Atma Ram Chauhan (deceased) through his LRs. Neeraj and others

...Petitioners

Versus

State of H.P. and another

...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1]

For the petitioners:	Mr. Sanjeev Bhushan, Senior Advocate with Mr. Sparsh Bhushan, Advocate.
For the respondents:	Mr. Anup Rattan, Advocate General with Mr. Amit K. Chaudhary, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner namely, Atma Ram Chauhan (hereinafter referred to as the petitioner), who has filed the instant petition, expired on 08.11.2017 and his legal representatives were brought on record, vide order dated 07.05.2018.

2. By way of present writ petition, the petitioner has prayed for the following substantive reliefs.

[1] *Whether the reporters of Local Papers may be allowed to see the judgment?*

"(i) That writ in the nature of certiorari may kindly be issued and the orders contained in Annexures P-6 and P-11 may kindly be quashed and set aside.

(ii) Writ in the nature of mandamus be issued directing the respondents to grant all consequential benefits after following extra ordinary leave for the period the petitioner could not join his duties and by further granting all consequential benefits including arrears of salary and other admissible allowances as well as the promotional benefits."

3. The precise grouse of the petitioner and canvassed by the learned senior counsel is that the enquiry conducted by the Enquiry Officer is against the mandatory provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred as CCS (CCA) Rules, 1965. The petitioner was served with the charge-sheet dated 01.06.1995 (Annexure P-1) along-with Article of Charges. He replied the same on 22.07.1995 (Annexure P-2). However, the reply was not accepted and Enquiry Officer was appointed vide order dated 23.08.1995(Annexure P-3).

4. It is further averred that the Enquiry Officer conducted enquiry and the petitioner, who remained absent, was proceeded *ex-parte* on 24.06.1996. The petitioner on the very next date, moved an application for setting aside *ex-parte*

order, which application was dismissed and the petitioner feeling aggrieved by the said order preferred revision petition on 26.07.1996 and the revisional authority had passed the order on 19.08.1996. As per the learned senior counsel for the petitioner, the revisional authority had relegated the petitioner to the Enquiry Officer, who had upheld the said order on 24.08.1996. However, neither the averments to file an application for setting aside the ex-parte order or revision nor the order dated 19.08.1996 passed by the revisional authority or order dated 24.08.1996 passed by the Enquiry Officer have been placed on record. The Enquiry Officer after conducting the enquiry submitted his enquiry report to the Disciplinary Authority.

5. The facts as emerge from the order dated 02.12.2010 (Annexure P-11) are that a notice of removal from service was served on the petitioner vide memorandum dated 03.12.1996 and the petitioner submitted a representation on 07.12.1996 and he was afforded with an opportunity of personal hearing. These facts have not been disputed and denied by the petitioner. Thereafter, respondent No.2 being the Disciplinary Authority, after following the due procedure, passed an office order dated 01.09.1997 and imposed penalty

of reversion upon the petitioner from the post of District Treasurer to the post of Sub-Treasurer for a period of two years. It was ordered that the reversion in the cadre will be for two years and if the conduct of the petitioner is found satisfactory, he will again be promoted. The seniority of the order of District Treasurer will be considered from the date of next promotion. The period of unauthorized absence from 03.11.1989 till the date of joining as Sub Treasurer will be treated as dies-non. Consequent upon reversion of the petitioner, he was transferred to Sub Treasury, Kotkhai against vacant post of Sub Treasurer.

6. The petitioner feeling aggrieved by the said order had preferred an appeal, which came to be dismissed on 13.01.1999. This order has not been challenged by the petitioner in the present petition. However, lateron, the petitioner filed a revision petition on 17.06.2006 i.e. after 7 years of dismissal of his appeal on 17.06.2006, which came to be rejected and conveyed to him vide letter dated 02.08.2006.

7. The petitioner feeling aggrieved by the said order of rejection of his revision petition/representation had preferred the writ petition bearing **CWP(T) No. 14113 of 2008, titled, Atma Singh Chauhan vs. State of H.P. and**

another, which was disposed of on 07.07.2010. The order passed in the revision petition was set aside on the ground that it was a non-speaking order and respondent No.1 was directed to consider the matter afresh and pass a speaking order. In case the petitioner requests for opportunity of hearing, the same shall also be granted to him.

8. In sequel to the directions passed by this Court, respondent No.1 passed an order on 02.12.2010, whereby the revision petition preferred by the petitioner was rejected.

9. The petitioner has assailed the said order by way of present petition and a perusal of the order passed by the revisional authority reveals that the petitioner had challenged the order of penalty imposed upon him on the grounds, firstly; that he had remained on leave during the period in question due to ailment of his wife and father, secondly; his case may be reviewed on the analogy of the cases of Shri Uday Ram and Smt. Usha Devi, who were removed from service, but were reinstated and granted all benefits of seniority and promotion and thirdly; he was suffering from heart disease and his wife is a cancer patient. The revisional authority after going through the record as well as the fact that the petitioner had remained willfully absent from duty

w.e.f. 30.08.1994 to 11.09.1997and did not participate in the enquiry proceedings as well as failed to prove, before the Enquiry Officer that he required such a long period for treating illness of his wife, despite being given ample opportunities to do so, rejected the revision petition. So far, the ground with respect to the cases of Sh. Uday Ram and Smt. Usha Devi reported by the petitioners were concerned, it was held that their suspension was revoked vide order dated 03.01.2003 and no benefit other than subsistence allowance already paid to them during their suspension was granted to them. Further, there is no correlation with the cases of Sh. Uday Ram and Smt. Usha Devi with the case of the petitioner. Thus, considering the overall facts of the case and the long period of absence for three years, the penalty imposed by the Disciplinary Authority was held to be fair and just and the revision petition was dismissed.

10. I have heard Mr. Sanjeev Bhushan, learned senior counsel duly assisted by Mr. Sparsh Bhushan, learned counsel for the petitioners and learned Advocate General for the respondents-State and also carefully perused the record.

11. It is not in dispute that the petitioner had remained absent from duty from 30.08.1994 to 11.09.1997. It

is also not in dispute that the petitioner had neither raised the ground of not following the provisions of Rule 14 of CCS (CCA) Rules, 1965 before the Disciplinary Authority nor before the Revisional Authority when revision petition was preferred. It is also not in dispute that the appeal preferred by the petitioner was dismissed on 13.01.1999 and he has neither challenged the said order before the Revisional Authority nor before this Court. The petitioner has challenged only the order of imposing penalty, vide office order dated 01.09.1997 (Annexure P-6) and office order dated 02.12.2010 (Annexure P-11), passed in revision petition. Further, a perusal of the revision petition reveals that the petitioner had not raised the ground that the proper procedure as mandatorily to be followed by Enquiry Officer was not followed and thus, this ground raised before this Court cannot be looked into and adjudicated for the reason that the Revisional Authority was only bound to consider the points, which were raised before it in the revision petition. The petitioner at every stage cannot take up a new ground to challenge the order since, the Revisional Authority had considered the claim and decided the same on the basis of the pleas and grounds urged before him. The plea now raised by

the learned senior counsel for the petitioner that there is violation of Rule 14 of CCS(CCA) Rules, 1965, cannot be considered, that too, while exercising the extra ordinary writ jurisdiction against the order passed by the Disciplinary Authority, which order was affirmed in the appeal and not challenged and thereafter stands affirmed in the revision.

12. It is now settled by a catena of judgments that the Court cannot sit as an appeal against the order passed by the Disciplinary Authority or by the Appellate Authority. Further, this Court can interfere with the punishment imposed by the Disciplinary Authority, where there is violation of principles of natural justice or rules having not been followed at the time of conducting the enquiry. Learned senior counsel has tried to raise point that since, there is violation of the rules, which contemplates to follow a particular procedure which has not been followed by the Enquiry Officer, this Court under Article 226 of the Constitution of India,, to advance substantive justice, can look into that aspect, cannot be accepted for the simple reason that once the said plea was neither raised before the Disciplinary Authority nor before the Appellate Authority or Revisional Authority, the petitioner has waived off the said plea. Furthermore, this Court cannot enter into

that arena for the simple reason that it has only to test the orders passed by the authorities under challenge. The Disciplinary Authority while passing the order of imposing penalty had taken a sympathetic view, which order was affirmed in the appeal and thereafter, the revision petition has been dismissed. Absence from service for such a long period cannot be justified and this Court sees no reason to interfere with the order passed by the Disciplinary Authority, especially when the said order was affirmed in the appeal on 13.01.1997 and the same has not been questioned in the present petition. If the revision petition filed by the petitioner dated 17.06.2006 (Annexure P-8) is perused, it is crystal clear that he had not purposely mentioned the date of dismissal of his appeal, vide office order dated 13.01.1999 and the order dated 13.01.1999 passed in appeal is not under challenge in the present proceedings.

13. Learned senior counsel for the petitioner vehemently argued that since the Revisional Authority had relegated the petitioner before the Enquiry Officer, whose order was under challenge, cannot be looked for the simple reason that the petitioner has neither laid the foundation in the petition nor the said order has been challenged in the writ

petition. If the petitioner was aggrieved by the said order, he ought to have challenged at that time and not at this stage. Learned counsel placed reliance upon the judgment passed by the Division Bench of this Court in '**Mohinder Pal Grover vs. State of H.P. and another, Latest HLJ 2013 (HP) 70** to contend that since Rule 14 of CCS (CCA) Rules, 1965 was not followed, the Court had held that the mandatory rule has to be followed and since in the present case, the Enquiry Officer has not followed the said procedure, the enquiry is vitiated. No doubt, this Court has held in the aforesaid judgment that the procedure as envisaged under the rules is mandatory to be followed but in the present case, the petitioner had neither raised the said plea in the appeal nor in the revision. Furthermore, before passing the order of penalty, the petitioner was issued the show cause notice dated 03.12.1996 to make representation and the petitioner had made the representation on 07.12.1996, but he has not placed on record the said representation, which shows that the petitioner did not raise the said plea. Once the petitioner has not challenged the order passed in the appeal against order of penalty, he cannot be granted any relief in the present proceedings.

14. A perusal of the order passed by the Revisional Authority clearly indicates that the petitioner had only raised the grounds that he remained on leave due to ailment of his wife and father, his case may be reviewed on the analogy of Sh. Uday Ram and Smt. Usha Devi, who were removed from service and were reinstated and he is suffering from heart disease and his wife is a cancer patient. Once, the competent authority had considered the issue in detail and the grounds which are now being addressed before this Court were not raised before the said authority, the judgment passed by the Division Bench of this Court is not at all attracted to the facts of the present case.

15. Learned senior counsel for the petitioner also placed reliance upon the judgment passed by the Delhi High Court in **Shri H.L. Sonar versus Kendriya Vidyalaya Sangathan and others, ILR 1987 Delhi 55** to contend that since the procedure as contemplated under Rule 14 of the CCS(CCA) Rules, 1965 was not followed, the Court had quashed the order of removal and in the present case too, since the mandatory procedure was not followed, the order passed by the Revisional Authority is unsustainable in law. However, the said judgment is not applicable, since the

petitioner had neither laid challenge to the order of dismissal of his appeal by the Appellate Authority on 13.01.1999 nor raised such points before the Revisional Authority and thus, the same cannot be considered at this belated stage. As already noticed above, the appeal filed by the petitioner was rejected on 13.01.1999 and he had filed the revision petition on 17.06.2006 after seven years of dismissal of his appeal and once the said order has not been challenged by him in the present proceedings, the points raised by the petitioner are of no use. It is settled law that if the party has not challenged the order, the same is presumed to have been accepted by the party.

16. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. Pending applications, if any, shall also stand disposed of.

(**Jiya Lal Bhardwaj**)
Judge

25th April, 2026
(Vriti)