

*** HIGH COURT OF DELHI : NEW DELHI**

+ 1. Writ Petition (Civil) No. 4711 of 2001

Judgment reserved on: July 27, 2009

% Judgment delivered on: September 9, 2009

R.K. Garg
S/o Late Shri Kulwant Rai
R/o A-25, Mohan Park
Naveen Shahdara
Delhi-110032. ...Petitioner

Through Mr. G.D. Gupta, Sr. Advocate with
Mr. Vikram Saini, Advocate

Versus

1. Union of India
Through the Secretary to the
Government of India
Ministry of Urban Development
Nirman Bhawan
New Delhi-110011.
2. The Director General (Works)
Central Public Works Department
Nirman Bhawan
New Delhi-110011. ...Respondents

Through Mr. A.K. Bhardwaj with
Ms. Jagrati Singh, Advocates

WITH

2. Writ Petition (Civil) No. 3705 of 2001

R.K. Garg
S/o Late Shri Kulwant Rai
R/o A-25, Mohan Park
Naveen Shahdara
Delhi-110032.

...Petitioner

Through Mr. G.D. Gupta, Sr. Advocate with
Mr. Vikram Saini, Advocate

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Ms. Jagrati Singh, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The two principal issues that arise for our consideration relate to the interpretation of the proviso to Rule 9(2)(a) of the Central Civil Services (Pension) Rules, 1972 and the validity of a non-speaking order passed by a disciplinary authority pursuant to a departmental disciplinary inquiry.

In our opinion, the proviso to Rule 9(2)(a) of the Central Civil Services (Pension) Rules, 1972 does not obligate the President or the disciplinary authority of a delinquent official to supply to him the report of the findings of the disciplinary authority before a final decision is taken by the President on the inquiry report in a departmental disciplinary proceeding. We are also of the opinion that, in law, a disciplinary authority is obliged to give reasons for taking an adverse decision against a delinquent official and imposing a penalty on him.

2. The Petitioner is aggrieved by a common order dated 27th May, 1999 passed by the Central Administrative Tribunal, Principal Bench in OA Nos. 22/1993 and 3310/1992.

3. The Petitioner was subjected to two departmental disciplinary enquiries by the Respondents on the basis of two charge-sheets issued to him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. During the pendency of the disciplinary proceedings, the Petitioner superannuated and, therefore, the enquiries proceeded against him in accordance with the provisions of Rule 9 of the Central Civil Service (Pension) Rules, 1972.

4. On the conclusion of the departmental enquiries, the Petitioner was visited with a penalty imposed by the President by two orders dated 25th January, 1992 and 29th January, 1992. The penalty imposed on the Petitioner in respect of both cases was a 50% cut in pension for 15 years.

5. Feeling aggrieved by the imposition of a penalty, the Petitioner preferred original applications before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. In support of his applications, the Petitioner raised four contentions before the Tribunal, all of which were negatived and that is why the Petitioner is now before us. Learned counsel reiterated those contentions before us.

Interpretation of the proviso to Rule 9(2)(a) of the Central Civil Services (Pension) Rules, 1972

6. It was submitted that under the proviso to Rule 9(2)(a) of the CCS (Pension) Rules, 1972 the Petitioner's disciplinary authority is required to submit a report of his findings to the President and it is on the basis of this report that a decision is taken by the President whether to impose any punishment on the delinquent official or not. It was submitted that the report submitted by his disciplinary authority to the President was not supplied to the Petitioner and, therefore, he was unable to represent against it. Consequently, it was contended that there was a violation of the principles of natural justice.

7. Rule 9(2)(a) of the CCS (Pension) Rules, 1972 reads as follows: -

“9. Right of President to withhold or withdraw pension.

(1) xxx xxx xxx

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.” (Emphasis supplied)

8. In support of his contention, learned counsel for the Petitioner placed reliance on a Division Bench decision of this Court in *Moti Lal Shakya v. Union of India and others* (WP (C) No. 3097/2002 decided on 29th May, 2009). In that decision, there is an observation to the effect that the “.....respondents have violated the statutory procedure while non supplying the recommendation of the initial disciplinary authority.....”. Unfortunately, there is no discussion on the question whether there is at all a requirement for the disciplinary authority or the President to furnish to the delinquent officer the report submitted by the disciplinary authority. It is only if there is such a requirement that the non-supply of the recommendation can be a violation of the procedure. Unfortunately, this issue has not been addressed. A little later in the decision it is observed that “.....the respondents have violated the statutory procedure prescribed in Rule 9 of the CCS (Pension) Rules 1972, firstly, the President (delinquent?) was not supplied the specific recommendation of the initial disciplinary

authority while forwarding the enquiry officer's report and, secondly, the charged officer's comments were also not sent to the President for his consideration. We are, therefore, of the considered opinion that non-supply of essential documents to the President has resulted in miscarriage of justice in the present case." Again, there is no discussion on this aspect and no reasons have been given for this conclusion. With respect, therefore, we hold these observations to be not binding in law but only limited to the facts of that case.

9. Learned counsel for the Petitioner also relied upon *State Bank of India and others v. D.C. Aggarwal and another, (1993) 1 SCC 13* to submit that it was mandatory for the Respondents to have furnished the report of the disciplinary authority to the Petitioner and to have invited his comments thereon while forwarding the case to the President. On the failure of the Respondents to do so, there is a violation of the principles of natural justice.

10. In our opinion, this decision does not at all advance the case of the Petitioner. What the Supreme Court was considering was the necessity of providing to the delinquent officer the views of the Central

Vigilance Commission (CVC) for consideration by the disciplinary authority. The CVC was not a party to the proceedings and its recommendation was “prepared behind the back of the respondent without his participation, and one does not know on what material.....”

It is in this context that the Supreme Court expressed the view that the opinion of the CVC is “irrelevant” and could not be looked into and, therefore, the delinquent official is entitled to give his comments in respect of that opinion. Clearly, the facts of that case are not at all apposite to the facts of the case that we are concerned with simply because it is not the opinion of any third or outside party that is being forwarded to the President but the views of the Petitioner’s disciplinary authority.

11. Moreover, it is not as if the report of the disciplinary authority is prepared without the Petitioner’s participation or without any knowledge of the material. In this context, it is important to note the procedure and circumstances in which the findings of the disciplinary authority are required to be forwarded to the President. As per the procedure explained to us, the report given by the Enquiry Officer on the conclusion of the disciplinary proceedings is furnished to

the delinquent official who is entitled to make a representation in respect of the discussion and conclusions of the Enquiry Officer. Both the enquiry report as well as the representation of the delinquent official thereon are placed before the disciplinary authority who then gives his report and forwards the entire record to the President for taking a final decision in the matter on whether to impose any penalty on the delinquent official or not. It is nobody's case that while taking a decision, the President considers only the findings of the disciplinary authority and not the report of the Enquiry Officer or the representation of the delinquent official, which are the primary documents.

12. Under the circumstances, it is quite clear that, as per the procedure, the delinquent official fully participates in the entire process. Giving the delinquent official an opportunity to represent against the report of findings of the disciplinary authority before the award of a punishment (as canvassed by learned counsel), would virtually amount to giving to that delinquent official a third opportunity to explain why he should not be punished – the first opportunity being during the departmental enquiry, the second opportunity being by way of a representation against the enquiry report and the third opportunity being

against the findings of the disciplinary authority. Surely, the principles of natural justice which require a fair hearing cannot be stretched to mean three fair hearings as contended by the Petitioner.

13. All that Rule 9 of the CCS (Pension) Rules does is to transfer the power of punishment from the disciplinary authority to the President. This procedural transfer cannot be read to mean that an additional right gets conferred on the delinquent official to make a representation to the President beyond the right to represent against the report of the Enquiry Officer. Under the circumstances, there can be no obligation, and indeed none has been shown to us, to supply a copy of the report of the findings of the disciplinary authority to the Petitioner.

14. In our opinion, the Tribunal rightly came to the conclusion that the findings of the disciplinary authority were not required to be supplied to the Petitioner for his comments under the proviso to Rule 9(2)(a) of the CCS (Pension) Rules, 1972 and, in any event, non-supply of the findings does not prejudice the delinquent official or violate any principle of natural justice.

Advice of the Union Public Service Commission

15. The second contention urged by learned counsel before the Tribunal (and this was not pressed before us) was that the advice of the Union Public Service Commission was not supplied to the Petitioner before the penalty order was passed by the President. Learned counsel for the Petitioner rightly did not press this ground in view of the decision of the Supreme Court in *Union of India and another v. T.V. Patel, (2007) 4 SCC 785*.

Non-speaking order of the disciplinary authority

16. The third contention urged by learned counsel for the Petitioner was that the penalty orders passed by the President were non-speaking orders. We have gone through the orders passed by the President and find that this submission of learned counsel is substantiated. After giving the broad facts of the controversy, the penalty order dated 25th January, 1992 reads as follows: -

“3. The Inquiry Officer submitted the inquiry report dated 28.4.1989 wherein he held Articles I, II and V as proved, Article III as partly proved, and Article IV as factually proved. The disciplinary authority sent a copy of the inquiry report to Shri R.K. Garg Asstt. Engineer (Retd) submitted the representation vide letter, dated the 11th September 1989. The Disciplinary Authority considered the representation of the charged officer vis-a-vis inquiry report and records

relevant to the case and submitted a report recording its findings to the Government for passing appropriate orders.

4. The President in consultation with the UPSC has considered the inquiry report, findings of the Disciplinary Authority and records relevant to the case. Agreeing with the recommendations of the Disciplinary Authority and the UPSC, the President has come to the conclusion that all the five articles of charges may be held as proved. Shri R.K. Garg, Asstt. Engineer is also involved in another case which has been examined in this Ministry in File No. C-14012/2/90-AVI II, wherein the President in consultation with the UPSC held all the Articles of charge except Article V and VI as proved.

Considering the fact the charges established against Shri R.K. Garg, Asstt. Engineer in both the cases are serious in nature, the President has come to the conclusion that the ends of justice would be met if 50% (fifty per cent) monthly pension otherwise admissible to Shri R.K. Garg, Asstt. Engineer is withheld for a period of 15 years for both the cases.

5. A copy of the UPSC's advice contained in their letter No. F. 3.2.91-SI, dated the 5th July, 1991 is enclosed."

[The penalty order dated 25th January, 1992 is on the same lines.]

A perusal of the above extract from the penalty order clearly indicates that no reasons have been given by the President for coming to the conclusion that he did. The Petitioner canvassed this issue before the Tribunal also but unfortunately in paragraph 7 of the impugned order, the Tribunal merely stated that on a perusal of the impugned penalty

order it was unable to agree with learned counsel that it was a non-speaking order. No reasons have been given by the Tribunal for coming to the conclusion that it did. The question that arises under these circumstances is whether the order passed by the President as the disciplinary authority of the Petitioner is required to be a reasoned order or not.

17. In support of his contention in this regard, learned counsel placed reliance on two decisions of the Supreme Court, namely, ***Mahabir Prasad Santosh Kumar v. State of Uttar Pradesh and others, AIR 1970 SC 1302*** and ***Director (Marketing) Indian Oil Corporation Ltd. and another v. Santosh Kumar, (2006) 11 SCC 147.***

18. ***Mahabir Prasad*** pertains to the cancellation of a license of a dealer in sugar and flour. It was noted that the order cancelling the license is appealable, which implied that the aggrieved party must have an opportunity to convince the appellate authority that the order passed by the original authority is erroneous. The Supreme Court held that the right of appeal could be effectively exercised only if reasons were recorded by the original authority and supplied to the aggrieved party.

If the aggrieved party is not supplied the reasons, the right of appeal is an empty formality.

19. Similarly in *Santosh Kumar* it appears that the disciplinary authority had mechanically passed an order of dismissal against the respondent pursuant to a disciplinary enquiry. It was upheld by the appellate authority without recording any reasons. On this basis, the Supreme Court concluded that the orders passed by the disciplinary authority as well as the appellate authority deserved to be quashed and remitted the matter for a fresh consideration. There is nothing explicit in the decision to suggest that the disciplinary authority was required to give reasons for punishing the delinquent official.

20. However, it is implicit in the above decisions that the original authority, exercising quasi-judicial functions, should supply the reasons for an adverse finding to the affected party.

21. In addition to the above decisions, we may discuss a few recent decisions of the Supreme Court on the subject.

22. In *Divisional Forest Officer, Kothagudem and Others v. Madhusudhan Rao*, (2008) 3 SCC 469 one of the issues for consideration before the Supreme Court was whether the order of the appellate authority in respect of a disciplinary inquiry was vitiated and liable to be set aside on the ground that it was not a reasoned order. The Supreme Court expressed the opinion in paragraph 19 of the Report that it was the duty of the appellate authority to give at least some reasons for rejecting the departmental appeal preferred by the respondent. It was further said that a similar duty was cast on the revisional authority. It was noted in paragraph 20 of the Report that both the appellate authority as well as the revisional authority are not required to give detailed reasons for agreeing and confirming an order passed by the lower forum, but in the interest of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or his revision. While no detailed reasons are required to be given, some brief reasons should be indicated even in an order affirming the views of the lower forum.

23. As will be seen, the decision does not concern the recording of reasons by a disciplinary authority but it is quite clear that if the

appellate authority as well as the revisional authority are duty bound to give at least some reasons for taking a view adverse to a party, it would be irrational to conclude that the authorities constituting the lower forum are not required to give reasons. Therefore, it must necessarily follow from this that even the disciplinary authority is required to give reasons for arriving at his conclusion for imposing a penalty on a delinquent officer.

24. In *Roop Singh Negi v. Punjab National Bank and Others*, (2009) 2 SCC 570 the Supreme Court noted that a departmental proceeding is a quasi-judicial proceeding and an Enquiry Officer performs a quasi-judicial function. In paragraph 23 of the Report it was observed that the orders of the disciplinary authority as well as the appellate authority were not supported by any reasons. Since both these orders had severe civil consequences, reasons should be assigned for arriving at an adverse conclusion.

25. Finally in *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and Others*, (2009) 4 SCC 240 the question that arose for consideration was whether

an order passed by the appellate authority affirming the decision of the disciplinary authority in respect of disciplinary proceedings is required to be supported by reasons or not. In paragraph 5 of the Report, the Supreme Court held that an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. It was noted that whether there was an application of mind or not can only be disclosed if some reasons, at least in brief, are mentioned in the order of the appellate authority. In coming to this conclusion, the Supreme Court referred to and relied upon *Madhusudhan Rao, M.P. Industries Ltd. v. Union of India*, AIR 1966 SC 671 and *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India*, (1976) 2 SCC 981.

26. The Supreme Court also briefly discussed the decision of the Constitution Bench of the Supreme Court in *S.N. Mukherjee v. Union of India*, (1990) 4 SCC 594 to the effect that the purpose of disclosure of reasons is that it minimizes the chances of arbitrariness and enables a person to know that the authority has applied its mind to the case thereby instilling confidence in the judicial or quasi-judicial authorities.

27. There are, therefore, two facets to this controversy – firstly, the duty cast on the disciplinary authority to give reasons for its adverse order and secondly, the entitlement of the delinquent official to know the reasons to enable him to effectively challenge the adverse order in appeal.

28. On an appreciation of all the above decisions rendered by the Supreme Court (and many others which we are not referring to at the moment) it is quite clear that a disciplinary authority has a duty to give reasons for coming to its conclusion, more particularly if the conclusion has adverse civil consequences in so far as the delinquent official is concerned. The giving of reasons enables the aggrieved official to know the mind of the disciplinary authority and this enables him to make an effective appeal to the higher forum, which can focus its thoughts on the issues involved, rather than have to search for them. There is, therefore, a tremendous benefit to all concerned if reasons for taking an adverse decision are recorded. The case law clearly suggests that the authorities higher up in the forum such as the appellate authority and the revisional authority are also required to give reasons even if they are in agreement with the views of the disciplinary authority but in the case of the

appellate or revisional authority, the reasons need not be elaborate or detailed but they must nevertheless exist so that it is apparent that there is an application of mind by the authorities.

29. At the same time, we may add that it is not as if the disciplinary authority is required to write a “judgment” as is commonly understood but its order must be detailed enough to clearly suggest that there is an application of mind to all the relevant facts of the case and to the submissions made by the delinquent official and if those submissions are rejected then the reasons for their rejection. In our opinion, this is now settled law and there can be no going back on this. We may also note that learned counsel for the Respondents did not cite any decision on this aspect of the case to persuade us to take a different view.

30. Applying the law laid down by the Supreme Court, we find that the orders passed by the President do not contain any reasons whatsoever. All that they say is that the President has considered the inquiry report, findings of the disciplinary authority and the record relevant to the case and in consultation with the Union Public Service

Commission the President has come to the conclusion that the articles of charge are proved. There is nothing to indicate that the submissions made by the Petitioner in his representation against the enquiry report were duly considered and the reasons for their rejection.

31. Unfortunately, even the Tribunal has not given due consideration to the fact that the order of the President does not contain any reasons. The Tribunal has merely stated that it is unable to agree with learned counsel for the Petitioner that the orders passed by the President are not speaking orders. The Tribunal was undoubtedly under an obligation to give reasons for disagreeing with learned counsel for the Petitioner when a specific contention was raised that the order passed by the President was not a speaking order, but it has failed to do so.

32. We may also add that against the order of the President (virtually acting as the disciplinary authority of the Petitioner) no appeal or revision is provided for. The effect of this is that the delinquent official really does not even know the reasons for an adverse decision (if one is taken against him) until he approaches the Tribunal for relief.

Even there, he is handicapped in challenging the order of the President due to an absence of reasons for the adverse order. To obviate placing the delinquent official on the backfoot and to give him a real chance of impugning the adverse penalty order, the interests of justice require that in proceedings such as the one that we are concerned with, the order of the President must be supported by reasons.

33. In view of the above, we have no option but to set aside the order passed by the Tribunal to this limited extent and also to set aside the orders passed by the President (virtually acting as the disciplinary authority of the Petitioner) and to issue an appropriate direction to the President to consider the matter afresh and pass speaking and reasoned orders.

Unequal punishments

34. The fourth contention urged by learned counsel for the Petitioner was that the punishment awarded by the Respondents to two other persons who were proceeded against on similar charges was much milder than the punishment awarded to the Petitioner.

35. We are not inclined to accept this submission made by learned counsel. Each case has to be decided on its own facts and the evidence on record. The proceedings in respect of the other two officials were not common with the proceedings in the case of the Petitioner. The other two persons were separately charge-sheeted and were dealt with separately. In the absence of a full disclosure of all relevant material, it is not possible for us to compare and contrast the charge-sheet issued to other persons and to the Petitioner, the evidence available in the other two cases, the conclusion arrived at by the Enquiry Officer and the view taken by the disciplinary authority.

Joint penalty

36. The final submission urged by learned counsel was that the matter has been dealt with by the President in respect of two charge-sheets and two penalty orders have been passed, but the actual penalty is common for both cases. Learned counsel says that this is impermissible. Apart from the fact that learned counsel has not shown us any decision in support of his contention, this issue was not urged by the Petitioner before the Tribunal. In exercise of our writ jurisdiction under Article 226 of the Constitution it is not possible for us to take up this issue for

consideration as if we are a court of first instance. The contention urged by learned counsel in this regard is, therefore, rejected.

Conclusions

37. For the above reasons, the writ petition is partly allowed. The impugned order passed by the Tribunal as well as the orders passed by the President on 25th January, 1992 and 29th January, 1992 are set aside on the ground that the order of the President does not contain any reasons. We remit the matter back to the President for a reconsideration of the case and to pass speaking and reasoned orders. Since the case is very old, we grant six months time for taking a final decision in the matter. No costs.

MADAN B. LOKUR, J

September 9, 2009
kapil/vk

A.K. PATHAK, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.