

**Court No. - 6**

**Case :-** WRIT - A No. - 9507 of 2024

**Petitioner :-** Sunil Kumar

**Respondent :-** State Of U.P. Thru. Chief Secy. Govt. U.P. Lko.  
And 4 Others

**Counsel for Petitioner :-** Arun Pratap Verma, Surya Mani Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Alok Mathur, J.**

1. Heard Sri Surya Mani Singh, learned counsel for the petitioner and learned Standing Counsel for the respondents.
2. With the consent of the parties, the writ petition is decided finally at the admission stage.
3. It has been submitted by the learned counsel for the petitioner that the petitioner while working on the post of Senior Cane Development Inspector, Lucknow was subjected to disciplinary proceedings, which were initiated on 14.6.2023 on issuance of the charge sheet. The petitioner had responded to the charge sheet by giving his reply and finally the disciplinary proceedings concluded by passing of an order of punishment on 24.05.2024 wherein the petitioner was inflicted with the punishment of stoppage of four increments with permanent effect and he was also given a censor entry. The petitioner being aggrieved by the said order had assailed the order before the appropriate authority, which proceedings are pending.
4. It has further been submitted that during the pendency of the disciplinary proceedings the petitioner was placed under suspension by means of order dated 14.6.2023 and the aspect pertaining to the payment of full salary for the period he was kept under suspension was directed to be decided subsequently. It is in this regard that a notice was given to the petitioner on

20.8.2024 to show cause as to why his salary for the period he was kept under suspension be not forfeited. The petitioner had given a detailed reply on 8.8.2024 where it was clearly stated that a disciplinary proceedings were not prolonged or procrastinated on account of any action of the petitioner and he was not in any other employment during the said period, therefore, he should be given full salary for the period he remained under suspension. He has further submitted that the said aspect was to be decided in terms of the Clause 54-B of the Financial Handbook Vol. II (Part 2 to 4).

5. By means of the order dated 29.8.2024, the matter pertaining to the grant of salary for the period of suspension has been decided by the State Government looking into the seriousness of the allegations levelled against the petitioner and he would not be entitled to any other allowance except the subsistence allowance during the period he was under suspension. The order dated 29.8.2024 has been assailed by the petitioner in the present case.

6. It has been submitted by the learned counsel for the petitioner that the matter pertaining to the payment of salary during the period the petitioner was kept under suspension was to be decided as per Clause 54-B of the Financial Handbook Vol. II (Part 2 to 4) after the disciplinary proceedings are concluded and he was reinstated in the service. He submits that proviso to subclause-3 of Clause 54-B of the Financial Handbook Vol. II (Part 2 to 4) clearly provides that it is only when the authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after

considering the representation, if any, submitted by by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

**7.** It is stated that the said proviso clearly indicates that principles of natural justice would be followed by the authority while making such determination where specific provision has been provided for giving a show cause notice and also for duly considering the representation submitted by the delinquent government servant.

**8.** Undoubtedly, as the impugned order itself records that the petitioner has given his detailed reply on 8.8.2024 giving various reasons for not deducting any amount for the period the petitioner was kept under suspension and accordingly, the said reasons ought to have been duly considered by the authority while passing the order determining the amount payable to the petitioner for the period he was kept under suspension. The impugned order does not consider any of the reasons spelt out by the petitioner in his defence and merely it has been stated that the charges levelled against the petitioner was serious and consequently it has been held that he would not be entitled to any other allowance other than the subsistence allowance for the period he was kept under suspension.

**9.** With regard to the issue that there are reasons or due consideration in the impugned order, learned Standing Counsel could not dispute the factual aspects.

**10.** It is in the aforesaid facts and circumstances, this Court is of the considered view that while passing an order in terms of Clause 54-B of the Financial Handbook Vol. II (Part 2 to 4) while determining the amount payable to the delinquent

employee on the termination of the disciplinary proceedings due consideration has to be made to the reasons indicated in the Clause itself and one of the relevant aspect of the matter would be in case the delinquent employee is responsible for delaying the enquiry proceedings. In the present case, it was incumbent upon the authorities concerned to have returned a finding in this regard, even if the employee has chosen not to respond the show cause notice given to him. Absence of giving any reasons in this regard is fatal to such an order passed under Clause 54-B and no reason has been given in the order itself is a ground sufficient to quash the impugned order.

**11.** It is in the aforesaid circumstances, this Court has been called upon in the present case to determine as to whether such a non speaking order bereft of any reasoning can be sustained.

**12.** In order to consider aforesaid aspect, it has to be considered as to whether giving reasons is essential or not. The Apex Court in the case of ***S.N. Mukherjee Vs. Union of India, (1991) 4 SCC 594***, has held that giving of reasons is a part of natural justice and it is the reasons which disclose the mind of the authority who is taken the decision. In order to indicate that there has been application of mind the said order should contain reasons before taken such a decision. The Court has held as under :-

*"39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an*

administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

**13.** It is well settled that an order without valid reasons cannot be sustained. To give reasons is the rule of natural justice. Highlighting this rule, Hon'ble Supreme Court held in the case of ***The Secretary & Curator, Victoria Memorial v. Howrah Ganatantrik Nagrik Samity and ors., JT 2010(2)SC 566 para 31 to 33*** as under :

"31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind. " [Vide *State of Orissa Vs. Dhaniram Luhar (JT 2004(2) SC 172* and *State of Rajasthan Vs. Sohan Lal & Ors. JT 2004 (5) SCC 338; 2004 (5) SCC 573*].

32. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order

indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide *Raj Kishore Jha Vs. State of Bihar & Ors.* AIR 2003 SC 4664; *Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors.* (2008) 3 SCC 172; *Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors.* (2008) 9 SCC 407; *State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi* AIR 2008 SC 2026; *U.P.S.R.T.C. Vs. Jagdish Prasad Gupta* AIR 2009 SC 2328; *Ram Phal Vs. State of Haryana & Ors.* (2009) 3 SCC 258; *Mohammed Yusuf Vs. Faij Mohammad & Ors.* (2009) 3 SCC 513; and *State of Himachal Pradesh Vs. Sada Ram & Anr.* (2009) 4 SCC 422].

33. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected."

**14.** Non recording of reasons, non consideration of admissible evidence or consideration of inadmissible evidence renders the order to be unsustainable. Hon'ble Supreme Court in the case of ***Chandana Impex Pvt. Ltd. Vs. Commissioner of Customs, New Delhi*** , 2011(269)E.L.T. 433 (S.C.), held as under :

"8. ....It needs to be emphasised that every litigant, who approaches the court for relief is entitled to know the reason for acceptance or rejection of his prayer, particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be subjected to examination at the higher forums. In *State of Orissa Vs. Dhaniram Luhar*<sup>2</sup> this Court, while reiterating that reason is the heart beat of every conclusion and without the same, it becomes lifeless, observed thus :

"8.....Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;....."

**15.** The Supreme Court in *State of Orissa v. Dhaniram Luhar* (2004) 5 SCC 568 while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record its reasons while disposing of the matter. The Court held as under:

"8. Even in respect of administrative orders Lord Denning, M.R. In *Breen v. Amalgamated Engg. Union*, (1971)2 QB 175, observed:(QB p.191 C) "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree* it was observed: "Failure to give reasons amounts to denial of justice." "Reasons

*are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."*

**16.** It is the reasons which is the bedrock of any determination by any authority which would disclose the mind of the authority and as to whether he has passed the order in terms of the statutory provisions. In the present case, despite giving opportunity to the petitioner he has submitted his reply but the State Government has not taken into account any reasons disclosed therein and, accordingly the said order is illegal and arbitrary and deserves to be quashed.

**17. The writ petition is, accordingly, allowed.**

**18. The impugned order dated 29.8.2024 is set aside. Let a fresh order be passed with expedition say within two months from the date a certified copy of this order is produced before the concerned authority.**

**(Alok Mathur, J.)**

**Order Date :- 18.10.2024**

**Anuj Singh**