

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12759 of 2013

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1. Deepak Kumar Son Of Late Sri Ramesh Chandra Resident Of Village
And P.O. Bhagen Bigha, District - Nalana

.... Petitioner/s

Versus

Punjab National Bank & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

09-01-2015

Heard counsel for the petitioner and the respondents.

In petitioner was employed as sub-ordinate staff and on the complaint of his sister of impersonation, a proceeding was started against him and ultimately it ended in the order of dismissal, vide letter dated 24th August 2012 passed by the Chief Manager cum-disciplinary authority and the same was challenged before the appellate authority and vide order dated 17th November 2012 rejected the appeal.

A short point has been raised by the petitioner that neither the disciplinary authority nor the appellate authority could appreciate the case of petitioner and none of them has passed the reasoned order. It is well settled principle that the reason must be assigned in the order so as to show the application of mind of the

authority as reason is living link in between the mind of decision maker to controversy in question and decision or conclusion arrived at. Right to reason is an indispensable part of a sound judicial system so much so affected party can know why the decision has gone against him.

Reliance can be placed on the judgments reported in 2003(4) SCC (Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar). It is relevant to quote Para-15 of the judgment:

“Para-15: It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Egg. Union* observed (All ER p.1154) h “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. 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 a sphinx’ is ordinarily incongruous with a judicial or quasi judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed

with the disciplinary proceedings, notwithstanding acquittal in the criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application.”

Reliance can also be placed on 2009-III LLJ Chairman Disciplinary-authority v. J.S.Varshney. It is necessary to quote Para-8 to 12 of the judgment which is as follows:

Para-8: In our opinion, 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. In fact the said decision in State Bank of Bikaner & Jaipur and Others v. Prabhu Dayal Grover (supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not



contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The view we are taking was also taken by this Court in Divisional Forest Officer Kothagudem v. Madhusudan Rao, 2008-11-LLJ-671, and in Madhya Pradesh Industries Ltd. V. Union of India, AIR 1976 SC 1785 etc.

Para-9. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

Para-10. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee v. Union of India, AIR 1990 SC 1984: (1990) 4 SCC 594 is that people must have confidence in the judicial or quasi judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not ? Also giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief,

must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation.

Para-11. No doubt in S.N.Mukherjee v. Union of India (supra) it has been observed (vide para 36) that:

“..The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

Para-12. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority”.

In this view of the matter, the order dated 24th August 2012(Annexure-10) and the order dated 17th November 2012 (Annexure-15) illegal and not sustainable in law as neither the Disciplinary authority nor the Appellate Authority has assigned reasons for arriving to finding and are hereby quashed.

The Disciplinary Authority will be at liberty to pass order in accordance with law. If the order goes against the petitioner, he will have liberty to challenge the order before the appellate authority and if the appeal is filed, the appellate authority will also be obliged to pass reasoned order. The Disciplinary Authority must complete the exercise within three months from the date of receipt or production of this order. This Court is not giving any opinion on the merit of the case.

With the above observation/direction, this petition is disposed of.

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(Shivaji Pandey, J)