

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No.960 of 2012 (O&M)

Date of Decision:08/07/2015

Baljinder Singh

...Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. J.S. Lalli, Advocate for the petitioner.

Ms. Minakshi Goel, A.A.G. Punjab.

Mr. Vijay Kaushal, Advocate
for respondents No.2 and 3.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

DEEPAK SIBAL, J.

C.M. No.7958 of 2015

Through this application, translated copy of order dated 14.2.2003 is sought to be placed on the record as Annexure R-1.

Allowed as prayed for.

Civil miscellaneous application stands disposed of.

Main case

The petitioner while discharging his duty as a Draftsman with the Punjab Water Supply and Sewerage Board (hereinafter referred to as “the respondent-Board”) for certain acts of omission and commission was departmentally proceeded against and punished vide order dated 22.5.2002 (Annexure P-12). The punishment order was passed by the Manager, Personnel & General Administration of the respondent-Board. Against the punishment order dated 22.5.2002 (Annexure P-12), the petitioner preferred

a statutory appeal before the Chief Engineer of the respondent-Board. Through order dated 28.2.2003 (Annexure P-13), the Manager, Personnel & General Administration of the respondent Board conveyed to the petitioner that his appeal had been rejected by the Chief Engineer. However, no order passed on his appeal was supplied.

The petitioner had been charge-sheeted and ultimately punished by the respondent-Board on the ground that he had submitted a wrong certificate that he belonged to the scheduled caste category. On the same ground, the petitioner was proceeded against under the criminal law as well. However, vide order dated 20.11.2008, the Judicial Magistrate Ist Class, Amritsar acquitted the petitioner of all the charges framed against him under the criminal law. Appeal by the State was dismissed on 26.8.2011 by the Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar. On such acquittal, the petitioner made a detailed representation to the Board for reconsideration of his case. The concerned Executive Engineer as also the Superintending Engineer of the respondent-Board recommended to the Managing Director of the respondent-Board to favourably consider the representation of the petitioner. However, vide order dated 30.6.2009, the petitioner's representation was rejected. Objecting to such rejection, the petitioner got a legal notice served upon the respondent-Board but when the same went undecided, the present writ petition was filed.

I have heard learned counsel for the parties and have gone through the record of the case.

The punishment order in the case of the petitioner was passed by the Manager, Personnel & General Administration of the respondent-Board. Against the punishment order, the petitioner had preferred a

statutory appeal to the Chief Engineer of the respondent-Board. The Manager, Personnel & General Administration of the respondent-Board had conveyed to the petitioner that the Chief Engineer had rejected the appeal of the petitioner. However, no order so passed on his appeal had been supplied to the petitioner. To this effect the petitioner had made a specific averment in his petition but the same was not conveniently replied to. The appellate order was not even appended with the counter filed by the Board. On the direction of the Court, the order passed by the Chief Engineer on the statutory appeal preferred by the petitioner has been placed on the record as Annexure R-1. The same in entirety reads as under:

“Personal hearing has been given by Chief Engineer on 18.12.2002 at 12.00 Noon in Head Office to Sh. Baljinder Singh, Draftsman with reference to his application dated 6.9.2002.

Accordingly draft is submitted for approval and signatures please.

Sd/- SA

12/12

MPGA

Sd/-

13/12

A-3

Personal hearing has been given by Chief Engineer on 18-12-2002 at 12.00 Noon in Head Office to Sh. Baljinder Singh, Draftsman with reference to his application. Comments are placed below in this regard.

Case may be forwarded to Chief Engineer for further necessary action.

Sd/-SA

SD/-Supdt.

17/12

Sd/- MPGA

17/12

Chief Engineer

An appeal was made by Sh. Baljinder Singh, Draftsman on

06.09.2002 to Chief Engineer against punishment given to him by MPGA vide office order No.288 dated 22.05.2002. Sh. Baljinder Singh, Draftsman was intimated vide this office letter No.27839 dated 12.12.2002 to meet Chief Engineer personally on 18.12.2002 at 12.00 Noon.

On 18.12.2002, full time was given by Chief Engineer to Sh. Baljinder Singh, Draftsman to express his views. But the official could not reply the questions asked by the Chief Engineer properly. Chief Engineer asked the official regarding scholarship obtained by him during 1978-79 while doing diploma, whether the same has been obtained as scheduled caste candidate or as per backward class. But Sh. Baljinder Singh, could not reply properly. He informed that earlier he received Rs.25/- per month as scholarship, but during diploma Principal given him money ----- Rs.20/- per month and Principal said that the amount is being given on account of certificate of Scheduled Caste. In query of Chief Engineer whether this money was returned by him, the official replied that nothing was intimated to him by the Principal. Whenever he will be intimated to return the money, he will deposit the money. It is clear from this that scholarship was obtained by him as scheduled caste candidate.

Chief Engineer asked about certificate issued by SDM, Amritsar that at three places the word scheduled caste has been written. Whether he has requested the SDM to make amendment in the certificate or not. The official expressed zig-zag attitude and said that he was newly comer from village and due to this he was no knowledge in this regard. Meanwhile, official starts telling about complaint made by another person against him which was not related to this case and Chief Engineer stopped him many time for doing this.

It is clear from the above that official gained benefits as scheduled caste candidate uptill any complaint has not made against him. It is clear that the official is responsible for charges levied against him.

Case is submitted to Chief Engineer (Appellate Authority) for consideration of punishment given to the official and further orders.

Sd/-Supdt.

19/12

Sd/-MPGA

19/12

Chief Engineer

A letter received from the official may also be dealt.

SD/-Chief Engineer

23/12

Sd/-MPGA

23/12

Sd/-Supdt.

26/12

A-3

It is submitted that an appeal was made by Sh. Baljinder Singh, Draftsman to the Chief Engineer against punishment given to him. He was given personal hearing on 18.12.2002 by the Chief Engineer. Later on, an application was given by Sh. Baljinder Singh on 18.12.2002.

He requested that he met personally on 18.12.2002 to Chief Engineer and expressed his views. He intimated that decision taken against him as per Head Office letter No.12455-56 dated 22.5.2002 may be withdrawn. Which person complains can not do so because that person is not eligible for his post (Draftsman).

In this regard, it is submitted that there is no new point in application submitted by Sh. Baljinder Singh, Draftsman. Reply of points raised by him has already been discussed on note page-08 to 08 in detail.

Case is again submitted for orders of Chief Engineer (Appellate Authority) as per 'A' on note page-11.

Sd/-SA

10/1

Sd/- Supdt.

13/1/03

Sd/-MPGA

13/1

Chief Engineer

If considers him as backward class, whether he was selected.

Explain in detail.

Sd/-

Chief Engineer

17/1

Sd/- MPGA

17/1

Sd/- Supdt.

17/1

A-3

With reference to query of Chief Engineer on note page-12, it is submitted that total 15 posts of Assistant Draftsmen were advertised in July, 1981. Out of these 4 posts for scheduled castes and one for backward class were reserved. Only one posts of backward class was advertised at that time. Sh. Baljinder Singh obtained 78% marks in interview and Sh. Baljit Singh obtained 83% marks. So Sh. Baljit Singh was appointed as Draftsman based on merit against backward class post and appointment of Sh. Baljinder Singh was not possible based on merit for this post at that time.

It is made clear here that Sh. Baljit Singh who was appointed against backward class, has resigned from the service on 17.03.1987 and no official of backward class is working at present.

Sd/-SA

28/1

Supdt

Submitted for orders as per 'A' on note page-11.

Sd/- Supdt

30/1

Sd/-MPGA

30/1

Chief Engineer

I agree with the punishment awarded. He is the last candidate selected in that batch. Please prepare speaking order.

Sd/- Chief Engineer

14/2

Sd/-MPGA/17/2

Sd/- Supdt.

18/2

A-3

DFA is placed below for approval as per decision of Chief Engineer on note page-13.

Sd/-SA

20/2

Sd/-Supdt.

20/2

MPGA

Fair draft is placed below for approval/signatures.

Sd/-SA

26/2

Supdt.

As per decision of Chief Engineer on note page-13, draft is submitted for approval.

Sd/- Supdt.

MPGA

May see before issue of letter.

Sd/-MPGA

26/2

Sd/-Chief Engineer

26/2

MPGA

Signed on orders

Sd/-MPGA

27/2

Supdt.

Despatcher

27/2”

A perusal of the so called order passed on the statutory appeal preferred by the petitioner shocks my conscious. Annexure R-1 is merely a bundle of notings which by no length of imagination can be termed as an order passed on a statutory appeal.

Further at each and every stage before the file would reach the Appellate Authority, it has been approved and forwarded by the Manager, Personnel & General Administration of the respondent-Board that is the same authority who had passed the punishment order against which the appeal was being considered.

Still further after agreeing with the punishment awarded, the Chief Engineer had himself not passed any speaking order but had asked his

subordinates to prepare the speaking order.

The speaking order, if any, has not been placed on the record of this Court.

The above referred record reveals the casualness with which the appeal of the petitioner has been considered. The element of bias in the so called consideration of his appeal is also writ large from the fact that at every stage of such consideration, the file was being routed from the ministerial staff to the appellate authority through the Manager, Personnel & General Administration of the respondent-Board against whose order, the appeal had been preferred. The notings and the drafts were put up for the approval of the appellate authority only after the same had been forwarded by the Manager, Personnel & General Administration of the respondent-Board. It is further apparent from the record that no order on the appeal was passed by the Appellate Authority himself. As per noting on the file, he left the order to be passed by his subordinates which ironically was marked down to the same authority who had passed the order which was the subject matter of the appeal.

Though the noting file refers to a speaking order to be prepared rejecting the appeal of the petitioner but no such speaking order in spite of the direction issued by this Court, was placed on the record.

The above set of facts clearly bring out the casualness and callousness with which the petitioner's statutory appeal has been considered and decided. Transparency and fairness demand giving of reasons while deciding rights and obligations of individuals. In support of the above, the following observations by the Apex Court in **Maya Devi (dead) through Lrs v. Smt. Raj Kumari Batra (dead) through Lrs. And others**; 2010(9)

SCC 486 can be aptly referred to:

*“13. The juristic basis underlying the requirement that Courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a long line of decisions rendered by this Court. In **Hindustan Times Limited v. Union of India & Ors.**, 1998 (2) S.C.T. 256; 1998(2) SCC 242 the need to give reasons has been held to arise out of the need to minimize chances of arbitrariness and induce clarity. In **Arun s/o Mahadeorao Damka v. Addl. Inspector General of Police and Anr.**, 1986 (3) SCC 696 the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice, and help the Apex Court to dispose of appeals filed against such orders. In **Union of India and others v. Jai Parkash Singh and another**, 2007(10) SCC 712, reasons were held to be live links between the mind of the decision maker and the controversy in question as also the decision or conclusion arrived at. In **Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and others**, 2010 (3) SCC 732, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision making process. In **Ram Phal v. State of Haryana and others.**, 2009 (4) R.C.R (Civil) 782 : 2009(3) SCC 258, giving of satisfactory reasons was held to be a requirement arising out of an ordinary man's sense of justice and a healthy discipline for all those who exercise power over others. In **Director, Horticulture Punjab and others v. Jagjivan Parshad**, 2008(2) S.C.T. 725 : 2008(3) R.A.J 361 : 2008(5) SCC 539, the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge.*

14. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by Courts and statutory or other authorities exercising quasi judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims

and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a Court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

15. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well recognized legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.”

In support of the above proposition, it would also be useful to refer to a Division Bench judgment of this Court in **Hari Singh v. State of Punjab and another**; 2004(3) SLR 778 wherein it has been held as under:

“10. The decision of the appellate authority is liable to be quashed on an additional ground, i.e., non-compliance of one of the facets of natural justice namely, recording of reasons by every authority entrusted with quasi-judicial functions and communications thereof to the affected party. The requirement of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authorities chartered with the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision making process. Another reason which makes it imperative for the quasi-judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory

appeal and revision but also by filing writ petition under Article 226 of the Constitution. Such decisions can also be challenged by way of appeal under Article 136 of the Constitution of India. The High Courts have the power to issue writ of certiorari to quash the orders passed by a quasi judicial authority/Tribunal. Likewise, in appeal the Apex Court can nullify such order/decision. This power of judicial review can be effectively exercised by the Superior Courts only if the order under Challenge contains reasons. If such order is cryptic and devoid of reasons, the Courts cannot effectively exercise the power of judicial review and we cannot countenance a situation in which the administrative authorities vested with the power to decide the rights of the parties may stultify the powers of the Court simply by not recording reasons in support of their decision or by refraining from communicating such reasons to the affected person. This is the reason why the Courts have insisted on rigorous compliance of the requirement of recording of reasons and communication thereof by every quasi judicial authority. Some of the judicial precedents, which can appropriately be cited to support the above mentioned proposition, are:-

- 1. Harnagar Sugar Mills Limited v. Shyam Sunder Jhunhunwala, AIR 1961 Supreme Court 1669;***
- 2. Bhagat Raja v. Union of India and others, AIR 1967 Supreme Court 1606;***
- 3. Travancore Rayon Ltd. v. Union of India, AIR 1971 Supreme Court 862;***
- 4. Mahabir Prasad Santosh Kumar v. State of U.P., AIR 1970 Supreme Court 1302;***
- 5. Woolcombers of India Limited v. Woolcombers Workers Union, AIR 1973 Supreme Court 2758;***
- 6. M/s Ajantha Industries and others v. Central Board of Direct Taxes, New Delhi and others, AIR 1976 Supreme Court 437;***
- 7. Siemens Engineering and Manufacturing Company of India Limited v. Union of India, AIR 1976 Supreme Court 1785;***
- 8. S.N. Mukherjee v. Union of India, AIR 1990 SC 1984: 1991 (1) SCT 241 (SC);***
- 9. Shanti Prasad Agarwalla v. Union of India, AIR 1991 SC 814;***
- 10. Krishna Swami v. Union of India, 1992 (3) S.C.T. 456 : AIR 1993 SC 1407; and***

11. *M.L. Jaggi v. Mahanagar Telephones Nigam Ltd., 1996 (1) R.r.R. 646 : AIR 1996 SC 2476.*

11. In Testeels Ltd. V. N.M. Desai, Conciliation Officer and another, AIR 1970 Gujarat 1, a Full Bench of the Gujarat High Court has made an extremely lucid enunciation of law on the subject and we can do no better than to extract some of the observations made in that decision. The same are:

“The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimizes arbitrariness in the decision-making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Articles 226 and the Supreme Court under Article 32 of the Constitution. These Courts have the power under the said provisions to quash by Certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then, they will be subject to judicial scrutiny and correction.”

12. *In M/s Brij Bassi Hitech Udyog Ltd. v. State of Punjab and others, 1997 (3) P.L.R 538, a Division Bench of this Court dealt with an issue whether, while exercising appellate/revisional powers*

under the Punjab General Sales Tax Act, 1948, the Sales Tax Tribunal is required to record reasons and communicate the same to the affected party. After making reference to the judicial precedents on the subject, the Court held that the Tribunal is not only bound to record reasons in support of its decision but also communicate the same to the affected person.

13. In the present case, the appellate authority neither considered the points raised by the petitioner in his appeal nor assigned any reason for rejecting the same. Therefore, there is no escape from the conclusion that Annexures P.8 and P.10 are violative of the rules of natural justice.”

In view of the above facts as also the settled position of law, the rejection of the petitioner's appeal cannot be sustained.

After the petitioner had been acquitted by the criminal Court, he had made a representation for reconsideration of his case. His representation had been recommended by the concerned Executive Engineer as also the Superintending Engineer. In spite of such recommendations, his representation, like his appeal, was also rejected by passing a non speaking order. In view of the law quoted above, the rejection of the representation of the petitioner through a non speaking order also cannot be sustained.

In view of the above, order dated 28.2.2003 (Annexure P-13) as also order/letter dated 30.6.2009 (Annexure P-18) are quashed and the matter is remitted back to the Appellate Authority for a fresh decision by passing a well reasoned and speaking order within three months from the date of receipt of a certified copy of this order and after granting hearing to the petitioner in accordance with law.

No costs.

(DEEPAK SIBAL)
JUDGE

08.07.2015
rajeev