



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2016

CORAM :

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P (MD) No.22013 of 2016

S.S.Murugan

... Petitioner

Vs.

1. The Deputy Director of Fire & Rescue Services,
Southern Region (Additional Charge)/
District Officer,
Fire & Rescue Services,
Madurai.

2. The District Officer,
Fire & Rescue Services,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorari to call for the records pertaining to the impugned order in Pa.Mu.No.4116/Aa/2016 dated 30.09.2016 signed on 17.10.2016 on the file of the first respondent and quash the same as illegal.

For Petitioner	:	Mr.T.Lajapathi Roy
For Respondents	:	Mr.A.Muthukaruppan Additional Government Pleader

ORDER

This Writ of Certiorari has been filed, seeking to quash the order dated 30.09.2016 signed on 17.10.2016 by the first respondent.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who takes notice for the respondents. By consent, the writ petition itself is taken up for disposal at the stage of admission.

3.The petitioner was working as a Fireman in Ambasamudram Fire Station. There was a complaint against the petitioner, stating that on 11.01.2016, the petitioner had consumed alcohol while he was on duty and based on which, a charge memo was issued against him by the second respondent. The second respondent after enquiry



imposed a punishment of stoppage of increment for three years with cumulative effect.

4. Contending that the said punishment is in violation of the Order 71(2) & 71(3) of the Tamil Nadu Fire & Rescue Service Manual, an appeal has been preferred by the petitioner. In the appeal, the impugned order has been passed modifying the punishment of stoppage of increment for two years (with cumulative effect) without giving any reason, which is also in violation of order 105(3) & (4) of the Tamil Nadu Fire & Rescue Services Manual. Contending that the order passed is cryptic, non speaking and violative of the principles of natural justice, this writ petition has been filed.

5. The learned counsel for the petitioner would submit that providing reasons is *sine quo non* in any judicial decision. As the appellate authority has passed the order without giving reasons, it is liable to be set aside in the light of the Judgment of the Hon'ble Supreme Court reported in **(2010) 9 SCC 496 [Kranti Associates P(Ltd) vs. Masood Ahamed Khan]**, which reads as under:

"51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.



h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

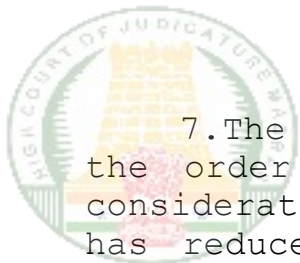
k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".



7.The learned Additional Government Pleader would submit that the order cannot be stated as non-speaking order and only on consideration of the whole circumstances, the appellate authority has reduced the punishment, which was imposed for a period of three years to two years.

8.No doubt punishment has been reduced. But relevant materials and relevant documents have not been considered by the appellate authority. There is not even a discussion regarding the order passed by the disciplinary authority.

9.Under such circumstances, this writ petition is allowed and the order passed by the first respondent dated 30.09.2016, signed on 17.10.2016 is set aside and the matter is remitted back to the appellate authority.

10.The appellate authority is directed a) to follow the dictum laid down by the Hon'ble Supreme Court in the decision cited supra; b) Order 105(3) & (4) of the Tamil Nadu Fire & Rescue Services Manual; c) to take into account the order passed by the disciplinary authority and to pass orders after giving an opportunity of hearing to the petitioner. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11.With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Deputy Director of Fire & Rescue Services,
Southern Region (Additional Charge) /
District Officer,
Fire & Rescue Services,
Madurai.
2. The District Officer,
Fire & Rescue Services,
Tirunelveli District.

+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 70139
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 70270

MJ