THE HON'BLE SRI JUSTICE A.V. SESHA SAI

WRIT PETITION No.24450 of 2011

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order passed by the 2nd respondent vide Proceedings No.Estt/62Bn/BSF/Dismiss/ 2010/24676-89, dated 06-10-2010 as confirmed by the 3rd respondent vide proceedings, dated 20-05-2011.

Heard Sri B. Shiva Kumar, learned counsel for the petitioner and Sri Gadi Praveen Kumar, learned Additional Standing Counsel for respondents, apart from perusing the material available before this Court.

Shorn of inappropriate details, the facts which are necessary for the disposal of the present writ petition are as under:

The petitioner herein was appointed as BSF Constable in the year 1992. The 2nd respondent – the Commandant, Head Quarters, 62 BN, Border Security Force, Sagar Road, Bikaneer, Rajasthan dispensed with the service of the petitioner herein by virtue of an order issued vide proceedings No.Estt/62Bn/BSF/Dismiss/2010/24676-89, dated 06-10-2010. Questioning the validity of the said order passed by the 2nd respondent, the petitioner herein preferred appeal before the 3rd respondent on 02-03-2011. Thereafter the appellate authority, vide proceedings, dated 20-05-2011, passed an order, rejecting the appeal as being devoid of merits. Calling in question the validity and legal sustainability of the said orders passed by the 2nd and 3rd respondents the present writ petition came to be filed.

Denying the averments and the allegations made in the affidavit filed in support of the writ petition and justifying the impugned orders, a counter-affidavit has been filed on behalf of the respondents.

It is contended by learned counsel for the petitioner that the orders impugned in the present writ petition are highly illegal, arbitrary and unreasonable and violative of Article 14 of the Constitution of India. It is further submitted by learned counsel for the petitioner that neither the Disciplinary Authority nor the Appellate Authority assigned proper, cogent and convincing reasons for dispensing with the service of the petitioner herein. It is also submitted that the impugned orders are in total violation of principles of natural justice. It is also submitted by learned counsel for the petitioner that in the grounds of appeal filed before the 3rd respondent the petitioner requested to call for the entire medical record from the concerned to do justice and to fix date for examination of the Medical Board and the said request was not considered.

On the contrary, it is vehemently contended by learned Additional Standing Counsel for Union of India, appearing for the respondents that there is no illegality nor there is any procedural infirmity in the impugned orders, as such, the request of the petitioner is not amenable for judicial review under Article 226 of the Constitution of India. It is further contended that taking into consideration the earlier conduct of the petitioner also, the authorities resorted to the impugned action and being a defence personnel the petitioner herein is expected to discharge his duties in a disciplined manner.

The material before this Court vividly discloses that as against the order of dismissal passed by the 2nd respondent on 06-10-2010, the petitioner herein preferred appeal on 02-03-2011, raising a number of grounds.

A perusal of the order of the appellate authority, dated 20-05-2011 clearly discloses that the appellate authority, without assigning any reasons and without even adverting and referring to the grounds of appeal, passed the impugned order, dated 20-05-2011, rejecting the appeal. It is a settled and well established proposition of law that the orders of the quasi-judicial authorities should necessarily be supported by valid and convincing reasons.

In the instant case, such exercise is conspicuously absent on the face of the order passed by the appellate authority except stating that the Review Committee under the Chairmanship of the Border Security Force, Rajasthan rejected the appeal as being devoid of merits, the appellate authority did not assign any reasons whatsoever for arriving at the conclusion. During the course of hearing it is also submitted by learned counsel for the petitioner that the petitioner herein is ready to appear before the Medical Board if his case is referred.

In the considered opinion of this Court the said exercise undertaken by the 2nd respondent is highly arbitrary, illegal, iniquitous and presumptuous and cannot be sustained in the eye of law.

In this contest, it is appropriate to refer to the judgment of Hon'ble Apex Court in case of ***SIEMENS ENGINEERING AND MANUFACTURING COMPANY OF INDIA LIMITED v. THE UNION OF INDIA AND ANOTHER***[1], and paragraph No.6 of the said judgment reads as under:

> *"6. Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents.* ***It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons.*** *That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. The Testeels Ltd. & Anr. (C.A.No.245 of 1970 decided on 17-12-1975). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him con firming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants has been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of*

cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. ***The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law****. The Government of India also failed to give any reasons in support or its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."*

The justification sought to be offered by the learned counsel for the petitioner that the earlier conduct of the petitioner had compelled the respondents to resort to the impugned action, in the definite opinion of this Court, cannot be sustained as the same ended in consequential action earlier.

For the aforesaid reasons, the writ petition is partly allowed, setting aside the order, dated 20-05-2011 passed by the 3rd respondent, rejecting the appeal filed by the petitioner and the appeal stands restored to the file of the 3rd respondent and the 3rd respondent is directed to pass appropriate orders on the said appeal filed by the petitioner herein after complying with the principles of natural justice. The said exercise shall be completed within a period of
three (3) months from the date of receipt of a copy of this order. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESHA SAI, J

January 07, 2016
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THE HON'BLE SRI JUSTICE A.V. SESHA SAI

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[1] AIR 1976 Supreme Court 1785