

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2353 of 2001

Date of Decision: 11.11.2016

Lal Chand

... Petitioner

Versus

The Haryana State Federation of
Consumers Cooperation Whole-sale
Stores Ltd. and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rohit Ahuja, Advocate,
for the petitioner.

Mr. Shailender Kashyap, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.

1. This is an inquiry case which has led to dismissal of a Salesman. He assails the inquiry procedure adopted as it lacked fair play and adherence to the principles of natural justice in terms of want of reasonable opportunities of defence at both the stages, of leading prosecution and defence evidence. Anyhow, the charges of embezzlement and misappropriation of funds and absence from duty from 28.4.93 to 9.2.94 were proven by the Inquiry Officer. The petitioner was supplied a copy of the inquiry report and his comments were sought thereon. He filed his reply pleading innocence. He criticized the inquiry conducted as one which was neither fair nor proper. The Managing Director being the disciplinary authority considered the materials on record including the reply to the show

cause notice and passed the order dated October 16, 1995 terminating the services of the petitioner. The order reads as follows:-

“Ref. No. Confed/EA-5/10028-65 Dated:- 13-11-95

ORDER:

While working as Salesman at Confed. D.O. Faridabad Shri Lal Chand s/o Sh. Mawasi Ram was charge sheeted vide this office letter No.28475-76 dated 2-3-94 for the following charges:-

- 1. Embezzlement/mis-appropriation of Confed. Funds.*
- 2. Absent from duty.*

The charge in detail have already been explained in the said charge-sheet.

The reply to charge sheet was received in this office on 23.3.94, which was considered and found unsatisfactory. Therefore, to know the factual position of the case Sh. R.D. Verma, Distt. Manager, Confed. D.O., Rewari was appointed Enquiry Officer vide this office letter No.2084-86 dated 29.4.94. The enquiry officer submitted his report on 29.10.94 and both the charges stood proved against him i.e. embezzlement/mis-appropriation of Confed funds of Rs.11824/- and absence from duty (28.4.93 to 9.2.94). As such a show cause notice for termination of services was issued vide order No. EA-5/5111-12 dated 20-7-95. The reply to show cause notice for termination was received in this office on 6.9.95 which was considered and to provide natural justice an opportunity of personal hearing was given to salesman on 12.10.95 vide letter No.Confed./EA-5/7119-21 dated 26.9.95. Shri Lal Chand Salesman appeared on 12.10.95, for personal hearing. He was heard by the undersigned. He has nothing concoct [sic concrete?] to say in his defence. The charges stand proved and are of very serious nature. Hence, the punishment of termination of service of Sh. Lal Chand/s/o Sh. Mawasi Ram is confirmed with immediate effect.

S.S. PRASAD

*Dated, Chandigarh
the 16th Oct., 1995.”*

MANAGING DIRECTOR.

2. The appeal to the Board of Directors failed on September 12, 2000 (P-11). It would be apposite to reproduce the order to understand its texture:-

“Sub: Appeal dated 22.11.95.

Your appeal dated 22.11.95 against Order No.Estt./EA-5/10028-65 dated 13.11.95 was put up before the Administrative Committee in its meeting held on 10.3.2000 vide item No.4. The Committee recommends as under:-

“The Committee went through the record placed before it. He embezzled/misappropriated Confed funds amounting to Rs.11824/- and remained absent from duties from 28.4.93 to 9.2.94. The charges already proved in the enquiry report. The Committee unanimously recommends that his appeal may be rejected.”

The above recommendation of the Administrative Committee was put up before the BOD of Confed in its meeting held on 12.6.2000 vide Agenda item No.3. The BOD approved the recommendation of the Administrative Committee dated 10.3.2000.

This is for your information.

Sd/-

*General Manager (P)
for Managing Director.”*

3. While the termination order passed by the Managing Director is most definitely non-speaking and the recommendatory order of the Administrative Committee approved by the Board of Directors upholding the termination is equally cryptic containing no worthwhile reason germane to the dispensation of the case and therefore, have the two orders been reproduced above for any reasonable person of ordinary intelligence to understand why this Court is of opinion that both the orders deserve to be set aside being non-speaking and arbitrary.

4. The necessity of recording reasons is an obligation owed by the dispenser to the subject, which is underpinned by the constitution bench authority of the Supreme Court in the lead case S .N. Mukherjee v. Union of India, AIR 1990 SC 1984: (1990) 4 SCC 594 at p. 613, where it has been elaborately explained that an administrative order entailing civil consequences without recording reasons has no place in the scheme of the rule of law. Reasons are necessary for two reasons, (1) reasons can be impeached, (2) They act as a deterrent to possible arbitrary action and an effective restraint on abuse of power, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction otherwise the employee at the receiving end would be deprived of this valuable safeguard against action taken in bad faith and against cherished ideals in equity, justice and good conscience. Besides, it makes it difficult and often impossible for the Court to exercise judicial review and the only cure would be a remand proceeding.

5. The order of termination in the present case merely parades the facts of the case without dealing with the evidence on record and the issues involved for a layperson to understand what has weighed in the mind of the authorities while awarding the extreme and harshest punishment of dismissing/terminating the service of the petitioner. There is no such vestige in the work done in either of the impugned orders. What was inherently flawed in the order of October 16, 1995 was compounded by even a greater flaw in the appellate order dated September 12, 2000 passed five years thereafter.

6. An order of affirmance of an administrative order must

necessarily be based on reasons spelled out when the order appealed against is silent on the aspects of the case in the grounds of appeal. Those have to be considered and dealt with. If there are no reasons then affirmance is of no use. It then becomes an onerous and pious duty of the appellate authority to either remand the case to the disciplinary authority for passing a fresh order or it may itself deal with the materials on record, weigh the evidence properly, discuss the same however briefly sufficient to disclose application of mind or form its own opinion on the oral and documentary evidence duly tested by cross-examination and all other prosecution and defence view points before visiting an employee of loss of livelihood. If there is no such work discernible from the adverse orders then, I am afraid, the orders should not be allowed to stand and deserve to be set aside.

7. Without expressing any opinion on the merits of the case, the matter should be remitted to the disciplinary authority to pass a fresh order in accordance with law. They would follow the rule in *S .N. Mukherjee*, comply with the principles of natural justice, deal with all the aspects of the case including the grounds taken in the appeal with right to the petitioner to file a supplementary appeal within a month from the date of supply of certified copy of this order and pass a fresh one and convey the same to the petitioner. Needless to say, the petitioner would be effectively heard by the Managing Director of Confed and then a well considered order be passed afresh. The Managing Director would also take into consideration that the petitioner was charged with criminal offences on the same set of allegations and was tried by the Criminal Court at Faridabad and acquitted of the charge vide Annex P-12 by a detailed judgment and order dated November

22, 2000 passed by the Additional Chief Judicial Magistrate, Faridabad in *State v. Lal Chand*. The disciplinary authority would read detailed judgment of the learned court at Faridabad carefully and form its opinion in its relation to the domestic proceedings on the same set of allegations. The disciplinary authority would also keep in mind that the petitioner was not given benefit of doubt and was honourably acquitted for the basic reason that evidence led on behalf of the prosecution when the entrustment itself was not proved on record then it could never be said that the accused-petitioner dishonestly misappropriated goods belonging to Confed with intent to cause wrongful loss to the complainant Confed and wrongful gain to himself. This judgment is of far reaching consequences and the alleged delinquency of the petitioner on the charge which led to termination failed at the hands of the prosecution. I would say no more and leave the rest of the matter to be decided by the disciplinary authority.

8. For the reasons recorded the writ petition is partly allowed. Both the impugned orders are quashed. The matter is remanded to be dealt with in terms of this order. The exercise be completed within two months from the date of receipt of certified copy of this order.

9. The order passed in remand is directed to be placed on the record of this case by an application submitted by the office of the Advocate General, Haryana for the perusal of the Court for which purpose the case is adjourned to March 10, 2017. Since the petitioner has been wronged, therefore, in my view, the petitioner should be compensated with costs of Rs.1 lac to be paid by Confed or or before the date the application comes up for hearing, as directed above.

10. It may be recorded before signing off for the present that had the petitioner's services not been terminated he would ordinarily have retired on reaching the age of superannuation in March 2012. Depending on the result of the remand proceedings, the consequential relief will be remodelled by Confed, to be judicially reviewed when the matter comes up again for the limited purpose.

(RAJIV NARAIN RAINA)
JUDGE

11.11.2016
manju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>