

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

201

**CWP No. 10234 of 2010 (O&M)
Date of decision:01.12.2016**

Sita Ram

.... Petitioner

Versus

Union of India and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. K.S.Khehar, Advocate for the petitioner.

Ms. Anita Balyan, Advocate for hte respondents-UOI.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of the orders of dismissal and appellate authority dated 22.02.2003 and 24.01.2008 resepectively (Annexures P8 and P10).

2. The petitioner joined service as a Barber in the year 1990 in the Border Security Force. While he was working in the month of November, 2002, he had received a message from his village that one of his cousin's health condition was critical. Thus, the petitioner proceeded to his village by making oral request to higher authorities to grant leave. Thereafter, he has reported back to duty on 12.12.2002. In the meanwhile on 16.11.2002, the petitioners cousin expired. For intervening period the respondents have taken into consideration that the petitioner has committed misconduct by

remaining absent. Thus, proceeded to hold an enquiry by framing charge-sheet while holding Summary Security Force Court trial. In the said trial, it was held that the charges were proved. Consequently, disciplinary authority proceeded to impose the penalty of dismissal from service on 22.02.2003.

3. Feeling aggrieved by the order of dismissal the petitioner has submitted his appeal before the appellate authority. The appellate authority confirmed the order of dismissal vide order dated 24.01.2008. Thus, the present petition has been presented.

4. Learned counsel for the petitioner submitted that the respondents have failed to appreciate under what circumstances, the petitioner was compelled to leave the place of work and also his cousin was very much attached to the petitioner. For the purpose of completing the death ceremony of the petitioner's cousin petitioner himself was emotionally under trauma, these factual aspects have not been taken into consideration. It is further contended that petitioner is working since 08.04.1990. Therefore, imposing the penalty of dismissal from service commensurate to the charge would be too harsh. It was further contended that order of dismissal is not a speaking order so also the contention raised before the appellate authority has not been considered by the appellate authority. Therefore, the order of dismissal as well as order of appellate authority are liable to be set aside.

5. Per contra, learned counsel for the respondents vehemently, contended that having regard to the conduct of the petitioner, the respondents have subjected the petitioner for Summary Security Force Court trial in which the charge sheet filed against the petitioner got proved. In the proceedings ample opportunity has been granted to defend his case.

Learned counsel for the respondents further submitted that earlier misconduct committed by the petitioner has been taken note of as petitioner was on several occasions remained absent. The petitioner was subject to Summary Security Force Court trial for past misconduct and he was given lighter punishment and thereafter, also he did not reform himself. Therefore, the respondents have proceeded to impose the penalty of dismissal from service.

6. Heard learned counsel for the parties.

7. Perusal of proceedings under Summary Security Force Court trial and the penalty of dismissal of service dated 22.02.2003 it is evident that after drawing SSFC proceedings, petitioner has not been provided opportunity i.e. before imposing penalty of dismissal. The respondents are required to issue show cause notice before passing an order of dismissal since it is a major penalty. An extract of the order dated 22.02.2003 reads as under:-

“OFFICE OF THE COMMANDANT 110 BATTALION
BSF: JALALABAD (PUNJAB)

No. Estt./Dismissal-SR/110/2003/2681-85 Dated the 22
Feb. 2003

ORDER

No. 90110554 B/B Sita Ram of 'F' coy of this unit has been tried by Summary Security Force Court on 22nd February 2003 at Head Quarters 110 Battalion Border Security Force Jalalabad (Punjab) for committing offence u/s 19(a). The accused has been found guilty of above charge and awarded punishment. “To be Dismissed From Service”. The sentence was promulgated to the accused at Battalion HQrs Chakarianwala Jalalabad on 22nd February 2003.

2. Consequent upon his dismissal

No.90110554 B/B Sita Ram 11 hereby struck off strength of 110 Battalion BSF w.e.f 22nd February 2003 (A/N).

3. Outstanding dues, if any including recovery of account of deficient kit/clothing amount be recovered from the dues available to the individual and deposited in to Govt. treasury.

BRO-II/04---

Sd/-
(A.K.Bist)
COMMANDANT
110 Battalion B.S.F.”

8. Learned counsel for the petitioner contended that petitioner has not been given opportunity after receipt of the Summary Security Force Court trial proceedings so as to oppose the penalty of dismissal from service. The quantum of service rendered by the petitioner has not been taken into consideration before imposing the major penalty of dismissal from service for remaining absent for few days. The respondent's contended that the petitioner was subjected to Summary Security Force Court trial on earlier occasion also and he was punished by imposing lighter punishment despite that he has not reformed therefore, they have proceeded to impose penalty of dismissal from service. It is to be noted that if the respondents have taken past events, the same is not the subject matter of charge-sheet. Without being part of charge-sheet, the same cannot be taken into consideration for the purpose of imposing the penalty of dismissal. In other words, the respondents have proceeded to take into consideration the extraneous matters like past events, which is impermissible as held by the Supreme Court in the case titled as *State of Mysore versus K. Manche Gowda* reported in 1964 SCR (4) 540. That apart, perusal of the dismissal order, it is evident that before imposing the penalty no show cause notice has been issued like respondents proposed to impose major penalty of

dismissal. In other words, no opportunity has been given to the petitioner after receipt of the Summary Security Force Court trial proceedings in which the charges were held to be proved against the petitioner. Perusal of the dismissal order, it is evident it is a non-speaking order. Further, provision for dismissal has not been quoted. What has been quoted is only offences under Section 19(a) of BSF Act. Therefore, there is total non-application of mind in passing Annexure P-8 dated 22.02.2003.

9. The Supreme Court in the case of ***Orxy Fisheries Private Limited versus Union of India and others*** reported in (2010)13 SCC 427 held as under:-

“40. In Kranti Associates, this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below : (SCC pp.510-12).

“(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 Harv. L. Rev. 731-37).

(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 Ruiz Torija v. Spain EHRR at p. 562 para 29 and Anya v. University of Oxford, 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".

41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order."

In the present case the disciplinary authority exercising quasi-judicial power under statutory Act and Rules- while imposing penalty of dismissal. It was due to give reasons and recording of reasons since order of dismissal is an appealable and the petitioner is not in a position to submit effective appeal. Thus reasonable opportunity has been denied to him. Supreme Court held in number of decisions even administrative decision/order must contain reasons and it should be speaking decision.

Reasons introduce clarity in an order on plainest consideration of justice, the disciplinary authority ought to have set forth its reasons, howsoever brief in its order, indicative of an application of mind; Reason is the heart beat of every conclusion, and without the same it becomes lifeless all the move when its order is amenable to further avenue of challenge. The absence of reasons has rendered the disciplinary authority order not sustainable.

10. In view of hte above discussion, order of dismissal dated 22.02.2003 is set aside. Consequently, the appellate authority's order is also set aside. However, setting aside the order of dismissal would not come in the way of disciplinary authority to proceed further from the defective stage. In other words, the petitioner is required to be heard before passing the order of dismissal by issuing necessary show cause notice i.e. propose to impose penalty. This process shall be concluded by the disciplinary authority within a period of 3 months from today.

10. In view of the setting aside the order of dismissal on technical ground the petitioner is not entitled for reinstatement in view of the decision of the Supreme Court passed in the case titled as ***Managing Director Ecil veruss B.Karunakar*** reported in 1994 SCC Supl.(2)391 wherein the principle has been laid down that if the order of dismissal is set aside on technical ground, in such case an employee would be deemed to be under suspension. Therefore, till the disciplinary authority proceed further, it is for the disciplinary authority to take a decision either to reinstate petitioner or continue him under suspension. The respondents are directed to pay the subsistence allowance from the date of dismissal till order of revocation or till passing fresh order. The subsistence allowance shall be calculated and

paid by the respondents within a period of 3 months from today.

11. Petition stands allowed.

01.12.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No