

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

**CWP No.10713 of 2011
Decided on :19.01.2016**

Dr. Jaspal Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Anil Chawla, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia , J. (Oral)

The petitioner challenges the order dated 11.08.2009 (Annexure P-1), whereby apart from the stoppage of one increment without cumulative effect the absence period from 06.10.2006 to 29.05.2007 has been treated as extra-ordinary leave and “dies non”.

It is not disputed that the petitioner was absent for the said period and an Inquiry Officer was also appointed to look into the charges regarding the absence. The report of the Inquiry Officer dated 19.02.2009 has been appended as Annexure P-8.

A perusal of the said report would go on to show that the defence of the petitioner-employee was that he could not come present on account of his illness. His categorical defence was that he was diagnosed in March, 2008 having T.B in the abdomen, which was a recurrent cause of PIVD, due to which he had also been advised not to travel and had been suggested bed rest during

the period of absence.

The impugned order, however, refers to Inquiry Report but does not take into consideration, the explanation given while awarding the punishment.

Counsel on the other hand submitted that the order is contradictory as such on one hand the benefit has been granted treating the said period as extra-ordinary leave and on the other hand the same has been treated as “dies non”. It is, accordingly, submitted that the order suffers from the infirmity and it is liable to be set aside on this ground.

The said contention of the counsel is without any justification. As per Rule 4.7 of the Punjab Civil Services, Vol.2, the period of extra-ordinary leave is not to count as service qualifying for pension. The said period has to be excluded for the purposes of pension. Similarly under Rule 8.122, Vol.1, an officer on extra-ordinary leave is not entitled for any leave salary. The said rules read as under:-

*“4.7 The time passed by a Government employee on leave of all kinds **except extraordinary leave**, other than that extraordinary leave counting towards increment under rule 4.9 (b) of Volume I, shall count as service qualifying for pension.”*

XXXXXXXXXXXXXXXXXXXXXXX

8.122. XXXXXXXXXXXXXXXXXXXXX

(4) An officer on extraordinary leave is not entitled to any leave to salary.”

It is in such circumstances, the period has been treated as “dies non”, which admittedly as per Oxford Dictionary means “not to be treated for legal purposes”. Thus, while imposing the punishment of stoppage of one increment without cumulative effect, the disciplinary authority was only passing the order on the period of absence as to how it to be treated. The said period was, accordingly, treated as a period for which the petitioner would not be entitled for any benefits both monetary and for the purposes of pension.

The Apex Court in '**State of Punjab Vs. Dr. P.L. Singla 2008 (8) SCC 469** while examining the said provisions of the above two rules, set aside the judgment and decree of the trial Court, which had been upheld by this Court. The absence period having been treated as period of extra-ordinary leave, it had been held that punishment of misconduct was wiped out and the employee had condoned the unauthorized absence. It was, accordingly, held that two consequences would follow under the Punjab Civil Service Rules, namely, that the employee was not entitled for salary during that period. Secondly, that period was not be counted as service qualifying for pension. The relevant observations read as under:-

“11. In this case, the punishment was imposed by order dated 16.9.1999/11.10.1999. That order was not cancelled, revoked or withdrawn. The subsequent order

dated 25.1.2001 merely accorded extraordinary leave in regard to the period of absence, but did not condone the unauthorized absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25.1.2001 would have clearly stated so. But it did not.

12. The assumption by the courts below that when an order is passed according extra-ordinary leave for the period of absence, it will have the effect of effacing or erasing the punishment already imposed, is therefore incorrect and is a serious error of law. When the trial court and the appellate court had committed this serious error, the High Court ought to have formulated an appropriate question of law and allowed the second appeal. Instead, it chose to dismiss the second appeal putting its seal of approval on a wrong interpretation of law leading to serious repercussions in regard to discipline and administration. The judgment of the High Court confirming the orders of the courts below, therefore calls for interference.

13. We accordingly allow this appeal, set aside the judgments and decrees of the courts below and dismiss the suit of the respondent. Parties to bear their respective costs.

Appeal allowed.”

Thus on this account no fault can be found with the impugned order.

However, on another account the writ is liable to be

allowed, which is on the ground that the impugned order while referring to the inquiry report has not taken the same into consideration. The explanation given while awarding the punishment, which has been noticed was on account of an illness. The respondent No.1 while passing the impugned order was under an obligation to at least take into account the report (Annexure P-6) issued by the Medical Officer, Civil Hospital, Tarn Taran, which showed that the petitioner was suffering from disease T.B. On this account itself, the order impugned cannot said to be containing any reasons by which it can be supported.

The Hon'ble Apex Court has time and again said that a reasoned order is necessary when the authorities are applying their mind to show that the decision taken is on proper application of mind and whether the orders can be sustained. Reliance can be safely placed upon the judgment of the Apex Court rendered in ***'Harbhajan Singh Dhalla vs. Union of India', AIR 1987 SC 9*** wherein it was held that while the observance of the principles of nature justice are required but there should be reasons which should support the decision even if it is an administrative order. The relevant paragraph reads as under:-

“26. In this case there is no provision of any appeal from the order of the Central Government in either granting or refusing to grant sanction under section 86 of the Code. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in court but

inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its jurisdiction under section 86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that decision must be expressed in such a manner that reasons can be spelled out from such decision. Though this is an administrative order in a case of this nature, there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively considered- There is no claim of any privilege that disclosure of reasons would undermine the political or national interest of the country.

Similar view has been taken in **'Union of India and others vs. Jai Prakash Singh and another', AIR 2007 SC 1363.**

Relevant paras read as under:-

"7. Reasons introduce clarity in an order. On plainest consideration of justice , the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

*8. Even in respect of administrative orders Lord Denning M.R. in **Breen v. Amalgamated Engineering Union, [1971] 1 All E.R. 1148** observed "The giving of reasons is one of the fundamentals of good administration". In **Alexander Machinery (Dudley) Ltd. v. Crabtree, (1974) LCR 120** it was observed: "Failure to give reasons*

amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can , by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. the "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

Accordingly, the impugned order dated dated 11.08.2009 (Annexure P-1) is set aside with a direction to respondent No.1 to pass a fresh order, after taking into account the Inquiry Report and the defence taken by the petitioner.

The said exercise be done within a period of 3 months from the receipt of the certified copy of this order.

With the above observations, the present petition is allowed.

JANUARY 19, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE