

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21065 of 2014

Ravi Behal

... Petitioner

Versus

State of Punjab & others

... Respondents

CWP No.21095 of 2014

Pawan Taneja

... Petitioner

Versus

State of Punjab & others

... Respondents

Date of decision : 29.02.2016

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

Present : Mr.P.S.Khurana, Advocate, for the petitioners.

Mr.Kamal Sehgal, Addl.A.G., Punjab.

Mr.A.S.Cheema, Advocate and
Mr.Puneet Gupta, Advocate,
for the private-respondents.

G.S. Sandhawalia , J. (Oral)

This judgment shall dispose of CWP-21065 & 21095-2014, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-21065-2014 titled *Ravi Behal Vs. State of Punjab & others*.

The petitioner challenges the order dated 16.09.2014 (Annexure P15), passed by respondent No.2, whereby the petitioner's case has been considered for Register-C, for the post

of Punjab Civil Services (Executive Branch) against advertisement No.2. Further prayer has been made for consideration of the case of the candidature in Register A-II, in the process of selection.

The petitioner, who had applied in pursuance of the advertisement issued by the respondent No.4, Punjab Public Service Commission dated 21.04.2014 (Annexure P3) by on-line application form, which had been invited from eligible candidates from Group A & Group B services of Punjab Government, for selection to the post of Punjab Civil Services (Executive Branch). The said posts were to be filled up through Register A-II and Register-C, for the process years 2008, 2012 & 2013. The last date for filling the online application forms was 12.05.2014 whereas the hardcopy was to go through the Head of the Department, to the office of the Commission by 30.05.2014.

It is not disputed that the petitioner, who was working as Junior Auditor in the Department of Food, Civil Supplies & Consumer Affairs, Punjab and posted in the District level, applied online, to be considered in Register A-II, within the prescribed period. Similarly, the hardcopy of the application was sent through the Commissioner-cum-Director, respondent No.3, before the cut-off date, on 22.05.2014 (Annexure P7). The summary of the service record was appended along with it. The Commission issued a public noticed dated 27.06.2014 (Annexure P8) whereby various lists were prepared and the petitioner was put in List-C

whereby the candidates who had applied their candidature, were subject to the receipt of confirmation by the Government. The petitioner figured in the said list at Sr.No. 21.

The petitioner filed a representation dated 28.06.2015 (Annexure P9), as to why he was included in List-C, which was the list of candidates whose candidature was subject to the receipt of confirmation by the Government. According to the petitioner, he should have been included in List-A, which was the list of eligible candidates, since there was no dispute regarding his candidature. The respondent-Commission, on 13.08.2014 (Annexure P11), sought for information regarding the fact that the Department had forwarded the application in Register A-II whereas he was covered in Register-C. The information was sought till 19.08.2014, since the result of the screening test, held on 06.07.2014, in which the petitioner had participated, was to be declared. The Commissioner, on 21.08.2014 (Annexure P12) reiterated that the petitioners were working in Ministerial Staff (Field), District Offices as Junior Auditors and they fell in the category of Register A-II.

In the meantime, the impugned order dated 16.09.2014 (Annexure P15) was passed whereby respondent No.2, on reconsideration of the subject, directed that the petitioners are liable to be considered in Register-C. In view of the said recommendation, the case of the petitioner was put in the list of 31 candidates shortlisted for interview in Register-C (Annexure P13)

and the petitioner figured at Sr.No.1 on 25.09.2014. On the same date, 77 candidates were also shortlisted in Register A-II, in which, petitioner's name did not figure, for which he had applied. The petitioner, thereafter, again represented on 26.09.2014 (Annexure P14) that he should be included in Register A-II.

In the written statement filed by the State, an attempt has been made to justify the fact that the petitioner is not holding a Ministerial post, being a Junior Auditor and is covered under Statistical & Accounts Personnel Category. Reliance has been placed upon the notification dated 19.05.1998 (Annexure R1) which is pertaining to revision of pay scales.

In the affidavit filed by the Commission also, an effort has been made to justify the shifting of the candidature of the petitioner.

In the considered opinion of this Court, the order dated 16.09.2014 (Annexure P15) is liable to be quashed on 2 principal grounds; firstly, on the ground of violation of principles of natural justice. Admittedly, before the cut-off date on 22.05.2014 (Annexure P7), petitioner's case had been forwarded by the Commissioner-cum-Director, the competent authority. His application was the subject matter of consideration but at no point of time, notice was given to him that his case was liable to be shifted from Register A-II to Register-C, on account of the fact that being a Junior Auditor, the post was not a ministerial post which

was the requirement under the Rules for consideration under Register A-II. If any decision had to be taken, they should have been put to notice as to why they should be liable to be considered against Register-C, even though they had applied in Register A-II. Thus, there is patent violation of the principles of natural justice, while changing the petitioner's consideration by the State on 16.09.2014, on its own level.

Secondly, the order is not sustainable on the ground that the same has been passed without recording any reasons, which are, now, sought to be incorporated in the written statement, justifying the impugned order. A further attempt has been made to refer to the record to justify this reasoning.

This Court does not agree with the said submission. It is settled principle that written statement cannot supplement the orders passed. The reasons should be recorded in the order itself. For this, one can fall back upon the observations of the Apex Court judgment in **Mohinder Singh Gill & another Vs. The Chief Election Commissioner, New Delhi & others 1978 (1) SCC 405** wherein it has been held that the impugned order cannot be improved by filing reply. The reasoning should find mention in the order itself and it will not get better like old wine. Relevant portion of the order reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so

mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older."

The impugned order also, as noticed above, does not contain any reason and admittedly, the petitioners have been gravely prejudiced by shifting them into another category, although they had applied in some other category. In **Harbhajan Singh Dhalla Vs. Union of India AIR 1987 SC 9**, the Apex Court has held that observance of the principles of natural justice is to be there and there should be reason to support the decision, even if it is an administrative order. Relevant portion of the judgment 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 thus:-

“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."

Resultantly, keeping in view the above settled principle of law, the order dated 16.09.2014 (Annexure P15) is quashed, with liberty to the respondent No.1, to pass fresh order, keeping in view the above observations made and after associating the petitioners with the decision making process, so that they can demonstrate as to which category they are entitled to be considered in.

Writ petitions stands allowed, in the above-said terms.

FEBRUARY 29, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE