

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

C.W.P. No. 7626 of 2013

Date of Decision:- 30.08.2016

Mohan Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rakesh Nagpal, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

DAYA CHAUDHARY, J. (Oral)

This petition has been filed for issuance of a writ in the nature of Certiorari for quashing enquiry report dated 27.10.2006 (Annexure P-3, order dated 18.6.2012 (Annexure P-8) and order dated 25.1.2013 (Annexure P-10).

As per averments made in the petition, the petitioner was charge-sheeted on 9.9.2005 alleging therein that he did not deposit the penalty amount recovered from the dealers in time along with other procedural lapses. Petitioner replied to the charge-sheet and subsequently enquiry was conducted against him. In pursuance of enquiry report, the petitioner submitted further explanation on 30.1.2007, which was rejected on 26.2.2007. Ultimately, the petitioner was dismissed from service vide order of even date i.e. 26.2.2007, which was communicated to him on 4.4.2007. Petitioner filed statutory appeal against order of dismissal.

Thereafter, the petitioner filed CWP No. 9761 of 2008 which was

dismissed on the ground that statutory appeal was pending. Thereafter, on 14.5.2009, the appellate authority dismissed the statutory appeal filed by the petitioner. The petitioner again filed CWP No. 17419 of 2009 before this Court, which was allowed and impugned orders dated 26.2.2007 and 14.5.2009 respectively were set aside and the Punishing Authority was directed to reconsider the case of the petitioner by passing a fresh speaking order. On 18.6.2012, the Punishing Authority again passed an order and petitioner was awarded punishment of dismissal from service as awarded earlier. Against said order, the petitioner again filed the statutory appeal before the Financial Commissioner (Taxation) on 26.7.2012 but the appeal was rejected.

Learned counsel for the petitioner contends that the petitioner was not afforded sufficient/reasonable opportunity of hearing. He has also urged that the Punishing Authority and the Appellate Authority were the same and the order passed by the Punishing Authority was upheld by the Appellate Authority whereas the Punishing Authority as well as the Appellate Authority cannot be one and the same.

Notice of motion was issued in the case on 9.4.2013. While issuing notice of motion, it was contended by learned counsel for the petitioner that the punishment which has been imposed upon the petitioner is disproportionate to the findings recorded by the Punishing Authority. It was also contended that the Punishing Authority as well as the Appellate Authority were the same as the same officer was promoted to the higher post at the time of decision of the appeal.

Learned State counsel was directed to get instructions as to whether the order has been passed by the same officer who was working at that time as Punishing Authority and this fact has been admitted by him. Learned State counsel has also furnished a list of Officers who are working as Financial Commissioners.

Same view was held in judgment of Hon'ble the Apex Court in ***Chairman, Disciplinary Authority vs. Jagdish Sharan Varshney and others, 2009 (4) SCC 240.*** The relevant portion of said judgment is reproduced as under :-

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in *Prabhu Dayal Grover* case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in *Divl. Forest Officer v. Madhusudhan Rao* (vide SCC para 20: JT para 19) and in *M.P. Industries Ltd. v. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India* (vide SCC para 6 : AIR para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.N. Mukherjee v. Union of India*, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in *S.N. Mukherjee* case, it has been observed that : (SCC p. 613, para 36)

“36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the

reasons contained in the order under challenge.”

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one-line orders stating that they agree with the view of the lower authority.

10. For the same reason, the decision of this Court in *State of Madras v. A.R. Srinivasan* (vide AIR para 15) has also to be understood as explained by us above.

11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order.”

Similar views have been observed in *Ram Chander vs Union of India and others* 1986(3) SCC 103, *Sengara Singh and others vs State of Punjab and others* 1983(4) SCC 225, *State of U.P vs Raj Pal Singh* 2002(1) SCT 205 as well as judgments of this Court in cases *Hari Singh vs State of Punjab and another* 2004(2) SCT 413, *Pritam Singh vs Haryana State Electricity Board* 1995(2) SCT 754, *R.S. Bhatti vs State of Haryana* 2001(2) SCT 1156.

Keeping in view the law position as discussed above and the submissions made by learned counsel for the petitioner that the petitioner

was punished by the same authority and subsequently the statutory appeal filed by the petitioner against the order of Punishing Authority was heard by the same officer as he was promoted to the higher post as also that the appellate Authority has not applied his mind while dismissing him from service, order passed by Appellate Authority dated 25.1.2013 (Annexure P-10) is set aside. Out of the list of five Financial Commissioners as supplied by learned State counsel, Sh. S.K. Sandhu, IAS, Financial Commissioner (Cooperation) is directed to hear the appeal which has already been filed and the same be decided within a period of three months from the date of receipt of certified copy of the order.

Writ petition stands disposed of accordingly.

August 30, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes