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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.2615 of 2005

Nasir Khan, S/o Ismail Khan, aged about 54 years, Occupation Deputy Ranger, Pali Forest Division Katghora, Distt. Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of D.K.S. Bhawan, Raipur
 2. Principal Chief Forest Conservator, Chhattisgarh, Raipur
 3. Conservator of Forest, Bilaspur, State of Chhattisgarh Through Secretary, Department of School Education, D.K.S. Bhawan, Raipur (C.G.)
 4. Commissioner, Public Instruction, Raipur Division, Raipur (C.G.)
- Respondents

For Petitioner: Mrs. Hamida Siddiqui, Advocate.
For Respondents/State: Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/02/2017

1. In a regular departmental enquiry initiated against the petitioner, the Conservator of Forests by order dated 1-10-2002 reverted the petitioner from the post of Deputy Forest Ranger to Forest Guard and also imposed a penalty of ₹ 1,20,034/- against which he preferred an appeal under the provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules of 1966'). The appellate authority by its impugned order dismissed the appeal against which this writ petition has been preferred.

2. Mrs. Hamida Siddiqui, learned counsel for the petitioner, would submit that the order imposing punishment as well as the order deciding the appeal are wholly unsustainable in law and therefore the order of penalty as well as the appellate order deserve to be set aside.
3. On the other hand, Mr. Avinash Singh, learned Panel Lawyer appearing for the State/respondents, would oppose the writ petition.
4. I have heard learned counsel for the parties and considered the rival submissions made on behalf of the parties and also perused the orders impugned as also the other material available on record with utmost circumspection.
5. A careful perusal of the order under appeal would show that the petitioner's appeal preferred under Rule 24 of the Rules of 1966 has been decided in a very casual and unsatisfactory manner. The appeal has been dismissed by simply holding that considering the record and comment made by the Forest Conservator, there is no substance in the appeal, and the appeal has been dismissed.
6. Appeal was preferred by the petitioner under Rule 23 of the Rules of 1966. The manner of hearing appeal is provided in Rule 27 (2) of the Rules of 1966, which states as under: -

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 10 or enhancing any penalty imposed under the said rules, the appellate authority shall consider--

(a) whether the procedure laid down in these rules has been complied with and if not, whether

enhanced penalty.”

7. A careful perusal of the Rule would show that the appellate authority is required to consider whether the procedure laid down in the Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; whether the findings of the disciplinary authority are warranted by the evidence on the record; and whether the penalty imposed is commensurate with the guilt of the delinquent Government servant, and thereafter, the appellate authority has to order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority concerned.
8. At this stage, reference may be made to the judgment of the Supreme Court in the matter of Divisional Forest Officer, Kothagudem and others v. Madhusudhan Rao¹ in which Their Lordships of the Supreme Court have clearly indicated that the appellate authority or the revisional authority while confirming the views of the disciplinary authority need not required to give detailed reasons, but brief reasons should be recorded showing application of mind, and observed as under: -

“19. Having considered the submissions made on behalf of the respective parties and also having regard to the detailed manner in which the Andhra Pradesh Administrative Tribunal had dealt with the matter, including the explanation given regarding the disbursement of the money received by the respondent, we see no reason to differ with the view taken by the Administrative Tribunal and endorsed by the High Court. No doubt, the Divisional Forest Officer dealt with the matter in detail, but it was also the duty of the appellate authority to give at least

1 (2008) 3 SCC 469

some reasons for rejecting the appeal preferred by the respondent. A similar duty was cast on the revisional authority being the highest authority in the Department of Forests in the State. Unfortunately, even the revisional authority has merely indicated that the decision of the Divisional Forest Officer had been examined by the Conservator of Forests, Khammam wherein the charge of misappropriation was clearly proved. He too did not consider the defence case as made out by the respondent herein and simply endorsed the punishment of dismissal though reducing it to removal from service.

19. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum."

9. But position would be quite different. If the statutory provisions governing consideration of appeal are taken into consideration, a duty is cast by the applicable rules to record reasons by application of mind. In the matter of R.P. Bhatt v. Union of India², the Delhi High Court dismissed the writ petition *in limine*. The short point involved for consideration in appeal, was whether the appellate order passed by the DGBR dt. 12-10-1980 was in conformity with the requirement of Rule 27(2) of the CCA Rules. The Supreme Court allowing the appeal and directing to dispose of the appeal afresh after applying his mind to the requirement of Rule 27(2), held as under: -

"4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider- (1) whether the procedure laid down in the

Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) ad (c) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the constitution or in failure of justice. We regret to find that the DG has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2), viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

10. In the matter of Ram Chander v. Union of India³ the central question before the Supreme Court was whether the order passed by the Railway Board dismissing the appeal, was in conformity with the requirements of Rule 22(2) of the Railway Servants (Disciplinary and Appeal) Rules, 1968, which is similar to Rule 27(2) of the CCA Rules. The Supreme Court noticing R.P. Bhatt (supra), held that appellate authority must afford opportunity of hearing and pass a reasoned order even if the order is one of affirmance. Paragraphs 5 and 9 of the report state as under: -

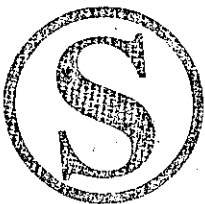
3 (1986) 3 SCC 103

"5. To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty or removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of Rule 22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside.

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

Further, the amendment of clause (2) of Article 311 of the Constitution of India by the Constitution (Forty-Second Amendment) Act, 1976 and the consequential change was explained and held as under: -

"25. ... Such being the legal position, it is of utmost importance after the Forty-Second



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Amendment as interpreted by the majority in Tulsiram Patel case⁴ that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

After allowing the appeal it was directed that the Railway Board should hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirement of Rule 22(2), as expeditiously as possible.

11. In the matter of Ravi Yashwant Bhoir v. Collector⁵, the Supreme Court while highlighting the rationale behind requirement of recording reasons in order held that right to reasons is an indispensable part of sound judicial system and observed as under: -

"The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice. 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 of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the

4 Union of India v. Tulsiram Patel, (1985) 3 SCC 398

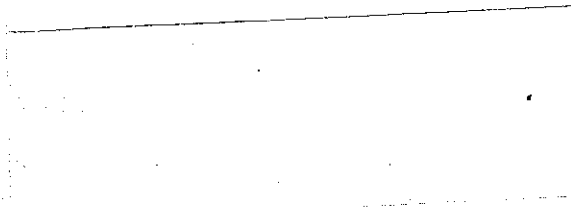
5 (2012) 4 SCC 407



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salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."

12. Examining the impugned order in the touchstone of Rule 27 (2) of the Rules of 1966 and on the principles of law laid down by the Supreme Court in afore-stated judgments, it is quite apparent that the petitioner has filed appeal and raised number of grounds which clearly require consideration, particularly in light of Rule 27 (2). Despite raising specific grounds and despite Rule 27(2) of the CCA Rules requiring the appellate authority to consider those grounds, the appellate authority has failed to consider any such grounds raised by the petitioner and dismissed the appeal of the petitioner. The manner in which the order of the disciplinary authority has been affirmed clearly reflects total non-application of mind. No reasons have been assigned affirming the order of the disciplinary authority.
13. In view of the above, the petition succeeds and the impugned order passed by the appellate authority deserves to be and is accordingly, set aside. The Principal Chief Conservator of Forests – respondent No.2 is directed to consider the appeal of the petitioner dealing with all the grounds raised therein. Since the appellate order was passed on 5-11-2004, the appellate authority would decide and consider the appeal within 45 days from the date of receipt of a copy of this order, taking into consideration the grounds raised by the petitioner in accordance with Rule 27 (2) of the Rules of 1966.





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14. The writ petition is allowed to the extent indicated herein-above.

No order as to costs.

Sd/-
Sanjay K. Agrawal
Judge

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