



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED : 10.04.2017

CORAM :

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition (MD) Nos.13517 and 20093 of 2013

N.Muthukrishnan

.. Petitioner in both petitions

Vs.

1. The State of Tamilnadu,
Rep. by its Principal Secretary,
Panchayat Raj Department,
Secretariat, St. George Fort,
Chennai - 600 009.
2. The Commissioner,
Rural Development and Panchayat Raj,
Chennai - 600 015.
3. The District Collector,
Dindigul District,
Dindigul.

.. Respondents in both petitions

PRAYER in W.P. (MD) No.13517 of 2013: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent in his proceedings in G.O.(Ms.) No.350, Rural Development and Panchyat Raj (E6) Department, dated 17.7.2013, confirming the order passed by the second respondent in his proceedings in Rc.No.29390/2009/DPC 2-1, dated 21.7.2011 confirming the order of the third respondent in his proceedings in Na.Ka.No.5500/2007/U.Va.2, dated 3.2.2009, to quash the same as illegal and consequently to direct the respondents to promote the petitioner notionally as Assistant Director with effect from the date on which his immediate junior was promoted with all attendant benefits.

PRAYER in W.P. (MD) No.20093 of 2013: Petition under Article 226 of the Constitution of India to issue a writ of Mandamus to direct respondents 1 and 2 to include the petitioner's name in the panel for Assistant Director for promotion to the post of Assistant Director as on 1.3.2011, by considering his representation dated



For Petitioner : Mr.H.Mohammed Imran for
in both petitions M/s.Ajmal Associates
For Respondents : Mr.K.Guru
in both petitions Additional Government Pleader

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COMMON ORDER

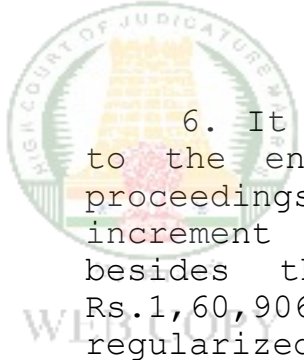
In W.P.No.13517 of 2017, the petitioner has prayed for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent in his proceedings in G.O.(Ms.) No.350, Rural Development and Panchyat Raj (E6) Department, dated 17.7.2013, confirming the order passed by the second respondent in his proceedings in Rc.No.29390/2009/DPC 2-1, dated 21.7.2011 confirming the order of the third respondent in his proceedings in Na.Ka.No.5500/2007/U.Va.2, dated 3.2.2009, to quash the same as illegal and consequently to direct the respondents to promote the petitioner notionally as Assistant Director with effect from the date on which his immediate junior was promoted with all attendant benefits.

2. In W.P.No.20093 of 2013, the petitioner has prayed for issuance of a mandamus to direct respondents 1 and 2 to include the petitioner's name in the panel for Assistant Director for promotion to the post of Assistant Director as on 1.3.2011, by considering his representation dated 31.10.2013.

3. The facts in a nutshell are as under: The petitioner was initially appointed as Junior Assistant in the office of the Panchayat Union, Vedachandur on 16.6.1980 and was promoted to various cadres and ultimately, he was promoted as Deputy Block Development Officer. He claims to have rendered 28 years of unblemished services in various cadres.

4. It is stated that, while things stood thus, the petitioner was issued with a charge memo dated 25.7.2007 alleging that while he was working as Deputy Block Development Officer at Reddiarchathiram Panchayat Union, Dindigul, he caused loss to the government to the tune of Rs.160,906/- by allowing the tar to be taken out of the office and it was also alleged that he failed to check the availability of the stock. In response to the same, the petitioner submitted his explanation denying the charges levelled against him.

5. It is stated that not satisfied with the explanation, the respondent authorities initiated departmental enquiry by appointing an Enquiry Officer, who submitted his report holding the charges proved. It is the specific plea of the petitioner that the Enquiry Officer has not assessed his explanation along with the documents in proper perspective and no reasons have been adduced by the Enquiry Officer to hold the charges against the petitioner proved.



6. It is averred that the petitioner submitted his explanation to the enquiry report and thereafter, the third respondent by proceedings dated 3.2.2009 imposed the punishment of stoppage of increment for a period of two years without cumulative effect, besides the recovery of the alleged loss to the tune of Rs.1,60,906/-. The period of suspension was ordered to be regularized as regular leave. It is the allegation of the petitioner that the third respondent, being the disciplinary authority, has not considered the explanation of the petitioner in proper perspective and had not passed a reasoned order.

7. It is stated that the petitioner appealed to the second respondent, being the appellate authority, who by order dated 21.7.2011, rejected the appeal without assigning any reason whatsoever. In other words, it is the plea of the petitioner that the order passed by the second respondent is a cryptic order and the conclusion arrived by him is not supported by reasons.

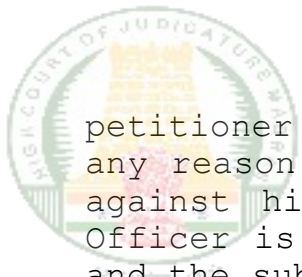
8. It is averred that the petitioner preferred a revision before the first respondent, who, by order dated 17.7.2013, dismissed the revision without giving credence to the explanation submitted by the petitioner and without assigning any reasons in support of such order. Assailing the said orders passed by the respondent authorities, the petitioner filed W.P.(MD) No.13517 of 2013 for the relief stated supra.

9. At the time of admission of W.P.(MD) No.13517 of 2013, this Court, by order dated 23.8.2013, granted interim stay of operation of the punishment order and in view of the same, petitioner's name was not included in the panel for the years 2008-2009 and 2009-2010, and not considered for promotion for the year 2010-2011. It is the case of the petitioner that the period of currency came to an end on 3.2.2011 and the crucial date for consideration of promotion is 1st March and the petitioner's name should have been included in the panel for promotion to the post of Assistant Director for the academic year 2011-2012.

10. It is alleged that the first respondent vide letter dated 18.4.2012 did not consider the name of the petitioner on the ground of subsistence of check period. The petitioner placing reliance on a Full Bench decision of this Court in *Rani v. The Director General of Police, 2011 (4) MLJ 1*, wherein it has been held that after the period of currency of punishment, a government servant is having a right to be considered for promotion, made a representation on 31.10.2013 to respondents 1 and 2 requesting them to consider his case for promotion from 2011-2012 to the post of Assistant Director, considering his seniority and other eligibility criteria. However, the said representation did not evoke any response. Hence, the petitioner filed W.P. (MD) No.20093 of 2013 for the relief stated supra.

<https://hcservices.ecourts.gov.in/hcservices/>

11. The main contention of the learned counsel for the



petitioner is that the Enquiry Officer, in his report, has not given any reason for holding the petitioner guilty of the charges leveled against him and in fact, such finding arrived at by the Enquiry Officer is based on no evidence and as such, the punishment imposed and the subsequent confirmation of the same is vitiated.

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12. It is further contended that the respondents have not considered the defence of the petitioner and did not assign any reason to reject the explanation. In other words, the orders impugned are cryptic and non-speaking orders. It is the plea of the learned counsel for the petitioners that the appeal was not decided in conformity with Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

13. Lastly, the learned counsel for the petitioner submitted that the punishment imposed is shockingly disproportionate and the same has deprived the petitioner of his promotional opportunity.

14. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents, drawing support from the counter affidavit filed by the third respondent, submitted that the charge memo issued to the petitioner was subsequently dropped vide G.O.(D) No.212, Rural Development and Panchayat Raj (E6) Department, dated 3.4.2012, but since the currency of punishment of recovery was pending on the crucial date, the case of the petitioner was rightly not considered by the respondent authorities.

15. He further submitted that this Court granted an order of interim stay of recovery alone and the punishment of stoppage of increment imposed is not stayed and in any event, the period of recovery will be part of the currency of punishment.

16. I heard Mr.H.Mohammed Imran, learned counsel for the petitioner and Mr.K.Guru, learned Additional Government Pleader for the respondents and perused the documents available on record.

17. In the case on hand, the employment of the petitioner and the punishment imposed are not in dispute. It is unnecessary to dwell upon the said aspects once again.

18. Let this Court analyse the order passed by the second respondent dated 21.7.2011 in an appeal filed by the petitioner challenging the order of punishment passed by the disciplinary authority and for this purpose, it is apposite to refer to Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, which reads as under:

"Rule 23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient



ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders--

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall , after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit ; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case."

19. The order passed by the second respondent after referring to the Enquiry Report, the Charges, the representation of the petitioner, the order passed by the third respondent, is as under:

"Orders of the Commissioner of Rural Development & Panchayat Raj:

I, Commissioner of Rural Development and Panchayat Raj



have carefully and independently examined the details of charges, explanation of the individual, findings of the enquiry officer, further representation of the delinquent officer, final orders of the District Collector, Dindigul and appeal preferred by the individual, I don't agree on the contention of the petitioner's claims wherein he has been punished more than once for the same offence. He is only making good the financial loss by repaying the amount. I therefore reject his claim and confirm the Collector's orders dated 3.2.2009 in the reference 6th cited."

20. A bare perusal of the aforesaid order, makes it amply clear that the procedure adopted by the second respondent to pass the order, referred supra, does not conform to the procedure contemplated under Rule 23 of the Rules. The purport of the said abovesaid Rule was considered by a Division Bench of this Court in the decision in *G.Srinivasan v. The Government of Tamil Nadu*, represented by the Commissioner and Secretary to Government, Revenue Department, Madras-9 and others, (1983) 2 MLJ 513, wherein it was held as under:

"8. where the power of the appellate authority is circumscribed by a statutory provision such as rule 23 as in this case, the appellate authority should act within the confines of that rule and he cannot pass an order arbitrarily without considering the matters referred to in rule 23. We are therefore of the view that the order of the Board of Revenue, dated 4th September, 1976, stands vitiated for violation of Rule 23. On this ground, the order of the Board of Revenue which confirms the orders of dismissal passed against the appellant will stand quashed and the Board of Revenue has to pass a fresh order on the appeal filed by the appellant which should be treated as pending."

(emphasis supplied)

21. In this context, it would be apposite to refer to a decision of this Court in *N.Sivakumaran v. State of Tamil Nadu*, 2009 (1) MLJ 701, wherein, interpreting the very same provision of law, it was held as under:

"33. When the appellate authority fails to exercise his statutory duty, which affects the Constitutional right of a person and if such authority disposes of an appeal, disregard to the manner circumscribed under the Rules and fails to assign brief reasons, indicating his mind, it amounts to denial of justice. Prejudice is per se evident and therefore, even if the employee has not raised the question of non-consideration of his appeal in accordance with the statutory Rules in the writ petition. Considering the deprivation of his right



livelihood, guaranteed under Article 21 of the Constitution of India, scuttling right of his appeal being considered in the manner as provided in the statutory Rules would be contrary to the spirit of the Constitutional Guarantee, viz., the right to life with dignity, which can be achieved through the income derived from his employment, the fundamental source. One should not forget that judiciary is the last resort of an aggrieved person and it is not enough that justice should be done and it must also be seen to be done.

Useful reference can be made to a decision of the Supreme Court in *State of W.B. v. Anwar Sarkar* AIR 1952 SC 75, and relevant portion in the judgment is extracted hereunder:

"It may be that justice would be fully done by following the new procedure. It may even be that it would be more truly done. But it would not be satisfactorily done, satisfactory that is to say, not from the point of view that the governments who prosecute, but satisfactory in the view of the ordinary reasonable man, the man in the street. It is not enough that justice should be done. Justice must also be seen to be done and a sense of satisfaction and confidence in it engendered."

34. Scrutiny of the appellate authority's order reveals that after extracting the summary of facts, at Paragraph 8 of the order, the appellate authority has merely stated that "the opinion of the Tamil Nadu Public Service Commission has been independently and carefully considered. The punishment of removal awarded by the Principal Commissioner and Commissioner for Revenue Administration is not excessive and therefore, the Government had decided to reject the appeal and accordingly, rejected the same". Thus it is manifestly clear that the appellate authority has passed a cryptic order and that there is a failure to consider the parameters set out in Rule 23(1) of the said Rules. In the interest of justice, the delinquent officer is entitled to know atleast the mind of the appellate authority in dismissing his appeal. No doubt, detailed reasons are not required to be given, but some brief reasons should be indicated in the order affirming the views of the disciplinary authority. As observed in *Alexander Machinery (Dudley) Ltd. v. Crabtree* (supra), 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.

35. **The subjective satisfaction of the appellate authority is conspicuously absent regarding Rule 23(1) (a)(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The order does not reflect, active application of the mind of the appellate authority and to put it in the words of the Apex Court, it is lifeless, except examining the quantum of penalty."**
(emphasis supplied)

22. The above said decision applies on all fours to the case on hand. Even in the instant case, the subjective satisfaction of the appellate authority is conspicuously absent. No reason whatsoever has been assigned by the appellate authority, after independent assessment of the case of the petitioner vis-à-vis, finding of the enquiry officer, the punishment order, etc. The order of the second respondent is, ex facie, bereft of reasoning.

23. It is a settled proposition of law that reasons should be recorded even in administrative matters, as it is incumbent upon the authorities to pass a speaking and reasoned order. In this regard, it is apt to refer to the decision of the Hon'ble Supreme Court in *Ravi Yashwant Bhoir v. District Collector and others*, (2012) 4 SCC 407, wherein the Supreme Court emphatically held as under:

"39 In *Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors.*, AIR 1991 SC 537, this Court has observed as under:—"Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always."

40. In *L.I.C. of India & Anr. v. Consumer Education and Research Centre & Ors.*, AIR 1995 SC 1811, this Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in *Union of India v. M.L. Kapoor & Ors.*, AIR 1974 SC 87; and *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors.*, AIR



1993 SC 935.

41. In *State of West Bengal v. Atul Krishna Shaw & Anr.*, AIR 1990 SC 2205, this Court observed that:

"7... Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."

42. In *S.N. Mukherjee v. Union of India*, AIR 1990 SC 1984, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. 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, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. In *Krishna Swami v. Union of India & Ors.*, AIR 1993 SC 1407, this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed:

"47. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."

44. This Court while deciding the issue in *Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors.*, (2010) 13 SCC 336, placing reliance on its various earlier judgments held as under:

"27. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a



judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice - delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice.

'The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind.'

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

45. In *Institute of Chartered Accountants of India v. L.K. Ratna & Ors.*, AIR 1987 SC 71, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held:

"In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under S. 22 A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the



basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding".

46. The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be 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 salutary requirements of natural justice is spelling out 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."

24. In my considered opinion, proper reasoning is an imperative necessity. Reasoning makes the decision easier for the parties to understand. Not only that, the requirement of providing reasons obliges the authority to satisfy the points that justify the decision and make it lawful. Every order must contain reasons in support of it. Reasons are link between materials on which certain conclusions are based and the actual conclusion. They disclose how the mind is applied to the subject matter for a decision. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.

25. The rule requiring recording of reasons must be observed in letter and spirit. Mere pretence of compliance by vague and general words is not enough. Though reasons need not be elaborate and extensive, all the same, they must be clear, explicit and intelligible. Reasons are the life line of any order. The order should reflect the application of mind of the authority while passing the said order and it is the reasons which would depict the same.

26. A bare perusal of the order passed by the second respondent, for instance, shows that the said order is ex facie bereft of reasoning and does not merit acceptance.

27. In any event, the information obtained under the provisions of the Right to Information Act reveals that no stock is purchase nor is available. This only fortifies the plea of the petitioner that there was no stock and such statement is not refuted by the respondent. authorities either across the bar or by way of counter affidavit.



28. That apart, from the date of admission of the writ petition, interim order of stay operating and the same continues even as on date. On this ground, I do not propose to remit the issue once again to the respondent authorities for fresh consideration, as the charge memo is of the year 2007 and almost 10 years have elapsed and the petitioner has already suffered sufficient ordeal in these years without any promotion. Moreover, the petitioner had also made good the loss suffered by the department.

29. In view of the above said finding, the other contentions raised in these writ petitions pale into insignificance.

30. For the foregoing reasons, the following order is passed:

- i. The writ petition in W.P. (MD) No.13517 of 2013 is allowed by setting aside the orders impugned;
- ii. The respondents are hereby directed to promote the petitioner notionally as Assistant Director with effect from the date on which his immediate junior was promoted with all attendant benefits;
- iii. The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.
- iv. In view of the above directions, no further orders need be passed in W.P. (MD) No.20093 of 2013 and the same is closed.
- v. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
State of Tamilnadu,
Panchayat Raj Department,
Secretariat, St. George Fort,
Chennai - 600 009.
2. The Commissioner,
Rural Development and Panchayat Raj,
Chennai - 600 015.
3. The District Collector,
Dindigul District, Dindigul.

+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 51038
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 51248

VS

TE/SV-MMS/SAR-2 : 28/02/2018 : 12P/6C

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Writ Petition (MD) Nos.13517 and 20093 of 2013
10.04.2017