

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

326

**CWP-10678-1995 (O&M)
Date of decision: 27.01.2017**

Satpal Singh

....Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Munish Mittal, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of order of disciplinary authority dated 10.05.1993 and appellate authority's order dated 02.06.1995 vide Annexure P7 and Annexure P9 respectively.

2. Petitioner on 13.03.1987 while working as a Driver of bus bearing No. 2135, which he was driving at Ellenabad to Yamunanagar route, met with an accident against a tree which resulted in damages to the bus and huge loss has been caused to Haryana Roadways Corporation. Arising out of this incident, the petitioner was charge-sheeted under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. In fact the relevant provision of law applicable to the petitioner is Haryana Civil

Services (Punishment and Appeal) Rules, 1987. The disciplinary authority after perusal of the enquiry officer's report has come to the conclusion that the petitioner was found guilty for the accident. Thus, his services were terminated after following procedures like issuance of 2nd show cause notice and receipt of reply to the 2nd show cause notice. Feeling aggrieved by the order of disciplinary authority dated 10.05.1993, petitioner preferred an appeal before the appellate authority under Rule 9 of the Appeal Rules on 16.06.1993 vide Annexure P8. The appellate authority while concurring with the disciplinary authority rejected the petitioner's appeal. Hence, the present petition.

3. Learned counsel for the petitioner submitted that both the disciplinary and appellate authority have not appreciated facts that there is no negligence by the petitioner in respect of accident took place on 13.03.1987. In this regard, the petitioner has submitted detailed reply to the 2nd show cause notice. However, the same has not been appreciated by the disciplinary authority and the disciplinary authority accepted the inquiring officer's report and proceeded to pass order of termination. It was further contended that a very detailed reply has been filed under Rule 9 of the appeal Rules. However, the appellate authority has not even considered single contention as is evident from the appellate authority's order dated 21.06.1995. The appellate authority is required to consider petitioner's appeal under Rule 11 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 which reads as under:-

11. Order which may be passed by appellate

authority. (1) In the case of appeal against an order under rule 9 or any penalty specified in rule 4, 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 after such consideration, shall pass such order as it thinks proper:*

Provided that no penalty shall be increased unless opportunity is given to the person concerned to show cause why such penalty should be increased -

- (2) An authority from whose order, an appeal is preferred under these rules, shall give effect to any order made by the appellate authority.”*

4. Perusal of the appellate authority's order do not reveal consideration as per Rule 11 which specifically mandates the appellate authority how the appeal is required to be considered. Reading of Rule 11 mandates that the appellate authority shall consider. Therefore, it is mandatory on the part of the appellate authority and consideration of appeal is not so as to say it has been perused. Supreme Court in the case of ***Orxy Fisheries Private Limited versus Union of India and others*** reported in 2010(13) SCC 427 held as under:-

“40. In Kranti Associates this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below:(SCC pp.510-12)

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid

enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harv.L.Rev. 731-37).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Rorija v. Spain, EHRR at p.562, para 29 and Anya v. University of Oxford wherein the court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

Therefore, appellate authority's order which is not in terms of Rule 11 (*supra*) is set aside and the matter is remanded to the appellate authority to re-examine the petitioner's appeal within a period of 4

months from today and pass an appropriate order.

5. The petitioner is permitted to raise additional grounds in writing if any before the appellate authority within a period of 2 weeks' from the date of receipt of this order and the appellate authority is directed to consider such additional grounds if any raised by the petitioner.

27.01.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No