

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

CWP No.17368 of 2012

Date of decision : 19.12.2017

Jasbir Singh

.....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Ashish Grover, Advocate for the petitioner.

Mr. Parminder Singh, Advocate for the respondents.

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DAYA CHAUDHARY, J.

Petitioner has approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for quashing of impugned order dated 23.04.2008 (Annexure P-3), whereby he has been awarded punishment of stoppage of two annual increments with cumulative effect and also order dated 09.09.2009 (Annexure P-9), whereby the appeal filed by him has been dismissed.

Briefly, the facts of the case as made out in the present petition are that the petitioner joined the respondent-department as Sub Divisional Officer in the year 1999 and, thereafter, he was promoted as Assistant Executive Engineer on 10.12.2003. He was charge-sheeted vide order dated 08.05.2006, on the allegations that during the period from 07.09.2004 to 03.11.2005, while working as Assistant Executive Engineer, he in connivance with the consumers, issued tube-well connections in violation of

circular issued by the respondent-department. One Parampal Singh was also working as Assistant Executive Engineer in the same Sub Division prior to the posting of the petitioner. He was also issued similar charge-sheet on the same allegations. In the inquiry, the allegations were proved against the petitioner as well as said Parampal Singh. Vide order dated 23.04.2008, punishment of stoppage of two annual increments with cumulative effect was awarded to the petitioner as well as to Parampal Singh.

Aggrieved by said order dated 23.04.2008, the petitioner as well as said Parampal Singh filed separate statutory appeals. Both the appeals were recommended by the Secretary of the respondent-Board. However, the appeal filed by the petitioner was dismissed, whereas appeal filed by said Parampal Singh was partly accepted and punishment awarded to him was reduced to stoppage of one increment without cumulative effect. The cases of the petitioner as well as of said Parampal Singh were on similar footings but different orders were passed in both the appeals without mentioning any reason.

Both the orders *i.e.* order of punishment of stoppage of two annual increments with cumulative effect and the order passed by the Appellate Authority are the subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the allegations against the petitioner and said Parampal Singh were same and same charge-sheets on same allegations were issued to them but different orders were passed in the appeals without mentioning any reason. Petitioner submitted

his objections to the inquiry report and same were also conveyed to respondent No.4, but without considering the same, impugned order dated 23.04.2008 (Annexure P-3) has been passed. The same Appellate Authority has passed two different orders and awarded two different punishments, whereas not only the charges but the allegations levelled against the petitioner and Parampal Singh were same. The appeal filed by the petitioner was dismissed whereas appeal of Parampal Singh was partly allowed and even a single reasoning has not been given as to how the case of the petitioner is different from case of Parampal Singh. As per inquiry report, the charges against both the officers were proved and same punishment was awarded to both the persons. At the end, learned counsel for the petitioner submits that the impugned orders are not only violative of Article 14 of the Constitution of India but discriminatory as well. The petitioner asked for an opportunity of personal hearing before the Appellate Authority, however, no such opportunity of hearing was given to him. Both the orders passed by the authorities are liable to be set aside.

Learned counsel for the respondents submits that the impugned orders are well reasoned and have been passed after holding regular inquiry and also by taking into consideration the allegations as well as the reply submitted by the petitioner.

Heard arguments of learned counsel for the parties and have also perused the charge-sheet, impugned order of stoppage of two annual increments with cumulative effect as well as the order passed by the Appellate Authority.

After hearing arguments of both the parties as well as perusing relevant record on the file, admittedly the case of the petitioner is at par with said Parampal Singh as they both were charge-sheeted on the same allegations. Even same findings were recorded against both of them in the inquiry report. Subsequently, in the appeals filed by the petitioner as well as said Parampal Singh, different orders have been passed by the Appellate Authority. The appeal filed by the petitioner was dismissed, whereas the appeal filed by said Parampal Singh was partly allowed. The punishment awarded to the petitioner has been upheld, whereas the punishment awarded to said Parampal Singh has been reduced to stoppage of one annual increment without cumulative effect.

On perusal of impugned order passed by the Appellate Authority, it shows that nowhere it has been mentioned as to how the grounds of appeal of the petitioner have been considered. While dismissing the appeal of the petitioner and allowing the appeal filed by said Parampal Singh, on same allegations, two different orders have been passed. The relevant portion of the order passed by the Appellate Authority while dismissing the appeal filed by the petitioner, is reproduced as under : -

“The employee has filed the appeal against the said punishment order on 21.07.2008 which was received and diared in the office on 01.08.2008 vide Diary No.1232.

The Whole Time Members has considered the appeal of the employee in meeting held on 24.08.2009 at Patiala vide No.12/09 and had taken the following decision :-

“Whole Time Members have rejected the appeal.”

So appeal of Jasbir Singh, AEE Code 5826 is hereby rejected and the punishment given by office order No.177/D-8360/T-1

dated 23.04.2008 of stoppage of two increments with cumulative effect and posting on non-public dealing post is hereby sustained. This order is being issued with the consent of Whole Time Members.”

On perusal of said order, it shows that Whole Time Members considered the appeal of the petitioner in the meeting held on 24.08.2009 and has rejected the same. The Appellate Authority has simply mentioned that appeal filed by the petitioner is rejected and punishment of stoppage of two annual increments with cumulative effect awarded to the petitioner vide order dated 23.04.2008 is sustained. Even no reason, whatsoever, has been mentioned.

On perusal of impugned order passed by the Appellate Authority, it is apparent that the same is totally non-speaking and has been passed without any application of mind. Not only it is violative of principles of natural justice but reasons for rejection of appeal have not been mentioned. No findings, whatsoever, have been recorded as to how the Appellate Authority considered the grounds of appeal. Recording of reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice. The reasons are stated to be live links between the mind of the decision making authority to the controversy and the decision or conclusion arrived at. The procedure laid down under the rules has not been complied with and as such, the non-compliance of relevant rules is also violative of principles of natural justice which can be considered as failure of justice.

On perusal of order passed and the facts and circumstances of

the case as mentioned above, it appears that the Appellate Authority has not applied its mind while passing the impugned order, whereas the reasons are necessary to be recorded.

Same view was held in judgment of Hon'ble the Apex Court in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank 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 Vs. Madhusudhan Rao (vide SCC para 20: JT para 19) and in M.P. Industries Ltd. Vs. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. Vs. 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 Vs. 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 Vs. 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 case ***Gulab Singh***

Vs. Maharshi Dayanand University, Rohtak and others 2005(1) PLR 440, State of Punjab Vs. Pargat Singh through LRs 2004(3) RSJ 604, Nafe Singh Vs. Haryana Land Reclamation and Development Corporation Ltd.and others 2016(1) SCT 212, Pritam Singh Vs. Haryana State Electricity Board 1995(2) SCT 754 and R.S. Bhatti vs State of Haryana 2001(2) SCT 1156.

In view of the facts as mentioned above and law position as discussed, the present petition is allowed. Impugned order dated 09.09.2009 (Annexure P-9) passed by the Appellate Authority is set aside and the case is remanded to the Appellate Authority for fresh consideration in view of observations made above and pass necessary order in accordance with law within a period of two months from the date of receipt of certified copy of the order as well as by considering the order passed in the case of Parampal Singh. In case the petitioner is required to be heard in person, opportunity of hearing be given to him.

19.12.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No