

C.W.P. No. 16599 of 2017

(1)

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

C.W.P. No. 16599 of 2017

DATE OF DECISION:28.07.2017

Gurmail Singh

.....Petitioner

Versus

Chief Secretary to Govt. of Punjab and others

.....Respondents

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. Deepak Goyal, Advocate  
for the petitioner.

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**DAYA CHAUDHARY, J.**

The prayer in the present petition is for issuance of a writ in the nature of certiorari for setting aside impugned order dated 7.9.2012 (Annexure P-1), whereby, junior to the petitioner has been promoted and order dated 15.6.2017 (Annexure P-5), whereby, the appeal filed by the petitioner against order dated 7.9.2012 has been dismissed.

Briefly, the facts of the case as made out in the present petition, are that the petitioner was initially appointed as Mali in Horticulture Section, Sangrur on 17.2.1976 and continued to work as such to the satisfaction of his officers. He was granted annual increments after regular intervals and was also allowed to cross efficiency bars. The petitioner was posted as peon in the office of respondent No.3 vide order dated 12.5.1992, subsequently, no increment was granted because the post of peon was not

considered as promotional post from the post of Mali-cum-Chowkidar. Thereafter, vide order dated 7.9.2012, respondent No.4 was promoted as Record Lifter on the basis of seniority-cum-merit by ignoring the petitioner. As per case of the petitioner, respondent No.4 i.e. Surinder Singh was junior to the petitioner as he was at seniority No. 178, whereas, the petitioner was at seniority No. 102. Aggrieved by the aforesaid order dated 7.9.2012, the petitioner preferred an appeal before Divisional Commissioner, Patiala Range, Patiala. Reply to the appeal was also filed by respondent No.3. i.e. Deputy Commissioner, Sangrur, wherein, it was admitted that respondent No.4 i.e. Surinder Singh was wrongly promoted. However, the appeal of the petitioner was dismissed without taking into consideration the reply filed by respondent No.3 as also the grounds of appeal. Both the orders i.e. 7.9.2012 (Annexure P-1) and 15.6.2017 (Annexure P-5) are subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the petitioner was much senior to respondent No.4 but still he was not promoted and case of his junior was considered for promotion. Learned counsel further contends that neither the reply filed by respondent No.3 nor the grounds of appeal were taken into consideration while dismissing the appeal. There was no adverse remarks against the petitioner and he was fulfilling the criteria for promotion to the post of Record Lifter on the basis of seniority-cum-merit.

Heard the arguments advanced by learned counsel for the petitioner and have also perused the impugned orders and other documents available on the file.

A perusal of impugned order dated 15.6.2017 passed by the

appellate authority i.e. Divisional Commissioner, Patiala Range, Patiala, clearly shows that the appeal was dismissed without giving specific reasons and without considering the ground of appeal. The comments in detail were sent by the Deputy Commissioner, Sangrur to the Commissioner, Patiala Range, Patiala regarding seniority mentioning that the petitioner was much senior to respondent No.4. Even in the grounds of appeal, which was by way of representation, not only detailed facts regarding date of appointment of petitioner as well as respondent No.4 were mentioned but details of granting of annual increment and crossing of efficient bars were also mentioned. It was also mentioned that the petitioner was appointed as Mali-cum-Chowkidar and the post of Mali-cum-Chowkidar and peon was of the same cadre. As per provisions of Punjab State (Class-IV) Service Rules, 1963, the promotion was to be made on the basis of seniority-cum-merit and as such the petitioner was entitled to be considered for promotion being senior to respondent No.4. Neither the grounds of appeal nor the comments of respondent No.3 were taken into consideration while rejecting the claim of the petitioner and as such the order passed by the appellate authority is totally non-speaking and is not based on any reasoning. The order has been passed without any application of mind. No finding has been recorded as to how the appellate authority has reached to the conclusion while dismissing the appeal. The reasons for dismissing the appeal are necessary to be recorded but no such reason has been recorded in the order passed by the appellate authority.

The controversy in the present case is squarely covered by the decision of Hon'ble the Apex Court in the case of **Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others** 2009

(4) SCC 240. The relevant portion of the 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 online 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.”

After perusing the impugned order and by applying the law

position as discussed above, I am of the view that the impugned order does not deserve to be sustained as recording of reason in the order is one of the fundamentals of good administration and is an indispensable part of a sound judicial system as the affected party has a right to know as to why decision has been taken against him. The salutary requirement of natural justice is to spell out reasons for the order made. In other words, it can be said that order should be speaking and well reasoned. In case, there is a failure on the part of respondents to give reasons, it amounts to denial of justice.

Accordingly, the present petition is allowed and impugned order dated 15.6.2017 passed by the appellate authority is set aside and respondent No.2 is directed to reconsider the case of the petitioner afresh and take necessary action in accordance with law by keeping in view the contents of the representation/appeal and also the comments sent by respondent No.3. However, it is made clear that the appellate authority is not to be influenced by the earlier order and in case the appellate authority takes decision by considering the total length of service, seniority number, seniority-cum-merit and also work and conduct of the petitioner, the necessary order be passed by granting all consequential benefits. In case any adverse order is to be passed then the same should be well reasoned and speaking. The petitioner would also be at liberty to avail appropriate remedy.

July 28, 2017  
pooja

**(DAYA CHAUDHARY)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes  
Yes