

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

CWP No.17739 of 2017

Date of Decision: 10.08.2017

Balwinder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Raj Kaushik, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Petitioner-Balwinder Singh has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing impugned order dated 06.01.2017 (Annexure P-4) and also for deciding the appeal dated 22.12.2015 on merits as while deciding the appeal, neither the reasons have been mentioned nor any opportunity of hearing has been given.

Briefly, the facts of the case, as made out in the petition, are that certain punishments were awarded to the petitioner while working in the Punjab Roadways, Tarn Taran, Depot of the Roadways but nothing was conveyed to him. Thereafter, he filed an appeal dated 22.12.2015 before the Secretary to Government Department of Transport, Punjab, Chandigarh. The appeal filed by the petitioner was rejected vide order dated 06.01.2017 by mentioning simple one line order and no reasons, whatsoever, have been

mentioned.

Learned counsel for the petitioner submits that a cryptic order has been passed and no reasons, whatsoever, have been mentioned. Neither any opportunity of hearing was given nor the grounds of appeal were considered. Learned counsel also submits that as per Rule 19 of Punjab Civil Services (Punishment and Appeal) Rules 1970, while considering the appeal, major penalty cannot be imposed unless the employee has been given a reasonable opportunity in accordance with provisions of Rule 10 of making a representation against the penalty. The appeal was also filed to challenge the order of stoppage of increments but the same has been rejected only on the ground of delay.

Heard the arguments of learned counsel for the petitioner and have also perused the documents available on the file including order dated 06.01.2017 (Annexure P-4), whereby, the appeal preferred by the petitioner has been filed/rejected.

As per representation made by the petitioner on 22.12.2015, his annual increments have been stopped with and without cumulative effect vide different orders. It has also been mentioned in the representation that no inquiry was conducted and major punishment has been awarded. Thereafter, the petitioner preferred an appeal before the Principal Secretary, Government of Punjab, Transport Department, Punjab, Chandigarh but the same was dismissed by passing one line order i.e “the appeal on the subject cited above has been closed by the Government after considering the same.”

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, 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 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 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 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.”

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 *Pritam Singh*

vs Haryana State Electricity Board 1995(2) SCT 754 and R.S. Bhatti vs
State of Haryana 2001(2) SCT 1156.

By applying the law position as discussed above, it is clear that
the order passed by the appellate authority is non-speaking and unreasoned.

Accordingly, the present petition is allowed and the impugned order
dated 06.01.2017 (Annexure P-4) is set aside and directions are issued to
the appellate authority to reconsider the appeal and decide the same afresh
by passing a speaking order preferably within a period of two months from
the date of receipt of certified copy of this order.

10.08.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes