

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

CWP No.23630 of 2016

Date of Decision:17.02.2017

Sanjeev Kumar and another ... Petitioners

Vs.

State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. G.S. Gopera, Advocate for the petitioners.

P.B. BAJANTHRI J. (Oral)

Notice of motion.

On the asking of the Court, Mr. Harish Rathee, Sr. D.A.G. Haryana, who is present in Court, accepts notice on behalf of the respondents-State.

Learned counsel for the petitioners is directed to furnish two sets of writ papers to the learned State counsel.

In the instant petition, the petitioner has questioned the validity of the order passed by the disciplinary authority as well as appellate authority vide Annexures P-8, P-9 and P-11 respectively.

The petitioners while working in the respondent-department were subjected to parallel proceedings. In the criminal case, they were acquitted. Whereas in the disciplinary proceedings, they were penalized by imposing the penalty of withholding of one annual increment with permanent effect. Feeling aggrieved by the order of the penalty, they preferred an appeal before the appellate authority. The appellate authority confirmed the order of penalty on 23.8.2016. Thus, the petitioners are aggrieved by the order of the appellate authority.

Learned counsel for the petitioners submitted that appellate authority has not appreciated each of the contention raised in their appeal. Therefore, order passed by the appellate authority is non speaking order and it is contrary to consideration of appeal rules i.e. Rule 11 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short “Rules 1987”).

On the other hand, learned counsel for the respondent-State submitted that appellate authority need not assigned reasons for the purpose of confirming an order of disciplinary authority. Therefore, there is no infirmity in the order of the appellate authority dated 23.8.2016.

Heard learned counsel for the parties.

The appellate authority while confirming the order of the disciplinary authority passed the following order:

“From

*The Additional Chief Secretary
to Govt. Haryana, Home Department*

To,

*The Director General of Police,
Haryana, Panchkula*

Memo No.7/22/2016-3HGI

Dated Chandigarh the 23.8.2016.

Subject: Appeal against the order dated 12.10.2015 vide which punishment of stoppage of one annual increment with permanent effect.

Reference your memo No.12644/E(H)-3 dated 7.12.2015 on the subject noted above.

2. After careful consideration the matter, the Government have decided to file the appeal of the applicants against the order dated 12.10.2015 vide which punishment of stoppage of one annual increment with permanent effect were awarded to them.

Sd/-

Section Officer Home

*For Additional Chief Secretary to Govt., Haryana
Home Department.”*

Rule 11 of Rules 1987 stipulates that how the appellate authority is required to consider an appeal. An extract of Rule 11 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 not 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.”

Having regard to the above provision of law read with decision of the appellate authority dated 23.8.2016, it is crystal clear that there is a total non application of mind. In other words, merely it is stated that “after careful consideration the matter, the Government have decided to file the appeal of the applicants against the order dated 12.10.2015.”

Thus, the order dated 23.8.2016 is not a speaking order.

Moreover, it is not in accordance with Rule 11 of 1987 Rules cited supra.

Supreme Court in the case of **Orxy Fisheries Pvt. Limited** v. **Union of India and others**; (2010) 13 SCC 427; in para 40, it is stated as under:

“In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below 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 Harward Law Review 731-737).

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 (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, 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".

The appellate authority being a quasi judicial authority is bound by the Rules 1987. In the absence of considering the appeal with reference

to the statutory provision cited supra, appellate authority order dated 23.8.2016 is not in terms of the aforesaid statutory rules. Thus, order dated 23.8.2016 (Annexure P-11) is set aside and the matter is remanded to the appellate authority for fresh consideration in terms of Rule 11 of Rules 1987. The appellate authority is directed to consider each and every contention raised by the petitioners in his appeal while passing a fresh order and in the light of the cited provision. The above exercise shall be completed within a period of three months from today.

Disposed of accordingly.

17.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No