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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1851 of 2018

and

C.M.P.No.14789 of 2018

1.The Tamil Nadu Electricity Board,
Represented by its Chairman,
No.8000, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Vellore Distribution Circle,
Vellore - 600 006.

... Appellants

vs.

R.Dhandapani

... Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent Act, against the order made in W.P.No.21016 of 2002, dated 03.08.2016.

WP.NO.21016/02

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent dated 3.7.2000 in Ref.No.022491/NP.A/U.2/98-6, imposing a punishment of reversion from the post of Wiremen to the post of Helper for a period of five years and of the period of reduction shall operate to postpone Petitioner's future increments and as modified by the order of the 1st Respondent dated 10.4.2001 bearing permanent BP.(Ch)No.53, modifying the punishment to one of reversion as Helper for a period of five years and the period of reduction not to operate to postpone the Petitioner's future increments and to quash the same and consequently to direct the Respondents to restore the Petitioner to the post of wiremen with effect from 3.7.2000 and give all consequential and attendant benefits.



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For Appellants : Mr.M.Fakkir Mohideen

For Respondent : Mr.Balan Haridass

JUDGMENT

(Judgment of the Court was made by SUBRAMONIUM PRASAD, J)

The present writ appeal is filed against the order passed by the learned Single Judge, made in W.P.No.21016 of 2002, dated 03.08.2016.

2. The facts in brief in this appeal, are that R.Dhandapani/ respondent herein, was working as a Wireman. Charge sheet dated 12.10.1998, was issued to him on the grounds that during the month of November 1997, the respondent had received bribe amount of Rs.50/- each, from 18 persons belonging to Ezaruvi Village, totalling Rs.900/-, in order to give them electricity connection and that the act of the respondent is an offence under the standing order No.30 (V) of TNEB Standing Orders for the employees other than clerical employees.

3. The respondent herein sent a reply dated 07.12.1998, denying the said allegation. Disciplinary proceedings were initiated against the respondent herein. Departmental witnesses were examined.

4. A perusal of the deposition, would show that the Chief Examination of P.W.1 was conducted on one day and the cross examination was conducted on another day.

5. In the Chief Examination, PW1 has deposed about the illegal demand made by the respondent, but that statement was withdrawn on the subsequent dates. After going through the records and evidence, the Enquiry Officer, observed as hereunder:-

"The Dept. Witness Tmty.R.Rajeshwari during the enquiry on 31.03.99 deposed the regarding the Electricity connection to be availed for their houses at Ezaruvi village, Rs.50 per application was paid to Thiru.R.Dhandapani when he came there after erection of the post. She deposed that her statement mentioning about lineman indicates Thiru Dhandapani only. The above statement was no where denied by Tmt R.Rajeswari during the cross examination of Thiru.R.Dhandapani, wireman. Moreover during the enquiry, it was not established by R.Dhandapani that he did not



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receive any money as bribe. On considering the above facts with close scrutiny, I consider that Thiru.R.Dhandapani, wireman received bribe amount from the persons belonging to Ezaruvi Village, who applied for getting electricity connection and accordingly I come to the conclusion that charge as framed against Thiru.R.Dhandapani has been proved."

6. Perusal of the finding of the enquiry officer, would show that he has accepted the version, in the chief examination, but has not considered the cross examination, when the witnesses resiled from the statement made in Chief.

7. The disciplinary authority, accepted the finding of the enquiry officer. The crucial aspect of the case, as to why the enquiry officer only accepted statement made in Chief, but did not consider the effect of the change of the stand, has not been discussed by the Disciplinary Authority.

8. The disciplinary authority, passed an order, reverting the respondent herein, from the post of wireman to the post of helper.

9. The respondent herein, filed an appeal. The Appellate Authority, by its order dated 10.04.2001, modified the punishment as "Reversion to the post of Helper for a period of five years, and that reduction shall not operate to postpone his future increments."

10. This order which has been challenged in W.P.No.21016 of 2002.

11. After advertng to the discrepancies and contradictions in the evidence and noting the absence of any discussion or explanation been given by both the authorities for imposing the impugned punishment, a learned Single Judge allowed the writ petition on 03.08.2016 by setting aside the order of punishment. Being aggrieved, instant writ appeal is filed.

12. Heard the learned counsel for the parties.

13. Perusal of the material on record shows that the PW1 has made categorical statement against the respondent herein, that he has accepted bribe, but subsequently, during cross examination, she has withdrawn her statement. Advertng to the evidence, the learned Single Judge, in Paragraph No.6 of the order made in W.P.No.21016 of 2002, dated 03.08.2016, has noted as hereunder:-

"6. On a careful consideration of the entire evidence, it is seen that MW.1, who made the complaint



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against the Petitioner, though in the chief examination first deposed about the alleged illegal demand made by the Petitioner, but did not sign the statement and on another day, while deposing, she denied the said statement, stating that she made the same in an unsound state of mind as she was not feeling well on that earlier day and hence, she deposed to remove the said statement and has categorically stated that the Petitioner was not at all involved in the alleged offence and to accept the later statement given on that day. In view of such contradictory statements, definitely her statement ought not to have been taken into consideration. Even assuming for a moment, but not admitting, that the enquiry officer has taken into consideration the evidence in a proper and perspective manner, reasons ought to have been given by both the authorities. But, neither the Enquiry Officer nor the Appellate Authority discussed about the statement of MW.1. Further, the other witnesses have also categorically stated that the Petitioner was not at all involved in the alleged offence."

14. Learned counsel for the respondent would contend that, since the order of the disciplinary authority is a non-speaking order that the matter may be remanded back to the appellate authority, to reconsider the issue.

15. As stated earlier, the disciplinary authority has not considered the effect of the witness resiling from her statement recorded during chief examination.

16. It is well settled that merely for reason that witness has turned hostile in his/her cross examination, testimony of the hostile witness in the examination, in chief, cannot be discarded. But the disciplinary authority is bound to consider and give reasons as to why he has chosen to disregard the evidence adduced in chief. The principle has been accepted even in criminal trial. The Hon'ble Supreme Court of India in the case of Paulmeli and Others Vs. State of Tamil Nadu reported in (2014) 13 SCC 90, observed as under:-

"21. This Court in Ramesh Harijan v. State of U.P. [(2012) 5 SCC 777 : (2012) 2 SCC (Cri) 905] while dealing with the issue held: (SCC pp. 786-87, para 23)

"23. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him.



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'6. ... The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof.'

[Vide Bhagwan Singh v. State of Haryana [(1976) 1 SCC 389 : 1976 SCC (Cri) 7], Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC 233 : 1976 SCC (Cri) 566], Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59] and Khujji v. State of M.P. [(1991) 3 SCC 627 : 1991 SCC (Cri) 916] (SCC p. 635, para 6)]"

22. In State of U.P. v. Ramesh Prasad Misra [(1996) 10 SCC 360 : 1996 SCC (Cri) 1278] , this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188], Subbu Singh v. State [(2009) 6 SCC 462 : (2009) 2 SCC (Cri) 1106], C.Muniappan v. State of T.N. [(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] and Himanshu v. State (NCT of Delhi) [(2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] . Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and the relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."

17. In the present case, there is a categorical statement made by MW.1 in the chief examination implicating the respondent herein, for accepting bribe. Neither, the enquiry officer nor the disciplinary authority, has given reasons, as to why they have not considered the effect of the witness, resiling from her earlier statement.

18. It is well settled preposition of the law that it is the duty of the enquiry officer and the disciplinary authority, to consider the evidence and record reasons, as to why the evidence of the witness, cannot be accepted.

19. This Court in V.Ramasamy Vs. The Secretary to the Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai, and another, reported in 2014 (8) MLJ 672, at paragraph Nos.46, 47 and 70 to 74, observed as



hereunder:-

"46. The enquiry officer is bound to scrutinise and assess the evidence adduced by the parties and discuss the same and also record the reasons, as to why, explanation offered by the delinquent, is not acceptable. He has only recorded that Pws.1, 5, 8 and 9 have clearly spoken about the demand and acceptance, which in the opinion of this Court, does not amount to proper consideration of the explanation offered. Though prosecution witness, PW.2, has turned hostile, during cross-examination, for the purpose of holding Charge No.2, as proved, the enquiry officer has not accepted his evidence. Such an approach is incorrect. The enquiry officer cannot go beyond the evidence tendered by a witness. He must record reasons, as to why he is not accepting the evidence.

47. It is well settled that the disciplinary authority is bound to consider the evidence on record, explanation offered in the defence, and arrive at a proper conclusion. While agreeing with the findings, the Disciplinary Authority has observed that the delinquent was not able to disprove the case. When the petitioner has submitted a detailed explanation, as to how, charges have been framed against him, belatedly, for the alleged incidents, which occurred in the year 1988-90 and when the alleged demand and payment has been disputed and when the witnesses have not given any specific dates and month and when the petitioner has alleged motive and given instances, regarding the earlier disputes, it is the duty of the Disciplinary Authority to consider the same, in proper perspective, instead of making a generalised statement, Interferences, cannot disprove direct and unambiguous statements of witnesses.

.....

70. In this context, it is useful to refer to few decisions of this Court as well as the Hon'ble Supreme Court, as to how the word "consider" employed in the discipline and appeal rules, have to be considered and applied for disposal of an appeal. While explaining the word "consider" employed in Rule 27(2) of the Central Civil Services (Classification and Appeal) Rules, 1965, the Hon'ble Supreme Court in R.P.Bhatt v. Union of India reported in AIR 1986 SC 1040, at Paragraphs 4 and 5, observed that, "The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to



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consider (1) Whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R.27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any findings on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2), viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

71. Following the R.P.Bhatt's case, the Supreme Court in Ram Chander v. Union of India reported in 1986 (3) SCC 103, held that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal.

72. In Arokiadoss v. The Deputy Commissioner of Police, reported in 1989 Writ L.R. 274, this Court, while dealing with the powers of the appellate authority under Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, at Paragraph 4, held as follows:

"the order of the appellate authority does not indicate, whether the appellate authority considered the materials on record in the light of Rule 6(1) of the Rules. He should have discussed the relevant evidence





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14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669], the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

17. The other question which arose in Harinagar was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in Harinagar the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a



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tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23).

19. Again in *Bhagat Raja v. Union of India* [AIR 1967 SC 1606] the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of the Mines and Minerals (Development and Regulation) Act, 1957, and having regard to the provision of Rule 55 of the Mineral Concession Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (see AIR p. 1610, para 8). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In *Mahabir Prasad Santosh Kumar v. State of U.P.* [(1970) 1 SCC 764], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In *Travancore Rayon Ltd. v. Union of India* [(1969) 3 SCC 868], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises and Salt Act, 1944, held that the Central Government was



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actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (see SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In *Woolcombers of India Ltd. v. Workers Union* [(1974) 3 SCC 318] this Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (see SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In *Union of India v. Mohan Lal Capoor* [(1973) 2 SCC 836] this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression "reasons for the proposed supersession" should not be mere rubber-stamp reasons. Such reasons must disclose how mind was applied to the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (see SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India* [(1976) 2 SCC 981], this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function,



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must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248], which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi* also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See SCC p. 317, para 39 : AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram v. State of Kerala* [(1979) 4 SCC 782] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368] this Court, dealing with a service



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matter, relying on the ratio in Capoor, held that "rubber-stamp reason" is not enough and virtually quoted the observation in Capoor to the extent that: (Capoor case, SCC p. 854, para 28)

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt. [(1979) 4 SCC 642]. while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) Broom's Legal Maxims (1939 Edn., p. 97) where the principle in Latin runs as follows:

"Cessante ratione legis cessat ipsa lex."

30. The English version of the said principle given by the Chief Justice is that: (H.H. Shri Swamiji case, SCC p. 658, para 29)

"29. ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

31. In Bombay Oil Industries (P) Ltd. v. Union of India [(1984) 1 SCC 141], this Court held that while disposing of applications under the Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. This Court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well-considered orders. In saying so, this Court relied on its previous decisions in Capoor and Siemens Engg. discussed above.

32. In Ram Chander v. Union of India [(1986) 3 SCC 103], this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rules. This Court held that the word "consider" occurring in Rule 22(2) must mean that the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasised that in discharging quasi-judicial functions the appellate authority must



act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

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33. In *Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.* [(1990) 3 SCC 280] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi* [(1991) 2 SCC 716], this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached (see SCC pp. 738-39, para 22).

35. In *M.L. Jaggi v. MTNL* [(1996) 3 SCC 119], this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (See SCC p. 123, para 8.)

36. In *Charan Singh v. Healing Touch Hospital* [(2000) 7 SCC 668] a three-Judge Bench of this Court, dealing with a grievance under the CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides



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for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasising". (See SCC p. 673, para 11 : AIR p. 3141, para 11 of the Report.)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in *Som Datt Datta v. Union of India* [AIR 1969 SC 414] where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594]. A unanimous Constitution Bench speaking through S.C. Agrawal, J. confirmed its earlier decision in *Som Datt* in *S.N. Mukherjee* case, SCC p. 619, para 47 : AIR para 47 at p. 2000 of the Report and held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the court martial as a proceeding is sui generis in nature and the Court of Court Martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of Winthrop in *Military Law and Precedents* are very pertinent and are extracted hereinbelow:

"Not belonging to the judicial branch of the Government, it follows that Courts Martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilised under his orders or those of his authorised military representatives."

40. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33,



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136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In *Stefan v. General Medical Council* [(1999) 1 WLR 1293 (PC)] it has been held: (WLR p. 1300)

the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in *R. v. Civil Service Appeal Board, ex p Cunningham* [(1991) 4 All ER 310 (CA)], Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said: (All ER p. 317)

"... '... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in *R. v. Immigration Appeal Tribunal, ex p Khan (Mahmud)* [1983 (2) ALL ER 420 (CA)] All ER at p. 423, QB at pp. 794-95], the reasons for the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).' "

43. The learned Master of Rolls further clarified by saying: (Civil Service Appeal Board case [(1991) 4 All. ER 310 (Ca), All ER p. 317)

"... '... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.' "

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of



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court to give reasons (see *North Range Shipping Ltd. v. Seatrans Shipping Corpn.* [(2002) 1 WLR 2397]). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In *English v. Emery Reimbold and Strick Ltd.* [(2002) 1 WLR 2409]. It has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen v. Chief Constable of the Royal Ulster Constabulary* [(2003) 1 WLR 1763], Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held: (WLR p. 1769, para 7)

"7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched."

46. The position in the United States has been indicated by this Court in *S.N. Mukherjee* in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In *S.N. Mukherjee* this Court relied on the decisions of the US Court in *Securities and Exchange Commission v. Chenery Corp.* [87 L Ed. 626] and *Dunlop v. Bachowski* [44 L Ed 2d 377] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(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



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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 lifeblood 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.)

(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 Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given



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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".

24. In the light of the submissions, decisions, order of the learned Single Judge is set aside and the matter is remanded back to the disciplinary authority, to consider the evidence and decide the matter afresh, after analysing the evidence and the effect of the witness resiling from his earlier statement. The Appellate Authority is directed to dispose of the matter within a period of eight weeks from the date of receipt of a copy of this order.

25. With the above directions, writ appeal is disposed of. No Costs. Consequently, the civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dm

TO:

- 1.The Chairman,
Tamil Nadu Electricity Board,
No.8000, Anna Salai,
Chennai - 600 002.
- 2.The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Vellore Distribution Circle,
Vellore - 600 006.

+lcc to Mr.Balan Haridass, Advocate sr.43929

W.A.No.1851 of 2018

and

C.M.P.No.14789 of 2018

nr 20/08/2019