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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 4th May, 2018*

+ W.P.(C) 4757/2018 & CM No.18309/2018 (stay)

MS. RICHA SHAILJA Petitioner

Through: Mr.Anil Mittal, Mr.Satyender Chahar and
Ms.Sayli Petiwale, Advocates.

versus

UNION OF INDIA AND ANR. Respondents

Through: Ms.Suparna Srivastava, CGSC with
Ms.Sanjana Dua and Mr.Tushar Mathur,
Advocates for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No.18310/2018 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 4757/2018 & CM No.18309/2018 (stay)

3. This matter has been received on transfer as DB-VI has not assembled today.
4. This is a petition under Article 226 of the Constitution of India filed by the petitioner being aggrieved by an order dated 24.04.2018 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') whereby an application bearing M.A. No.1392/2018

seeking stay of transfer order dated 18.12.2017 has been dismissed.

5. The petitioner had joined the services in the Ministry of Water Resources on 01.07.2013 as a Lower Division Clerk (LDC) on compassionate ground, post the demise of her husband. The petitioner is stated to be the sole bread earner and is looking after her two minor daughters.
6. The petitioner was transferred from Planning and Investigation Division, Faridabad to Planning Circle, Central Water Commission (CWC), Jaipur, vide order dated 18.12.2017. The petitioner claims that her Annual Performance Report (APR) for the year 2016-17 was graded as '8' and 'very good'. On 03.03.2017 she was granted an Honorarium sanctioned by the Hon'ble President of India for excellent work and services during the tenure 2016-17.
7. It is also claimed that the petitioner was awarded remuneration for her extra work, which she did on a holiday on 04.10.2017. Mr.Mittal, counsel for the petitioner submits that there is enough evidence on record to show that the petitioner is a hard working and dedicated employee.
8. Being aggrieved by the order dated 18.12.2017, by which the petitioner was transferred from Faridabad office to Jaipur, Rajasthan, led to filing of O.A. No.1247/2018, after her representation was rejected. Along with the O.A., petitioner had also filed an application seeking stay of her transfer, which has been rejected vide order dated 24.04.2018.
9. Mr.Mittal, learned counsel for the petitioner has raised various grounds to show that the impugned order is bad in law and is thus,

liable to be set aside by this Court. Mr.Mittal further submits that the impugned order lacks reasons and the learned Tribunal has simply relied upon the stand taken by the respondents while rejecting her representation. Mr.Mittal also contends that the Tribunal should have applied its mind independently and de hors the stand of the respondents, else the purpose and objective of adjudication by an independent Tribunal would be rendered meaningless. Mr.Mittal, counsel for the petitioner further submits that the Tribunal has failed to take into account the submissions made including the submission that the transfer order is punitive in nature and thus, liable to be set aside. Mr.Mittal has further prayed that the impugned order be set aside and the matter be remanded back for fresh hearing.

10. Counsel for the respondents has opposed this petition. Reliance is placed upon an order dated 15.02.2018, whereby the respondent No.2 had disposed of the representation made by the petitioner. Counsel for the respondents, thus, submits that cogent reasons have been given at the time of rejection of the request of the petitioner.
11. Counsel for the petitioners submits that a reading of the order of Tribunal would show that the stay application was dismissed only on the ground that the representation of the petitioner was dismissed, which alone cannot be a ground to reject her stay application.
12. Notice to show cause as to why the petition be not admitted. Counsel appearing on behalf of the respondent Nos.1 and 2 accepts notice. Counsel for the respondent Nos.1 and 2 has drawn the attention of the Court to the order dated 18.01.2018 in support of her submissions that relevant reasons were given when the representation of the petitioner

was considered and rejected. She contends that the Tribunal was convinced by the same reasons while dismissing the application for stay.

13. We have heard the learned counsels for the parties. With the consent of both the parties, we dispose of the writ petition at the admission stage itself.

14. The order of the Central Administrative Tribunal reads as under:

“MA No.1575/2018-This MA has been filed to take on record an order dated 18.01.2018 of the Central Water Commission. In the Circumstances, the MA is allowed. The said document enclosed to the MA shall be taken on record of the OA and appropriate pagination may be given.

MA No.1392/2018-The instant MA has been filed seeking to stay the order dated 18.12.2017. In the circumstances and since the representation made by the applicant against the order dated 18.12.2017, was already considered and rejected by the respondents, we do not find any merit in the MA and the same is accordingly dismissed. However, the joining of the applicant at the new place of posting is without prejudice to her rights in the OA.

For filing reply by the respondents, list on 30.05.2018.”

15. Reading of this order would show that the only reason for rejecting the application of the petitioner is that the representation of the petitioner stands rejected. The impugned order in our view is not a reasoned order. The petitioner being dissatisfied by the reasons given by the respondents while rejecting her representation has led to the filing of the OA and an application seeking stay of transfer. While dealing with the similar issue, the Hon’ble Supreme Court of India in

the case of *Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others* reported in (2010) 9 SCC 496 has held that reasons have become an indispensable component of the decision making process. The Supreme Court has highlighted that even a quasi-judicial authority must record reasons in support of its conclusions. The Supreme Court has underlined the principle that recording of reasons is meant to serve the wider principle of justice that must not only be done but it must appear to be done. The Supreme Court of India while delivering the aforesaid judgment revisited the law and analysed the same on the subject in great depth. The relevant paragraphs of the case of *Kranti Associates Private Limited* (*supra*) read as under:

“12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262: AIR 1970 SC 150.

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.

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 : AIR 1970 SC 1302, 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 : AIR 1971 SC 862, 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 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 : 1973 SCC (L&S) 551 : AIR 1973 SC 2758 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).

28. In *Gurdial Singh Fijji v. State of Punjab*, (1979) 2 SCC 368 : 1979 SCC (L&S) 197, this Court, dealing with a service matter, relying on the ratio in *Union of India v. Mohan Lal Capoor* (1973) 2 SCC 836 : 1974 SCC (L&S) 5, held that “rubber-stamp reason” is not enough and virtually quoted the observation in *Union of India v. Mohan Lal Capoor* (1973) 2 SCC 836 : 1974 SCC (L&S) 5, to the extent that: (*Capoor* case (1973) 2 SCC 836 : 1974 SCC (L&S) 5, 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 : 1980 SCC (Tax) 16 : AIR 1980 SC 1 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*, (1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1, 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 : AIR 1984 SC 160, 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* [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87] and *Siemens Engg.* [(1976) 2 SCC 981 : AIR 1976 SC 1785] discussed above.

32. In *Ram Chander v. Union of India* (1986) 3 SCC 103 : 1986 SCC (L&S) 383 : (1986) 1 ATC 47 : AIR 1986 SC 1173, 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).

44. But, however, the present trend of the law has been

towards an increasing recognition of the duty of court to give reasons (see *North Range Shipping Ltd. v. Seatrans Shipping Corpn.*, (2002) 1 WLR 2397 : (2002) 4 All ER 390 : (2002) 2 All ER (Comm) 103 (CA)). 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 : (2002) 3 All ER 385 (CA), 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 : (2004) 2 All ER 237 (HL), 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 v. Union of India*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] 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*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984, this Court relied on the decisions of the US Court in *Securities and Exchange Commission v. Chenery Corpn.*, 87 L Ed 626 : 318 US 80 (1942)

and *Dunlop v. Bachowski*, 44 L Ed 2d 377 : 421 US 560 (1974) 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 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*, (1987) 100 Harvard Law Review 731-37)

(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* (1994) 19 EHRR 553, EHRR, at 562 para 29 and *Anyia v. University of Oxford*, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the 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”.

16. Applying the law to the facts of the present case, we are of the considered view that the learned Tribunal should have applied its mind independently and should have considered the rival submissions of both the parties and thereafter decided the

application seeking stay of transfer by a reasoned order. For the reasons aforegoing, we set aside the order dated 24.04.2018 and direct the Tribunal to hear M.A. no.1392/2018 afresh and pass a reasoned order.

17. The writ petition and CM No.18309/2018 are disposed of in the above terms.
18. The parties will appear before the Central Administrative Tribunal Principal Bench, New Delhi on 09.05.2018.
19. Copy of this order be given *dasti* under the signature of the Court Master.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 04, 2018
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