

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CWP No.9789 of 2018 (O&M)

Date of decision: 14.10.2019

Vinit Ahuja

..... Petitioner

Versus

State Bank of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jagdish Manchanda, Advocate
for the petitioner.

Ms. Madhu Dayal, Advocate
for the respondents.

ARUN MONGA, J. (ORAL)

1. Without commenting on the merits of the case, after perusal of the impugned appellate order dated 30.10.2017 (Annexure P-76), I am of the view that the same is as cryptic and non-speaking as it can be. The appeal of the petitioner was dismissed by the Appellate Authority on the specious plea that Appellate had not brought anything new in his submissions which merits modification in the punishment awarded by the disciplinary authority.

2. In somewhat similar circumstances, this Court in a judgment rendered in case titled 'Dr. P.K. Mittal Vs. State of Punjab and others', 1982(2) SLR 267, observed that unless the competent authority while passing of order reflects his mind, it is not possible for the Court to decide as to what transpires to reach the conclusion of summary dismissal as has been done in the present case. His Lordship M.M. Punchhi, J. (as he then

was) speaking for this Court observed that:-

*“The only contention raised by Mr. J. L. Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on **Ram Dass Chaudhary v. State of Punjab and another, 1968 S. L. R. 792**, wherein P. C. Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in **Bhagat Raja v. Union of India and others, AIR 1967 Supreme Court 1606**, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature. The case before P. C. Jain, J. arose from an appellate order of the Government, but here the impugned order is on the original side.*

*In **State of Punjab v. Dr. R. K. Chopra, 1978(1) I. L. R. 1**, a Division Bench of this Court approved P. C. Jain, J's view in Ram Dass Chaudhary's case (supra) To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court. Ex facie, something has to be available on the face of the order from which the Court of correction has to go by.*

In the instant case, as is plain, the order was that the reply of the petitioner had been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be true, that it indicates the

reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner. The arena for the respective two spheres is well marked. And though permitted to over-shadow 'to some extent, cannot have the effect of superimposition to wipe out the ultimate aspect altogether.'"

3. I may hasten to add here that in the case in hand, against the order of disciplinary authority, first appeal is a statutory right of the petitioner and he ought to have been heard and speaking order passed thereon by giving reasons to agree or disagree.

4. Applying the judgment *ibid*, the impugned appellate order is not sustainable in law. On this short ground, as no reason has been assigned while dismissing the appeal of the petitioner, the appellate order is liable to be set aside.

5. In the circumstances, the appellate order is set aside and the writ petition is disposed of with a direction to respondent No.3 to dispose of the appeal by passing a fresh speaking order after granting opportunity of being heard to the petitioner.

6. Learned counsel for the respondent has also raised an objection with regard to the jurisdiction of this Court to challenge the appellate order. The said objection is kept open, to be decided in appropriate proceedings and this order shall not come in the way of respondent to raise the objection of jurisdiction in any later proceedings.

7. Disposed of in above terms.

(ARUN MONGA)
JUDGE

14.10.2019
D.Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No