

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

109 WRIT PETITION NO.11231 OF 2019

SUBHASH BUDHAJI WAGH
VERSUS
THE NEW INDIA ASSURANCE CO. LTD., MUMBAI AND ANOTHER

...
Mr. S. R. Barlinge, Advocate for Petitioner.

Mr. S. G. Chapalgaonkar, Advocate for Respondents.
...

CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.

DATE : 30th August, 2021.

PER COURT:

. We have heard Mr. Barlinge, learned counsel for petitioner and Mr. Chapalgaonkar, learned counsel for respondent.

2 The petitioner retired on attaining the age of superannuation on or about 31st December, 2018. The contention of the petitioner is that the enquiry was conducted after retirement. The enquiry was conducted with *mala-fide* intention and with an ulterior motive. According to the learned advocate, the Enquiry Officer appointed was not competent as per the Vigilance Manual. The enquiry was not conducted impartially. The petitioner was dismissed from service after more than four years of his retirement. The appeal filed by the petitioner was decided in mechanical manner without

assigning proper reasons. The learned counsel submits that the appellate authority has to give reasons while dismissing the appeal of the petitioner. The learned counsel relies upon the judgment of the Apex Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others, reported in, (2009) 4 Supreme Court Cases 240. The learned counsel also relies upon the judgment of the Division Bench of this Court in the case of Anil Amrut Atre Vs. District and Sessions Judge & another, reported in, 2003 (2) Bom.C.R. 246.

3 Mr. Chapalgaonkar, learned counsel for respondents submits that under the Service Rules, the provision exist that the enquiry can be conducted even after the retirement of the employee. As per the CVC Vigilance Manual, the enquiry was conducted by he competent person. The Enquiry Officer was senior to the petitioner. The learned counsel submits that every opportunity was given to the petitioner during the course of enquiry. After the appellate authority's order dismissing the appeal, the memorial was preferred before the Chief Managing Director. The Chief Managing Director has also dismissed the same. All the authorities are concurrent. The reasons are given, though may not elaborate. The grounds of appeal have been dealt with.

4 Mr. Chapalgaonkar, learned counsel relies upon the judgment of the Apex Court in the case of *Oriental Bank of Commerce and another Vs. R.K. Uppal*, reported in, *(2011) 8 Supreme Court Cases 695*.

5 Mr. Barlinge, learned counsel did not seriously dispute that even after the retirement, the enquiry can be conducted as per the Service Rules governing the parties.

6 As far as the objection that the Enquiry Officer appointed was not competent to conduct the enquiry, we do not find the same to be proper. The Enquiry Officer was competent to conduct the enquiry, he was senior to the petitioner.

7 The emphasis was laid more on the ground that the reasons are not given by the appellate authority.

8 Nowadays, the distinction between the administrative order and quasi judicial order has almost obliterated. The reasons now are considered to be the third limb of the principles of natural justice. The reasons depict the application of the mind of the authority passing the order. The reasons have the link between the final conclusion and the evidence on record.

9 An order bereft of reasons cannot be sustained.

10 We can understand that the appellate authority hearing the appeal is not a judicial nor quasi judicial officer. The Court cannot expect an elaborate and detail reasoning from such an administrative authority. However, reasons in brief explaining that the grounds raised in the appeal are dealt with have to be demonstrated in the order dismissing the appeal. The grounds are raised in the memo of appeal. The appellate authority has culled out the grounds raised by the petitioner in the appeal, however, has not dealt with it while arriving at conclusion. The said grounds were required to be dealt with by brief reasons though not elaborate one.

11 As the appellate order does not demonstrate the grounds raised in the appeal being considered, we set aside the appellate order.

12 The matter is remitted to the appellate authority for reconsideration of the appeal filed before it.

13 The appellate authority may examine the grounds raised by the petitioner in the appeal and may deal with the same afresh.

14 The appeal may be decided afresh in accordance with the procedure, preferably within three months.

15 The writ petition is accordingly disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

nga