

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10207 of 1996 (O&M)
Date of decision: 15.01.2024

Dev Raj Kalsi (since deceased) through his LRs
.....Petitioner
Versus

Punjab State Civil Supplies Corporation Limited
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Ms. Brea Sandhu, Advocate
for Ms. Deepali Puri, Advocate
for the respondent.

NAMIT KUMAR J.

1. Feeling aggrieved against the impugned orders of dismissal dated 22.03.1995/10.04.1995 (Annexure P-7) and the appellate order dated 15/16.05.1996 (Annexure P-9), the petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari to quash the said dismissal order.

2. Brief facts of the case are that the petitioner joined the Punjab State Civil Supplies Corporation Limited (hereinafter to be referred as 'the PUNSUP') as Sub-Inspector in the year 1975 and he was transferred and posted as Sub-Inspector at Jalalabad Centre, to assist the Centre In-charge vide order dated 09.05.1985. Thereafter, the petitioner was placed under suspension vide order dated 17.03.1989 and was issued a charge-sheet dated 21.09.1989 under Rule 8 of the Punjab

Civil Services (Punishment & Appeals) Rules, 1970 and the same was received by him through the District Magistrate, PUNSUP, Ferozepur on 06.10.1989. A detailed reply, sent by registered post, was submitted by the petitioner to the charge-sheet on 23.10.1989, denying the allegations levelled in the charge-sheet. He also sought personal hearing to clarify his position in order to prove his innocence of the alleged allegations, however, vide order dated 17.09.1990, Sh. B.S. Sidhu, Deputy Director (Headquarters) was appointed as an Enquiry Officer, who conducted the enquiry and submitted his enquiry report and the allegations levelled against the petitioner were proved, which was forwarded to him vide letter dated 20/23.07.1993 (Annexure P-5) and his written defence statement was sought to the said enquiry report. The petitioner submitted his written defence statement dated 17.08.1993, however, without considering the same, the petitioner was imposed the penalty of dismissal from service along with recovery rights for an amount of Rs.10,83,443.39/- vide order dated 22.03.1995 (Annexure P-7).

3. Feeling aggrieved against the punishment order dated 22.03.1995, the petitioner filed a detailed appeal dated 30.04.1995, however, the same has been dismissed vide order dated 15/16.05.1996.

4. Thereafter, aggrieved against the dismissal order dated 22.03.1995 as well as the appellate order dated 15/16.05.1996, the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner submits that apart from the other grounds taken in the writ petition, one of the ground for challenging the punishment and appellate order is that the same are

cryptic and non-speaking. He submits that the petitioner submitted his written defence statement dated 17.08.1993 running into 19 pages (Annexure P-6), however, the same has not even been considered by the respondent/PUNSUP while passing the impugned order of punishment and rather in para 1 of the said order, it has been stated that the petitioner has made no representation before the authorities. He further submits that against the order of punishment dated 22.03.1995, the petitioner filed a detailed appeal running into 16 pages, however, none of the points raised in the appeal have been considered by the appellate authority while rejecting the appeal vide order dated 15/16.05.1996 (Annexure P-9). He submits that since the punishment order and the appellate order are cryptic and non-speaking, therefore, the same are liable to be set-aside.

6. Learned counsel appearing for the respondent could not dispute the abovesaid factual aspect and could not justify passing of the cryptic and non-speaking punishment order as well as appellate order.

7. I have heard learned counsel for the parties and perused the record.

8. The charge-sheet was issued to the petitioner under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. Rule 19 of the 1970 Rules, deals with "Consideration of Appeal", which reads as under:-

"19. Consideration of appeal-(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 4 and having regard to the circumstances of the case, the order of suspension is justified or not and

confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing of the penalties specified in rule 5 or enhancing any penalty imposed under the said rule, the appellate authority shall consider –

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the punishing authority are warranted by the evidence on the record, and

(c) whether the penalty or the enhanced penalty imposed is adequate or severe;

and pass orders –

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that –

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) to (iv) XXXX XXXX XXXX”

9. A perusal of the dismissal order dated 22.03.1995, would show that the same has been passed on a wrong premises that no representation has been submitted by the petitioner whereas the petitioner has placed on record a detailed written defence statement dated 17.08.1993 (Annexure P-6), which has been submitted by him against the findings recorded by the Enquiry Officer and none of the points raised therein have been considered by punishing authority while passing the dismissal order. Further the appellate order is also to the

same effect and is totally cryptic and non-speaking and the concluding para of the appellate order, reads as under:-

“In compliance of the above said orders of Hon’ble high Court, the Appellate Committee heard the appeal of Shri Kalsi Ex-sub Inspector, PUNSUP, in its meeting held on 3.5.96 at 3.00 P.M. After considering the grounds of appeal, and submissions made by the appellant, the appeal was dismissed and punishment awarded was confirmed.

Tejinder Kaur
Managing Director”

10. The respondent/authorities were under legal obligation to assign cogent reasons while passing the impugned orders dated 22.03.1995 and 15/16.05.1996 (Annexures P-7 and P-9, respectively) so that this Court, while exercising its power of judicial review, may be in a position to know as to what were the reasons weighing in the mind of the authorities, while passing the impugned orders. It is so said because the aim of the principles of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Since the horizon of natural justice has been constantly expanding in the recent past, hardly any visible distinction is left in the functioning of the administrative and quasi-judicial bodies, so far as the necessity of recording the reasons is concerned. That is why reasons are called the soul of an order.

11. The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **“*Ram Phal v. State of Haryana*”, 2009(1) SCC (L&S) 645**. The relevant observations made by the Hon'ble Supreme Court in para 6 of the judgment in Ram Phal's case (supra), which can be gainfully followed in the present case,

read as under:-

*“The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man's sense of justice and also a healthy discipline for all those who exercise power over others. This Court in **Raj Kishore Jha v. State of Bihar** has stated:*

19....Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

12. Again, while dealing with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice as well as recording reasons, the Hon'ble Supreme Court laid down the broad guidelines in this regard, in the case of “**Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others**”, (2010) 9 SCC 496. The relevant observations made in para 47 of the judgment, which aptly apply in the present case, read as under:-

“47. Summarizing 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).

*(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 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".

13. Same view was held in judgment of Hon'ble the Apex Court in “**Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others**”, **2009(4) SCC 240**. The relevant portion of said judgment is reproduced as under :-

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not

contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in **Divl. Forest Officer Vs. Madhusudhan Rao** (vide SCC para 20: JT para 19) and in **M.P. Industries Ltd. Vs. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. Vs. Union of India** (vide SCC para 6 : AIR para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in **S.N. Mukherjee Vs. Union of India**, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in **S.N. Mukherjee** case, it has been observed that : (SCC p. 613, para 36)

“36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate

authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.

*10. For the same reason, the decision of this Court in **State of Madras Vs. A.R. Srinivasan** (vide AIR para 15) has also to be understood as explained by us above.*

11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order.”

14. Similar views have been observed in **“Ram Chander Vs. Union of India and others”**, 1986(3) SCC 103, **“Sengara Singh and others Vs. State of Punjab and others”**, 1983(4) SCC 225, **“State of U.P Vs. Raj Pal Singh”**, 2002(1) SCT 205 as well as judgments of this Court in case **“Gulab Singh Vs. Maharshi Dayanand University, Rohtak and others”**, 2005(1) PLR 440, **“State of Punjab Vs. Pargat Singh through LRs”**, 2004(3) RSJ 604, **“Nafe Singh Vs. Haryana Land Reclamation and Development Corporation Ltd. and others”**, 2016(1) SCT 212, **“Pritam Singh Vs. Haryana State Electricity Board”**, 1995(2) SCT 754 and **“R.S. Bhatti vs State of Haryana”**, 2001(2) SCT 1156.

15. The appellate order is against the provisions of Rule 19 of the 1970 Rules, which clearly provides as to how the appeal filed against the order of punishment is to be considered by the Appellate Authority.

16. Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that since the impugned orders are cryptic and non-speaking, they cannot be sustained. The respondent/authorities have failed to discharge their legal obligation and acted in violation of the

above-said guidelines laid down by the Hon'ble Supreme Court and also Rule 19 of the 1970 Rules, therefore, impugned orders cannot be sustained for this reason as well.

17. In view of the facts as mentioned above and law position as discussed, the present petition is allowed. Impugned order dated 22.03.1995/10.04.1995 (Annexure P-7) passed by the Punishing Authority and the order dated 15/16.05.1996 (Annexure P-9), passed by the Appellate Authority, are set-aside and the case is remanded back to the Punishing Authority for fresh consideration in view of the observations made hereinabove and pass necessary orders, in accordance with law within a period of 03 months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

15.01.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No