

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-18319 of 2004

Date of decision: 06.02.2024

Bharat Bhushan Handa

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Balram Singh, Advocate,
for the petitioner.

Mr. Ashish Rawal, Advocate,
for respondent No.1-UOI.

Mr. Bhushan Bhatia, Advocate,
for respondent No.2.

NAMIT KUMAR, J.

1. This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the order dated 08.01.2002 (Annexure P-7) and order dated 09.05.2002 (Annexure P-9).

2. Learned counsel for the petitioner submits that apart from other grounds which have been taken in the present writ petition, one of the ground to challenge the order dated 09.05.2002 (Annexure P-9) passed by the Appellate Authority, whereby appeal against the order dated 08.01.2002 (Annexure P-7) vide which petitioner was removed from service, has been dismissed, is that the same is cryptic and non-speaking order as none of the points raised in the appeal has been considered and dealt with. He submits that the said order is liable to be

set aside and the matter may be remanded back to the Appellate Authority for reconsideration and its decision on merits.

3. On the other hand, learned counsel for the respondent No.2 could not justify the passing of the impugned order by the Appellate Authority which is totally cryptic and non-speaking.

4. I have heard learned counsel for the parties and perused the relevant documents.

5. The order dated 09.05.2002 (Annexure P-9) passed by the Appellate Authority reads as under :-

“This has reference to your appeal dated 18.02.2002 against order the Disciplinary Authority of the bank dated 08.01.2001 imposing the penalty of “Removal from the Bank’s Service”.

The decision of the Board, appellate authority in its meeting dated 03.05.2002 is appended for your information.

“The Board considered the appeal and thoroughly discussed all aspects of the case including principles of natural justice. The Board did not find any merit in the appeal and unanimously concurred with the order of the Disciplinary authority. As such, the Board has decided to uphold the decision of the Disciplinary authority for imposing the penalty of removal upon Sh. Handa and reject his appeal.”

*Sd/-
Senior Manager”*

6. Perusal of the order reproduced above would show that none of the points raised by the petitioner in his appeal dated

18.02.2002 (Annexure P-8) has been considered and decided by the Appellate Authority.

7. The respondent/authorities were under legal obligation to assign cogent reasons while passing the impugned order dated 09.05.2002 (Annexure P-9) 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 authority, while passing the impugned order. It is so said because the aim of the rules 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 a judgment.

8. 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 *ibid*, 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 and others, (2003) 11 SCC 519*** has stated:*

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

9. 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".

10. Same view was held in judgment of Hon'ble the Supreme 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.”

11. Similar views have been observed by the Hon'ble Supreme Court 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 in the judgments of this Court in **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.

12. Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court and this Court, it is unhesitatingly held that since the appellate order is cryptic and non-speaking, it 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 as well as this Court, therefore, impugned order cannot be sustained for this reason.

13. In view of the facts as mentioned and position of law as discussed above, the present petition is allowed. Impugned order dated 09.05.2002, passed by the Appellate Authority is set-aside and the case is remanded to the Appellate Authority for fresh consideration and decision on merits in view of the observations made hereinabove and pass necessary orders, in accordance with law, within a period of three months from the date of receipt of certified copy of this order.

06.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No