



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

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CWP-13279-2018**Date of Decision : 28.08.2024**

Pawan Kumar

.....Petitioner

Versus

Punjab State Power Corporation Limited and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. V.K. Shukla, Advocate with
Mr. Ashish Gupta, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 22.09.2014 (Annexure P-5), passed by respondent No.2, whereby punishment of removal from service has been imposed upon the petitioner and the order dated 20.12.2017 (Annexure P-7), passed by respondent No.3, whereby an appeal filed by the petitioner against the punishment order dated 22.09.2014 has been rejected.

2. Learned counsel for the petitioner submits that apart from the other grounds which have been taken in the present writ petition, one of the ground to challenge the order dated 20.12.2017 (Annexure P-7), passed by the Appellate Authority, is that the same is non-speaking order as the grounds taken in the appeal dated 09.02.2015 (Annexure P-6) have not been taken into consideration. He submits that the said order

is nonest in the eyes of law and is liable to be set aside and the matter



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may be remanded back to the Appellate Authority for reconsideration after affording an opportunity of personal hearing to the petitioner.

3. On the other hand, learned counsel for the respondents has fairly conceded that the order passed by the Appellate Authority is non-speaking and ambiguous and has no objection to the prayer made by learned counsel for the petitioner and submits that the Appellate Authority shall reconsider the appeal of the petitioner in accordance with law.

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

5. The disciplinary proceedings against the petitioner were initiated under Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 and charge-sheet dated 28.02.2011 (Annexure P-3) was issued against the petitioner under Regulation 8 of the said Regulations. Regulation 26 of the said Regulations, deals with “Consideration of Appeal”, which reads as under:-

“26. CONSIDERATION OF APPEALS

(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 Regulation 4 and having regard to the circumstances of the case of suspension is justified or not and confirm or revoke the order accordingly.

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

(a) whether the procedure laid down in these regulations has been complied with and if not, whether such non-compliance has resulted in the violation of any provision 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 excessive, adequate, inadequate or severe;*
- (d) whether the facts on which the order was based, have been established;*
- (e) whether the facts established afford sufficient ground for taking action 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) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (v) to (ix) of Regulation 5 and an enquiry under Regulation 8 has not already been held in the case, the appellate authority shall subject to the provisions or Regulation 14 itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Regulation 8 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit;

(ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Regulation 5 and an inquiry under Regulation 8 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with provisions of Regulation 10 of making a representation against such enhanced penalty.”

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6. I have perused the impugned order dated 20.12.2017 (Annexure P-7), passed by the Appellate Authority and the same reads as under :-

“With regard to above subject, your appeal against O/o No.990 dated 22.9.2014 whereby you were removed from service was considered by Hon’ble Director Finance on 15.10.2015 and after hearing your side reached to the conclusion that :

“Sh. Pawan Kumar SAS Accountant (removed from service) due to remain on leave without sanction remained unsuccessful to participate in the inquiry and to furnish the reply to the charge-sheet issued to him by the competent authority. In compliance of the posting order issued to him on his request, he did not join. The competent authority asked him to join duty repeatedly through letters and newspaper notice, but he did not bother for the same. Today during his personal hearing he could not produce any fact regarding remaining absent and not furnishing reply to the letters and for not complying with the posting orders. Therefore, the punishment awarded to him cannot be reconsidered and the undersigned is completely agreeing to the same.”

This is for your information.”

7. Perusal of the order reproduced above would show that no points raised in the detailed appeal dated 09.02.2015 (Annexure P-6) have been considered and dealt with by the Appellate Authority while rejecting the appeal filed by the petitioner.

8. The respondent/authorities were under legal obligation to assign valid and cogent reasons while passing the impugned order dated



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20.12.2017 (Annexure P-7) 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 of 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.

9. 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 and others : (2003) 11 SCC 519*** has stated:*

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

10. 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 51 of the judgment, which aptly apply in the present case, read as under:-

“51. 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 (1994) 19 EHHR 553, at 562 para 29 and Anya v. University of Oxford : 2001 EWCA Civ 405, 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".*

11. 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 :-

“7. 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.

*The view we are taking was also taken by this Court in **Divl. Forest Officer Vs. Madhusudhan Rao : JT 2008 (2) SC 253 (vide para 19)** and in **M.P. Industries Ltd. Vs. Union of India : AIR 1996 Supreme Court 671, Siemens Engg. & Mfg. Co. of India Ltd. Vs. Union of India : AIR 1976 Supreme Court 1785 (vide para 6), etc.***

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

9. *The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in **S.N. Mukherjee Vs. Union of India : (1990) 4 SCC 594**, is that people must have confidence in the judicial or quasi-judicial authorities.*

10. *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.*

No doubt, in S.N. Mukherjee case (supra), it has been observed that : (vide 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.”

11. *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.

12. *For the same reason, the decision of this Court in **State of Madras Vs. A.R. Srinivasan : AIR 1996 Supreme Court 1827** (vide para 15) has also to be understood as explained by us above.*

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

12. 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**.

13. 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 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 fairly



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conceded by learned counsel appearing for the respondents, therefore, impugned order cannot be sustained for this reason as well.

14. In view of the facts as mentioned above and law position as discussed, the present petition is partly allowed. Impugned order dated 20.12.2017 (Annexure P-7), passed by the Appellate Authority is set-aside and the case is remanded back to the Appellate Authority for fresh consideration and decision on merits, in view of the observations made hereinabove and pass speaking order after affording an opportunity of personal hearing to the petitioner within a period of four months from the date of receipt of certified copy of this order.

28.08.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No