

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

105/2

2024:PHHC:027041-DB

LPA-1375-2023 (O & M)
Date of Decision: 27.02.2024

State of Punjab and another

.....Appellant(s)

Versus

Jaswinder Singh and another

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Saurav Khurana, Addl. A.G., Punjab.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

CM-3503-LPA-2023

1. Application for condonation of delay of 185 days in filing the appeal is allowed, in view of the averments made in the application supported by affidavit of official of the State.
2. Delay condoned.
3. CM stands disposed of.

LPA-1375-2023 (O & M)

4. Consideration in the present letters patent appeal is to the order passed by the learned Single Judge on 16.02.2023 in CWP-24781-2018, Jaswinder Singh vs. State of Punjab and others whereby, the said writ petition filed by Jaswinder Singh (respondent herein) was allowed. Resultantly, the order dated 01.06.2017 (Annexure P-7) wherein by reviewing the earlier order dated 14/19.08.2015, one major punishment of stoppage of two annual increments with future effect which had been imposed was set aside.
5. The reason which weighed with the learned Single Judge was that the power of review as such under Rule 21 of the Punjab Civil Services

(Punishment & Appeal) Rules, 1970 did not give the same authority the power

to review its order. The power vests with the Governor or the Appellate Authority or any other authority specified in this behalf by general or special order. It was accordingly held that even if the officer who had passed the impugned order being the Additional Chief Secretary is taken to be the Appellate Authority, the same could have been reviewed only within a period of six months and after that the Appellate Authority would have become *functus officio*.

6. Without going into the said aspect regarding the applicability of the Rule, we are of the considered opinion that the order itself whereby the punishment of stoppage of two increments with cumulative effect was imposed is a non-speaking order and cannot be sustained on that ground also. A perusal of the paper book would go on to show that initially, the writ petitioner had been charge sheeted on 20.02.2009 (Annexure P-1) under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. An inquiry was, thus, conducted by an officer who was a retired Additional District and Sessions Judge, who gave a report as such whereby, three persons' role was noticed differently in their defence. The same reads thus:-

“14. Similarly, the plea taken by M.M. Syal, Joginder Singh as well as Jaswinder Singh (COs) to the effect that they had taken immediate steps to stop the ongoing illegal construction and were instrumental in the issuance of demolition notice also cannot be taken into consideration as contrary to their version, the construction activity was found going on at the spot by clubbing both the plots as one single unit contrary to the sanctioned plans during the visit of the vigilance team.”

7. Apparently, keeping this in mind, the Punishing Authority as per the said report of the Enquiry Officer, dropped the charge sheets on 14.08.2015 (Annexure P-3) against the said three persons including the writ petitioner

Jaswinder Singh, the Building Inspector. The said order passed by the Secretary, Local Self Government, Department of Punjab was issued as per the orders of the Hon'ble Local Government Minister.

8. Apparently, since the inquiry report dealt with other officials also who were also to be proceeded against namely A.K. Singla, Superintending Engineer and Sh. Gurcharan Singh, Executive Engineer and their punishment orders as such thereafter were to be considered. Thus, an opportunity of hearing was then provided on 27.04.2017 to the writ petitioner alongwith the other persons whose charge sheets had also been dropped. Resultantly, the impugned order was passed imposing punishment of stoppage of two annual increments with future effect by the Additional Chief Secretary, Government of Punjab, again with the approval of the Minister to the Local Self Government. The two persons similarly situated, against whom charges were dropped, were granted the punishment of stoppage of one increment without future effect. The order does not depict as such the reason to show as to how the writ petitioner was separately placed against others who were only given a minor penalty whereas he was imposed with the major penalty with cumulative effect. Apart from that, the order also does not go on to show in any manner as to what weighed with the Punishing Authority at that point of time to differ and take a different view on an earlier occasion on 14.08.2015.

9. It is settled principle that an administrative order having consequences has to be speaking order and has to provide reasons and cannot be silent like a phoenix as the Courts as such are then handicapped to know what weighed with the authorities. On this account itself, we are of the considered opinion that the order itself is not sustainable keeping in view the law laid down in *M/s Kranti Associates Pvt. Ltd. and another Vs. Shri Masood Ahmed Khan*

& others, 2010(4) RCR (Civil) 600 wherein, it has been held that even if an

administrative decision is taken which has prejudicial implications, it has to contain reasons. The relevant part reads as under:

“51. Summarising 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 life blood 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 (1987) 100 Harvard Law Review 731-737).

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 EHRR 553, at 562 para 29 and Anya vs. 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".

10. It is apparent that at that point of time since the senior officials as such had to be awarded the punishment namely Mr. A.K. Singla and Mr. Gurcharan Singh, a 3% cut in their pension was made vide the impugned order.

Apparently, it was only done since the senior officials would have put forth with

their defence that the writ petitioner had been duly exonerated and, therefore, they should also be given the same treatment. In the absence of any reasons, as noticed, it is apparent that the earlier punishing authority had applied its mind to the report of the Enquiry Officer and noticed the roles of the three officials and dropped the charge sheet against them. The second order does not show any application of mind to that extent. Even inquiry report has not been discussed and the effect of the same. It is settled principle that reasons have to be contained in the impugned order and now the State counsel cannot turn back to the justification given in the written statement. Reliance on this principle of law can be taken from ***Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405 at page 417***, wherein it has been held that authority cannot plead beyond the order under challenge. The Supreme Court has held:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] : “Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

grow older.”

11. Following above cited judgment in *Mohinder Singh Gill (Supra)*, the Hon’ble Supreme Court in a little recent judgment in ***OPTO Circuits (India) Ltd. vs. Axis Bank, (2021) 6 SCC 707 at page 715***, has held:

12. The action sought to be sustained should be with reference to the contents of the impugned order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court. This has been succinctly laid down by this Court in Mohinder Singh Gill v. Chief Election Commr. [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] as follows : (SCC p. 417, para 8)

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police v. Gordhandas Bhanji, 1951 SCC 1088] : (SCC p. 1095, para 9)

‘9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’

Orders are not like old wine becoming better as

they grow older.”

In fact, in the instant case such contention of having exercised power under Section 102 CrPC has not been put forth even in the counter-affidavit, either in this appeal or before the High Court and has only been the attempted ingenuity of the learned Additional Solicitor General. Such contention, therefore, cannot be accepted. In fact, in the objection statement filed before the High Court much emphasis has been laid on the power available under the PMLA and the same being exercised though without specifically referring to the power available under Section 17 of the PMLA.”

12. In such circumstances, we are of the considered opinion that the impugned order dated 01.06.2017 (Annexure P-7) as such which is subject matter of challenge is not liable to be sustained for the reasons separate than what the learned Single Judge has observed. Accordingly, finding no merit in the present appeal, the same stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

27.02.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No