(1972) 10 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2734 of 1970

H.K. Khanna APPELLANT

Vs

The Union of India and others RESPONDENT

Date of Decision : 08-10-1972

Acts Referred:
Punjab Municipal Act, 1911 — Section 16(1)(e)

Citation : (1972) 10 P&H CK 0035

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : M.R. Agnihotri with Mr. Rajinder Jain, for the Appellant; D.S. Nehra with Mr. S.S. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—The petitioner was appointed as-an Upper Division Clerk by the Accountant General, Punjab, at Lahore on July 5, 1947. After the partition of the country, he was transferred to the Office of the Accountant General, Central Revenue, New Delhi, in August, 1947, and thereafter was transferred to the office of the Accountant General, Punjab, Simla, in March, 1948 He passed the Subordinate Accounts Service examination in November. 1950. He was posted from place to place for a number of years, which really annoyed him. He addressed certain communications to the higher authorities which were considered to be against the provisions contained in the Government Servants Conduct Rules. The petitioner was given a charge-sheet on May 17, 1968, consisting of ten articles. The Statements of imputations of misconduct or misbehaviour in support of the articles were also supplied. He was asked to send his reply within ten days, which time was further extended. The petitioner submitted his reply on July 15, 1968, a copy of which is Annexure '' G '' to the writ petition. Finding his reply to be unsatisfactory, a regular enquiry was held and Shri M.S. Nat was appointed Enquiry Officer. The Enquiry Officer issued notice to the petitioner to be present at the enquiry or August 26, 1968. The petitioner did not choose to be present. He was repeatedly asked to be present before the Enquiry Officer between. August 26, 1968, and September 3, 1968, but the petitioner treated the enquiry with contempt and wrote to the Enquiry Officer--

Do what pleases you and do not bother me any more.

To another communication which was received by the petitioner on September 20, 1968, he wrote to the Enquiry Officer--

Please do not torture me any more. Seven years are more than enough

The Enquiry Officer thereafter held the enquiry ex parte, and submitted his report dated July 9, 1969. On receipt of this report, the Accountant General, Haryana, issued a notice to the petitioner dated December 8, 1969, informing him that on a careful consideration of the enquiry report he had agreed with the findings of the Enquiry Officer and held that the articles of charges against the petitioner were proved. He was provisionally of the opinion that the petitioner was not a fit person to be retained in service and so the penalty of compulsory retirement should be imposed on him. The petitioner was asked to show cause against the proposed penalty. A copy of the enquiry report was sent to him. In reply to that notice the petitioner submitted his reply on January 17, 1970. He challenged the findings arrived at by the Enquiry Officer and at the end submitted the following objections:--

(i) I have been given no opportunity to defend myself,

(ii) Inquiry report is nothing but the restatement of the charges/allegations against me.

(iii) The charge-sheet, as it is based on the presumption of guilt, and does not even take account of all the relevant facts brought out in various communications purported to have been written by me.

(iv) Whatever evidence has been recorded has been recorded at my back and still worse it has never been made known to me and I, therefore, do not have the opportunity to show the wrongs done in its assessment.

(v) The Inquiry Officer, being subordinate to the authority/authorities against whom allegations (which have been dubbed as false without any basis) were purported to have been made was not competent to inquire into the truth of otherwise of the statements purported to have been made by me in various communications and in the result it would appear that he, instead of going into the depth took the propositions made by the department as granted.

(vi) The test of suitability should be the public good and not the convenience on subjective acceptability of a particular person.

(vii) The tentative conclusion is therefore unwarranted and without any basis.

Thereafter he prayed in his reply that no reliance should be placed on the enquiry report and the case should be entrusted to an independent enquiry officer may be the Commissioner for Departmental Inquiries. After receipt of this explanation, Shri A.C. Bose, Accountant General, Haryana, passed a reasoned order on the file on February 18, 1970 rejecting the submissions made by the petitioner in his reply to the show-cause notice and ordered that he should be retired compulsorily as not being fit to be retained in service. Instead of communicating the reasoned order to the petitioner, only the following order was communicated to him:--

After carefully considering Shri H.K. Khanna''s reply dated the 20th January, 1970, in response to notice under Rule 15(4)(1) of the C.C.S. (Classification Etc.) Rules, 1965, and also fully taking into account all other factors, I have come to the conclusion that he is not fit to be retained in Government service. In my capacity as the disciplinary authority, I impose the penalty of compulsory retirement on Shri H.K. Khanna, S.A.S. Accountant, with effect from 28th February, 1970 (A.N.)

This order is dated February 21, 1970. The petitioner filed an appeal against that order, which was dismissed by the appellate authority and the order of dismissal was conveyed to the petitioner in a letter dated July 15, 1970, reading as under:--

Shri H.K. Khanna, Ex. S.A.S. Accountant, is hereby informed that his appeal to the appellate authority against his compulsory retirement by the disciplinary authority has been rejected after careful consideration of all the factors by the appellate authority. The appellate authority has further, in the exercise of the powers vested in him under Rule 27 of the C.C.S. (C.C.A.) Rules, 1965, confirmed the penalty of compulsory retirement imposed on Shri H.K. Khanna by the disciplinary authority.

This communication was received by the petitioner on July 27, 1970. The petitioner then filed the present petition questioning the validity and legality of these two orders. Written statements have been filed to which replications have also been filed.

2. I need not go into the facts of this case in detail. The learned counsel for the petitioner has pointed out that both the impugned orders deserve to be quashed on the simple ground that they are not speaking orders. There is no dispute that disciplinary proceedings against a Government servant, whether original or appellate, are quasi-judicial in nature. Not only that the principles of natural justice have to be followed but the final order has to contain the reasons which have to be communicated to the delinquent officer in order to enable him to effectively challenge those reasons in appeal or in other statutory proceedings available to him Their Lordships of the Supreme Court observed in Pragdas Umar Vaiahya v. Union of India C.A. 657 of 1067, Civil Revision No. 657 of 1967, decided on August 17, 1967, as under:

Recording of reasons and disclosure thereof is not a mere formality. The party affected by the order has a right to approach this Court in appeal, and an effective challenge against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order.

3. A similar view was expressed by their Lordships of the Supreme Court in Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhujhunwala AIR 1061 SC 1669. It was held by a Full Bench of five judges of this Court in The State of Punjab v. Bhagat Ram Patanga ILR (1960) 2 P&H 347, that the order of removal of a Municipal Commissioner u/s 16(1)(e) of the Punjab Municipal Act, 1911, is a quasi-judicial order and the state Government, while removing a Municipal Commissions., is expected to give an cutline of the process of reasoning by which they reached their decision. It was further observed that although appeal or revision from the State Government''s order u/s 16(1)(e) of the Municipal Act removing a Municipal Commissioner and imposing disqualification on him to contest election to a municipality for a stated period, does not lie at all, yet an authority which is called upon to determine and a judicate upon the rights of the parties is expected to give an outline of process of reasoning by which it reaches the decision. In view of these judgments, the two impugned orders are liable to be quashed on simple ground that they are not speaking orders.

4. The learned counsel for the respondents has, however, vehemently argued that in this case the petitioner had not participated in the enquiry proceedings in spite of various opportunities having been afforded to him In his reply to the charge-sheet he had, in fact, admitted the statement of allegations made against him, that is, he had sent the communications on the bask of which charges were framed against him. In such circumstances, the learned counsel submits that it was not necessary for the disciplinary authority or the appellate authority to pass a speaking order. Reliance in support of this submission is placed on the judgment of their Lordships of the Supreme Court in Channabasappa Basappa Happali v. The State of Mysore 1871 SLR 9. I have carefully gone through that judgment with the help of the learned counsel and do not find anywhere any mention of the order that had been passed in that case. It was held by their Lordships that when the appellant had admitted his guilt, then the order of punishment passed against him was perfectly legal and could not be set aside. The judgment does not indicate that the order passed in that case was not a speaking order. This judgment is, therefore, of no avail to the learned counsel.

5. The learned counsel then drew my attention to another judgment of their Lordships of the Supreme Court in State of Madras v. A.R. Srinivasan AIR 1986 SC 1827, wherein it was observed in paragraph 15 of the report as under:--

In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it teems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial, but having regard to the manner in which these enquires are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

6. These observations would have applied to the facts of this case if the petitioner had not raised objections to the Enquiry Officer''s report. In this case, it was incumbent on the disciplinary authority to refute the objections of the petitioner before the Enquiry Officer''s report was accepted in toto and the penalty was imposed on him. It has to be remembered that after the Enquiry Officer''s report, an opportunity had to be given and was afforded to the petitioner to show cause why that report should not be accepted and the proposed punishment should not be inflicted on him. When the petitioner tendered his explanation in reply to that notice, then the disciplinary authority could escaps the duty of recording reasons refuting his objections to the Enquiry Officer''s report or the punishment proposed in the show cause notice. As I have said above, in fact, the disciplinary authority passed a reasoned order on the file but did not communicate that reasoned order to the petitioner. Instead thereof, a cryptic order was issued to him which did not comply with the requirements of quasi-judicial order.

7. The order of the appellate authority is also liable to be quashed on the ground that it does not give reasons. In an appeal, it is absolutely necessary for the appellate authority to give its reasons why the grounds mentioned in an appeal are not accepted. An appeal provided by the statute cannot be dismissed without passing a reasoned order unless the statute authorises it. The petitioner, as has been pointed out by their Lordships of the Supreme Court in Pragdas Umar Vaiahya''s case (supra), has a right to challenge such a quasi judicial order in a writ petition under Article 226 of the Constitution or by way of application for special leave to their Lordships of the Supreme Court and that right cannot be effectively exercised if the petitioner does not know on what grounds or for what reasons his appeal has been rejected. It will be open to the disciplinary authority to pass another order and communicate it to the petitioner, if so desired.

8. For the reasons given above, this petition is accepted with costs and the two impugned orders are quashed. Counsel''s fee Rs. 100/-.

