

(2010) 11 SHI CK 0114
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 40 of 2010

Jiwan Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0114

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Disciplinary proceedings were initiated against the Petitioner. The enquiry officer was appointed. He submitted the report to the disciplinary authority. The disciplinary authority imposed the penalty of three increments with cumulative effect upon the Petitioner vide order 3rd October, 1988. Petitioner preferred an appeal before the appellate authority. The appellate authority dismissed the same on 09.03.1989. A bare perusal of order dated 09.03.1989 reveals that the same is neither speaking nor reasoned. It is now well settled that the orders passed by the disciplinary authority and appellate authority must be speaking and reasoned. The appellate authority has to take into consideration all the grounds raised in the memorandum of appeal. There must be due application of mind while deciding a statutory appeal.

2. Their Lordships of the Hon''ble Supreme Court in Roop Singh Negi Vs. Punjab National Bank and Others, have held as under:

Furthermore, the order of disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have assigned. If the enquiry officer had relied upon the confession made by the Appellant, there was no reason as to why the order of discharge passed by the criminal Court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the

Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inference drawn by the enquiry officer apparently were not supported by any evidence. Suspicion as is well known, however high may be, can under no circumstances be held to be substitute for legal proof.

3. In *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*, their Lordships of the Hon''ble Supreme Court have held that the appellate authority must give reasons while affirming the order of lower authority. Their Lordships of the Hon''ble Supreme Court in *G. Vallikumari Vs. Andhra Education Society and Others*, have held that the disciplinary authority must record reasons while passing the order.

4. Their lordships of the Hon''ble Supreme Court in *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers* (2010) 4 SCC 785 have held as under:

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

19. In the cases where the Courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the Court of competent jurisdiction are challenged in absence of proper discussion. The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court.

5. Accordingly, in view of the observations made hereinabove, the petition is partly allowed. Annexure A-E, dated 09.03.1989 is quashed and set aside. The appellate authority is directed to re-hear the appeal and decide the same fresh after taking into consideration the grounds/pleas raised in the memorandum of appeal by a speaking order. The Petitioner shall be heard in person. The needful

shall be done within a period of one month from the date of production of a certified copy of this judgment by the Petitioner.