

(2019) 07 PAT CK 0311

In the Patna High Court

Case No : Letters Patent Appeal No. 1459 Of 2018 In Civil Writ Jurisdiction Case
No. 13226 Of 2014

Krishna Kant Jha

APPELLANT

Vs

State Of Bihar Through The Secretary And Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 136, 227
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 27(2)
Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 22(2)

Citation : (2019) 07 PAT CK 0311

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Gyanand Roy, Bindhyachal Singh, Smriti Singh

Final Decision : Allowed

Judgement

1. Does an appellate authority owe any obligation to record reasons while affirming a dismissal order or not is the moot question raised in this appeal, which in turn also involves the issue of presumption of a valid exercise of appellate power by an authority none else than the Standing Committee of the High Court constituted under the Patna High Court Rules consisting of the Chief Justice and six puisne Judges. The presumption that a collective decision of the Standing Committee was arrived at upon a full consideration of the issues raised in the appeal which did not require recording of separate reasons while affirming the punishment order, is at the core of this debate.
2. Heard learned counsel for the appellant and the learned counsel for the respondents. The appellant is a dismissed Class-III employee of the District Judgeship of Darbhanga.
3. Taking exception to the rejection of his appeal by the High Court on the administrative side, the appellant filed a writ petition challenging the order of dismissal as also the appellate order. The writ petition was dismissed by a

learned single Judge on the ground that since the witnesses were examined and cross-examined during enquiry, therefore there is no procedural violation and consequently, no prejudice was caused to the appellant. The learned single Judge further recorded the finding that the allegation of non-supply of the statements during preliminary enquiry did not also cause any prejudice as the detail enquiry followed by a second show cause to the appellant had given all opportunity to him before the dismissal order was passed. The learned single Judge also held that the statements that were recorded during the preliminary enquiry had lost their significance on account of a regular enquiry having been held, and the statements of witnesses having been recorded with opportunity of cross-examining to the appellant.

4. In the penultimate paragraph, the learned single Judge records that even if the matter is remanded to the appellate authority for a decision by assigning reasons, the same would be of no legal consequence as there is no possibility of change in the decision of the appellate authority since the alleged non-supply of statements recorded during the preliminary enquiry will have no bearing on the matter.

5. Assailing the aforesaid findings, the present appeal has been filed and the learned counsel for the appellant contends that non-recording of reasons by itself vitiates the appellate order inasmuch as the appellate order as brought on record through the counter affidavit, which is in the shape of a resolution of the Standing Committee of the High Court clearly indicates that the appeal has been rejected by a one line sentence "The appeal be rejected".

6. Learned counsel for the petitioner has taken the Court through the documents on record and we have also perused the original record that was produced before us. The original record indicates that the incident was not reported by the Lawyers who deposed during enquiry about the taking of an alleged bribe by the appellant for the institution of a title suit in which a sitting Judge of this Court was a plaintiff. The complaint appears to have emanated at the instance of the then Hon'ble Inspecting Judge who appears to have issued a direction, upon which the then Registrar General issued a note to the District Judge, Darbhanga to enquire into the matter and also with regard to the status of posting of the employee. This set into motion a preliminary enquiry by the District Judge, Darbhanga who thereafter conducted a regular enquiry and recorded the statements of four witnesses. The first was of a Lawyer of the Darbhanga Civil Court Dr. Ashok Kumar Singh. The second was of another Lawyer of the same Court Shri Shashi Bhushan Prasad Singh and the third Shri Sunil Kumar Singh. The fourth witness Amarendra Singh disclosed his identity as an old client of Dr. Ashok Bahadur Singh. The deposition of all the four witnesses was to the effect that an alleged bribe was demanded by the appellant which was tendered to him and accepted. The amount of bribe money accepted and retained by him was returned back after two days.

7. There is a variation in the statements as we have noticed from the record,

namely, Dr. Ashok Kumar Singh has stated that the appellant had demanded and was insistent upon instituting the title suit only on satisfaction of a demand of Rs.300/- in spite of the fact that he was informed that the plaintiff was no one else than a sitting High Court Judge. Apart from this, the said witness stated that a sum of Rs.300/- had been demanded which the witness did not give to the appellant himself. For this, he employed the services of Amarendra Singh upon information being received from his colleague Sushil Kumar Singh whereafter he took out a sum of Rs.300/- and handed it over to Amarendra Singh to pass it on to the appellant. In order to ensure this transaction being witnessed, he also states that he asked his colleague Shri Shashi Bhushan Prasad Singh to accompany Amarendra Singh to witness the aforesaid transaction.

8. According to the three witnesses, a sum of Rs.300/- was tendered, but the appellant returned back Rs.100/- and took only Rs.200/- which amount he returned after two days.

9. According to the fourth witness Amarendra Singh, who is said to have actually given the money to the appellant, only Rs.200/- was tendered that was accepted by him. He does not depose, as the others, that Rs.300/- was offered to the appellant and he took only Rs.200/- and returned Rs.100/-. There is therefore a clear variation in the statements of the other witnesses and the statement of Amarendra Singh to the said effect.

10. There is one thing very peculiar which is noticeable in this case. Amarendra Singh claimed himself to be an old client of the Lawyer and he is neither his Clerk nor he is the plaintiff or a defendant but claims to be a Pairvikar of the title suit which was being instituted and in which the alleged incident is said to have taken place.

11. We are unable to comprehend as to why an ordinary litigant or a pairvikar would become a member of a "trap team" that went on to offer a bribe to the appellant and why would the appellant after two days return back the bribe money to him. One of the witnesses has also stated that there were other persons standing when the said transaction is stated to have taken place in the office of the Civil Court premises itself. The said witness has also indicated that he will be able to recognize those people by face, but he does not know their names. The manner in which this incident has been narrated by the witnesses, the presence of an independent witness would have substantiated the allegation of the incident. It is not understood as to why such persons were not produced as witnesses whom the witness claims to be able to recognize by their face. The presence also cannot be doubted, more so when the Civil Court is a busy place and there are other employees also of the Civil Court apart from litigants and lawyers. The story of the return of the bribe money, which has been denied by the delinquent, has not been substantiated as to when and where the money was returned and in whose presence. The witness has merely stated that the money was returned back to him after two days. There is no explanation as to how and when did the witness come to meet the delinquent for return of the bribe money.

These aspects relating to variation in evidence, and its assessment by the disciplinary authority, in spite of its existence on record has not found consideration by any reason being recorded in the punishment or appellate order.

12. When it comes to recording of reasons on the basis of material evidence, which has been led and exists on record, the reason howsoever brief deserves to be recorded in any order, particularly in a matter arising out of a disciplinary proceeding. The impugned appellate order nowhere reflects the same. The records which have been produced also do not indicate the existence of any reasons in the deliberations of the appellate authority. May be the records were before the Committee and had been perused but even this is not reflected in the order.

13. Shri Bindhyachal Singh, learned counsel for the respondents has vehemently urged that the recording of reasons is not necessary inasmuch as there is a presumption that when such a decision is taken by the Standing Committee of the High Court in appeal, the entire records were produced and every material was examined before proceeding to take a decision.

14. We may point out that even if such a presumption exists and has to be accepted as existing, yet the existence of power is one thing and its exercise is another. The exercise of such powers is clearly quasi-judicial in nature. In our opinion, therefore, recording of at least brief reasons may be necessary, particularly in cases where the evidence is being contested in the background of the present case.

15. Giving of reasons by the disciplinary authority is no longer in doubt. In the instant case, the appellate authority has rejected the appeal, thereby confirming the order of the disciplinary authority. In view of the Constitution Bench judgement in the case of S.N. Mukherjee Vs. Union of India, reported in (1990) 4 SCC 594, paragraph 36, it has been held that the appellate or revisional authority, if it affirms a punishment order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge. The words used by the Apex Court as referred to above are that "no separate reasons are required to be given if there is an agreement with the reasons contained in the order under challenge".

16. It is this issue that was being considered in the light of the provisions of the Army Act and Army Rules where the question was as to whether the confirming authority is required to record its reasons while confirming the finding of the court-martial proceedings. The Apex Court went on to hold that if the court-martial proceedings are being set aside or the sentence is being reduced then reasons have to be recorded, but not when the findings and sentence are confirmed. With regard to post confirmation proceedings where a representation/petition is heard by a higher authority, it was held that since reasons are not required to be recorded at the confirmation stage, therefore, there is no such requirement even when a higher authority is entertaining a representation. We

must remember that the aforesaid proceedings arose out of a court-martial under the Army Act, 1950 and the Army Rules, 1954 where more discipline and control is envisaged as against any other disciplinary proceedings by an administrative authority.

17. Giving of reasons is conducive and is an essential element of administration of justice. The recording of reason in appeal was considered by the Apex Court in the judgement of *State of West Bengal Vs. Atul Krishna Shaw & Anr.*, reported in 1991 Supp. (1) SCC 414, where the appellate authority in a matter of land settlement was the District Judge. The Apex Court held that the appellate authority is bound to consider the entire material to consider whether the reasons assigned by the primary authority is cogent, relevant to the issue and based on material evidence on record. The Apex Court observed in that case that the appellate authority had forsaken this salutary duty which the Legislature obviously entrusted it at the appellate stage.

18. We may point out that the judgement in the case of *S.N. Mukherjee (supra)*, the observations made by the Apex Court had been tendered at variance with the observations of the Apex Court in the case of *Siemens Engg. and Mfg. Co. Ltd. Vs. Union of India*, reported in (1976) 2 SCC 981, which was, however, in relation to the exercise of power by the appellate authority under the Customs Act and the Tariff Act of 1934. The Supreme Court observed that it was not suggesting that the appellate authority should have made an elaborate order, but could have been a little more explicit and articulate so as to lend assurance when the case of the appellant had been properly considered. The Apex Court also held that the Government, while rejecting the revision also failed to give any reasons which can be presumed that the same reason existed which prevailed with the Collector in appeal. However, the Court commented that it would have been better if the Government of India while rejecting the revision had given a proper consideration and then also went on to suggest that instead of the administrative authorities being conferred with such powers a quasi judicial tribunal should be set up in this regard. We may, however, record the earlier decision in the case of *M/s. Travancore Reyon Ltd. Vs. Union of India*, reported in (1969) 3 SCC 868, paragraph 9, 10 and 11:

"9. In a later judgment *Bhagat Raja v. Union of India* the Constitution Bench of this Court in effect overruled the judgment of the majority in *Madhya Pradesh Industries Ltd.* case. The Court held that the decisions of tribunals in India are subject to the supervisory powers of the High Court under Article 227 of the Constitution and of appellate powers of this Court under Article 136. The High Court and this Court would be placed under a great disadvantage if no reasons are given and the revision is dismissed by the use of the single word "rejected" or "dismissed". The Court in that case held that the order of the Central Government in appeal, did not set out any reasons of its own and on that account set aside that order. In our view, the majority judgment of this Court in *Madhya Pradesh Industries Ltd.* case has been overruled by this Court in *Bhagat*

Raja case.

10. In later decisions of this Court it was held that where the Central Government exercising power in revision gives no reasons, the order will be regarded as void; see *State of Madhya Pradesh v. Seth Narsinghdas Jankidas Mehta*; *State of Gujarat v. Patel Raghav Nath*s; and *Prag Das Umar Vaishya v. Union of India*.

11. In this case the communication from the Central Government gave no reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached, in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

19. The question here, however, is as to whether an appellate body is obligated to give its reasons even while affirming a reasoned order given by the lower authority in a service matter. It is here we may point out that there are no reasons given in the judgement in the case of *S.N. Mukherjee* (supra) as to why are disciplinary proceedings are differentiated from other types of adjudicatory proceedings for the purpose of giving of reasons in a decision pertaining to a disciplinary proceedings. In a disciplinary proceeding like the present one, the action brings about total elimination of the delinquent from government employment.

20. In this regard, we find a different opinion by the Apex Court in the case of *R.P. Bhatt Vs. Union of India & Ors.* reported in (1986) 2 SCC 651 which does not appear to have been considered in the case of *S.N. Mukherjee* (supra). The said judgement relied on another Constitution Bench judgement in the case of *State of Madras Vs. A.R. Srinivasan*, reported in AIR 1966 S.C. 1827, which has also not been referred to in the case of *S.N. Mukherjee* (supra).

21. The said judgement proceeded on the applicability of Rule 27(2) of the C.C.S.

Classification, Control and Appeal Rules, 1965 which required the appellate authority to take into consideration the material before the disciplinary proceeding to either confirm, enhance, reduce or set aside a penalty order. In the context of the Rule it was held that the appellate authority did not give findings on the crucial questions that had been dealt with by the disciplinary authority.

22. Then comes the decision in the case of Ram Chander Vs. Union of India & Ors. reported in (1986) 3 SCC 103 where Rule 22(2) of the Railway Service, Discipline and Appeal Rules, 1968 was considered where also the appellate authority was obligated to decide an appeal in accordance with the principles stated therein. The Court came to the conclusions that if there are statutory rules, then in that event the general observations that the appellate tribunal may dismiss an appeal agreeing with the reasons of the disciplinary authority, would suffice. However, the Court went on to discuss a few constitutional amendments and then after referring to the case of Union of India Vs. Tulsi Ram Patel & Ors., reported in (1985) 4 SCC 252 held that reasoned decisions by tribunals such as the Railway Board will promote public confidence in the administrative process. In paragraph 25 of the reported judgement, the Supreme Court held that after the 42nd amendment as interpreted by majority in the case of Tulsi Ram Patel (supra), the appellate authority must not only give a hearing to the government servant concerned, but also pass a reasoned order dealing with the contentions raised by him in the appeal. It may be re-emphasized that the case of Ram Chandra (supra) has again not been referred to in the case of S.N. Mukherjee (supra).

23. The off-shoot of the said opinions, therefore, indicate that separate reasons may not be required while affirming the order of punishment, but the reasons which are being affirmed should find some discussion or reference in order to indicate that the appellate authority has taken into consideration not only the reasons recorded by the disciplinary authority, but also the grounds taken for questioning the correctness of such reasons.

24. An august body like The Standing Committee constituted of Judges definitely raises a presumption that they are judicially trained minds, and not executive officers discharging mere administrative functions. The nature of the Office of a Judge presumes the existence of an expertise in the office holder for taking a decision after due deliberations in accordance with law and in the present case a quasi-judicial function of deciding an appeal. The decision in the present case has not been taken by an individual, but is a collective decision of all the Judges of the Standing Committee. The presumption therefore of authority carries a greater weight coupled with the presumption that the issues raised were deliberated upon, and then a conclusion was drawn on the basis of the material on record. This presumption is valid in respect of the existence of power conferred on the Standing Committee.

25. A presumption is to assume something or to take for granted, without inquiry or examination and to accept it as true or false without inquiry about any proof,

but is based on probable or reasonable grounds. The probable and reasonable ground in the present case as explained above is based on the very constitution of the Standing Committee of none else than judicially trained minds of Judges who are constitutional authorities. The presumption of knowledge of law and its application goes with the august chair of a Judge of the High Court. This is not only a probable, but a reasonable ground to assume a presumption in favour of the Standing Committee about its competence. As a corollary to the same, it can also be presumed that the Standing Committee while exercising its appellate power has before it the material as well as the grounds of appeal for its consideration.

26. The question is whether such material or the grounds taken in appeal were considered or not, and as to whether they should be presumed to have been considered.

27. Consideration means an examination from all sides and to balance carefully all that can be said in its favour or against it. It means deliberation or to give weight to by pondering over it and then reflecting the same in its decision.

28. A presumption of consideration, in our opinion, would be complete if there is some reflection of the consideration of the entire material on record. It is a presumption about the consideration of the material or grounds of appeal that comes to the fore for our consideration.

29. In our opinion, the ultimate decision by a one word or one phrase appellate order, that does not reflect on the consideration of the grounds of an appeal and the material on record, cannot by itself be said to indicate some kind of a gloss over the material on record. The ultimate recording of a decision in order to raise such a presumption of consideration of the material on record and the grounds of appeal can be validated if the decision or the resolution, howsoever brief it may be, indicates the acceptance of the reasons recorded by the disciplinary authority or rejection of the grounds of appeal. The judgment in the case of S.N. Mukherjee (*supra*) categorically states "no separate reasons are required" to be given. What we intend to say is that there can be separate reasons other than those recorded by the disciplinary authority even while upholding a punishment order. Apart from this, the appellate order should also infuse a confidence that the case of the appellant was appropriately dealt with as we find, and have noted earlier, that the existence of power is one thing and its exercise another. We are aware that this function of deciding an appeal on the administrative side can at best be a quasi-judicial function but it should not be lost sight of that whenever a penalty is imposed or a punishment awarded it brings about serious civil consequences and amounts to deprivation of a means of livelihood in cases like dismissal or termination. In such matters, the hope and expectation from an appellate authority to decide upon a consideration of the entire material is a genuine expectation which can be satisfied by the expression of a few words, howsoever brief they are, that may reflect a presumption of consideration.

30. The assumption recorded by the learned single Judge that there is no possibility of change in the ultimate view adopted by the appellate authority amounts to presuming that the appellate authority cannot take a different view even if it has to record reasons. In our opinion, recording of even a consideration of the defence of the appellant or reasons not to accept them is within the realm of the appellate authority and also its obligation. The presumption drawn by the learned single Judge that the appellate authority will not be able to take a different view would be questioning the capacity and authority of the appellate body to take its own decision.

31. We therefore on this short ground allow the appeal and set aside the appellate order as recorded in the resolution of the Standing Committee dated 11th March, 2014, as communicated on 18th March, 2014, with a request to the High Court to consider the appeal again and take an appropriate decision in the matter. The impugned judgment of the learned single Judge dated 30.08.2018 is also set aside.