

(2010) 04 MAD CK 0164

In the Madras High Court

Case No : Writ Petition No. 975 of 2007 (O.A. No. 4702 of 1999) & Writ Petition No. 975 of 2007 and O.A. No. 4702 of 1999

P. Natesan

APPELLANT

Vs

Conservator of Forests and District Forest Officer, Athur
Division

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0164

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : S. Ravi, for the Appellant; P. Satish, G.A., for the Respondent

Final Decision : Allowed

Judgement

B. Rajendran, J.—This writ petition has been filed to Quash the punishment of reduction to the bottom scale of pay for a period of 5 years

with cumulative effect passed by the second respondent herein in his Proceedings No. E2/1802/96 dated 26.12.96 and the consequential order of

the first respondent herein in his Na.Ka. No. 5100/97 E3 dated 14.1.99 with all consequential monetary and service benefits.

2.The petitioner who was the Forest Watcher was charge sheeted for three sandalwood offences on 25.02.1996, 26.02.1996 and 29.02.1996

continuously from Chekkadipatti beat, Neyyamalai Section of Valappadi Range, in which a total quantity of 2104.500 Kgs. Of Sandalwood and

One Ashok Leyland Lorry bearing Regn.No. TMU 9690 have been seized. Since the petitioner was incharge of the said beat and large quantity of

sandalwood worth Rs. 3,68,287/- is involved, the negligence/connivance of the petitioner was suspected.

3. An enquiry was conducted and ultimately, a punishment was granted by the second respondent by a proceedings dated 26.12.1996 wherein

reducing the pay to the bottom of the time scale for 5 years with cumulative effect. Aggrieved against the said punishment, the petitioner preferred

an appeal to the Conservator of Forests, Salem and he has also confirmed the punishment on 14.01.1999. Aggrieved against the said confirmation

in the appeal, the petitioner has come forward with the present application before the Tribunal now transferred to this Court.

4. The main grievance in the petition is that the Appellate Authority while rejecting the appeal has not passed a considered order. The appeal

grounds have not been met out in the order of the Appellate Authority. It is a non-speaking order. There was no application of mind and hence the

Appellate Authority's order need to be set aside.

5. In this connection, the respondents has filed a detailed counter. They have stated that the offence committed by the petitioner is of very grave in

nature. The enquiry was conducted properly. Necessary opportunities were given. Principles of Natural Justice was followed. There is no

impediment in giving the punishment and the punishment was rightly granted by the Disciplinary Authority and thereafter on the appeal, the

Appellate Authority also have taken into consideration the submissions of the petitioner and ultimately orders have been passed giving the reasons.

Therefore, the attack made by the petitioner is not legally sustainable. Hence, they would contend that the impugned order is a valid one.

6. Heard both the parties. The learned Counsel for the petitioner restricted his argument only to one aspect namely, whether the Appellate

Authority's order is not a considered order. He would only contend that the Appellate Authority has not meted out all the points raised by the

petitioner in his appeal grounds and hence it becomes a non-speaking order and therefore, it is liable to be set aside. In fact he would also point

out in the Appellate Authority's order, after taking into consideration, the various submissions made by the petitioner, in one line the order passed

by the Lower Authority has been confirmed. In this connection, he would also point out that he is very much aggrieved only in that portion namely,

the punishment with cumulative effect which would affect the very right of the petitioner in keeping pensionary benefits.

7. He also brought to the notice of the Court in so far as the co-delinquent is concerned, after the rejection of the appeal, he preferred a revision to

the Principal Conservator of Forests and the Principal Conservator of Forests in revision reduced the punishment to one that of without cumulative

effect so that the future retirement benefits will not be affected and hence he will like the matter to be remanded back to the Appellate Authority to

pass necessary orders taking into consideration the order passed by the Principal Conservator of Forests. Anyway his attack is that the order is of

non-speaking order. If we take the Appellate Authority's order in the penultimate paragraph, the Appellate Authority has only stated this though

after considering the various documents and also the explanations made out by the petitioner in the appeal grounds, only one thing is stated that the

Appellate Authority namely, the petitioner has not produced any evidence to substantiate the case. He would also state that with the connivance of

other employees large level smuggling has taken place. Therefore, he is confirming the order of the punishing Authority. Therefore, it is very crystal

clear that this order is a cryptic order without giving any reasoning for the non-acceptance of the explanation given by the petitioner. Under those

circumstances, as per the Supreme Court decision the Appellate Authority passing non-speaking order is liable to be set aside.

8. In view of the judgment of the Supreme Court which was followed in my own judgment in W.P.No. 42286 of 2006 dated 03.03.2010

7. The learned senior counsel for the petitioner brought to the notice of this Court the decision of the Honourable Supreme Court reported in (

Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, wherein the Honourable

Supreme Court held that 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. 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. In Para No. 5 and 8 of the judgment, it was held as

follows:

5. 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.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India is that people must have confidence in the judicial or quasi-judicial authorities. 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.

I find that the Appellate Authority order has not given any reason to substantiate the finding given by the Authority below. As rightly pointed out by the Supreme Court, the Appellate Authority, though need not give elaborate reasons but atleast give some reasonings for accepting which is lacking in this order.

9. Hence, the Appellate Authority's order dated 14.01.1999 alone is set aside and the matter is remanded back to the Appellate Authority for fresh consideration of the matter and pass orders within a period of four months from the date of receipt of a copy of this order. Accordingly the writ petition is allowed to a limited extent. No costs.