
(2015) 04 P&H CK 0226
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9478 of 2013

Radhey Shyam

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 3 SCT 263

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : C.M. Chopra, for the Appellant

Final Decision : Allowed

Judgement

Deepak Sibal, J.

1. The present case has a checkered history, spread over a period of 20 years. During this period, this is fourth time that the petitioner has been forced to knock the doors of this Court for the vindication of his grievance.

2. The facts, in brevity, leading to the filing of the present petition, are that while the petitioner served the respondent Municipal Corporation, Chandigarh (hereinafter referred to as the Corporation) as a Sectional Officer, through order dated 06.10.1995 (Annexure P-1), he was placed under suspension. Thereafter, a charge-sheet dated 02.02.1996 (Annexure P-2) was served upon him for alleged acts of omission and commission on his part. The charge-sheet was for imposition of a major penalty. The reply to the charge-sheet, filed by the petitioner, having been found to be unsatisfactory, he was subjected to a regular departmental inquiry. In the inquiry report dated 16.07.1999 (Annexure P-10), which followed the departmental inquiry, six out of the eighteen charges levelled against the petitioner stood proved. A copy of the inquiry report was served upon the petitioner, to which he gave his detailed response. After rejecting the response so filed by the petitioner, the Disciplinary Authority, through order

dated 04.10.1999 (Annexure P-13), imposed on the petitioner the penalty of removal from service, which would not be a disqualification for future employment under the Government.

3. Against the above said punishment order, the petitioner preferred a statutory appeal, which was rejected vide order dated 07.01.2000 (Annexure P-15). On the rejection of his appeal, the petitioner approached this Court through C. W.P. No. 4496 of 2000-Radhey Shyam vs. U.T., Chandigarh A Division Bench of this Court, vide its order dated 01.08.2001 (Annexure P-16), found the order of the appellate authority to be a non-speaking order and resultantly, while quashing the order, disposed of the writ petition with a direction to the appellate authority to re-consider the appeal of the petitioner and to pass a speaking order thereupon, in accordance with law. The relevant portion of this order reads as under:-

"This petition under Articles 226/227 of the Constitution of India seeks quashing of the impugned orders. The only submission made by the learned counsel is that the appellate authority has not considered all the points which were raised before him. It is well settled law that the appellate authority has to apply its mind to all the points which may have been raised by the parties.

In view of the above, on this short ground, order Annexure P-6 is hereby quashed and set aside. The writ petition is disposed of with a direction to the appellate authority to re-consider the appeal and to pass speaking order in accordance with law. Let the appeal be decided within a period of two months of the receipt of a copy of this order. The respondents will not evict the petitioner from the official accommodation till two weeks after the decision of the appeal, in case the appeal is decided against the petitioner. No costs."

4. In purported compliance with the direction given by the Division Bench, the petitioner's appeal was re-considered, but ended up with the same result and the same was again dismissed. Against the above dismissal of his appeal, the petitioner again knocked the doors of this Court through C. W.P. No. 8569 of 2003-Radhey Shyam vs. The Union of India and others. A Division Bench of this Court, vide its order dated 29.01.2004 (Annexure P-24), went through the grievance raised by the petitioner and again found the order passed by the appellate authority to be an order which had not considered all the issues raised by the petitioner, as also found the same to be an order passed without application of mind. Accordingly, the order passed by the appellate authority was again quashed, with liberty to the appellate authority to pass orders afresh, in accordance with law. The relevant portion of the aforesaid order dated 29.01.2004 is as under:-

"After having heard both sides, we are of the considered view that the order, Annexure P9, is even now liable to be quashed on the short ground that it contravenes the provisions of Rule 19(2) of the Rules. A reading of this rule reveals that it imposes a duty on the appellate authority to consider various

factors enumerated therein while deciding the appeal filed against an order of punishment, and those factors are (a) whether the procedure laid down in the rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice; (b) whether the findings of the punishing authority are warranted by the evidence on record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate, or severe.

A perusal of the order, Annexure P9, shows that the appellate authority had not at all considered the questions as to whether the procedure laid down in the Rules for holding departmental inquiry had been followed or whether findings recorded by the punishing authority were based on the evidence available on the record. It was pointedly brought to the notice of the appellate authority that the delinquent official had not been allowed to cross-examine the witnesses during the inquiry. Still it did not consider it necessary to ascertain the correct position in this regard from the records of the enquiry file, and disposed of the objection by simply observing that "In case the I.O. did not at any point of time adopt due procedure, the delinquent official should have also represented to the Commissioner, Municipal Corporation, which he had not done." It also did not apply its mind to the question as to whether the findings of the punishing authority in respect of the charges, which were several in number, were supported by any material on record, or not.

This case is squarely covered by a Division Bench judgment of this Court reported as Balwinder Singh vs. State of Punjab and others 1998(4) Recent Services Judgments 148, wherein also, the appellate order was quashed as the same did not contain any indication which could give a clue to the application of mind by the competent authority on the issue of compliance of procedure laid down in the Rules or the justification of the findings recorded by the punishing authority.

In view of the above, the writ petition is allowed and the order Annexure P9 is quashed. The appellate authority shall, however, be at liberty to pass the orders afresh, in accordance with law."

5. As per the orders of this Court, the appeal filed by the petitioner was again taken up for consideration by the appellate authority and this time too, it met the same fate of being dismissed. Against the above order of dismissal of his appeal, the petitioner once again approached this Court through C. W.P. No. 12124 of 2004-Radhey Shyam vs. Union of India and others. As the appellate order again had been passed without appreciating the issues raised by the petitioner and without dealing with the grounds raised by him, this Court, through order dated 08.11.2010, for the third time in a law, set aside the order passed by the appellate authority and remitted the matter back to the same Authority to consider and decide the petitioner's appeal by passing the following directions:-

"This Court has always held that the application of mind should be apparent from

the face of the order and from a perusal thereof it should be discernable. However, without going into the controversy, order (Annexure P-17) is hereby set aside and the Home Secretary-cum-Secretary, Local Government, Chandigarh-cum-Appellate Authority is directed to comply with the directions given by this Court in order (Annexure P-15) and thereafter, pass a fresh order. To set at rest any controversy, which may not be raised in future, the petitioner is directed to file written submissions before the appellate authority detailing each argument and the appellate authority shall deal with each argument detailed in the written submissions to be made by the petitioner. The petitioner shall submit his written arguments within a period of 15 days from the date of receipt of a certified copy of this order and the appellate authority shall pass final order within a period of three months from the date of receipt of written arguments.

[Emphasis supplied]"

6. A perusal of the above quoted directions make it clear that this Court had issued clear cut directions to the petitioner to file written submissions before the appellate authority and the appellate authority was directed to deal with each argument raised by the petitioner in his written submissions.

7. As directed, the petitioner filed his written arguments. In the written arguments, he raised certain preliminary submissions. On the merits of the matter, he annexed a detailed chart dealing with each and every article of charge levelled against him. Shockingly, through the order dated 21.02.2013 (Annexure P-28), the appellate authority decided only the preliminary submissions filed by the petitioner and the petitioner's grouse so raised on merits of the matter, was not even touched. It is against the above inaction on the part of the respondent no. 2-appellate authority that the petitioner had to again knock the doors of this Court through the present petition.

8. In spite of service, no one appears on behalf of the appellate authority-respondent no. 2 and this is not just today, but even on the earlier dates i.e. 10.01.2014 and 08.07.2014. Respondent no. 2 has even not filed any response to the writ petition.

9. A perusal of the impugned order, when read with the written submissions filed by the petitioner, shows that respondent no. 2-appellate authority has only decided the preliminary submissions filed by the petitioner and the issues raised by the petitioner on the merits of the matter have not even been touched. It is clear that respondent no. 2-appellate authority has, consistently and with impunity, not only been rejecting appeals filed by the petitioner, without application of mind, but has also apparently been disregarding the orders passed by this Court.

10. It is unfortunate that in spite of specific orders passed by this Court on three occasions, respondent no. 2-appellate authority continued with its casual and rather callous approach. Due to the above inaction on the part of respondent no. 2-appellate authority, the petitioner has virtually lost about two decades of his

life. It was a rather simple matter to decide the appeal of the petitioner after considering the issues raised by him but it is unfortunate that respondent no. 2-appellate authority could not do even that. I would have expected that a senior officer of the Chandigarh Administration, like respondent no. 2-appellate authority, would have dealt with the matter with a higher degree of responsibility. While deprecating the action of respondent no. 2 appellate authority, I again set aside the impugned order dated 21.02.2013 (Annexure P-28), while granting another opportunity to respondent no. 2-appellate authority to now decide the appeal/written arguments of the petitioner, in terms of the directions given by this Court through order dated 08.11.2010 (Annexure P-26) in C. W.P. No. 12124 of 2004-Radhey Shyam vs. Union of India and others. The same be decided within one month of the date of receipt of a certified copy of this order.

11. The writ petition stands allowed in the above terms.

12. In the facts of the case, as above, I consider it proper to burden respondent no. 2-appellate authority with costs of Rs. 50,000/-, which should be deducted from the salary of the officer, who passed the order dated 21.02.2013 (Annexure P-28).