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**(2012) 02 AHC CK 0234**  
**In the Allahabad High Court**  
**Case No : Service Single No. 6204 of 1991**

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|-----------------------------------------|----|------------|
| Ram Pal Singh                           | Vs | APPELLANT  |
| Director of Agriculture U.P. and Others |    | RESPONDENT |

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**Date of Decision :** 03-02-2012

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2012) 2 ADJ 689 : (2012) 134 FLR 299

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Hon"ble Anil Kumar, J.—Heard Sri Manish Mishra, learned counsel for petitioner and Sri V.S. Tripathi, learned State counsel and perused the record.

2. Facts in brief of the present case are that petitioner was initially appointed in the Agriculture Department of the State of Uttar Pradesh on Grade III post by order dated 15.06.1964 passed by Director of Agriculture and posted as Assistant Agriculture Inspector at Government Agriculture Seed Store, Manglaur, Saharanpur.

3. By an order dated 31.01.1978 (Anneuxre No. 4), he was placed under suspension. On 19.05.1978 (Anneuxre No. 5) a charge sheet has been issued to the petitioner, after receiving same, as per the version of the petitioner, he demanded certain documents but the same has not been supplied to him, as such being no other alternative left before him, submitted his reply on 05.09.1978 (Anneuxre No. 6) inter alia denying charges leveled against him and in his reply he stated that Sri Suresh Chand Sharma was responsible for the embezzlement of DAP fertilizer who had received the fertilizer stock in question thereafter inquiry was conducted by Inquiry Officer who submitted the inquiry report to the punishing authority/Director of Agriculture/O.P. No. 1.

4. On 03.11.1980 (Annexure No. 2) the punishing authority/O.P. No. 1 passed

the impugned punishment order thereby dismissing the petitioner's services and three other charges were also leveled against him including the recovery of a sum of Rs. 40,017.24 from the petitioner.

5. Aggrieved by the impugned order of punishment the petitioner preferred an appeal before the appellate authority. Lastly by a letter/order dated 16th March, 1991 (Anneuxre No. 1), it was informed that the appellate authority has rejected the petitioner's appeal after due consideration. Hence, present writ petition has been filed challenging the impugned orders dated 16.03.1991 (Anneuxre No.1) and 03.11.1980 (Anneuxre No. 2).

6. Sri Manish Mishra, learned counsel for petitioner in brief has assailed the impugned orders firstly on the ground that in the present case the inquiry officer after conducting the inquiry proceedings, in his inquiry report proposed the punishment which is to be awarded to the petitioner. The said action on his part is contrary to law as he has got no authority whatsoever to propose punishment to be given to the petitioner. In support of his argument, he placed reliance on the judgment of Hon'ble the Apex Court given in the case of State of Uttaranchal and Others Vs. Kharak Singh, .

7. Sri Manish Mishra, learned counsel for petitioner further submits that the impugned order dated 03.11.1980 (Anneuxre No. 2) passed by O.P. No. 1 is a non-speaking order and no reason whatsoever has been assigned in the said order as after refering the charges in impugned order, the punishing authority in the operative portion stated that he agreed with the inquiry report submitted by the Inquiry Officer and accordingly the punishment as suggested therein has been awarded. Hence, the said impugned order is a non-speaking order, violative of Article 14 of the Constitution of India as well as principles of natural justice.

8. Lastly it is argued by Sri Manish Mishra, learned counsel for petitioner that aggrieved by the order dated 03.11.1980 (Anneuxre No. 2) passed by O.P. No. 1, the petitioner filed an appeal on 20.02.1981 and after lapse of more than 10 years, it was communicated to him by an order dated 16.03.1991 ((Annexure No. 1) that the appellate authority after considering his case, has rejected the appeal. However, no order of rejection of the appeal has been given to him. The said action on the part of appellate authority is contrary to law as well as principles of natural justice. In support of his argument he has placed reliance on the judgment of the Apex Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others (1009) 1 SCC (L&S) 806.

9. Accordingly, Sri Manish Mishra, learned counsel for petitioner submits that the impugned orders dated 16.03.1991 and 03.11.1980 are liable to be set aside and writ petition may be allowed.

10. Sri V.S. Tripathi, learned Additional Chief Standing Counsel on the basis of pleadings on record submits that in the present case taking into consideration the irregularities committed by the petitioner he has been placed under

suspension and thereafter a charge sheet has been served on him, 16 charges were leveled and after providing due opportunity to him the Inquiry Officer has conducted inquiry proceedings in accordance with law and submitted the inquiry report to the punishing authority who after considering the same had passed the punishment order dated 03.11.1980 awarding the order of thereby dismissal from service against which the petitioner's appeal has been rejected.

11. It is further submitted by Sri V.S. Tripathi, learned State counsel that at the relevant point of time there is no bar on the part of the inquiry officer to recommend the punishment to be awarded to a delinquent employee, as such the action on the part of inquiry Officer thereby recommending the proposed punishment to be awarded to the petitioner after conducting the inquiry proceedings is neither illegality nor infirmity on his part which renders the impugned order of dismissal dated 03.11.1980, illegal, hence present writ petition filed by the petitioner lacks merit and liable to be dismissed.

12. I have heard learned counsel for parties and perused the record.

13. In view of the factual matrix of the present case, the first point which is to be adjudicated is whether the action on the part of Inquiry Officer to recommend the punishment after holding the inquiry proceedings is a valid action on his part or not. The answer to this question finds place in the judgment rendered by Hon'ble Apex Court in the case of State of Uttaranchal and Others Vs. Kharak Singh, , held as under:-

In regard to the question whether an enquiry officer can indicate the proposed punishment in his report, this Court, in a series of decisions has pointed out that it is for the punishing/disciplinary authority to impose appropriate punishment and enquiry officer has no role in awarding punishment. It is useful to refer to the decision of this Court in Tarachand Damu Sutar Vs. The State of Maharashtra, wherein it was held: (AIR 1134 para 6)

In the communication addressed by the Enquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. The question of imposing punishment can only arise after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the enquiring authority.

14. Further from the perusal of the impugned order dated 03.11.1980 (Annexure No. 2) passed by Director of Agriculture/O.P. NO. 2 it is not disputed that rather admitted by the learned State counsel that the same is non-speaking order and no reason whatsoever has been assigned by the O.P. No. 1 while passing the said order.

15. It is well settled law that an order passed by an authority should be a reasoned one and the objection taken by a person should be dealt with because reasons are like a live wire which connects the mind of the decision making

authority and the decision given by him and if this wire/link is broken i.e. to say no reasons are given in the impugned order then it will not be possible to know as what was going in the mind of the decision making authority on the basis of which he has come to the conclusion and passed the impugned order.

16. In *Breen Vs. Amalgamated Engg. Union*, reported in 1971(1) AIIER 1148, it was held that the giving of reasons is one of the fundamentals of good administration. In *Alexander Machinery (Dudley) Ltd.Vs. Crabtress*, reported in 1974(4) IRC 120 (NIRC) it was observed that "failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at".

17. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the later before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out. The inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance." So, the impugned orders dated 03.11.1980 (Annexure No. 2) is contrary to law, liable to be set aside.

18. In the present case the petitioner being aggrieved by the impugned order dated 03.11.1980 (Annexure No. 2) filed a statutory appeal before the appellate authority on 20.02.1981 and after lapse of more than a decade only it was informed to him by order dated 16.03.1991 (Annexure No. 1) that the appellate authority has rejected the petitioner's appeal after due consideration. In view of the said fact, I am of the considered opinion that the said action on the part of the appellate authority thereby not giving the reasons on which basis the appeal filed by the petitioner has been rejected is an action which is arbitrary in nature, thus, violative of Article 14 of the Constitution of India because every person/employee has a right under law to know reason on the basis which his case has been rejected, Hon"ble the Apex Court in the case of *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others* (1009) 1 SCC (L&S) 806,

19. 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's case*(supra) 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. The view we are taking was also taken by this Court in Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, , and in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), , The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , etc. Thus, the impugned order dated 03.11.1980 (Annexure No. 2) as well as the appellate order by which the petitioner's appeal has been rejected being contrary to principles of natural justice are liable to be set aside. Accordingly, the question arises for consideration before this Court is to the effect that if the order in questions are set aside, on technical ground fact stated hereinabove whether the matter is to be remanded back to the competent authority to take a fresh decision or not. In this regard, after considering the peculiar facts and circumstances of the present case and taking into consideration that the petitioner is a 71 years old person and he has suffered great mental agony during the intervening period due to impugned orders which have been passed against him which are against the principles of natural justice, so keeping in view the law as laid down by this Court in the case of Man Mohan Singh Jaggi Vs. Food Corporation of India and others (2001) 29 LCD 2265, in the interest of justice I do not feel appropriate to remand the matter again to the competent authority for reconsideration.

20. For the foregoing reasons, the impugned orders are set aside. However, keeping in view the principle of no work no pay, the petitioner is not entitled for any salary for the intervening period but this period shall not be treated as break in service but the same shall be treated as continuation of service for other consequential and post retiral benefits.

21. With the above observations, the writ petition is allowed.