

(2012) 01 AHC CK 0268

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56885 of 2003

R.B. Saxena

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 22(2), 27(2), 6

Citation : (2012) 2 ADJ 65 : (2012) 2 AWC 2088

Hon'ble Judges : S.K. Singh, J; Pankaj Naqvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri B.P. Singh, learned Sr. Advocate assisted by his colleague Sri V.K. Singh and Sri A.K. Gaur, learned Advocate who appeared for the respondents.
2. By means of this writ petition prayer has been made for quashing the judgment of the Central Administrative Tribunal, Allahabad dated 9.9.2003 passed in Original Application No. 964 of 1997 (Annexure No. 15 to the writ petition) and the orders dated 9.5.1996, 30.7.1996 and 25.4.1997 (Annexure No. 11, 12 and 13 respectively to the writ petition).
3. For disposal of the writ petition facts in brief will suffice.
4. Petitioner was initially appointed in the year 1965 as Electrical Khalasi i.e. Group D post at Allahabad under Assistant Shop Superintendent (TR-D). Thereafter he was promoted as Judicial Clerk and in the year 1992 when he was working as Senior Clerk in the office of Divisional Electrical Engineer, Aligarh he was served with a major penalty charge sheet dated 1.10.1992. Finally the disciplinary authority without considering the reply and the details given by the petitioner by order dated 9.5.1996 removed the petitioner from service, upon which petitioner filed appeal and revision but both were dismissed vide orders dated 30.7.1996 and 25.4.1997 and Original Application filed before the Tribunal

was also dismissed on 9.8.2003 and thus all the four orders are under challenge.

5. Submission of the learned counsel for the petitioner is that petitioner was not afforded reasonable opportunity in the departmental proceedings to defend himself and he was compelled to have defence helper without even allowing time to prepare the case and the witness called by the petitioner was not examined. It is further submitted that in all six persons were proceeded for the charge of preparation/issuance of the fake appointment letters but all others have been exonerated and only petitioner has been singled out and punished with extreme penalty.

6. Submission is that so far the petitioner is concerned the charge is that he gave fake appointment letters to two employees and it is not a case that he got the forged appointment letter prepared and signed rather the then A.P.O. Ram Khelawan and other employees got prepared those letters and this fact has been accepted by the Enquiry Officer but the disciplinary authority has only said that it does not matter as to who was the signatory of the appointment letter.

7. Besides the aforesaid aspects submission is that a detailed representation/objection was submitted by the petitioner against enquiry report but nothing has been considered and in a most mechanical manner without applying the mind to the facts the disciplinary authority passed an order of removal from service. Appellate authority and the revisional authority both concurred without advertng to the facts and details in the same fashion.

8. Submission is that the Tribunal which was expected to judge the things in a judicial manner in the light of the materials on record and the grounds so taken by the petitioner arguments so advanced but in a very surprising manner the Tribunal in one paragraph by a non speaking order has just said that no infirmity has been found in the decision and no interference is required.

9. Submission is that authorities were required to consider the facts and details and the arguments so advanced and were required to answer the same, may be in brief manner but non assigning of any reason whatsoever either by the departmental authority or by the Tribunal has vitiated the entire process.

10. Sri Gaur, learned Advocate who appeared for the respondents submits that although from the orders of the disciplinary authority as well as of the appellate or revisional authority it is not clear that they have assigned reasons to meet the factors so pointed out by the petitioner and the Tribunal has also not recorded the facts and arguments in detail and dismissed the Original Application in summary manner but the facts remains that entire record will be presumed to have been perused and opinion has been formed in the light of the available material and, therefore, no interference is required.

11. At this stage, we are to just notice certain decisions of the Apex Court and of this Court wherein it has been ruled that assigning of the reasons while forming an opinion and while deciding the matter is quite necessary and that indicates

the mind of the authority and the Court that how it has proceeded to accept/reject the submissions.

12. Sri Gaur, learned Advocate fairly submits that the aforesaid decision of the Apex Court and of this Court are certainty on this point.

13. To impress upon the need of giving reasons while deciding a matter is very simple. Unless narration of facts, argument/objection to a decision and discussion part, even in brief is there, here a litigant is to judge and is to be satisfied that he received meaningful consideration of his case, the conclusion of which might not favour him. It is commonly said that dispensation of justice has to appear which can only be confirmed by looking into your wisdom and comparative thought to the issue which can only be viewed only when it is expressed. Expression can only be in writing. No body is going to read and infact may not be capable to reach by going into your inner feel unless that is reduced in writing.

14. The need of giving reasons to a conclusion has been expressed time and again by the Apex Court.

15. In an old decision given by the Apex Court in the case of Ram Chander Vs. Union of India (UOI) and Others, , placing reliance on another decision of the Apex Court in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), , the following observations were made:

Ordinarily, the appellate or revisional. authority shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the Appellate Tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons.

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall "consider" as to the matters indicated therein. The word "consider" has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

16. In another decision given by the Apex Court in the case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , the following observations were made:

Every quasi-judicial order must be supported by reasons. That has been laid

down by a long line of decisions of this Court ending with *N.M. Desai v. Testeels Ltd.*, C.A. No. 245 of 1970 decided on 17-12-1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If Courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application.

17. We can refer another recent decision of the Apex Court given in the case of *MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and Another*, , which is to the following effect:

4. We find that the writ petition involved disputed issues regarding eligibility. The manner in which the High Court has disposed of the writ petition shows that the basic requirement of indicating reasons was not kept in view and is a classic case of non-application of mind. This Court in several cases has indicated the necessity for recording reasons." Disclaimer: The text is computer generated. The user must verify the authenticity of the extracted portion with the original.

5. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union*, (1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2

WLR 742 (CA), observed: (All ER p. 1154h) The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd v. Crabtree*, 1974 ICR 120 (NIRC), it was observed:

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.

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by 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. 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 [*Chair-man and Managing Director, United Commercial Bank v. P.C. Kakkar*].

18. To sum up the aforesaid aspect another recent decision of the Apex Court given in the case of *Divisional Forest Officer, Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao*, , can be referred and the observations as made in para 19 and 20 will be useful to be quoted here:

19. Having considered the submissions made on behalf of the respective parties and also having regard to the detailed manner in which the Andhra Pradesh Administrative Tribunal had dealt with the matter, including the explanation given regarding the disbursement of the money received by the respondent, we see no reason to differ with the view taken by the Administrative Tribunal and endorsed by the High Court. No doubt, the Divisional Forest Officer dealt with the matter in detail, but it was also the duty of the appellate authority to give at least some reasons for rejecting the appeal preferred by the respondent. A similar duty was cast on the revisional authority being the highest authority in the Department of Forests in the State.

Unfortunately, even the revisional authority has merely indicated that the decision of the Divisional Forest Officer had been examined by the Conservator of Forests, Khammam wherein the charge of misappropriation was clearly proved. He too did not consider the defence case as made out by the respondent herein and simply endorsed the punishment of dismissal though reducing it to removal from service.

20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are

required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum.

19. In view of the aforesaid, it is clear that decision taken by the departmental authority being non speaking even the tribunal has not taken pains of noticing the facts, report and the submission that all other charged employees were exonerated and although the petitioner has not been found to be signatory of the appointment letters and it is said that only two fake appointment letters were supplied by him, extreme penalty of removal from service has been given.

20. On these facts, we are of the considered view that we are not to undertake the exercise of examining the records to form a final opinion either way like the departmental authorities and at the same like the Tribunal and thus the claim of the petitioner in the light of the facts and grounds has to be attended afresh by the Central Administrative Tribunal and a decision in accordance with law will have to be taken.

21. As the matter is quite old the Central Administrative Tribunal is expected to decide the matter with all expedition preferably within a period of three months from the date of receipt of certified copy of this order from either of the sides.

22. For the reasons given above, this writ petition succeeds and is allowed. The impugned order passed by the Central Administrative Tribunal dated 9.9.2003 (Annexure 15) is hereby quashed and the matter is relegated for being heard and decided as indicated above.