
(2009) 08 CAL CK 0021
In the Calcutta High Court
Case No : W.P.S.T. No. 522 of 2009

Santanu Kumar Mukhopadhyay	Vs	APPELLANT
State of West Bengal and others		RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21

Citation : (2009) 123 FLR 545

Hon'ble Judges : Pratap Kumar Ray, J;Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Alok Kumar Biswas and Abishek Biswas, for the Appellant;Pratik Dhar and Ms. Jayeeta Chakraborty for the State, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. Assailing the judgment and order dated 19th May, 2009 passed in O.A. No. 5031 of 2006 by the West Bengal Administrative Tribunal, Bikash Bhavan, Salt Lake City,, Calcutta, this writ application has been filed.

3. Challenge before the learned Tribunal was the decision of the Disciplinary Authority in a departmental proceeding which stood confirmed by the Appellate Authority, namely, the Governor of West Bengal. Learned Advocate for the writ petitioner submits that the decision/order of Appellate Authority, confirming the decision of the Disciplinary Authority, was not a speaking order and the said Appellate Authority did not apply his mind. This grievance of the writ petitioner as agitated before the learned Tribunal below has been answered in the following terms by the learned Tribunal below which reads such:--

Grievance against the Appellate order has also been made on behalf of the petitioner alleging mainly that it is not a speaking order, and as such, interference by this Tribunal would be necessary. But, as per the settled position of law, when Appellate order is passed in affirmation of the final order, it need

not be a speaking order, but one has to see whether there has been application of judicial mind or not in passing such order, and in the instant case, looking into the Appellate order, passed on behalf of the Authority concerned, it may be indicated that there has been sufficient application of judicial mind in passing the Appellate order, and as such, no interference, as prayed, is necessary against the Appellate order by this Tribunal".

4. The order of the Appellate Authority is at page 275 of the writ application which reads such:--

Government of West Bengal

ORDER

Having gone through the appeal petition of Sri Santanu Kumar Mukhopadhyay, Deputy Secretary to the Government of West Bengal, Department of Consumer Affairs, and after perusing the records of the case, I am satisfied that the appeal does not merit consideration. I agree with the decision of the Administrative Department. The appeal petition of Sri Santanu Kumar Mukhopadhyay is disallowed. The Appellant may be supplied with a copy of this order.

Sd/-

Governor of West Bengal..."

5. On a bare reading of the order of the Appellate Authority it appears that the Appellate Authority simply held "I am satisfied that the appeal does not merit consideration". No reason assigned for affirming the decision of the Disciplinary Authority by the Appellate Authority. Learned Tribunal below held that the Appellate Authority under the law does not require to pass a speaking order in case of affirmation of the final order. The finding of the learned Tribunal below is contrary to the judgment of the Apex Court and the settled legal position as declared in the case *Chairman, Disciplinary Authority, Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*, . This judgment was r delivered relying-upon the earlier judgments of the Apex Court, passed in the cases *Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao*, , *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, and *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, . The view passed in the case *S.N. Mukherjee v. Union of India* (1990) 4 SCC 599, and the view expressed in the case *State Bank of Bikaner v. Prabhu Dayal Grover* (1995) 6 SCC 217, were explained in the manner that though there was no necessity of assigning the reason in details by the Appellate Authority while confirming the decision of the Disciplinary Authority, but a brief reason is required to be assigned. The relevant paragraphs explaining the views *S.N. Mukherjee* (supra) and *Prabhu Dayal Grover* (supra) have been discussed in paragraphs 5, 9 and 10 of *Jagdish Sharan Varshney* (supra). The said paragraphs read such:--

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 Prabjiu Dayal Gover 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. The 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. 9. No doubt, in S.N. Mukherjee case it has been observed that: (SCC p. 613, para 36).

36.... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can comply dismiss appeals by one-line orders stating that they agree with the view of the lower authority. 10. For the same reason, the decision of this Court in State of Madras v. A.R. Srinivasan (vide AIR para 15) has also to be understood as explained by us above.

6. Considering the said legal position, we are of the view that the decision of the Appellate Authority is not at all a speaking order. Assigning of a reason has a purpose so that one can know that the Appellate Authority has applied its mind. In the instant case, as no reason assigned save and except a sentence that on perusal of the records" the appeal does not merit consideration", the principle of law as settled as discussed above accordingly has been breached. Right to reason and a reasoned decision is a basic fundamental right. In the language of Lord Denning passed in the case in the case Breen v. A.E.U. (1971) 2 QB 175, "it is one of the fundamentals of good administration". Right to Information and right to be informed reason both are within the domain of Articles 19(1) and 21 of the Constitution of India in terms of the judgment passed in the case Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, It is essential of justice is the view expressed in the case R. v. Civil Service Appellate Board, Ex-parte Cunningham (1991) 4 All E.R. 310. Absence of reason is nothing but non-application of mind is the view expressed by the Apex Court in the case Kamla Kanyalal Khushalani Vs. State of Maharashtra and another, .

7. Having regard to the legal position as discussed above, we are of the view that the order passed by the Appellate Authority was not legally sustainable due to lack of assigning reason even in brief while affirming the decision of the Disciplinary Authority. Learned Tribunal below did not consider that aspect in its proper perspective.

8. Considering on that score only the impugned order of the learned Tribunal is set aside and quashed and the order of the Appellate Authority also stands quashed and set aside. The Appellate Authority is directed to pass a reasoned decision disposing of the appeal considering the points taken in Memorandum of Appeal, as filed by the petitioner.

The writ application is accordingly allowed.

MRINAL KANTI SINHA, J.

I agree.