

(2022) 11 SHI CK 0032
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.4509 Of 2019

Sharwan Kumar

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 227
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)9ii), 3(1)(iii)
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 11

Citation : (2022) 11 SHI CK 0032

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Rakesh Kumar Dogra, Desh Raj Thakur, Narender Thakur, Dalip Sharma, Manish Sharma

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. Heard .

2. By way of instant petition, petitioner has prayed for following substantive reliefs:-

" (i) That the impugned punishment order dated 25.02.2019 contained in Annexure P-8 passed by the Director of Higher Education, Himachal Pradesh-respondent No. 2 read with order dated 19.12.2019 contained in Annexure P-12 passed by the learned Appellate Authority-respondent No. 1 may kindly be quashed and set aside with all consequential service benefits, being non-speaking, un-reasoned, arbitrary, illegal, discriminatory and not based on true facts of the case, by issuing writ of Certiorari.

(i) That the respondent-Department may kindly be directed to release the pending due and admissible salary from March, 2019 onward along with interest @ 9% per annum to the petitioner forthwith, by issuing writ of mandamus."

3. Petitioner, while posted as Lecturer in History in Government Senior Secondary School, Chah-Ka-Dohra, District Mandi, H.P., was accused of misbehavior with female student of Class 10+2. The alleged conduct of the petitioner being in violation of Rules 3(1)(i), (ii) and (iii) of CCS Conduct Rules, 1964, petitioner was charged to have committed misconduct. Inquiry was conducted and the charge was held to have been proved.

4. The Disciplinary Authority, vide order dated 25. 02.2019, Annexure P-8, imposed major penalty on petitioner under Rule 11 of CCS (CCA) Rules 1965 and he was ordered to be compulsorily retired from government service with immediate effect. The appeal filed by the petitioner to the Appellate Authority was also dismissed, vide order dated 19.12.2019, Annexure P-12.

5. Noticeably, the orders passed by the Disciplinary Authority as also by the Appellate Authority are without any reasons. It is trite that disciplinary proceedings are quasi judicial in nature and are mandatorily required to be held by strictly adhering to principal of natural justice.

6. A Constitution Bench of Hon'ble Supreme Court in S.N. Mukherjee VS. Union of India, (1990) 4 SCC 594 has held as under:-

"35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi- judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi- judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the re- cording of reasons by an administrative authority serves a salutary purpose, namely, it excludes

chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. 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.

37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law, 6th Edn. P. 548) . In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram parlem, a basic principle of natural justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well-known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in A.K. Kraipak and Others v. Union of India and Others, [1970] 1 SCR 457, wherein it has been held:

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one

shall be a Judge in his own cause (*nemo dabet esse judex propria causa*) and (ii) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

7. In *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharvan Varshney and others* (2009) Vol 4 SCC 240, Hon'ble Supreme Court has held that even where the appellate authority agrees with the disciplinary authority, the order passed by it 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. In *S.D. Sharma Vs. State of H.P.*, 2005 Labour Industrial Cases that appellate authority grounds raised in the self-contained order. 696, it has been held by this Court must consider and decide all the appeal and issue a complete and

9. In CWP No. 1119 of 2021, titled as *Babu Ram Vs. H.P. University*, a Division Bench of this Court has held as under:-

"11. Arbitrariness in making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority is clearly suggestive of the order being arbitrary hence legally unsustainable."

10. Adverting to the facts of the case, while imposing major penalty of compulsory retirement, the Disciplinary Authority did not provide any reasons. Relevant extract of such order dated 25.02.2019, Annexure P-8 is noticed as under:-

" AND WHEREAS as per the inquiry report submitted by the Injury Officer the charges against Sh. Sharwan Kumar the then Lecturer in History Govt. Sr. Sec. School Chah-Ka-Dohra, District Mandi, H.P. presently posted at Govt. Sr. Sec. School Balag, District Mandi, H.P. have been proved. He was given an opportunity to make representation against the proposed penalty notice dated 7th December, 2018. The representation (dated 03.01.2019) submitted by said Sh. Sharwan Kumar, Lecturer in History, was considered and not found satisfactory.

NOW THEREFORE, the undersigned hereby imposes major penalty under Rule 11 of CCS (CCA) 1965 and accordingly the said Sh. Sharwan Kumar the then Lecturer in History Govt. Sr. Sec. School Chah-K Dohra, District Mandi, H.P.

presently posted at Govt. Sr. Sec. School Balag, District Mandi, H.P. is hereby "COMPULSORY RETIRED" from Government services with immediate effect."

11. Record reveals that petitioner filed an appeal before the Appellate Authority. A copy of written arguments/submissions submitted on behalf of the petitioner before the Appellate Authority has also been placed on record as Annexure P-11, which reveals that detailed submissions were made on behalf of the petitioner. However, order dated 19.12.2019, Annexure P-12, passed by Appellate Authority again was passed without assigning any reason. The relevant extract of Annexure P-12 is being noticed as under:-

"AND WHEREAS Sh. Sharwan Kumar was called for personal hearing on 06.08.2019 when he appeared alongwith his Defence Counsel. He also submitted a statement on 13.08.2019 which was also taken on record.

The Undersigned has heard Sh. Sharwan Kumar in person, gone through the relevant record and his written statement. Nothing has been brought on record by Sh. Sharwan Kumar. Lecturer History to justify interference in the decision of the Director of Higher Education

Now therefore, the undersigned does not find any ground to interfere with the penalty of "COMPULSORY RETIRED" imposed by the Director of Higher Education, Himachal Pradesh in this case. Accordingly, the appeal is dismissed/rejected."

12. Thus, applying the above noticed exposition of law to the facts of the case, the impugned order dated 25.02.2019 Annexure P-8, passed by Disciplinary Authority and order dated 19.12.2019, Annexure P-12, passed by Appellate Authority, cannot be sustained. The impugned orders have definitely resulted in denial of justice to petitioner as right to reason is an indispensable part of a sound judicial system.

13. In result, the petition is allowed. The impugned order dated 25.02.2019, Annexure P-8, passed by Disciplinary Authority and order dated 19.12.2019, Annexure P-12, passed by Appellate Authority, are set-aside. Respondent No. 2 is directed to pass a reasoned order afresh as Disciplinary Authority, in accordance with law.

14. The petition is accordingly disposed of, so also the pending miscellaneous application, if any.