
(2013) 07 JH CK 0148
In the Jharkhand High Court
Case No : Writ Petition (S) No. 7522 of 2012

Shilendra Kumar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 4 AJR 493 : (2014) 1 JLJR 136

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Tandon, Shivshankar Kumar and Kumari Rashmi, for the Appellant; Purnendu Sharan, J.C. to Sr. S.C. II, for the Respondent

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J.—The petitioner has approached this Court challenging the penalty order dated 03.01.2012 and the appellate order dated 30.08.2012. The brief facts of the case as disclosed in the writ petition are that, the petitioner was appointed on 01.06.1984 on the post of Stenographer. On 09.10.2007, an F.I.R. being Patna (Vigilance) Case No. 112 of 2007 was registered as the petitioner was caught red-handed while taking bribe of Rs. 2,000/-. A departmental proceeding was also initiated in which charges were framed against the petitioner vide memo. No. 11176 dated 17.10.2008, on the allegation that he was caught red-handed while taking bribe of Rs. 2,000/- on 09.10.2007. On conclusion of the enquiry, the enquiry report was submitted holding the charges levelled against the petitioner found proved. The petitioner filed his reply to the second show-cause notice on 13.07.2011 and the order of penalty dated 03.01.2012 was passed by the Respondent No. 3-the disciplinary authority. Against the order of penalty, the petitioner preferred an appeal which was rejected by order dated 30.08.2012. Aggrieved, the petitioner has approached this Court by filing the present writ petition.

2. Heard the learned counsel appearing for the parties and perused the documents on record.

3. Mr. Manoj Tandon, the learned counsel appearing for the petitioner has raised a contention that, the penalty order is cryptic. No reason has been assigned for passing the order of penalty against the petitioner. The appellate order also suffers from non-application of mind and therefore, the impugned orders are liable to be quashed.

4. Since the contention raised on behalf of the petitioner is a pure question of law, I am of the opinion that for adjudicating the issue, no counter-affidavit is required and therefore, with the consent of the parties, I proceed to dispose of the matter at the admission stage itself.

5. Before advertng to the contention raised on behalf of the petitioner that, the order passed by the disciplinary authority must contain reasons and the orders passed by the appellate authorities should indicate application of mind, it would be useful to notice the law prevalent on this issue.

6. In England, at one time it was thought that there is no requirement for recording reasons by the administrative authorities for its decision. Lord Denning M.R., in "Breen Vs. Amalgamated Engineering Union", reported in (1978) 3 All ER 211, recorded his dissenting opinion that "the giving of reasons is one of the fundamentals of good administration." The Committee of Justice in its report has expressed the view: "No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions." The judicial opinion remained divided for some time even after enactment of the Tribunals and Enquiries Act, 1958 which was replaced by Tribunals and Enquiries Act, 1971 and in respect of the Tribunals authorities which are not covered by the said enactment, the position, as prevails at common law, applies. ["Regina Vs. Immigration Appeal Tribunal Ex parte Khan (Mahmud)", reported in (1983) 2 All ER 420].

7. In Australia also, it has been accepted that those entrusted with discretionary power to make decisions which will affect other persons, must act fairly and state the reasons for their decision. ["Osmond Vs. Public Service Hoard of New South Wales", reported in (1985) 3 NSW LR 447]. However, the said decision was overruled by the High Court of Australia.

8. In United States of America, recording of reasons for its decision by an administrative authority, has been insisted upon by the courts. ["Phelps Dodge Corporation Vs. National Labour Relations Board", reported in (1940) 85 L ed 127].

9. In India, inspite of recommendation by the Law Commission for making a provision that administrative decisions should be accompanied by reasons, no law has so far been enacted. However, the question whether an administrative authorities should record the reasons for its decision, came up for consideration before the Hon"ble Supreme Court in several cases. Now, the law on the issue is more or less settled. The question relating to offences under the Army Act came

before the Hon''ble Supreme Court in *Som Datt Datta Vs. Union of India (UOI) and Others*, and the Hon''ble Supreme Court has held as under:

10. In the present case it is manifest that there is no express obligation imposed by Section 164 or by Section 165 of the Army Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the Court Martial. Mr. Dutta has been unable to point out any other section of the Act or any of the rule made therein from which necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority. Apart from any requirement imposed by the statute or statutory rule expressly or by necessary implication, we are unable to accept the contention of Mr. Dutta that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

11. In English law there is no general rule apart from the statutory requirement that the statutory tribunal should give reasons for its decision in every case. In *Rex v. Northumberland Compensation Appeal Tribunal 1952-1 KB 338* it was decided for the first time by the Court of Appeal that if there was a "speaking order" a writ of certiorari could be granted to quash the decision of an inferior Court or a statutory tribunal on the ground of error on the face of record. In that case, Dunning, L.J. pointed out that the record must at least contain the document which initiates the proceedings: the pleadings, if any; and the adjudication, but not the evidence, nor the reasons unless the tribunal chooses to incorporate them in its decision. It was observed that if the tribunal did state its reasons and those reasons were wrong in law, a writ of certiorari might be granted by the High Court for quashing the decision. In that case the statutory tribunal under the National Health Service Act, 1946 had fortunately given a reasoned decision; in other words, made a "speaking order" and the High. Court could hold that there was an error of law on the face of the record and a writ of certiorari may be granted for quashing it. But the decision in this case led to an anomalous result, for it meant that the opportunity for certiorari depended on whether or not the statutory tribunal chose to give reasons for its decision, in other words, to make a "speaking order". Not all tribunals, by any means, were prepared to do so, and a superior Court had no power to compel them to give reasons except when the statute required it. This incongruity was remedied by the Tribunals and Inquiries Act, 1953 (S. 12) (6 and 7 Elizabeth 2 C. 66), which provides that on request a subordinate authority must supply to a party genuinely interested the reasons for its decision. Section 12 of the Act states that when a tribunal mentioned in the First Schedule of the Act gives a decision it must give a written or oral statement of the reasons for the decision, if requested to do so on or before the giving or notification of the decision.....

10. In *Travancore Rayon Ltd. Vs. Union of India (UOI)*, while stressing the need for assigning reason, the Hon''ble Supreme Court has held as under:

11. In this case the communication from the Central Government gave no

reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached, in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

11. In *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, the Hon^{ble} Supreme Court has held as under:

6. Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned Counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. 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.* 1. 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 December 8, 1961 which were repeated in the subsequent representation dated June 4, 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 a 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. We hope and trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned, orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs Authorities and the validity of the adjudication made by the Customs Authorities can also be satisfactorily tested in a superior tribunal or court.....

12. In *Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another*, the Hon"ble Supreme Court has held as under:

4. The Tribunal has not stated the reasons in support of its conclusions. This criticism of Shri Chaudhary, counsel for the Woolcombers, appears to us to be right. As regards basic wages, the Tribunal says only this: "I am inclined to lay down the basic wages of the workmen ... those who are highly skilled workmen ... will get Rs. 32 per week as their basic wages. Those who are skilled workmen ... will get Rs. 28 per week as their basic wages. Those who are semi-skilled workmen ... will get Rs. 25 per week as their basic wages Those who are unskilled workmen will get Rs. 22.50 p. per week as their basic wages." As regards the basic wages of other employees, the Tribunal says: "Now in the light of the enhanced pay as revised by me in respect of skilled, unskilled, semi-skilled and highly skilled workers, I want to revise" the existing Wages of clerks, drivers, darwan sweeper, laboratory assistants and over-lookers.

5. It may be observed that the first passage quoted by us states only the conclusions. It does not give the supporting reasons. The second passage quoted by us states merely one of the reasons. The other relevant reasons are not disclosed. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for

various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi-judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasise that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions.

13. From the aforesaid discussion, it is clear that the order passed by the authority who decides the claim, should contain reasons. However, whether an order is a reasoned order or not, would depend on the facts of the case and can be ascertained upon construction of the order in question. How much reasoning is required and whether an order contains sufficient indication that materials on record have been examined and there is proper application of mind or not, are the issues which can be decided in the facts of each case.

14. Now, coming back to the facts of the case, I find that the only charge levelled against the petitioner is that, he was caught red-handed while taking bribe of Rs. 2,000/-. The disciplinary officer has passed an order on 03.01.2012, which is extracted below:

Government of Jharkhand Personnel, Administrative Reforms & Rajbhasha Department Office Order

O.O. No.-5/Estt.-Charge-02/09P/Ranch, dt. Jan., 2012

Shri Shilendra Kumar, Personal Assistant (presently under suspension and named accused, Vigilance Case No. 112/07 dated 09.10.2007) was put under suspension by Officer Order No. 269 dated 01.08.2008, issued by Personnel and Administrative Reforms Department, Bihar, Patna on account of his being caught red-handed by Vigilance team.

A departmental proceeding has been initiated by framing a charge against Shri Kumar by order No. 11176 dated 17.10.2008 issued by Personnel and Administrative Reforms Department. During the pendency of the departmental proceeding, the services of Shri Kumar was allocated finally to the State of Jharkhand under Bihar Re-organisation Act, 2000.

In view of relieving of Shri Kumar on 15.07.2009 for joining in the State of Jharkhand by the Bihar Government, the Departmental proceeding initiated against Shri Kumar could not be completed and all the related records were transmitted to the State of Jharkhand.

The State of Jharkhand by the departmental office order No. 335 dated 17.12.2009 decided to conduct the departmental proceeding against Shri Kumar for the charge as per the records sent by the State of Bihar.

After considering the inquiry report submitted by the Inquiry Officer in the departmental proceeding conducted against Shri Kumar, the following punishment is imposed upon Shri Shilendra Kumar:-

The suspension of Shri Kumar is evoked with effect from the issuance of the order with the condition that he shall not be entitled for anything except the subsistence allowance for the period of suspension and he is reverted to his basic pay on the post he is working.

Since the case is pending in the Vigilance Court against Shri Kumar, thus this order would be subject to the result of the final order passed by the learned Court in future.

(Pramod Kumar Tiwari) Deputy Secretary to Government

15. A perusal of the aforesaid order clearly indicates that nothing has been discussed by the disciplinary authority in so far as the case against the petitioner is concerned. Even the foundational facts have not been discussed by the disciplinary authority, besides not giving any reason whatsoever for awarding the penalty of reduction of pay to his original basic pay. The disciplinary authority has not even recorded his concurrence to the enquiry report.

16. The appellate order dated 30.08.2012 is extracted below:-

Letter-5/Estt.-Charg 02/2/2009P.-10024/ Government of Jharkhand Personnel, Administrative Reforms & Rajbhasha Department

To,

Shri Shilendra Kumar, Personal Assistant, Disaster Management Department, Jharkhand, Ranchi.

Ranchi dt. 30.08.2012

Subject:-Regarding your received application/appeal relating to exoneration from the punishment given in the light of departmental proceeding.

Your appeal has been rejected after considering your appeal representation in the light of the enquiry report received pursuant to the pending case of bribe in Vigilance Court and departmental proceeding.

(Pramod Kumai Tiwari) Deputy Secretary to Government

17. The appellate order also does not disclose any application of mind on behalf of the appellate authority. In Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, the Hon''ble Supreme Court has observed:

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirement of law while exercising his jurisdiction under Rule 37 of the Rules.

18. In view of the aforesaid, I find merit in the contention raised on behalf of the petitioner that the penalty order dated 03.01.2012 and the appellate order dated 30.08.2012 are liable to be interfered with on the ground of violation of the principles of natural justice. Accordingly, the writ petition is allowed. The impugned orders dated 03.01.2012 and 30.08.2012 are quashed. The disciplinary authority is directed to pass a fresh order within a period of four weeks from the date a certified copy of this order is produced before him.