
(2012) 12 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1955 of 2009-D

Sunder Pal and Another

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Punjab Police Rules, 1934 — Rule 16.24

Citation : (2013) 2 ShimLC 630

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Tarlok Chauhan, for the Appellant; Rajinder Dogra, Additional Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J.—By means of this writ petition, the following relief has been claimed:--

(a) That the impugned order dated 23/9/2004 (Annexure-P/1, charge sheets (Annexure-P/2) and Annexure-P/4), enquiry report (Annexure-P/6), order dated 10/6/2005 (Annexure-P/7) passed by respondent No. 4, order dated 16/6/2007 (Annexure-P/9) passed by respondent No. 3 and order dated 4/2/2008 (Annexure-P/11) passed by respondent No. 2 may kindly be quashed and set aside.

The petitioners are members of Police Force and in the year 2004 were posted in Police Station, Pachhad, District Sirmaur. One of the accused, namely, Balbir Singh alias Pinku in FIR No. 30/04 was entrusted to them in custody on 2.8.2004. He was to be produced in the Court of Judicial Magistrate, Rajgarh. Shri Anoop Singh, the SHO of Police Station also accompanied them and the said accused. On way back to police station, the accused was taken to his house in village Gandhar for recovery of his underwear pursuant to some statement allegedly made while in custody. He when taken to his house asked the police

escort, i.e. the petitioners to allow him to go for urination in the bath room. They seem to have permitted him. However, instead of going to the bath room, he managed his escape by running from a narrow space leading from his house towards forest. Though the petitioners allegedly made efforts to nab him, but of no avail as he managed to escape by running into the forest taking advantage of rain and foggy weather. This has led in initiating the departmental action against both the petitioners vide order of the Superintendent of Police, Sirmaur, Annexure A-1. The Deputy Superintendent of Police, Headquarters, Nahan, District Sirmaur (respondent No. 5) was appointed as Inquiry Officer. The Inquiry Officer had served the petitioners with the article of charge Annexure A-2 and Annexure A-4. They submitted their written statements in defence Annexures A-3 and A-5, respectively. The Inquiry Officer after taking on record the evidence produced against the petitioners and taking into consideration the written statements submitted by both the petitioners in defence, has recorded a finding that they both were negligent in the discharge of their official duties due to which the accused in FIR No. 30/04 managed his escape from their custody and as a result thereof not only the name of police department is defamed, but the investigation of the case also adversely effected. The inquiry report, Annexure A-6 was submitted by the Inquiry Officer to the Disciplinary Authority, the Superintendent of Police, Sirmaur, who imposed the penalty of forfeiture of two years' service for the purpose of increment permanently upon each petitioner. Aggrieved thereby though they preferred service appeal Annexure A-8 before the appellate authority and also revision petition Annexure A-10 to the Head of Department, i.e. Director General of Police, however, rejected vide orders Annexures A-9 and A-11 respectively.

2. The challenge to the impugned orders Annexure A-7 and also Annexure A-9 as well as A-11 is on the grounds, inter alia, that the inquiry officer was not competent under the Punjab Police Rules to serve charge sheet upon the petitioners and it was the sole prerogative of the disciplinary authority. Also that the disciplinary proceedings have been conducted with close and predetermined mind to hold the petitioners guilty. The written statement in defence submitted by the petitioners is not taken into consideration. The evidence available on record suggesting that the petitioners were not at fault with respect to the escape of the accused is erroneously ignored.

3. The impugned orders whereby the penalty has been imposed upon the petitioners and whereby the appeals/revision petitions preferred have been rejected, are non-speaking nor all the points raised been taken into consideration. Petitioners have not been afforded the opportunity of being heard.

4. In reply, the stand taken by the respondent-State is that under Rule 16.24 of the Punjab Police Rules, the Inquiry Officer is competent to serve the delinquent with summary of allegations and as such, no illegality is said to be committed by serving upon the petitioners article of charge by the Inquiry Officer. The inquiry was conducted in accordance with rules and in strict compliance to the principles

of natural justice. The penalty has also been imposed upon the petitioners after affording them due opportunity of being heard.

5. The only case canvassed by the learned Counsel representing the petitioners and rightly so, is that, all the points raised in the service appeal Annexures A-8 and A-10 have not been dealt with by the appellate authority while deciding the same vide impugned order Annexure A-9, which according to learned Counsel is non-speaking and devoid of any credence. In order to buttress the arguments so advanced reliance has been placed on the judgment of Apex Court in Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, . In this judgment, the Apex Court has dealt with the necessity of recording reasons in administrative matters by the authority concerned. The observations made by the Apex Court in the judgment, supra read as follows:--

RECORDING OF REASONS:

38. It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.

39. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, this Court has observed as under:--

Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always.

40. In LIC of India and Another Vs. Consumer Education and Research center and Others, this Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, ; and Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others,

41. In State of West Bengal Vs. Atul Krishna Shaw and Another, , this Court observed that:

Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review.

42. In S.N. Mukherjee Vs. Union of India, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in

cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. In *Krishna Swami Vs. Union of India and another*, , this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed:

Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21.

44. This Court while deciding the issue in *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, , placing reliance on its various earlier judgments held as under:

27. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice.

The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind.

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected.

45. In *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held:

In fairness and justice, the member is entitled to know why he has been found

guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court u/s 22A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding.

46. The emphasis on recording reason 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 of the authority before the 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.

6. Similar is the ratio of the judgment rendered by a Co-ordinate Bench of this Court in CWP No. 1164 of 2009 titled Ramesh Kumar v. Union of India and others, dated 13.8.2012.

7. Now if coming to impugned order Annexure A-9 passed by the appellate authority only few of the facts came to be recorded therein and without recording any reason, it is concluded that the petitioners failed to perform the assigned duties and it is for this reason, the accused managed his escape from their custody. The points, five in number, raised in the appeal Annexure A-8 have not been critically examined in accordance with the evidence collected by the Inquiry Officer vis-a-vis the inquiry report. The Revisional Authority, i.e. the Director General of Police, in the order Annexure A-11, no doubt, jotted down all the five points raised by the petitioners before him, however, disposed of the revision petition with the only observation that a revision petition can only be filed on the ground of material irregularities in the proceedings or production of fresh evidence and that no legal ground for reconsideration is brought to him in the revision petition, without making any observation that the grounds raised in the revision petition and jotted down in the order are legal grounds or not. It is seen that the approach so adopted by the authorities is illegal and rather deprecated by the Apex Court in the judgment, cited supra.

8. On the other hand, if coming to the grouse brought to this Court in this writ petition, the appellate authority and for that matter even the disciplinary authority should have applied its mind to the evidence collected by the Inquiry Officer during the course of inquiry and thereafter to have passed the orders

imposing penalty upon the petitioners and decided the appeal, they preferred and not by merely swaying with the gravity and seriousness of the charges levelled against the petitioners. Therefore, this Court finds the present a fit case where subject to the other rights and contentions of the petitioner(s) qua the manner in which the inquiry is conducted or procedural irregularities having been highlighted, a direction to the appellate authority, i.e. the Inspector General of Police, Southern Range, Shimla to decide the appeal, Annexure A-8 afresh in the light of the law laid down by the Apex Court, cited supra, would serve the ends of justice.

9. For the foregoing reasons, the impugned order Annexure A-7, imposing thereby penalty upon the petitioners being un-reasoned and non-speaking as well as violative of the principles of natural justice, deserves to be quashed and set aside with liberty reserved to the disciplinary authority to take fresh decision in the matter in the light of the law laid down by the Apex Court in the judgment cited supra and also the observations hereinabove.

10. Consequently, orders Annexure A-9 passed by the appellate authority in the appeal preferred by the petitioners and Annexure A-11 passed by the 2nd respondent, Director General of Police in the revision also deserves to be quashed and set aside with a further direction that in the event of any appeal/revision petition if preferred by the petitioners, to decide the same in accordance with above observations. This writ petition is thus disposed of with a direction to the disciplinary authority, i.e. the Superintendent of Police, Sirmaur at Nahan to take a fresh decision in the matter after affording due opportunity of being heard to the petitioners. The liberty is reserved to the petitioners to approach this Court again against the surviving grievances, if any. Pending application(s), if any, also shall stand disposed of. No order as to costs.