

(2017) 04 RAJ CK 0174
In the Rajasthan High Court
Case No : 517 of 2009

Union of India & Ors.

APPELLANT

Vs

Gulshan Raj Verma

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Constitution of India, Article 225, Article 225 - Jurisdiction of existing High Courts - Jurisdiction of existing High Courts
Air Force Rules, 1969, Ru

Citation : (2017) 04 RAJ CK 0174

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : A.K. Rajvanshy, C.S. Panwar

Judgement

1. In this special appeal filed under Rule 134 of Rajasthan High Court Rules read with Article 225 of the Constitution of India, the appellant Union of India and authorities Ministry of Defence have challenged the judgment dated 09.03.2009 passed by learned Single Judge in SBCWP No.3884/1997, whereby the learned Single Judge allowed the writ petition with certain directions to the appellants.

2. As per brief facts of the case, the writ-petitioner was enrolled in trade of Police with Indian Air Force on 07.10.1987. A show cause notice was given to him on 09.11.1995 as to why he be not discharged from the services under Rule 15 (2) (g) (ii) of Air Force Rules, 1969 and as per procedure prescribed under Airman Habitual Offenders Notification dated 14.08.1984.

3. The respondent/writ-petitioner submitted his explanation along with necessary details. The Commanding Officer of Air Force Station, Jaisalmer, called the writ petition on 17.10.1996 and issued with a clearance certificate in five copies with instructions to clear stand w.e.f. 21.10.1991 (af). A discharge certificate subsequent thereto was issued in the month of December, 1996.

4. Being aggrieved by the discharge in the manner aforesaid, the respondent/

writ-petitioner preferred a writ petition before this Court and in this Court vide order dated 27.08.1999 directed the respondents to produce a copy of the discharge order and also record of the competent authority satisfying itself regarding discharge of the writ-petitioner from Air Force. The above direction was reiterated on 09.07.2008. The appellant- UOI in pursuance to the aforesaid order produced the copy of discharge order dated 26.06.1996 and also relevant option of noting resulting into approval for discharge of respondent/writ-petitioner.

5. The learned Single Judge after perusing the entire record and considering the prayer of the writ-petitioner observed that after going through the document aforesaid and the contention of the learned counsel for the petitioner that competent authority before accepting recommendation to discharge the writ-petitioner did not apply its mind as such and failed to act as per Rule 15 of the Rules of 1969, therefore, impugned discharge is bad in law.

6. The learned Single Judge while following the judgment reported in WLC (Raj.) 1993 (3) P.1 allowed the writ petition and quashed and set aside the order 26.09.1996 and other consequential orders.

7. Learned counsel appearing on behalf of appellants submits that the judgment impugned is not in consonance with law because reasons were recorded on the file, therefore, it was not necessary for the competent authority to communicate reasons upon which the writ-petitioner was discharged from the services. It is also argued that finding of learned Single Judge is erroneous because in Paragraph 5 of the file, the competent authority after taking into consideration the entire reasons for discharge approved the order while using word "approved", which goes to show that competent authority has applied its mind towards the facts and evidence on record, however, the learned Single Judge committed error while not considering the fact that all the facts were considered by the competent authority and recorded the reason on file before approving the question of discharge. Therefore, the judgment impugned may kindly be quashed.

8. On the other hand, learned counsel for the respondent/writpetitioner argued that whole proceedings undertaken by the appellants is totally against the principles of natural justice because in view of judgment Hon''ble Apex Court in the case of S.N. Mukherjee Vs. Union of India reported in (1990) 4 SCC 594, the authority exercising quasi-judicial functions is required to record reasons for its decision irrespective of whether decision is subject to appeal, revision or judicial review, so also, those reasons should be clear and explicit, though may not be elaborated. But, in this case only word used in Paragraph 5 is "approved" and furthermore, the reasons have not been communicated to the writ-petitioner. Thus, no error has been committed by the learned Single Judge. It is also submitted that in the case of S.N. Mukherjee (supra) the provisions of Army Act, 1950 were under consideration and, therefore, in view of judgment of Hon''ble Apex Court in the said case, no interference is called for in the judgment impugned.

9. After hearing the learned counsel for the parties, we have perused the judgment of learned Single Judge, and also perused the order of discharge (Annex.P/5) dated 26.09.1996 passed in pursuance to directions issued by the competent authority.

10. In the case of S.N. Mukherjee's case (supra), the following adjudication was made by the Apex Court, which reads 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.

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40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. .."

11. In view of the fact that in the order, which is served upon the respondent/writ-petitioner, the only word was used in paragraph 5 for discharging the writ-petitioner from the service is "approved", cannot be treated a reasoned order because at the time of judicial review, it is not possible to adjudicate the controversy.

12. Accordingly, and in view of above, there is no force in this intra-court appeal filed by the appellant Union of India, and the same is hereby dismissed.