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(2013) 10 P&H CK 0350

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 6456 of 2010

R.K. Garg	APPELLANT
Vs	
State of Haryana and Another	RESPONDENT

Date of Decision: Oct. 11, 2013

Citation: (2014) 2 SCT 540

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Rajeev Parshad, D.A.G., Haryana, for the Respondent

Judgement

Tejinder Singh Dhindsa, J.
The petitioner who retired from the post of Chief Engineer, Irrigation Department, State of Haryana has filed the instant writ petition impugning the order dated 13.1.2010, Annexure P24, passed by the Financial Commissioner and Principal Secretary to Government Haryana, Irrigation Department whereby a penalty of 50% cut in pension has been imposed upon him. Petitioner also questions the validity of the departmental proceedings initiated in the light of charge sheet dated 24.10.2007 and which have finally culminated in the inflicting of penalty of 50% cut in pension. Facts in brief would require notice. Petitioner retired from service under the State Government, Irrigation Department on 30.11.2007 upon attaining the age of superannuation. Prior thereto, he was appointed as a Member (Water Supply), Delhi Jal Board, vide orders dated 7.8.2006 initially on deputation basis. He was thereafter re-appointed by the Government of NCT Delhi as Member (Water Supply), post-retirement from the State of Haryana, in the first instance upto 30.11.2009, i.e. the age of 60 years and then given extension for one year upto 30.11.2010.

2. Petitioner was issued a show cause notice dated 28.3.2007, Annexure P8, alleging that he had been deputed for inspection and submission of report regarding construction of Jewar Tappal Embankment by the U.P. Irrigation Department on the left bank of river Yamuna. It was asserted that the petitioner had furnished a wrong report and had

misstated that the work had started in U.P. during the incumbency of one Shri S.C. Chawla, Executive Engineer, whereas the MOU was signed on 4.10.2004 by the U.P. Government. Petitioner submitted his reply dated 11.4.2007 clarifying that his report was factually correct and was based upon the reports of the concerned Superintending Engineer and Executive Engineer. The petitioner, in his reply, sought clarification as regards the nature of MOU that had been signed on 4.10.2004 by the U.P. Government and its implication/effect on the commencement of the construction in question. It was also clarified by the petitioner in the reply that he had never been called upon to act as an Enquiry Officer and as such, the show cause notice had been issued without application of mind and was not in bonafide exercise of power, and rather had been issued only to bail out Shri S.C. Chawla and to coerce the petitioner to comply with an order of recall from deputation that had been issued on the same date. It so transpires that the reply submitted by the petitioner to the show cause notice was not accepted and a charge sheet dated 24.10.2007, Annexure P10, under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 was served upon him on the following charges;

While posted from 28.8.2002 to 31.8.2006 as Chief Engineer, Yamuna Water Services, Haryana Irrigation Department, Sh. R.K. Garg committed certain acts of omission and commission for which he is charged as under:-

1. That he failed to make a proper checking of construction work Jewar Tappal Embankment by Uttar Pradesh, Irrigation Department on the left bank of River Yamuna. In the inquiry report conducted by him, he intimated that the scheme for the construction of embankment came to the notice of Haryana Government on 19.4.2005 and the work was taken up by the Uttar Pradesh Government in May, 2003.

On the basis of said enquiry report he recommended for taking action against Sh. S.C. Chawla, Executive Engineer Palwal Water Services, Palwal and others on the ground that during their incumbency the work on Jewar Tappal Embankment was started whereas in the reply submitted by Sh. S.C. Chawla, he added papers of Drainage Division First Meerut stating that the work was started after 4.10.2004, i.e. the date on which M.O.U. was signed. That the report made by Shri R.K. Garg was wrong, malafide, vitiated & designed to mislead the Government & thereby causing strain in relation between the Government of Haryana and Uttar Pradesh in a sensitive issue of inter State river matter. He made derogatory remarks on the State Government of Haryana when his explanation was sought.

The above lapses constitute grave misconduct on the part of Shri R.K. Garg, the then Chief Engineer, Yamuna Water Services, Haryana, Irrigation Department (Now on deputation with Delhi Jal Board, Delhi) rendering him liable for strict disciplinary action.

3. The petitioner submitted a reply dated 13.11.2007. The then Special Secretary, Department of Irrigation was appointed as the Enquiry Officer who submitted a report dated 21.1.2008 concluding the charges to be proved against the petitioner. A show

cause notice dated 12.1.2009, Annexure P17, was issued by the Disciplinary Authority, upon agreeing with the findings of the Enquiry Officer, contemplating the imposition of penalty of 50% cut in pension. The petitioner submitted a reply dated 28.1.2009, Annexure P18. However, vide impugned order dated 13.1.2010, Annexure P24, the penalty of 50% cut in pension has been imposed upon the petitioner.

4. Petitioner in person and Mr. Rajeev Parshad, Deputy Advocate General, Haryana have been heard at length.

5. At the very outset, this Court is of the considered view that there has been a non-compliance of one of the facets of natural justice, namely, recording of reasons by the Punishing Authority and communication thereof to the petitioner. The petitioner having been served a show cause notice dated 12.1.2009 had submitted a detailed reply dated 28.1.2009 which has been placed on record at Annexure P18. The submission of such reply is not disputed. In such reply, the petitioner had raised the grounds of victimization, the authorities having acted with a pre-determined mind and the findings of the Enquiry Officer being perverse on account of either ignoring material documents and evidence or on account of mis-appreciation of the same. Specific instances in regard thereto were furnished in the detailed reply dated 28.1.2009.

6. The Punishing Authority has dealt with the matter in the following terms:

After examining the inquiry Report and reply of Shri R.K. Garg to the 2nd show cause notice thereon, the matter was referred to Haryana Public Service Commission for obtaining their concurrence for imposing the punishment of 50% cut in the pension of Shri R.K. Garg. Haryana Public Service Commission accorded their approval vide their Memo No. Dis/29/2009/11495 dated 17.11.2009 to impose the punishment of 50% cut in the pension against him.

So, keeping all the aspects and circumstances of the case in view, the Governor of Haryana is hereby decided to inflict the punishment of 50% cut in pension upon Shri R.K. Garg, Chief Engineer (now retired).

It is, therefore, ordered accordingly.

7. Suffice it to observe that no reasons whatsoever have been recorded which, in turn, would reflect application of mind by the Punishing Authority and which form the basis to justify the imposition of penalty of 50% cut in pension.

8. The requirement of recording of reasons by the Punishing Authority is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimises arbitrariness in the decision-making process. Judicial precedents which can be cited to support the above mentioned proposition are:

1 Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others,

2. S.N. Mukherjee Vs. Union of India,

3. Krishna Swami Vs. Union of India and another, and

4. M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others,

9. A Full Bench of Gujarat High Court in Testeels Ltd. Vs. N.M. Desai and Another, has enunciated the law on the subject and observed as under:

The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision-making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution. These Courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then, they will be subject to judicial scrutiny and correction.

10. The impugned order inflicting the imposition of 50% cut in pension is completely bereft of reasons. It is a totally non-speaking cryptic order. The present case is a perfect example whereby a quasi-judicial authority has stultified the powers of judicial review of this Court simply by not recording reasons in support of the impugned order.

11. For the reasons recorded above and without making any observations as regards the merit of the controversy, the impugned order dated 13.1.2010 at Annexure P24 is set aside on the short ground of violation of the principles of natural justice being a non-speaking order. The matter is remanded back to respondent No. 1 to re-consider the issue by taking into account all material and relevant facts as also to deal with the

submissions and the grounds raised by the petitioner in the detailed reply dated 28.1.2009, Annexure P18, submitted in response to the show cause notice. The petitioner shall also be afforded an opportunity of personal hearing. It is further directed that such exercise of re-consideration in terms of passing a reasoned order be completed within a period of ten weeks from the date of receipt of this order. Petition allowed in the aforesaid terms.