HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 9900/2005

Pawan Prajapati

----Petitioner

Versus

1. Union of India through it's Secretary, Ministry of Home Affairs, New Delhi
2. Director General of Police, Border Security Force, 10, C.G.O. complex, Lodhi Road, New Delhi-3

----Respondents

For Petitioner(s)	:	Mr. Sunil Samdaria, Adv.
For Respondent(s)	:	Mr. Ashish Kumar, Adv. Mr. Subhankit Bhatnagar, Adv.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

RESERVED ON	::	11.07.2023
PRONOUNCED ON	::	19.07.2023

REPORTABLE

1. The issue involved in this petition is "whether any Administrative action or order is required to be supported by reasons? Whether the Disciplinary and Appellate Authority is supposed to pass a speaking order before taking any action against an employee?"

2. Instant petition has been filed by the petitioner with the following prayer:-

> "In conspectus of aforesaid state of facts, it is prayed to Hon'ble Court.
>
> (i) to quash and set aside the orders dated 8.3.2004 & 31.08.2004 and directed the respondents to reinstate the petitioner with all consequential benefits.

(ii) to direct the respondents to restore the benefits as if impugned orders had never been passed.

(ii) Any other relief which this Court deem fit and proper in facts and circumstances of the case may also be awarded.

(iii) Award cost of the writ petition."

3. Counsel for the petitioner submits that the petitioner was serving as a Constable in Border Security Force (for short 'BSF') and he was granted 8 days casual leave from 27.10.2003 to 4.11.2003 but he over-stayed for 77 days and he rejoined his services on 20.01.2004. Counsel submits that the reason for his absence was the ailments of his parents. Counsel submits that a chargesheet was served upon him on 01.03.2004 but prior to issuance of chargesheet, the proceedings of recording evidence was conducted on 11.02.2004, 12.02.2004 and 16.02.2004 in contravention to the statutory provisions contained under Rules 48 of the Boarder Security Force Rules, 1969 (for short 'the Rules of 1969'). Counsel submits that as per the Rule 44 of the Rules of 1969, it was mandatory for the authorities to first serve the chargesheet and, thereafter, record the evidence but here in the instant case, the evidence was recorded first and chargesheet was served at the later stage. Counsel submits that without considering the defence taken by the petitioner, the respondents have passed the order impugned on 08.03.2004 without passing any speaking or reasoned order. Counsel submits that there was absolutely no application of mind on part of the Summary Security Force Court. Counsel submits that feeling aggrieved and dissatisfied by the said order, the petitioner submitted an appeal before the Appellate Authority and the same was also dismissed summarily without assigning any reasons vide impugned order

dated 31.08.2004. Counsel submits that the Disciplinary Authority as well as the Appellate Authority were supposed to appreciate the allegations levelled against the petitioner and the defence taken by the petitioner, but here in the instant case, there was no application of mind on the part of both the authorities which has resulted in violation of the principle of natural justice. Counsel further submits that the reasons for petitioner's absence were explained to the authorities and the reason was that grandfather of the petitioner died and the presence of the petitioner was required for performing the necessary rituals and, thereafter, the parents of the petitioner fell ill and for taking their care he over-stayed at home. Counsel submits that all these defence were narrated to the authorities but these facts have not been appreciated by the authorities at the time of passing the impugned orders. Counsel submits that it was incumbent upon the authorities to pass a reasoned and speaking order but here in the instant case, this exercise has not been done. He further submits that the order dismissing his appeal was served upon the petitioner at Ajmer, hence, this Court has territorial jurisdiction to entertain this petition in the State of Rajasthan. In support of his contention, he has placed reliance upon the following judgments:-

(i) S.N. Mukherjee Vs. Union of India reported in **AIR 1990 SC 1984;**

(ii) Union of India & Anr. Vs. Vishnu Lal Nai & anr. reported in **2005 (2) Vol. XLVIII RLR 113;**

(iii) Mahender Pratap Singh Kapil Vs. Union of India & Ors. reported in **1999 (1) WLC (Raj.) 375; &**

(iv) Nawal Kishore Sharma Vs. Union of India and Others reported in **2014 (9) SCC 329.**

Counsel submits that in view of the submissions made hereinabove, the orders impugned passed by the authorities be quashed and set aside and the respondents be directed to reinstate back the petitioner in service with all consequential benefits.

4. Per contra, counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that no cause of action has arisen within the State of Rajasthan, hence this Court has no jurisdiction to entertain the present petition. Counsel submitted that neither the cause of action nor any part of cause of action has arisen within the State and mere communication of the order does not give him the cause to approach this Court. Counsel further submitted that there is no violation of any statutory provisions contained under the Rules of 1969. Counsel submitted that entire proceedings were conducted as per Rule 48 of the Rules of 1969 and when the evidence was recorded, three witnesses were examined and opportunity of cross-examination was given to the petitioner but the petitioner refused to cross-examine all the witnesses. He further submitted that petitioner has pleaded guilty when the chargesheet was served upon him and looking to his past entries in the service record, a decision was taken to dismiss him from service. Counsel submitted that it is well settled proposition of law that if the disciplinary authority accepts the finding recorded by the Enquiry Officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the finding recorded in the inquiry report, therefore no further elaborate reasons were required to be given

by the disciplinary as well as the appellate authority, hence the respondents have not caused any illegality in passing the order impugned. Counsel further submitted that BSF is a para military force and the petitioner was supposed to intimate the concerned officer about the reasons of his absence but the petitioner has failed to do so, that is why the proceedings were conducted against him by following the procedure and a decision was taken to dismiss him from the service. Counsel submitted that it is settled proposition of law that the High Court cannot act as an appellate authority against finding of fact recorded by the Disciplinary authority. In support of his contentions he has placed reliance upon the following judgments:-

(1) Oil and Natural Gas Commission Vs. Utpal Kumar Basu & Anr. reported in **(1994) 4 SCC 711**

(2) Ram Narain Singh Vs. Chief Of the Army Staff and others, reported in **2002(2) MPLJ 324,**

(3) Central Industrial Security Force and Ors. Vs. Abrar Ali reported in **AIR 2017 SC 200**

(4) Dnyandev Jadhav vs. UOI & Ors. in WP No. 6578/2014 of the Bombay High Court

(5) Ramraj Meena Vs. The Union of India and Ors. reported in **DBSAW No. 333/2022** of the Rajasthan High Court.

(6) Boloram Bordoloi Vs. Lakhimi Gaolia Bank and Ors. reported in **MANU/SC/0057/2021: Civil Appeal No. 4394/2020** decided on 08.02.2021.

5. Counsel submits that in view of the submissions made herein above, the petitioner does not deserve any indulgence by this Court in this petition and the petition is liable to be dismissed.

6. In rebuttal counsel for the petitioner submitted that prior to the serving of chargesheet upon him, the entire evidence were

recorded in violation of Rules of 1969. He further submitted that petitioner never pleaded guilty, the respondents have simply narrated the word guilty in the document issued on 03.02.2004 while the chargesheet was issued to the petitioner on 01.03.2004 therefore there was no occasion or reason available to the petitioner to plead guilty. Counsel submitted that if it was the case of the respondents that petitioner had pleaded guilty then their was no reason to serve chargesheet upon the petitioner and record the evidence prior to that. Counsel submitted that under these circumstances, interference of this Court is warranted.

7. Heard and considered the submissions made at Bar and perused the material available on record.

8. The basic grievance of the petitioner is that acting against the mandatory procedure and provision contained under Chapter VII of the Rule of 1969, the Disciplinary Authority has passed a non-speaking order dated 08.03.2004 by which the petitioner has been dismissed from service without considering the defence taken by him. The other grievance of the petitioner is that even the Appellate Authority has dismissed his appeal in a summary manner without recording any reasons and has passed a non-speaking order, which has resulted in violation of principles of natural justice.

9. Admittedly, Chapter VII of the Rules of 1969 deals with the procedure of issuing chargesheet, hearing of charges against the enrolled person and recording of order against such person. For ready reference the relevant provisions contained under Rule 43, 44, 45 and 48 are reproduced as under:

43. Offence report.—Where it is alleged that a person subject to the Act 1[other than an officer or a Subordinate Officer] has committed an offence punishable thereunder the allegation shall be reduced to writing in the form set out in Appendix IV.

44. Charge Sheet.—Where it is alleged that an officer or a Subordinate Officer has committed an offence punishable under the Act, the allegation shall be reduced to writing in the form set out in Appendix VI.

45. Hearing of the charge against an enrolled person.— (1) The charge shall be heard by the Commandant of the accused in following manner—

(i) The charge and statements of witnesses, if recorded, shall be read over to the accused.

(ii) If written statements of witnesses are not available, or where the Commandant considers it necessary to call any witness, he shall hear as many witnesses as he may consider essential to enable him to determine the issue.

(iii) Wherever witnesses are called by the Commandant, the accused shall be given opportunity to cross-examine them.

(iv) Thereafter, the accused shall be given an opportunity to make a statement in his defence .]

(2) After hearing the charge under sub-rule (1), the Commandant may:-
(i) award any of the punishments which he is empowered to award; or
(ii) dismiss the charge; or
(iii) remand the accused, for preparing a record of evidence or for preparation of an abstract of evidence against him; or
(iv) remand him for trial by a Summary Security Force Court:

Provided that, in cases where the Commandant awards more than 7 days imprisonment or detention he shall record the substance of evidence and the defence of the accused:

Provided further that he shall dismiss the charge, if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him it is not advisable to proceed further with it:

Provided also that, in case of all offences punishable with death a record of evidence shall be taken.

[Provided further that in case of offences under Sections 14, 15, 17, 18 and offence of 'murder' punishable under Section 46 of the Act, if the accused has absconded or deserted, the Commandant shall hear the charge in his absence and remand the case for preparation of the record of evidence.]

48. Record of evidence.- (1) [The officer ordering the record of evidence may either prepare the record of evidencehimself or detail another officer to do so.

(2) The witnesses shall give their evidence in the presence of the accused and the accused shall have right to cross-examine all witnesses who give evidence against him.

[Provided that where statement of any witness at a court of inquiry is available, examination of such a witness may be dispensed with and the original copy of the said statement may be taken on record. A copy thereof shall be given to the accused and he shall have the right to cross- examine if he was not afforded an opportunity to cross -examine the witness at the Court of Inquiry.]

(3) After all the witnesses against the accused have been examined, he shall be cautioned in the following terms; "You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence." After having been cautioned in the aforesaid manner whatever the accused states shall be taken down in writing.

(4) The accused may call witnesses in defence and the officer recording the evidence may ask any question that may be necessary to clarify the evidence given by such witnesses.

(5) All witnesses shall give evidence on oath or affirmation:
Provided that, no oath or affirmation shall be given to the accused nor shall he be cross-examined.

(6) (a) The statements given by witnesses shall ordinarily be recorded in narrative form and the officer recording the evidence may, at the request of

the accused, permit any portion of the evidence to be recorded in the form of question and answer.

(b) Witnesses shall sign their statements after the same have been read over and explained to them.
1 [(6A) The provisions of section 89 of the Act shall apply for procuring the attendance of the witnesses before the officer preparing the Record of Evidence.]

(7) Where a witness cannot be compelled to attend or is not available or his attendance cannot be procured without an undue expenditure of time or money and after the officer recording the evidence has given a certificate in this behalf, a written statement signed by such witness may be read to the accused and included in the record of evidence.

(8) After the recording of evidence is completed the officer recording the evidence shall give a certificate in following form :-
"Certified that the record of evidence ordered by... ..Commandant... .....was made in the presence and hearing of the accused and the provisions of rule 48 have been complied with".

10. Perusal of the record indicates that as per the offence report the allegation against the petitioner is that he was granted 8 days casual leaves w.e.f. 27.10.2003 to 04.11.2003 but he failed to join the duty even after the expiry of the said leaves and he rejoined voluntarily on 20.01.2004, hence, he over-stayed for 77 days. On the basis of this offence report, the enquiry officer conducted an enquiry and recorded the evidence of witnesses on 11.02.2004, 12.02.2004 and 16.02.2004 and thereafter chargesheet was served upon the petitioner on 01.03.2004. The grievance of the petitioner is that no evidence of any witnesses was recorded after serving the chargesheet upon him, hence he has been deprived to cross-examine the witnesses. Another grievance of the petitioner is that when the evidence of the witnesses was recorded, no chargesheet was served, hence, he was not aware of the charges, hence, he has not been able to contest the matter and by

following such irregular process, the principles of natural justice have been violated. But still a non-speaking order was passed dismissing his services.

11. This fact is not in dispute that the petitioner took all these grounds before the Appellate Authority who also rejected the appeal in a summary manner without assigning any reasons.

12. For the sake of convenience the impugned order dated 08.03.2004 passed by the Disciplinary Authority is reproduced as under:

> "Office of the Commandant 129 Battalian BSF c/o 56 APO dated 8 March, 2004.
>
> Order
>
> Whereas, no.950056760 Contable Pawan Prajapati of this unit has been tried by a summary security force court on 08.03.2004 at HOr 129 Battalion, BSF c/o 56 APO for the offence under section 19 (b) Individual found guilty of the charge and sentence awarded 'to be dismissed from service. The sentence of the court promulgated to the accused on 08.03.2004.
>
> 2. His absence period from 05.11.2003 to 20.01.2004 he treated as "Dies-Non" for all purpose. He is struck off strenth of 129 BN BSF with effect from 08.03.2004(AN).
>
> Dt. 8.3.2004
>
> Distribution:-
>
> 1. Individual: If you feel aggrieved by this order, your may present a petition to the IG BSF, Ftr HQ JMU within 3 months from the date of receipt of this order.
> 2. to 6 unrelated."

13. Feeling aggrieved by this order dated 08.03.2004, the petitioner submitted an appeal before the Appellate Authority, the same was dismissed on 31.08.2004 by observing as under:-

> "Government of India
> Ministry of Home Affairs

Directorate General Border Security Force
(Disc & Lit Branch)
10, CGO Complex
Lodhi Raod, New Delhi-3
31 Aug 2004

To
Ex No.95005676
Constable Pawan Prajapati
(Through Commandant 129 Bn BSF)

Sub: TATUTORY PETITION AGAINST CONVICTION BY SUMMARY SECURITY FORCE COURT (SSFC) TRIAL

Please refer to your statutory petition dated 01.06.04 against your conviction by Summary Security force court (SSFC) trial held on 08.03.04.

2. The issues raised in your petition have been considered very carefully in the light of relevant records, legal provisions and evidence in SSFC trial proceedings. After a detailed consideration and careful scrutiny of all facts and circumstances of the case. The worty DG BSF has rejected your petition being devoid of merit.

dt. 31.08.2004

Sd/-
Chief Law Officer
(D & L),
By Inspector General"

14. Bare perusal of both orders dated 08.03.2004 and 31.08.2004 clearly indicate that these orders do not fulfill the requirement of passing of speaking orders.

15. Constitutional Bench of Hon'ble Apex Court in the case of **S.N. Mukherjee V. Union of India** reported in **AIR 1990 SC 1984** has held that administrative actions must be supported by reasons because recording of reasons by an administrative authority serves a statutory purpose namely it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. It has been held in para 38 as under:

"38: The object underlying the rules of natural justice "is to prevent miscarriage of justice" and

> secure "fair play in action." As pointed out earlier the requirement about re- cording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by adminis-trative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi- judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that affect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the sub-ject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweight the salutary purpose served by the require- ment to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

16. Apex Court in the case of **Siemens Engineering & Manufacturing Co. of India Ltd. Vs. Union of India and Anr.** reported in **(1976) 2 SCC 981** has held that every quasi-judicial authority must record reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. In doing so, such authority would definitely inspire greater confidence in public mind. It has been held in para 6 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. But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him con firming 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 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 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 has 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 or 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. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

17. It is well settled proposition of law that the reasons should be recorded while passing administrative order and such reasons dispel all doubts about arbitrariness of the authority. Unless the law empowers the authority in such a way that reasons are to be withheld, there is a general duty to given reason by such authority.

18. Disciplinary power to inflict punishment not only stigmatized a person but also takes away his bread or slice thereof such proceedings call for strict test of fair play and fair procedure.

19. The Disciplinary Authority in the present case merely recorded its *ipse dixit* that the petitioner has been tried by the Summary Security Force Court on 08.03.2004 for the offence

under Section 19(b) and he was found guilty of the charge and was awarded sentence of dismissal from service. No reasons have been recorded that why such conclusion to dismiss him from service has been made.

20. The impugned order dated 08.03.2004 has been passed by the Summary Security Force Court without assigning any reason and similarly the order dated 31.08.2004 passed by the Appellate Authority does not give any reason for passing such order. Hence, both the orders are non-speaking orders, which have violated the principles of natural justice. Hence, the matter requires reconsideration by the Disciplinary Authority for passing appropriate reasoned order after following the procedure contained under Chapter VII of the Rules of 1969.

21. At this stage, this Court does not deem it fit and proper to decide the objections raised by the counsel for the respondents regarding invoking jurisdiction of this Court by the petitioner, because the impugned order dated 31.08.2004 was communicated to the petitioner at his residential address at Ajmer and he approached this Court immediately in the year 2005 and now after a lapse of 18 years, he cannot be relegated to approach the jurisdictional Court where the orders impugned have been passed. The judgments cited by the counsel for the respondents are not applicable looking to the peculiar facts and circumstances of this case.

22. In view of the discussions made herein-above, the impugned orders dated 08.03.2004 and 31.08.2004 are quashed and set aside. The matter is remitted back to the appropriate authority for

passing reasoned and speaking order after following the provisions contained under Chapter VII of the Rules of 1969 after granting opportunity of hearing to both sides within a period of three months from the date of receipt of certified copy of this order.

23. As a result, this petition is allowed in part. The respondents are directed to reinstate the petitioner back in service but he will not be entitled to get any back wages from the date of his removal from service till his reinstatement.

24. Stay application and all applications (pending, if any) also stand disposed of.

25. No costs.

(ANOOP KUMAR DHAND),J

MR/Pcg/10