HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 759/2012

Jasram Jat

----Petitioner

Versus

1. Inspector General of Police, Ajmer Range, Ajmer.
2. Superintendent of Police, District Tonk.
3. Station House Officer, Police Station Old Tonk, District Tonk.

----Respondents

For Petitioner(s)	:	Mr. J.P. Goyal, Sr. Adv. with Ms. Jyoti Swami
For Respondent(s)	:	Mr. P.S. Naruka for Mr. Rupin Kala

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Judgment

RESERVED ON	::	27.09.2023
PRONOUNCED ON	::	11.10.2023
REPORTABLE		

1. Discipline is the hallmark of the disciplinary forces and its members are not expected to violate the discipline by consuming liquor and wander in a public place in a drunken condition. Whether such persons can held guilty and punished for such charge without passing a speaking order and without recording just and sufficient reasons?. It is in this background the issue involved in this petition is required to be considered.

2. Feeling aggrieved and dissatisfied by the impugned non-speaking orders dated 08.11.2011 and 17.02.2011, the petitioner has filed this petition with the following prayer:-

"i) to quash and set aside the impugned order dated 08.11.2011 (Annexure-7) passed by Inspector General of Police, Ajmer Range, Ajmer.

ii) to quash and set aside the order dated 17.02.2011 (Annexure-5) passed by Superintendent of Police, District Tonk.

iii) to discharge the petitioner from the charges leveled against him and to revoke the penalty imposed on him.

iv) Any other appropriate order, direction or relief which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.

v) Cost of writ petition may also be awarded in favour of the petitioner."

Submissions by the petitioner:

3. Counsel for the petitioner submits that the petitioner was chargesheeted under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958 (for short 'Rules of 1958') with the charge that on the fateful day i.e. 17.12.2010, the petitioner was found in drunken state and due to his imbalance, he sustained certain injuries for which he was medically examined and he was found in drunken state wandering around quarters of the police line. Counsel submits that a detailed reply to the chargesheet was submitted by the petitioner wherein, the petitioner submitted that he was not on duty on that day and he was suffering from mental illness, for which he took medicine and due to reaction of the said medicine, the petitioner fell down on the road and sustained injuries. Counsel submits that even preliminary enquiry was conducted and in the enquiry it was found that the petitioner was not on duty and he was suffering from mental disease. Counsel submits that discarding all these aspects, the disciplinary authority found him guilty and on the basis of the

report so furnished to the disciplinary authority the punishment order has been passed against the petitioner by which his one annual increment without cumulative effect has been withheld. Counsel submits that against the said order, the petitioner submitted an appeal before the Appellate Authority but over looking the grounds raised in the appeal, the appeal has been dismissed. Counsel submits that under these circumstances, interference of this Court is warranted and the order passed by the respondents be quashed and set aside. Counsel has placed reliance on the judgment passed by this Court in the case of ***Pratap Singh vs. The Superintendent of Police And Ors.: S.B. Civil Writ Petition No.1987/98*** decided on 13.08.2002.

Submissions by the respondents:

4. Per contra counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that the petitioner was part of a discipline force and he was supposed to act and behave in disciplined manner but he was found in drunken state and due to intoxication, he fell down on the road and sustained injuries. When the petitioner was medically examined by the medical Officer, this fact was further verified that the petitioner was found to be intoxicated and that he had consumed alcohol on the fateful day. Counsel submits that after affording opportunity of hearing, an enquiry was conducted against him wherein, he was found guilty. Accordingly, the impugned order was passed withholding his one annual grade increment without cumulative effect. Counsel submits that the scope of judicial review is very limited in such matters and the Court should refrain itself from re-appreciating the evidence by

exercising its jurisdiction contained under Article 226 of the Constitution of India. In support of his contention, he has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of ***State of Bihar And Ors. Vs. Phulpari Kumari reported in (2020) 2 Supreme Court Cases 130***. Counsel further submits that under these circumstances interference of this Court is not warranted.

Reasoning and Analysis:

5. Heard and considered the submissions of the rival sides. The legal issue in this petition is 'whether the punishment order against an employee must provide the reasons or recording one line conclusion is enough to punish him for the alleged misconduct?'

6. Rules of 1958 have been enacted in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The proviso to Article 309 is the source of Rule making power to regulate the recruitment and conditions of the services of the persons appointed to services and post connected with the affairs of the State. Chapter V of these Rules deals with discipline and the penalties imposed upon the delinquent employees who are found guilty of any misconduct.

7. Rule 14 of the Rules of 1958 deals with the nature of penalties and the same read as under:-

> "**14. Nature of Penalties**.–The following penalties may, for good and sufficient reasons, which shall be recorded, and as hereinafter provided, be imposed on a Government servant, namely :–
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> (i) censure;
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> (ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law, rule or order ;

(iv) reduction to a lower service, grade or post; or to a lower time scale or to a lower stage in the time scale or in the case of pension to an amount lower than that due under the rules ;

(v) compulsory retirement on proportionate pension ;

vi) removal from service which shall ordinarily not be a disqualification for further employment ;

(vii) dismissal from service which shall ordinarily be a disqualification for further employment.

Explanation :–

(1) The following shall not amount to a penalty within the meaning of the rule:–

(i) withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the Service or post or the terms of his appointment;

(ii) stoppage of Government servant at the efficiency bar in the time scale on the ground of hid unfitness to cross the bar ;

(iii) non–promotion whether in a substantive or officiating capacity of Government servant, after consideration of his case, to a Service, Grade or post for promotion to which he is eligible ;

(iv) reversion to a lower service, grade or post of a Government servant officiating in a higher service grade or post on the ground that he is considered after trial, to be unsuitable for such higher Service, grade or post or on administrative grounds unconnected with his conduct ;

(v) reversion to his permanent service, grade or post of a Government servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation ;

(vi) compulsory retirement of Government servant in accordance with the provisions relating to his superannuation or retirement ;

(vii) termination of the services –

(a) of a Government servant appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation ; or

(b) of a temporary Government servant appointed otherwise then under contract on the expiration of the period of appointment;

(c) of a Government servant under an agreement, in accordance with the terms of such agreement;

(d) of a Government servant in the services of any of the integrating units of Rajasthan, on non–selection or non–absorption for appointment in any of the services of the integrated State of Rajasthan in accordance with the integration rules.

Explanation:–

(2) The discharge of a person appointed on an ad–hoc or provisional basis to any of the posts in the integrated setup of Rajasthan Services otherwise than for reasons of non–selection or non–absorption to any such services or posts in a accordance with the integrated rules, shall amount to removal or dismissal as the case may be.

Note–The disqualification for further employment on account of dismissal under Rule 14 (vii) can only be waived by the Government if the merits of an individual case so justify."

Perusal of this Rule indicates that wide discretionary powers have been bestowed on the Disciplinary Authority to punish the delinquent employee looking to his/her misconduct. The discretion of the punishing authority should be sound, legal, regular, guided by the law and governed by Rule. It should not be arbitrary, vague and forceful and must not be governed by rumors. The Rule provides the "good and sufficient reasons" should be recorded on the basis of which a penalty has been imposed. When the

Disciplinary Authority adopts a casual approach while passing a punishment order, it does not amount to sufficient compliance of this provision. The phrase "good and sufficient reasons" confers a wide discretion on the Disciplinary Authority to determine the gravity and nature of misdemeanor. What amounts to 'good and sufficient reasons' is left to the unfettered and unguided discretion of the punishing authority. The existence of "good and sufficient reasons" is jurisdictional fact which a Disciplinary Authority must affirm before it can exercise its jurisdiction under Rule 30 of the Rules, 1958 in respect of imposition of any penalty specified therein. The persons aggrieved by the punishment order may file an appeal under Rule 23 of those Rules. Rule 30 of these Rules deals the points of consideration of appeal. For ready reference Rule 30 is reproduced as under:-

"30. Consideration of appeals.–

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provision of rule 13 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 14, the appellate authority shall consider –

(a) whether the procedure prescribed in these rules has been compiled with and if not, whether such non–compliance has resulted in violation of any provisions of Constitution or in failure of Justice;

(b) whether the facts on which the order was passed has been established;

(c)whether the facts established afford sufficient justification for making an order; and

(d) whether the penalty imposed is excessive, adequate or inadequate and after giving a personal hearing to Government Servant to explain his case, if he desires so and after consultation with the Commission if such consultation is necessary in the case, pass order –

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to authority which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:
Provided that –

(i) the appellate authority shall not impose any enhance penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose.

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which may wish to make against such enhanced penalty; and

(iii) if the enhanced penalty which the appellate authority propose to impose is one of the penalties specified in clause (iv) to (vii) or rule 14 and an inquiry under rule 16 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 18, itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry pass such orders as it may deem fit."

8. The Disciplinary Authority and the Appellate Authority must consider the fact that the impugned order of penalty must contain the "good and sufficient reasons". Such orders must be speaking orders containing the reasons for coming to such conclusion of holding the delinquent employee guilty of any misconduct alleged against him/her.

9. There is no doubt that the Enquiry Officer is not bound by the strict rules of law of evidence, but report of the Enquiry Officer must be a reasoned one and failure to do so renders the order of punishment illegal.

10. The order of punishment which is passed in quasi-judicial proceedings must contain some reasons. Mere recording of conclusions is not sufficient for compliance of the requirement of principles of natural justice as well as Rule 14 of the CCA Rules. Merely recording one line conclusion that after going through the record, the charges levelled against the delinquent official are fully proved is not sufficient. The order must contain reasons, which could show application of mind and which could disclose mental application of the competent authority to the contents of the enquiry report and connected record. Apart from this, points raised by the delinquent official in the representation must be considered by the competent authority and good and sufficient reasons must be recorded as to why they were not being acted upon.

11. Now reverting back to the facts of this case, the allegation against the petitioner is that on the fateful day, he was found fallen on ground in police line campus in a drunken condition and he sustained injuries and for the above conduct, he was served with the chargesheet under Rule 17 of the Rules of 1958 and he was found guilty and punished with penalty of withholding one annual increment without cumulative effect vide order dated 17.02.2011. Against which he preferred an appeal and the same was dismissed vide order dated 08.11.2011.

12. It is worthy to note here that prior to passing the order dated 17.02.2011, a preliminary enquiry was conducted and it was concluded that the petitioner was not on duty on 17.12.2010 and he was suffering from mental disease and he was under treatment, hence, he used to walk around in the night.

13. The petitioner submitted detailed reply with the chargesheet but without considering the defence of the petitioner and the report of preliminary enquiry, the penalty order has been passed against the petitioner without recording good and sufficient reasons in the impugned order dated 17.02.2011. A one line order has been passed that the charges were found to be proved against the petitioner on the basis of evidence available on the record and the reply of the petitioner was found to be unsatisfactory.

14. The impugned order does not disclose the reason that which evidence and documents were proved and on what basis the Superintendent of Police, Tonk, had drawn the conclusion that the charges were found to be proved against the petitioner. The impugned order dated 17.02.2011 does not indicate any reason, which could show application of mind and which could disclose mental application of mind of Disciplinary Authority to the contents of the enquiry report and connected record. Thus, the impugned order is not a speaking order and no reasons whatsoever have been assigned in it. No finding has been recorded by the Authority that the petitioner was found in drunken condition.

15. Similarly, the order of Appellate Authority i.e. the Inspector General of Police, Ajmer Range, Ajmer (i.e. the order dated 08.11.2011) is not a speaking order, as no reasons whatsoever have been assigned in it. The Appellate Authority has not acted in accordance with the provision contained under Rule 30 of the Rules of 1958.

16. It is true that while exercising the powers contained under Article 226 of the Constitution of India, the High Court should not

function as a court of appeal over the findings of the Disciplinary Authority. Such orders can be interfered only when there is "no evidence" in the Departmental Enquiry.

17. Dealing with the scope of judicial review, the Hon'ble Apex Court has held in the case of Phulpari Kumari **(supra)** in para 6.1 and 6.2 as under:-

> "**6.1.** It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.
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> **6.2.** The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer."

18. Perusal of the impugned order indicate that both Disciplinary and Appellate Authority have acted in a cursory manner and have passed the impugned orders in a casual manner without assigning good and sufficient reasons. Both these orders are perverse and are not in accordance with law. It is true that discipline is the hallmark of disciplinary forces like police etc. and each and every member of the disciplinary forces are supposed and expected to behave in a disciplined manner and they are not supposed to violate the discipline by consuming liquor in public space or should arrive in public place in a drunken position. Drinking in open public place or street is not permissible and the same amounts to an offence under Section 34 of the Police Act.

19. As per Rule 26 of the Rajasthan Civil Services (Conduct) Rules, 1971 (for short, 'Rules of 1971') a government servant shall strictly abide by the law relating to intoxicating drink or drugs which are in force in any area in which he may happen to be for the time being and he shall not appear in public place under the influence of any drink or drug.

20. If at all, the respondents were of the view that the petitioner has acted in violation of Rule 26 of the Rules of 1971**,** they could have recorded such finding in the impugned order after appreciating the evidence led against the petitioner and the defence taken by him. But in the instant case, no such findings have been recorded. No speaking orders have been passed by both the Disciplinary as well as Appellate Authority without assigning any reason.

21. In the considered opinion of this Court, the enquiry so conducted is not in consonance with the procedure laid down in the CCA Rules, 1958 under which petitioner was chargesheeted under Rule 16 of the CCA Rules, therefore, the order impugned is totally non-speaking order. The Disciplinary Authority has not recorded reasons and has not even considered the statement as well as plea taken by the petitioner in his explanation filed after receiving the copy of the chargesheet. Therefore, order impugned is totally non-speaking order and the enquiry in question is also conducted without following the procedure laid down in the CCA Rules, in which, the petitioner was found to be guilty of wandering in Police Line campus after consuming liquor. Therefore, in view of the judgment rendered by the Hon'ble Supreme Court in **S.N. Mukherjee Vs. Union of India (UOI)** reported in **(1990) 4 SCC**

595, in which, the Constitution Bench of the Hon'ble Supreme Court has held that the order passed by the Disciplinary Authority must be passed after recording reasons and the quasi judicial authority is under obligation to pass a speaking order. Relevant para 35, 36, 39 and 40 of the said judgment run 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.
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> 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 recording 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.

39. 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 recording 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 administrative 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 effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. And the Administrative Decision (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 subject-matter, the scheme and the provisions of the enactment. The public interest derlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.
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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."

22. In this case, impugned order dated 08.11.2011 as well as order impugned dated 17.02.2011 passed by the Appellant and Disciplinary authority, respectively, reveals that these orders are totally non-speaking orders and enquiry was also not conducted as per procedure laid down in the rules.

Conclusion:

23. Having regard to the facts and circumstances of the case observed hereinabove, while following the judgment in **S.N. Mukherjee's case (supra)**, this writ petition is partly allowed. The order dated 08.11.2011 passed by the Appellate Authority as well as order dated 17.02.2011 passed by the Disciplinary Authority are hereby set aside with liberty to the respondents to hold fresh enquiry against the petitioner in accordance with law. Such enquiry shall, however, be conducted within six months from the date of receipt of certified copy of this order.

24. No order as to costs.

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

(ANOOP KUMAR DHAND),J

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