

A.F.R.

RESERVED ON: 16.03.2018

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Case :- WRIT - A No. - 6611 of 1990

Petitioner :- Narendra Lal

Respondent :- Chairman Alld. Bank And Others

Counsel for Petitioner :- B.D. Mandhyan, B.P. Mishra, S.K. Gupta, S.K. Vidyarthi

Counsel for Respondent :- T.P. Singh, P.N. Tripathi, S.C., Siddharth Singh

Hon'ble Siddharth, J.

Heard Sri S. K. Vidyarthi, learned counsel for the petitioner and Sri P. N. Tripathi, learned counsel for the respondents.

This writ petition has been filed by the petitioner, praying for quashing of the punishment order dated 14.01.89, passed by the Disciplinary Authority and the enquiry report dated 30.07.1989 of the enquiry report and the order of the appellate authority dated 07.10.1989. Further direction has been sought for reinstatement of the petitioner with all consequential benefits, including arrears of salary, with 18% interest.

The facts of the petition are that while working as Clerk-cum-Cashier in Allahabad Bank Branch, Nav Yug Market, Ghaziabad, the petitioner was charge sheeted with charge dated 13.08.1987 under the provisions in Clause-19.5 (c), (e), (j) and (l) of first Bi-partite Settlement dated 19.10.1966 and 6 charges were leveled against him, regarding insubordination, dereliction of duty and indecent behaviour with the officers of the Bank. On 05.05.1987, he submitted his reply to the charges alleging prejudice and caste bias. An enquiry officer was appointed and the petitioner and the Bank submitted their oral and written evidence before him. The enquiry was concluded on 22.04.1988 but the report was submitted after about a year on 30.03.1989. The petitioner was found guilty of Charge Nos. 1, 2, 3 and 5. On charge no. 4, he was found guilty partially and Charge No. 6 was not found to be a charge. A second show cause notice dated 08.04.1989 was issued to the petitioner to submit reply to the proposed punishment as per finding of the enquiry officer and on his request, he was granted opportunity of

personal hearing on 29.04.1989. On that date the disciplinary authority was out of station and the officer-in-charge got endorsement that he is submitting his written statement in lieu of personal hearing. The petitioner could not understand the import of the above endorsement at that time and later he sent letter dated 01.05.1989 and 07.05.1989 that the endorsement was obtained by the officer-in-charge by misleading him. However, without further opportunity of personal hearing the punishment order of dismissal dated 14.06.1989 was passed by the disciplinary authority and the appeal of the petitioner preferred against the same was dismissed by the order dated 07.10.1989 by the appellate authority. Thereafter he filed a mercy appeal before the Chairman/Managing Director which was also dismissed by the order dated 14.02.1990, on the ground of non maintainability as per the settlement.

The respondent filed their Counter Affidavit stating that the petitioner was suspended on the charges of gross misconduct. He was afforded full opportunity of defence. The delay in submission of enquiry report occurred due to the enquiry officer being employed as Manager in a very busy Branch. The petitioner was informed that he has requested for opportunity of personal hearing on 29.04.1989, but the disciplinary authority requested him to come on 09.05.1989 but the petitioner came on 29.04.1989 and submitted his written objection on his own and later sent letters alleging submission of written objection on being misled by the officer-in-charge. His appeal was considered and dismissed by the appellate authority. Thereafter, he made mercy appeal which is not provided under the Settlement and therefore it was dismissed.

The learned Counsel for the petitioner has argued that his appeal was wrongly transferred by the Chairman-cum- Managing Director to the Assistant General Manager, when the Chairman is his appellate authority. The appointing authority of the petitioner was the Deputy General Manager when the punishment order has been passed by the

Regional Manager, Officer of lower rank which has vitiated the entire proceedings. The enquiry officer did not consider the oral and documentary evidence while holding him guilty of charge. The petitioner belongs to Scheduled Caste and the respondents nos.5 and 6 belong to higher caste and therefore they were harassing the petitioner and he has to lodge First Information Report against them because they were trying to physically assault him. As a counter blast, the respondent no.5 made a false report before the respondent no.2, Regional Manager and the charge sheet was issued against the petitioner. Sri Arun Verma conducted the preliminary enquiry against the petitioner but he was illegally made presenting officer by the Bank in enquiry proceedings. On account of his appointment as Presenting Officer of the Bank, the petitioner could not cross examine him when the charge sheet was framed on his report and the disciplinary proceedings were initiated against him. Sri Arun Verma was an important witness who conducted the preliminary enquiry against the petitioner and got the enquiry instituted against the petitioner. The petitioner made request to call Sri Arun Kumar in the witness box and permit the petitioner to cross examine him. His request was turned down on the ground that he is Presenting Officer and can not be cross examined by the petitioner as witness. The petitioner has disputed the findings of fact recorded by the enquiry officer on various grounds, which can not be gone into by this Court under Article 226 of the Constitution of India.

The Counsel for the respondents has argued that the powers of disciplinary authority have been delegated to various authorities by the circular of the Bank and consequently Regional Manager was the competent disciplinary authority of the petitioner. The petitioner lodged the First Information Report in 'peshbandi' against the employees of the Bank. He was in habit of misbehaving with his superior officers and therefore, disciplinary action was the only way out for the Bank. Sri Arun Verma neither submitted any enquiry report nor it was given any

weightage for instituting enquiry against the petitioner. He was personnel officer and therefore was appointed Presenting Officer of the Bank. Therefore, he was not a competent witness. Thereafter, the factual arguments regarding the charges have been replied which can not gone into by this Court.

Before proceeding further it is to be kept in mind that the Court cannot re-appreciate the evidence and findings like an Appellate Authority as held by the Apex Court in the case of **State of Band of India and others Vs. Ramesh Dinkar Punde reported in (2206) 7 Supreme Court Cases 212 (para 6,7 & 8).**

6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an appellate authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an appellate authority.

“ Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. (See Govt. of A.P. and Ors. (appellant) v. Mohd. Nasrullah Khan (respondent) (2006) 2 SCC 373 at page SCC 379).

A scrutiny of the process of disciplinary enquiry conducted by the respondent bank can only be done by this Court, while exercising its power of judicial review. The procedure of enquiry is given in the Shastri Award, Desai Award and the Bipartite Settlements between the Management of the Banks and the representatives of the Banks' Employees. The procedure given in the Shastri Award was modified by Desai Award to certain extent and governed the service conditions of the employees therein covered except to the extent they have been modified in the settlement dated 19.10.1966, the following procedure has been provided for disciplinary action against an employee of the Bank.

19.11 When it is decided to take any disciplinary action against an

employee such decision shall be communicated to him within three days thereof.

19.12. The procedure in such cases shall be as follows :—

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witness and produce other evidence in his defence. He shall also be permitted to be defended—

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed:

OR

(ii) at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

(iii) with the Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowance, etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

(d) If the representative defending the employee is an employee of the same bank at an outstation branch within the same State, he shall be relieved on special leave (on full pay and allowances) to represent the employee and be paid one return fare. The class of fare to which he will be entitled would be the same as while travelling on duty. In case of any adjournment at the instance of the bank, he may be asked to resume duty and if so, will be paid fare for the consequential journey. He shall also be paid 50% of the halting allowance for 69 70 the period he stays at the place of the enquiry defending the employee as also for the days of the journeys which are undertaken at the bank's cost

(e) enquiry need not be held if—

(i) the misconduct is such that even if proved the bank does not intend to award the punishment of discharge or dismissal; and

(ii) the bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct; and

(iii) the employee makes a voluntary admission of his guilt in his reply to the aforesaid show cause notice. However, if the employee concerned requests a hearing regarding the nature of punishment, such a hearing shall be given,

19.13. Where the provisions of this Chapter conflict with the procedures or rules in force in any bank regarding disciplinary action, they shall prevail over the latter. There may, in such procedures or rules, exist certain provisions outside the scope of the provisions contained in this Chapter enabling the bank to dismiss, warn, censure, fine an employee or have his increment stopped or have an adverse remark entered against him. In all such cases also the provisions set out in Clauses 19.10 and 19.11 above shall apply.

19.14. The Chief Executive Officer or the principal officer in India, of a bank, or an alternate officer at the Head Office or principal office appointed by him for the purpose, shall decide which officer (s) shall be empowered to hold enquiry and take disciplinary action in the case of each office or establishment. He shall also decide which officer or a body higher in status than the Officer authorised to take disciplinary action shall be empowered to deal with and dispose of any appeals against orders passed in disciplinary matters.

A perusal of the aforesaid clauses of the bipartite settlement proves that as per Clause-19.12, the delinquent employee is required to be given a hearing as regards the nature of proposed punishment, in case any charge is established against him. In the present case, the petitioner was given the opportunity of personal hearing, but on account of the disciplinary authority being out of station, he could not appear before him and instead submitted his written reply to the findings of the enquiry

report of the Enquiry Officer dated 29th April, 1989, which contains a reply to the each and every finding disputed by the petitioner. Thereafter, when he was not given personal hearing, he sent a Supplementary Written Statement dt. 01.05.1989, with some additional facts against the report of the enquiry officer and then a Second Supplementary Written Statement dated 01.05.1989 to the disciplinary authority. However, a perusal of the decision of the disciplinary authority/ punishment order dated 14.06.1989, shows that there is no consideration of the aforesaid written statements submitted by the petitioner against the proposed punishment. The punishment order only records the dates of issuing the show cause notice against the proposed punishment, the receipt of written reply dated 29.04.1989, in lieu of personal hearing, by the petitioner and then it records the finding that after going through the written statement submitted by the charged employee, he finds absolutely no reason to reduce the proposed punishment. Further finding has been recorded that charged employee was given reasonable and adequate opportunity by the enquiry officer to defend himself and produce material in his defence. He has not placed any convincing material in his written statement dated 29.04.1989 by way of extenuating facts and circumstances having bearing on his misconduct and enquiry as a whole. Therefore, the proposed punishment of dismissal in the show cause notice dated 08.04.1989 was confirmed.

There is no consideration of the detailed objections raised by the petitioner in his written statement dated 29.04.1989 and his first and second Supplementary Written Statement dated 01.05.1989 and 07.05.1989 respectively the petitioner has raised detailed objections running into 16 pages annexed as Annexure No.4 to the writ petition. He has further submitted two Supplementary Written Statements stated above which are annexed as Annexure Nos. 5 and 6 to the writ petition and their receipts by the respondents has not been denied. The Apex Court in the case of **S. N. Mukherjee Vs. Union of India** reported in

(1990)4 4 Supreme Court Cases 594 has stressed upon the disclosure of reasons for passing an order as follows :

20. *In India the matter was considered by the Law Commission in the 14th Report relating to reform in Judicial Administration. The Law Commission recommended:*

"In the case of administrative decisions provision should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs." (Vol. II P. 694)

21. No laws has, however, been enacted in pursuance of these recommendations, imposing a general duty to record the reasons for its decision by an administrative authority though the requirement to give reasons is found in some statutes.

22. The question as to whether an administrative authority should record the reasons for its decision has come up for consideration before this Court in a number of cases.

23. In **Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjunwala [1962] 2 SCR 339**, a Constitution Bench of this Court. while dealing with an order passed by the Central Government in exercise of its appellate powers under [Section 111\(3\)](#) of the Companies Act, 1956 in the matter of refusal by a company to register the transfer of shares, has held that there was no proper trial of the appeals before the Central Government since no reasons had been given in support of the order passed by the Deputy Secretary who heard the appeals. In that case it has been observed:

"If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under [Article 136](#) of the Constitution we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order." (P. 357)

24. In **Madhya Pradesh Industries Ltd. V. Union of India [1966] 1 S.C.R. 466** the order passed by the Central Government dismissing the revision petition under Rule 55 of the Mineral Concession Rules, 1960, was challenged before this Court on the ground that it did not contain reasons. Bachawat, J., speaking for himself and Mudholkar, J., rejected this contention on the view that

the reason for rejecting the revision application appeared on the face of the order because the Central Government had agreed with the reasons given by the State Government in its order. The learned Judges did not agree with the submission that omission to give reasons for the decision is of itself a sufficient ground for quashing it and held that for the purpose of an appeal under Article 136 orders of courts and tribunals stand on the same footing. The learned Judges pointed out that an order of court dismissing a revision application often gives no reasons but this is not a sufficient ground for quashing it and likewise an order of an administrative tribunal rejecting a revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection. The decision in **Hari Nagar Sugar Mills case (supra)** was distinguished on the ground that in that case the Central Government had reversed the decision appealed against without giving any reasons and the record did not disclose any apparent ground for the reversal. According to the learned Judges there is a vital difference between an order of reversal and an order of affirmance. Subba Rao, J., as he then was, did to concur with this view and found that the order of the Central Government was vitiated as it did not disclose any reasons for rejecting the revision application. The learned Judge has observed:

"In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a Welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimize arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds, A reasoned order is a desirable condition of judicial disposal." (P. 472).

"If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officer may turn out to be a potent weapon for abuse of power. But, if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard." (P. 472).

"There is an essential distinction between a court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional court agrees with the reasoned judgment of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons." (P. 472-73).

25. With reference to an order of affirmance the learned Judge observed that where the original tribunal gives reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons and that what is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal.

26. This matter was considered by a Constitution Bench of this Court in Bhagat Raja case (supra) where also the order under challenge had been passed by the Central Government in exercise of its revisional powers under Section 30 of the Mines and Minerals (Regulation and Development Act, 1957 read with rules 54 and 55 of the Mineral Concession Rules, 1960. Dealing with the question as to whether it was incumbent on the Central Government to give any reasons for its decision on review this Court has observed:

"The decisions of tribunals in India are subject to the supervisory powers of the High Courts under [Art. 227](#) of the Constitution and of appellate powers of this Court under [Art. 136](#). It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected, or "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory

method of dealing with the appeal." (P. 309).

27. This Court has referred to the decision in **Madhya pradesh Industries case (supra)** and the observations of Subba Rao, J., referred to above, in that decision have been quoted with approval. After taking note of the observations of Bachawat, J., in that case, the learned Judges have held: "After all a tribunal which exercises judicial or quasi-judicial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of parties of far-reaching consequences to them are adjudicated upon in a summary fashion, without giving a personal hearing when proposals and counter proposals are made and examined, the least that can be expected is that the tribunals shall tell the party why the decision is going against him in all cases where the law gives a further right of appeal." (P.315).

28. Reference has already been made to Som Datt Datta's case (supra) wherein a Constitution Bench of this Court has held that the confirming authority, while confirming the findings and sentence of a Court-Martial, and the Central Government, while dealing with an appeal under Section 165 of the Act, are not required to record the reasons for their decision and it has been observed that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, it could not be said that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision. In that case the Court was primarily concerned with the interpretation of the provisions of Act and the Army Rules, 1954. There is no reference to the earlier decisions in Harinagar Sugar Mills case (supra) and Bhagat Raja case (supra) wherein the duty to record reasons was imposed in view of the appellate jurisdiction of this Court and the supervisory jurisdiction of the High Court under Articles 136 and 227 of the Constitution of India respectively.

29. In **Travancore Rayon Ltd. V. Union of India [1970] 3 SCR 4**(1 this Court has observed:

"The Court insists upon disclosure of reasons in support of the order on two grounds; one, that the party aggrieved in a proceedings before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority

invested with the judicial power."

30. In **Mahabir Prasad Santosh Kumar v. State of U.P** reported in (1969) 3 SCC 868, the District Magistrate had cancelled the licence granted under the ' U.P Sugar Dealers' Licensing Order, 1962 without giving any reason and the State Government had dismissed the appeal against the said order of the District Magistrate without recording the reasons. This Court has held:

"The practice of the executive authority dismissing statutory appeal against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law."

"Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just."

31. In **Woolcombers of India Ltd.** case (supra) this Court was dealing with an award of an Industrial Tribunal. It was found that the award stated only the conclusions and it did not give the supporting reasons. This Court has observed:

"The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities

to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court."

32. In **Siemens Engineering & Manufacturing Co. of India Limited** case (supra) this Court was dealing with an appeal against the order of the Central Government on a revision application under the Sea Customs Act, 1878. This Court has laid down:

"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 quasijudicial order must be supported by reasons." (P 495) "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 along 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."

33. **Tarachand Khatri v. Municipal Corporation of Delhi & Others**, [1977] 2 SCR 198 was a case where an inquiry was conducted into charges of misconduct and the disciplinary authority, agreeing with the findings of the Inquiry Officer, had imposed the penalty of dismissal. The said order of dismissal was challenged on the ground that the disciplinary authority had not given its reasons for passing the order. The said contention was negatived by this Court and distinction was drawn between an order of affirmance and an order of reversal. It was observed:

" while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order if it differs from the conclusions arrived at and the recommendations made by the Inquiry Officer in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition too broadly to say that even an ordinary concurrence must be supported by reasons."

34. In **Raipur Development Authority and Others v. Chokhamal Contractors and Others**, [1989] 2 S.C.C. 721 a Constitution Bench of this Court was considering the question whether it is obligatory for an arbitrator under the Arbitration Act, 1940 to give reasons for the award. It was argued that the requirement of giving reasons for the decision is a part of the rules of natural justice which are also applicable to the award of an arbitrator and reliance was placed on the decisions in Bhagat Raja case (Supra) and Siemens Engineering Co. case (Supra). The said contention was rejected by this Court. After referring to the decisions in Bhagat Raja case (Supra); Som Datt Datta case (Supra) and Siemens Engineering Co. case (Supra) this Court has observed:

"It is no doubt true that in the decisions pertaining to Administrative Law, this court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rules. It would be in the interest of the world of commerce that the said rule is confined to the area of Administrative Law But at the same time it has to be borne in mind that what applies generally to settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes."

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 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 quasijudicial 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.

37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law, 6th Edn. P. 548). In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram parlem, a basic principle of natural

justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well-known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in *A. K. Kraipak v. Union of India* [1970] 1 SCR 457, wherein it has been held:

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one shall be a Judge in his own cause (*nemo debet esse iudex propria causa*) and (ii) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice." (P. 468-69).

38. A similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See: *R. v. Deputy Industrial Injuries Commissioner ex P. Moore*, [1965] 1 Q.B. 456; *Mahon v. Air New Zealand Ltd.*, [1984] A.C. 648.

39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay 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 whereunder 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 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 subject matter, the scheme and the provisions of the enactment. The public interest underlying 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.

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.

Therefore, the impugned punishment order was clearly passed without application of mind to the objection of the petitioner in violation of Clause-19.12(a) and 19.12(c) of the Settlement and without recording reasons for sustaining such an order.

Clause-19.12(c) of the Settlement provides that in awarding punishment by way of disciplinary action, the authority concerned shall take into account the gravity of misconduct, the previous record, if any, of the employee or any other aggravating and extenuating circumstances, that may exist. A perusal of the impugned punishment order shows that the disciplinary authority has not complied with any of the above requirements and has only stated that the petitioner was given sufficient opportunity of hearing and there are no extenuating circumstances brought by him to his notice.

Therefore, it is clear that the impugned punishment order was passed in ritualistic manner, resorting to procedural formality, without application of mind and without recording consideration of the points raised by the petitioner in his written statements to the order of proposed punishment. The appellate order has also not taken into account, the requirements of passing the punishment order as per the settlement and

has affirmed the order of punishment passed by the disciplinary authority which can not be permitted.

After the above consideration of the facts and legal issues involved in the case, the punishment order dated 14.01.89, passed by the Disciplinary Authority and the order of the Appellate Authority dated 07.10.1989 are hereby quashed. Further direction has been sought for reinstatement of the petitioner in service with all consequential benefits, including arrears of salary with 18% interest. In view of the fact that the petitioner has retired from service during the pendency of writ petition, he is held entitled to 25% of arrears of salary along with benefits of continuity of service and post retiral benefits, including its arrears, which shall be paid to him within 2 months from the date of this order. Since the respondents are represented by their Counsel, notice of this order is deemed on the respondents through their Counsel and the time for compliance of the order shall start from the date of order.

This writ petition is partly allowed.

No order as to costs.

Order Date :- 11.04.2018

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