

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.1641/2004

New Delhi, this the 1st day of March, 2005

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.S.K. Naik, Member(A)

Shri Mahavir Singh,
S/o Shri Mangal Ram,
Warder - 534,
R/o A-28, Camp Jail, Tihar,
New Delhi-64

....Applicant

(By Advocate: Shri D.S. Mahendru, proxy for Shri R.P. Luthra)

Versus

1. Govt. of N.C.T. of Delhi,
Through its Chief Secretary (Home),
Delhi Administration,
Delhi Secretariat,
I.T.O., New Delhi

2. D.G. cum I.G. (P),
Prison Headquarters,
Jail Road,
New Delhi

....Respondents

(By Advocate: Shri Vijay Pandita)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The applicant by virtue of the present application seeks to assail the orders passed by the disciplinary authority dated 23.12.2002 and of the appellate authority dated 16.1.2004. The disciplinary authority has



passed the following order:

"The undersigned is therefore of the view that the charged official is guilty of the above charges and of the opinion that a penalty of reduction of pay by three lower stages in the present time scale of pay for a period of three years, be imposed. During this period he will not earn ^{any} increments. After expiry of this period he will be given the benefit of these forfeited increments, will meet the end of justice.

Therefore, the undersigned being the Competent Disciplinary Authority empowered under the rules, order that penalty of reduction of pay by three lower stages in the present time scale of pay for a period of three years. During this period he will not earn any increments and after expiry of this period he will be given the benefit of these forfeited increments. It is further ordered that his period of suspension w.e.f. 23-8-99 to 11-10-99 will be treated as such one and he will not be paid more than what has been paid to him as subsistence allowance."

2. When the matter went in appeal, the following order had been passed:

"Sir,

I am directed to draw your kind attention to the appeal dated 13-2-03 made before the Principal Secretary (Home) by Sh. Mahavir Singh, Warder - 534 against order No.F.11(321)/CJ/Vig/99/3361 dated 23-12-02 passed by Director General (Prisons) wherein the Competent Disciplinary Authority imposed penalty of reduction of pay by three lower stages in the present time scale of a pay for a period of three years and during this period he will not earn any increments and after expiry of this period he will be given the benefit of their forfeited increments and further ordered that his period of suspension w.e.f. 23-8-99 to 11-10-99 will be treated as such one and he will not be paid more than what has been paid to him as subsistence allowance.

The Principal Secretary (Home), considered his appeal and also granted him personal hearing on 18-11-

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03. After considering all the facts the Appellate Authority dismissed his appeal on 7-1-04. It is therefore requested to informed the official accordingly.”

3.Learned counsel for the applicant, without delving into the merits of the matter, contends that the appeal has been dismissed without passing any speaking order which was necessary.

4.We have already reproduced above the extract of the order passed by the appellate authority. No reasons have been given as to why the appeal has been dismissed. Once an appeal is prescribed, it is expected that the appellate authority will apply its mind and record reasons as to why contentions raised are not correct. However brief may be the reasons, the same must indicate so that while judicially reviewing the said order, we can know the thinking of the appellate authority. In the present case, it is absent.

5.Learned counsel for the respondents relied upon the decision in the case of **State Bank of India, Bhopal vs. S.S. Koshal**, 1994 Supp (2) SCC 468. In that case, the question for consideration before the Supreme Court was as to whether the order so passed was a speaking order or not. Perusal of the decision shows that the Supreme Court in the facts of the case held that it was a speaking order and it was not held that speaking order need not be passed. The said paragraph reads:

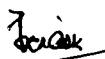
“8. The High Court has taken the view that the rule requires the appellate authority to pass a speaking order even if it is an order of affirmance. For the purpose of this case, we shall assume the said view to be the correct one. Even so we are not satisfied that the appellate order is not a


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speaking order. We have already extracted the appellate order in full hereinbefore, which shows that it considered at length the facts of the case including the fact that the appellate authority (sic disciplinary authority) had differed from the findings of the Enquiry Officer in respect of the two charges. The appellate authority then says that it considered the relevant grounds of appeal and after considering the facts of the case came to the conclusion that there was no substance in the appeal. In view of the fact that it was an order of affirmance, we are of the opinion that it was not *obligatory* on the part of the appellate authority to say more than this as the order as it is, shows application of mind. The order cannot be characterized as a non-speaking order."

Therefore, the contention so much thought of has little basis.

6. For these reasons, without expressing ourselves on the merits of the matter, we quash the order of 16.1.2004 and direct that the appellate authority may pass a fresh order preferably within four months of the receipt of the certified copy of the present order and communicate it to the applicant. O.A. is disposed of.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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