

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**T.A No. 1235/2009
[W.P. (C) No.3905/1994]**

New Delhi this the 28th day of July, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

Waziruddin,
Junior Engineer (Drainage)
CSC-IV, Shahdra, South,
Laxmi Nagar, Delhi
R/o C-22, Y-II,
Dilshad Garden, Delhi-54. ...Applicant

(Argued by: Mr. Lalta Prasad with Mr. Jai Raj Mudgal)

Versus

1. Lt. Governor of Delhi,
Through its Chief Secretary,
5, Sham Nath Marg,
Delhi-54.
2. Delhi Jal Board
Through CEO,
Varunalaya,
Jhandewalan,
New Delhi.Respondents

(Argued by: Shri Atul Kumar Sharma for Mr. Karunesh Tandon, Advocate)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

This case has a chequered history. However, the facts, relevant for disposal of instant Transferred Application (TA) is that, applicant, Waziruddin S/o Shri Hafiz Nooruddin, while working as Junior Engineer in Water Supply and Sewage

Disposal Undertaking (for short "WSSDU"), remained absent from duty unauthoroizedly. Thus, he was stated to have committed the grave misconduct, during the course of his employment. As a consequence thereof, he was dealt with departmentally, under the relevant provisions of WSSDU and was charge sheeted in the following manner:-

"(i) That Shri Waziruddin remained absent from duty unauthorizedly on the following dates:-

27.10.1987 to 01.11.1987
03.11.1987 & 09.11.1987 to 01.12.1987
14.12.1987 to 21.03.1988

(ii) That Shri Waziruddin has been running absent from duty w.e.f. 29.03.1988 to date in an unauthoroized manner.

(iii) That E.E. (P) W-II vide Regd. AD letter dated 26.05.1988, asked Shri Waziruddin to produce himself before MOI of WS&SD Undertaking for medical check up but he failed to appear before MOI of WS &SD Undertaking.

(iv) That he is in the habit of availing leave/remaining absent without getting the leave sanction and he submitted (sic) application after availing leave due to which municipal work suffers badly".

2. Although applicant denied the charges, however, the regular Departmental Enquiry (DE) was initiated against him. In pursuance thereof, the Enquiry Officer (EO) was appointed, who concluded that the charges framed against the applicant stand fully proved, beyond any doubt, vide impugned enquiry report dated Nil (Annexure A-C Colly.).

3. Concurring with the findings of the EO, the penalty of removal from service was imposed on the applicant, vide order dated 09.03.1994 (Annexure-G), by the Disciplinary Authority (DA). Sequelly, the appeal filed by him was dismissed by means of a non-speaking order dated 14.09.1994 (Annexure P-7 Colly.), by the Appellate Authority(AA) as well.

4. Aggrieved thereby, the applicant had preferred the Civil Writ Petition bearing No.3905/1994, challenging the impugned orders in the Hon'ble High Court of Delhi. Subsequently, the Writ Petition was transferred to this Tribunal.

5. The respondents have refuted the claim of the applicant and filed the reply. Virtually, acknowledging the factual matrix and reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations contained in the main TA and prayed for its dismissal.

6. Controverting the allegations contained in the reply of the respondents and reiterating the grounds taken in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

7. At the very outset, it will not be out of place to mention here, that the TA was rejected vide order dated 23.08.2012, by a Coordinate Bench of this Tribunal.

8. Dissatisfied thereby, the Civil Writ Petition bearing No.835/2013 filed by the applicant was accepted. The order dated 23.08.2012 was set aside and the TA was restored to its original number, vide order dated 12.02.2013, by a Division Bench of the Hon'ble High Court of Delhi. That is how we are seized of the matter.

9. Although the applicant has challenged the impugned orders on various grounds, but during the course of argument, learned counsel for the applicant has confined his argument

only to the extent, that impugned order dated 14.09.1994 (Annexure A-7 Colly.) of AA, is cryptic and result of non-application of mind.

10. In this regard, learned counsel has contended with some amount of vehemence that, the applicant was seriously ill and was suffering from Cancer of Lungs and he has produced sufficient medical evidence before the EO, to prove that his absence was not wilful, but on account of his serious illness. The argument is that the relevant authorities have not considered the human angle of the problem of the applicant and ignored all the relevant factors relatable to his absence and imposed a very harsh punishment of removal from service.

11. Raising the variety of arguments, learned counsel submitted that although all the pointed issues specifically raised, the AA has just ignored the material factor by passing a very cryptic impugned order dated 14.09.1994 (Annexure P-7 Colly.), just in continuation of office note, which cannot be termed to be a legal order. Thus, he prayed for setting aside the impugned order of AA.

12. On the contrary, the learned counsel for respondents has urged that, although the order of AA is not properly worded, but the AA has considered the relevant material while passing the impugned order and prayed for dismissal of TA.

13. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after

considering the entire matter, we are of the firm view that the instant TA deserves to be accepted, for the reasons mentioned hereinbelow.

14. As is evident from the record, that the case of the applicant from the very beginning is that, his absence was not wilful but on account of his serious illness beyond his control. He has produced the medical record before the enquiring authority, during the course of enquiry.

15. The contention of the learned counsel for the applicant that all these issues were raised, but the AA has ignored the same without mentioning any reason, has considerable force.

16. A bare perusal of the record would reveal, that the impugned order of AA dated 14.09.1994 (Annexure P-7 Colly.) is in continuation of Office Note from page 31/N, which reads as under:-

“from page 31/N

I have gone through the appeal of Shri Waziruddin, Junior Engineer and also all the connected records.

It appears from the record that Shri Waziruddin, Jr. Engineer had earlier remained absent without authority on a number of spells and had also been further absenting from duty w.e.f. 28.03.88. This itself is sufficient for any disciplinary authority to take a serious view. I have not come across any ground in his application, which might help him. It also appears that keeping in view the nature of the charge he has been given right quantum of punishment also. Under the circumstances, I have no option but to reject his appeal”.

17. Meaning thereby, what to talk of recording the cogent reasons, the AA has not even mentioned any fact in issue and has just mentioned that this charge has been adequately proved on speculative grounds.

18. What cannot possibly be disputed here is that, in the scheme of holding of an enquiry, the functions of every appropriate officer are quasi judicial in nature. They are assigned different duties to be performed at the relevant stages in accordance with rules and law. They are further required to observe the principles of natural justice. It is not a mere formality to be by-passed by such authority, which has been exhibited by the AA in this case.

19. Hon'ble Apex Court in cases of ***Roop Singh Negi Vs. Punjab National Bank and Others (2009) 2 SCC 570*** and ***State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha (2010) 2 SCC 772*** has ruled that function of EO, DA and AA is quasi-judicial in nature. The AA while acting in quasi-judicial authority, is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the parties and then to record reasons in his report, which are totally lacking in the instant case.

20. Considering the importance of passing the speaking orders, the Central Vigilance Commission in its wisdom has taken a conscious decision and issued instructions vide Office Order No.51/09/03 dated 15.09.2003, which reads as under:-

“Subject: - Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.

Sir/Madam,

It was clarified in the Department of Personnel & Administrative Reforms' OM No. 134/11/81/AVD-I dated 13.07.1981 that the disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that the recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. Such orders passed by the competent disciplinary/appellate authority as do not contain the reasons on the basis whereof the decisions communicated by that order were reached, are liable to be held invalid if challenged in a court of law.

2. It is also a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC. There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of mind by the concerned authorities.

3. It is once again brought to the notice of all disciplinary/appellate authorities that Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order."

21. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240** has in para 8 held as under:-

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial

authorities. **Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation**".

22. An identical question came to be decided by Hon'ble Apex Court in a celebrated judgment in the case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others 1970 SCC (1) 764*** which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that **"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". It was also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its

solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253.***

23. Therefore, the AA was legally required to record the reason, in support of its decision, in order to decide the real controversy between the parties, which admittedly is totally lacking in the present case. Not only that, the AA has violated the statutory provision/rules/law, but it has also violated the principles of natural justice, without considering the material, medical evidence & human angle and just ignored relevant factors with impunity, by way of very brief and cryptic order, which is not legally permissible.

24. Thus, the impugned order exhibit non-application of mind, lack validity, cannot legally be sustained and deserve to be quashed in the obtaining facts and special circumstances of the case.

25. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

26. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of hearing before the AA, the instant OA is partly allowed. The impugned order dated 14.09.1994 (Annexure A-7 Colly.) passed by the AA is hereby quashed. The case is remitted back to the AA to decide the

appeal afresh after sympathetically considering the medical record of seriousness of illness (Cancer of his Lungs) produced by the applicant before the EO and human angle. He is also directed to consider the desirability of awarding lesser penalty on the Doctrine of proportionality of punishment, within a period of 2 months from the date of receipt of a certified copy of this order positively. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh