CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

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ORIGINAL APPLICATION N0.060/00475/2018

Chandigarh, this the 25th day of May, 2018

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CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J).

Bharat Kanojia aged around 44 years, son of Shri Kulwant Kanojia, presently working as Food Safety Officer, Government Multi Speciality Hospital, Sector 16, Chandigarh – Group A.

...

.... APPLICANT

(Argued by: Mr. Karan Nehra, Advocate)

VERSUS

1. Chandigarh Administration, Chandigarh through its Home Secretary-cum-Secretary, Health & Commissioner Food Safety, U.T. Chandigarh.
2. Director Health Service-cum-Assistant Commissioner, Food Safety Chandigarh Administration, Chandigarh.
3. Commissioner of Food Safety, Chandigarh Administration, Room No. 411, 4th Floor, Chandigarh UT Secretariat, Delux Building, Sector 9, Chandigarh – 160017.
4. Food Safety & Standards Authority of India, Ministry of Health and Family Welfare, Government of India, FDA Bhawan, Kotla Road, New Delhi through Chief Executive Officer.
5. Sukhwinder Singh son of Shri Surinder Singh, Designated Officer, Department of Food Safety, GMSH-16, Chandigarh.

....RESPONDENTS

(Argued by: Mr. Arvind Moudgil, Advocate)

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. The main contention of learned counsel, at this stage, is that the applicant moved representations dated 22.01.2015

(Annexure A-7) and dated 12.09.2016 (Annexure A-8 colly), for redressal of his grievance, pleading important points, but the same was rejected, by passing a single line impugned order dated 06.09.2017 (Annexure A-9), by the Competent Authority, which according to him, is not a legal order and is against the principles of natural justice. The learned counsel for the respondents has very fairly acknowledged the factual matrix in this regard.

2. Having heard learned counsel for the parties, having gone through the record, with their valuable assistance, and after considering the entire matter, I am of the considered opinion that the instant Original Application (O.A.) deserves to be partly accepted in the manner and for the reasons mentioned herein below.

3. What cannot possibly be disputed here is that the applicant moved representations dated 22.01.2015 (Annexures A-7), followed by reminders dated 12.09.2016 (Annexure A-8 colly), raising a variety of issues, with regard to his promotion to the post of Designated Officer (for brevity, D.O.), but the same were abruptly rejected, by passing a single- line impugned order dated 06.09.2017 (Annexure A-9) that his request cannot be accepted.

4. Meaning thereby, the impugned order (Annexure A-9), is not only sketchy & non-speaking but result of non-application of mind as well. Moreover, the impugned order was passed in a very casual manner, without assigning any cogent reasons. Such authority is required to consider the entire matter contained in

the representation, in the right perspective, and then to pass speaking and reasoned order to decide the grievance of the applicant, which is totally lacking in the present case.

5. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the well celebrated 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". 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.

6. Sequelly, in the case of ***S.N. Mukherjee Vs. Union of India***, 1990 (5) SLR 8 (SC), the Apex Dispensation has observed as under :-

> **"**38**.** The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about 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.xxx
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> 39. 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."

7. An identical view was also taken in the decisions in ***MMRDA Officers Association Vs. Mumbai Metropolitan Regional Development Authority & Another***, 2005 (2) RSJ, 362 SC and ***Divisional Forest Officer, Kothagudem Vs. Madhusudhan Rao*** JT 2008 (2) SC 253.

8. Again, a similar question came to be decided by the Hon'ble Apex Court in the case of ***State of Uttranchal Vs. Sunil Kumar Singh Negi,*** 2008 (2) SCT 429, and the Court has ruled as under :-

> "6.xxxx The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. vs. Battan and Ors. (2001) 10 SCC 607). About two decades back in State of Maharashtra vs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129, the desirability of a speaking order was highlighted. The requirement of indicating reasons has been judicially recognized as imperative. The view was reiterated in Jawahar Lal Singh vs. Naresh Singh and Ors. (1987) 2 SCC 222.
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> 7) In Raj Kishore Jha vs. State of Bihar and Ors. (2003) 11 SCC 519, this Court has held that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.
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> 8) Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made.

9. Still further, in the decision in the case of ***State of Haryana Vs. Ramesh Kumar,*** 2009 (2) SCT 145 (SC), the Hon'ble Court has ruled as under:-

"6. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. v. Battan and Ors (2001 (10) SCC 607). About two decades back in State of Maharashtra v. Vithal Rao Pritirao Chawan (AIR 1982 SC 1215) the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was re-iterated in Jawahar Lal Singh v. Naresh Singh and Ors. (1987 (2) SCC 222). Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the `Constitution').

7. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. Chairman and Managing Director United Commercial Bank and Others Vs. P.C. Kakkar, 2003 (4) SCC 364 : [2003(2) SLR 445 (SC)."

10. Not only that, the Hon'ble Supreme 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".

11. Sequelly, the Hon'ble Apex Court has held in ***M/s Kranti Associates Pvt. Ltd. & Another Vs. Sh. Masood Ahmed Khan & Ors,*** 2010 (4) RCR (Civil) 600 (SC), has held as under :-

> a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
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> b. A quasi-judicial authority must record reasons in support of its conclusions.
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> c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
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> e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
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> f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
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> g. Reasons facilitate the process of judicial review by superior Courts.
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> h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
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> i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
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> j. Insistence on reason is a requirement for both judicial accountability and transparency.
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> k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
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> l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.
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> m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

> n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
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> o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

12. Even Hon'ble High Court of Punjab and Haryana has taken similar view in a number of cases including in ***Dhani Ram Chaudhary Vs. State of Haryana***, 1998 (3) RSJ, 609 (DB) and ***Balbir Singh Dharni Vs Union of India & Others***, 2002 (2) RSJ 197 DB P&H.

13. Therefore, it is held that the impugned order dated 06.09.2017 (Annexure A-9), is cryptic, brief9, non-reasoned and cannot legally be sustained. The ratio of law laid down by the Hon'ble Apex Court in the indicated judgments is, *mutatis mutandis*, applicable to the instant controversy, and is the complete answer to the problem in hand.

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

15. In the light of the aforesaid prismatic reasons, and without commenting further anything on merit, lest it may prejudice case of either side, during the course of fresh consideration, the instant O.A. is partly accepted. The impugned order dated 06.09.2017 (Annexure A-9) is hereby set aside, in the obtaining circumstances of the case. As a consequence thereof, the case is remitted back to the Competent Authority to consider and decide the indicated representations, by passing a speaking & reasoned

order, and in accordance with law, within a period of two months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

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

Dated: 25.05.2018

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