Before M. M. Kumar & Jora Singh, JJ.

VED PARKASH GUPTA,—*Petitioners*

VERSUS

HARYANA STATE FEDERATION OF CONSUMERS COOPERATIVE WHOLESALE STORES LIMITED AND ANOTHER,—*Respondents*

CWP No. 2157 of 2007

3rd September, 2008

Constitution of India, 1950—Art. 226—Staff Service Rules of the Haryana State Federation of Consumers' Cooperative Wholesale Stores Limited-Rls. 26.1 & 30—Dismissal from service-Charges against a District Manager of causing loss to Confed by negligence in performance of duties—Enquiry Officer finding officer guilty of charges—Punishing Authority after considering reply & granting hearing to petitioner inflicting penalty of dismissal from service—Rejection of appeal by Appellate Authority—Challenge thereto—Appellate Authority failing to record reasons as required under Rl. 30—Managing Director of Confed acting as a Disciplinary Authority as well as Appellate Authority by participating in proceedings while deciding appeal—Not permissible in law—Petition allowed, matter remanded back to appellate authority for taking decision afresh.

Held, that Rule 30.3 of the Rules imposes an obligation of consideration of the case by the appellate authority, which would mean an objective consideration by it after due application of mind, which implies recording of reason for its decision. The duty to record reason has become even more pronounced after the amendment carried in Article 311(2) abolishing the right of a delinquent employee to show cause against the quantum of punishment. The obligation to record reason has to be insisted upon because the appellate authority is the final forum for recording findings of fact. The Courts are not permitted to tinker with the findings recorded by the disciplinary authority and affirmed or dissented by the appellate authority. Therefore, it is incumbent

on the appellate authority to record reasons which provide necessary links between evidence before the appellate authority and the conclusions reached.

(Para 9 & 10)

Futher held, that Shri R. P. Jowal was not competent to sit in the meeting of the Board of Directors-appellate authority because he himself has passed the order of punishment, which was subject matter of appeal before the Board of Directors. It would tantamount becoming a Judge in his own cause which is impermissible in law.

(Para 13)

Anurag Goyal, *Advocate for the petitioner.*

Ms. Mamta Singhal Talwar, *AAG, Haryana.*

Rajesh Garg, *Advocate, for respondent Nos. 1 and 2.*

M. M. KUMAR, J.

(1) The petitioner has approached this Court by filing instant petition under Article 226 of the Constitution with a prayer for quashing order dated 21st September, 2005 (P-7) passed by the Managing Director of the Haryana State Federation of Consumers Cooperative Wholesale Stores Limited (for brevity, 'the Confed'), dismissing him from service. The aforementioned order has also been upheld by the Appellate Authority-Board of Directors.

(2) Brief facts of the case, which has led to the filing of the instant petition, are that the petitioner was appointed on the post of General Manager on 27th October, 1975 in the Confed-respondent. In the year 2001-2002 when he was posted as District Manager in the District Office Karnal, he was placed under suspension,—*vide* order dated 11th June, 2002 in contemplation of a regular departmental inquiry. On 15th December, 2003 a charge sheet was issued to him under Rule 26.1 of the Staff Service Rules of the Haryana State Federation of Consumers' Co-operative Wholesale Stores Limited (for brevity, 'the Rules'). It was alleged that he had committed various acts of omission and commission like negligence in performance of duty,

which led, to causing of loss to the Confed, which is misconduct, under Rule 26.1 of the Rules. A departmental inquiry was held and the petitioner was found guilty of those charges by the Enquiry Officer. He was given a show cause notice by the punishing authority provisionally expressing the opinion that the findings recorded by the Enquiry Officer were agreeable and the penalty of dismissal from service is liable to be inflicted. The petitioner replied to the show cause notice which was duly considered by the Managing Director-cum-Punishing Authority after granting him personal hearing. The view expressed by the Managing Director-cum-Punishing Authority is discernible from the last two paras of his order, which reads thus :—

> "Shri V.P. Gupta GM (u/s) was present on 17th August, 2005 in connection with the Show cause Notice issued to him,— *vide* letter No. Estt./EA-2/5551-52, dated 11th July, 2005. I heard Shri V.P. Gupta, GM (u/s) and during personal hearing, he pleaded for his innocence. I have gone through the record and I agree with the findings of Enquiry Officer. He failed to produce any cogent proof in his defence. Due to the negligence of Shri V.P. Gupta, Confed suffered a loss of approximately Rs. 92.00 lacs as Shri V.P. Gupta executed an agreement with M/s Mahabir Rice Mill, Indri which was defective/not proper as not signed by the partner. He failed to execute proper agreement with M/s Mahabir Rice Mill, Indri which resulted into non-delivery of CMR. He also failed to take approval from District Milling Committee headed by Deputy Commissioner, Karnal which was mandatory before giving stocks of paddy to the mill.
>
> He made correct (?) with the firm, which was not even registered. Hence the firm was bogus. Secondly, he did not brother to convene a meeting, which was to be headed by Deputy Commissioner. Thirdly, he also did not send this to Head Office for final approval. All this establishes his total connivance with the parties. Had this all not happened Confed would have been saved from incurring losses to the tune of Rs. 1.00 crore (Approx.). Such personnel are rogue in the service and they have no right to continue in service.

Keeping in view the gravity of the charges proved and his past unsatisfactory service record, the proposed punishment of dismissal is confirmed and Shri V.P. Gupta, GM is dismissed from the service of Confed with immediate effect.

I order accordingly."

(3) The petitioner feeling aggrieved by the order of dismissal filed an appeal under Rule 30 of the Rules. The Board of Directors-Appellate Authority has dismissed the appeal in its meetings held on 13th December, 2006 and 28th December, 2006. The Agenda Item No. 3 was taken up and the Board of Directors had taken the decisions which reads as under :—

"Board considered the matter along with the submissions made by Shri V.P. Gupta in his appeal as well as additional points raised in his representation submitted to the Board during personal hearing on 13th December, 2006. The contents of the dismissal order dated 21st September, 2005 were perused and the reasoning given by the then Managing Director for holding Shri V.P. Gupta guilty of the charges were discussed in detail. After due deliberations, it was resolved that there is no infirmity in the dismissal orders passed by the then Managing Director and there are no valid grounds to interfere in this order. Board, therefore, resolved to reject the appeal of Shri V.P. Gupta. ....."

(4) The petitioner has pleaded that the order dated 21st September, 2005 (P-7) was passed by Shri R.R. Jowel, who was the Managing Director at that time. A perusal of Ground (b) para 11 shows that by the time the appeal of the petitioner was to be considered, Shri R.R. Jowel was appointed as Registrar, Cooperative Societies, Haryana and he was Ex-Officio member of the Board of Director-Appellate Authority. It is also the case of the petitioner that Shri R. R. Jowel participated in the proceedings while deciding his appeal. The aforementioned averments made by the petitioner have not been disputed by the respondents in the written statement.

(5) Mr. Anurag Goyal, learned counsel for the petitioner has made two submissions before us. Firstly, he submits that the doctrine of bias would creep in, once Shri R.R. Jowel has participated in the proceedings while hearing the appeal of the petitioner. He has further submitted that according to Rule 30 of the Rules, the Board was required to consider the case of the petitioner by recording the reasons. According to the learned counsel, the order is cryptic and without any reasons. In support of his submissions, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Amar Nath Chowdhary** *versus* **Braithwaite and Co. Ltd., (1),** and a Division Bench judgment of this Court in the case of **Hari Singh** *versus* **State of Punjab (2),** and argued that on both the issues, the case is covered in favour of the petitioner and against the respondent.

(6) Mr. Rajesh Garg, learned counsel for respondent Nos. 1 and 2 has however, argued that no detailed reason was required to be recorded once an appellate order is an order of affirmation. According to the learned counsel, the Board has considered the case of the petitioner in detail, which satisfies the requirement of Rule 30 of the Rules. Mr. Garg has further submitted that there is no illegality or bias merely because of the presence of Shri R.R. Jowel because other Members of the Board were also present during the deliberations.

(7) After hearing learned counsel for the parties and perusing the paper book with their able assistance, we are of the view that this petition merits acceptance to the extent that the appellate order has not been passed in accordance with the provisions of Rule 30 of the Rules. It would be apposite to examine Rule 30 of the Rules, which reads thus :—

"30. Appeal

30.1 An appeal against the orders of the competent authority imposing a penalty under rule 20 shall lie with the authorities mentioned in column 3 of Rule 29.

30.2 No appeal shall be entertained unless it is made within 30 days from the date of the communication of the order.

(1) (2002) 2 S.C.C. 290
(2) 2004 (2) SCT 413

The appellate authority may, however, entertain any appeal within 60 days of the said date if the appellant has sufficient cause for not submitting the appeal in time.

30.3 The appellate authority may after consideration of the case :—

(i) Set aside, reduce, confirm or enhance the penalty ; or

(ii) Submit the case to the authority who imposed penalty with such directions as it may deem fit in the case.

30.4 All appeals shall ordinarily be decided within a period of 4 months from the date of receipt of the appeal."

(8) A perusal of Rule 30 of the Rules makes it evident that an appeal would be competent and the same is to be entertained within a period of 30 days from the date of communication of the order of the disciplinary authority. However, an appeal can also be entertained within 60 days if the appellant has sufficient cause for not submitting the appeal within 30 days itself. According to Rule 30.3 of the Rules, the appellate authority is required to consider the case of a delinquent officer before setting aside, reducing, confirming or enchancing the penalty. The use of expression 'consideration' imposes an obligation on the Board of Directors-Appellate Authority to record reasons. In the case of **Ram Chander** *versus* **Union of India (3),** Hon'ble the Supreme Court interpreted Rule 22(2) of the Railway Servants (Disciplinary and Appeal) Rules, 1968, which also used the expression 'consider'. While interpreting the aforementioned rule, their 'Lordships' has observed as under :—

".....in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects

(3) (1986) 3 SCC 103

stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

(9) It is, thus, evident that Rule 30.3 of the Rules imposes an obligation of consideration of the case by the appellate authority, which would mean an objective consideration by it after due application of mind, which implies recording of reason for its decision. The duty to record reason has become even more pronounced after the amendment carried in Article 311(2) abolishing the right of a delinquent employee to show cause against the quantum of punishment. The aforementioned provision has been interpreted by Hon'ble the Supreme Court in the judgment rendered in the case of **Union of India** *versus* **Tulsi Ram Patel (4).** Adverting to the aforementioned aspect, their Lordships' has further observed in the case of Ram Chander (supra) as under :—

"After the amendment, the requirement of clause (2) will be satisfied by holding an inquiry in which the Government servant has been informed of the charges against him and given a reasonable opportunity of being heard. But the essential safeguard of showing his innocence at the second stage i.e. after the disciplinary authority has come to a tentative conclusion of guilt up on a perusal of findings reached by the Inquiry Officer on the basis of the evidence adduced, as also against the proposed punishment, has been removed to the detriment of the delinquent officer. ....."

(10) We are further of the view that the obligation to record reason has to be insisted upon because the appellate authority is the

(4) (1985) 3 SCC 398

final forum for recording findings of fact. The Courts are not permitted to tinker with the findings recording by the disciplinary authority and affirmed or dissented by the appellate authority. There, it is incumbent on the appellate authority to record reasons which provide necessary links between evidence before the appellate authority and the conclusions reached. In that regard reliance may be place on a judgment of Hon'ble the Supreme Court in the case of **Union of India** *versus* **Mohan Lal Copoor** (5), wherein their Lordships' has observes as under :—

> ".....Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with. We think that reliance was rightly placed by respondents on two decisions of this Court relating to the effect of non-compliance with such mandatory provisions. These were : **Associated Electrical Industries (India) Pvt. Ltd., Calcutta** *versus* **its Workmen,** AIR 1967 SC 284 and **Collector of Morighyr** *versus* **Keshav Prasad Goenka,** (1963) 1 SCR 98= (AIR 1962 SC 1694)."

(11) The aforementioned discussion shows that the argument raised by the learned counsel for petitioner is meritorious and his reliance on the judgment of Hon'ble the Supreme Court in the case of Amar Nath Chowdhary (supra) is also acceptable.

(12) The second issue concerning participation of Shri R. R. Jowel is also liable to be answered in favour of the petitioner becasue

(5) (1973) 2 SCC 836

Shri R. R. Jowel could not have participated in the meeting of the Board of Directors while hearing the appeal of the petitioner. His participation has prejudicial effect on the rights of the petitioner who could not have fair hearing. It is well settled that no person can be a judge in his own cause. It is in somewhat similar circumstances that in Amar Nath Chowdhary's case (supra), the decision taken by the appellate authority was set aside and the following observations were made :—

> "6. One of the principle of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as *nemo debet esse judex in propria causa,* which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid form of bias. *What we are concerned with, in the present case is whether an authority can sit in appeal against its own order passed in the capacity of Disciplinary Authority. In Financial Commissioner (Taxation) Punjab and others versus Harbhajan Singh (1996) 9 SCC 281, it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority.* In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the Disciplinary Authority was in conformity with law. It is not disputed that Shri S. Krishnaswami, the then Chairman-cum-Managing Director of the Company acted as a Disciplinary Authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. (underlining for emphasis)

(13) When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court then no doubt is left that Shri R. R. Jowel was not competent to sit in the meeting of the Board of Directors-appellate authority because he himself has passed the order of punishment, which was subject matter of appeal before the Board of Directors. It would tantamount becoming a Judge in his own cause which is impermissible in law.

(14) For the reasons aforementioned, the writ petition succeeds to the extent that the appellate order has not been passed in accordance with law. Accordingly, the appellate order dated 29th December, 2006 (P-9) is set aside. The matter is remanded back to the Board of Directors for decision afresh in accordance with law. The Board of Directors shall decide the matter expeditiously preferably within a period of four months from the date of receipt of a certified copy of this order.

(15) The writ petition stands disposed of in the above terms.

R.N.R.

Before Mehtab S. Gill & Augustine George Masih, JJ.

NAGESH KUMAR,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 8102 of 2007

5th September, 2008

Constitution of India, 1950—Art. 226 & 311(2)(b)—Principles of audi altrem partem—Termination of services by invoking provisions of Art. 31192)(b)—Charges against petitioner of filing false affidavit and complaint against Superintendent—Enquiry Officer recommending for taking strict action against petitioner—Government after considering explanation of petitioner deciding to terminate services—Appointing authority without giving an opportunity of hearing to petitioner terminating services of