APPELLATE CIVIL

Before Prem Chand Jain and K. S. Tiwana, JJ.

STATE OF PUNJAB and another—*Defendants-Appellants.*

versus

DR. RAM KISHAN CHOPRA—*Respondent.*

Regular Second Appeal No. 1055 *of* 1972.

August 2, 1977.

Punjab Civil Service (Punishment and Appeal) Rules, 1952—Rules 4(ii) and 8—Order withholding an increment—Whether should be a speaking one—Order in terms of "explanation carefully considered and found to be unsatisfactory"—Whether satisfies the requirements of the rule and natural justice.

Held, that the consideration of the representation as is inferable from the use of the words in rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952 "and such representation has been taken into consideration" after the opportunity of representation, is not a matter of mere formality. The order should reflect such a consideration by the disciplinary authority. The mere punctuation of the words "considered" in the impugned order does not suffice the requirements of rule 8 nor fulfils the requirements of natural justice. The language of the order should demonstrate such a consideration in some way. The order of punishment under rule 8 which is without regular departmental enquiry and the very first order should contain some material in some form to show that the representation has been considered. This does not mean that the disciplinary authority should write a long-winding order giving detailed reasons like judgment rendered by a Court of law. The minor punishments like the withholding of the increment are not very innocuous but have a long-range effect against the punished official. These disciplinary authorities being quasi-judicial have to pass orders, which in judicial parlance have come to be known as speaking orders. This term implies that the order should speak the reasons which weighed with the authority making the order. In other words, it should reflect the mind of the authority passing the order to some extent about the reasons which led him to the conclusion against the delinquent official, contained in the orders. (Para 9)

Regular Second Appeal from the decree of the Court of Shri Joginder Singh Mander, District Judge, Chandigarh dated the 4th

day of April, 1972, reversing that of Shri Harnam Singh, Sub Judge 1st Class, Chandigarh, dated the 21st December, 1970 and granting the plaintiff a declaratory decree that the order in question is illegal and void and the respondent State of Punjab shall bear the costs of the appellant throughout.

S. K. Jain, Advocate, *for the appellant.*

Inder Kishan Mehta, Advocate, *for the respondent.*

JUDGMENT

K. S. Tiwana, J.

(1) The Punjab Government, the appellant before us, on August 27, 1964, imposed punishment upon the respondent by stopping his one grade increment without cumulative effect. The respondent contested the imposition of this punishment through a civil suit on the ground that he was not given an adequate opportunity to submit his representation and the order imposing the punishment was not speaking order. His case is that for these reasons the order was invalid and ineffective. The appellant-State contested the suit of the respondent. The case was tried by the learned Subordinate Judge on the following issues:—

1. Whether the impugned order is illegal, arbitrary and void?
2. Relief.

(2) The Subordinate Judge Ist Class dismissed the suit of the respondent with costs. The District Judge, Chandigarh, on appeal found that sufficient opportunity was given to the respondent but on the second point he, following the judgment of this court in ***Ram Dass Chaudhry*** v. *State of Punjab and another* (1) held that the impugned order was not a speaking one, and accepted the appeal with costs. The Punjab Government has come to this Court in regular second appeal. At the time of the admission of the appeal, as the correctness of the Single Bench decision in *Ram Dass Chaudhry's case* was assailed, the appeal was admitted to Division Bench. That is why this appeal is before us.

(3) Shri S. K. Jain, the learned counsel for the appellant, was not permitted to raise an objection that without waiting for the

(1) 1968 S.L.R. 792.

result of the appeal, the respondent could not file the suit on the ground that the objection was not raised in the written statement, before the lower Courts or in the grounds of appeal in this Court.

(4) The only question requiring decision in this appeal is whether the impugned order imposing the minor punishment of stoppage of one increment without cumulative effect under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter referred to as the Rules), is good and whether *Ram Dass's case* (supra), which is based on *Bhagat Raja* v. *Union of India and others* (2), was correctly decided. Rule 8 of the Rules is as under :—

> "8. Without prejudice to the provisions of rule 7, no order under clause (i), (iii) or (iv) of rule 4 shall be passed imposing a penalty on a Government servant, unless he has been given an adequate opportunity of making a representation that he may desire to make, and such representation has been taken into consideration.
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Withholding of an increment is a punishment provided under rule 4(ii) of the Rules.

(5) The learned counsel for the appellant has argued that what is required of the disciplinary authority is the consideration of the representation and nothing more. If, according to the learned counsel for the appellant, the disciplinary authority mentions in the order that representation has been considered, it fulfills the requirements of the Rules and the order cannot be questioned. He has cited *Shadi Lal Gupta* v. *State of Punjab* (3) decided by the Supreme Court and *Malvinderjit Singh* v. *State of Punjab and others* (4) in support of his argument. These two judgments deal with the question of adequate opportunity to the delinquent official when under rule 8 of the Rules, minor punishment was awarded to him. Both these judgments point out the distinction between rules 7 and 8 of the Rules and hold that under rule 8, the delinquent official was

(2) A.I.R. 1967 S.C. 1606.
(3) 1973 S.L.R. 913.
(4) I.L.R. (1970) II Pb. & Hary 580 (F.B.).

to be given an opportunity to show cause against the proposed punishment and the representation, if any, filed by him was to be considered. He had no right to ask for the report of the Enquiry Officer or other material on which the punishment was proposed against him. *Shadi Lal's case* and *Malvinderjit Singh's case* did not decide what type of consideration such a representation is to be given or in what language it should be expressed. No such argument involving the speaking nature of the order was raised in those cases. These two cases are, therefore, no precedents to the effect whether any order under rule 8 should contain reasons or should be a speaking one.

(6) The next case cited by the learned counsel for the appellant is the *Union of India and others* v. *K. Rajappa Menon* (5). In this case, K. Rajappa Menon was an Assistant Station Master. After departmental enquiry, the report was submitted, on the basis of which in accordance with rule 1713 of the Railway Servants Conduct and Disciplinary Rules, the Chief Commercial Superintendent recorded the order as:—

> "The employee in his reply, dated 3rd August, 1963 to this charge-sheet, has not accepted the charges contained in the same. An enquiry, therefore, was arranged. It was held by the Assistant Commercial Superintendent of Olavakkot from 22-8-1963 to 29-8-1963. I have seen the enquiry proceedings. I find that the procedure has been followed correctly, that the accused has been given every reasonable opportunity for his defence and I agree with the findings of the Enquiry Officer that all the charges mentioned in the charge-sheet have been established. Since these are serious charges, it is tentatively decided to impose the penalty of dismissal from service on Shri K. Rajappa Menon, Assistant Station Master, Chalakudi. He should, therefore, be asked to show cause why he should not be dismissed from service accordingly."

In those circumstances, when there was a departmental enquiry and the Chief Commercial Superintendent as a disciplinary authority had agreed with the report of the Enquiry Officer, it was held:—

> "Rule 1713 does not lay down any particular form or manner in which the disciplinary authority should record its

(5) A.I.R. 1970 S.C. 748.

findings on each charge. All that the Rule requires is that the record of the enquiry should be considered and the disciplinary authority should proceed to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order or a judgment of a judicial tribunal. The rule certainly requires the disciplinary authority to give consideration to the record of the proceedings, which as expressly stated in Exhibit R. 8. was done by the Chief Commercial Superintendent. When he agreed with the findings of the Enquiry Officer that all the charges mentioned in the charge-sheet had been established it meant that he was affirming the findings on each charge and that would certainly fulfil the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way and so read it is difficult to escape from the conclusion that the Chief Commercial Superintendent had substantially complied with the requirements of the Rule."

Rule 1713 referred in *K. Rajappa's case* is as under:—

"The disciplinary authority shall, if it is not the inquiring authority, consider the record of the enquiry and record its findings on each charge."

The rule itself suggests the distinction in the rule of the disciplinary authority when he himself is an inquiring authority or when as a disciplinary authority it acts on the report of the inquiring officer. This judgment and *D. D. Kumaria* vs. *Divisional Superintendent, Northern Railawy, Hazari Ganj, Lucknow*, (6), which again is a case of a Railway employee, do not help the learned counsel for the appellant in his argument that the disciplinary authority awarding punishment at the very first stage is not required to give any reasons for awarding punishment.

(7) In *State of Madras* v. *A. R. Srinivassan* (7), the argument was that the disciplinary proceedings being of quasi-judicial nature,

(6) 1974 S.L.R. (Vol. II) 879.

(7) A.I.R. 1966 S.C. 1827.

the disciplinary authority acting in quasi-judicial manner was required to indicate some reasons why it agrees with the Tribunal and when no reasons were given, the order of disciplinary authority should be struck down. This argument was repelled by the Supreme Court with the following observations:—

> "We are not prepared to accept this argument. In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unles it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial, but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case".

(8) In *The State of Haryana and others* v. *Ram Chander* (8), a Full Bench of this Court held :—

> "Where under the rules an Enquiry Officer is appointed to conduct a detailed enquiry into the guilt of the delinquent,

(8) A.I.R. 1976 Pb. & Hary. 381.

> where the Enquiry Officer submits a detailed report giving his findings and the reasons for his findings and where the disciplinary authority agrees with the findings of the Enquiry Officer, it cannot be said as a matter of law that the disciplinary authority is bound to record reasons in every case. There is a vital difference between a case where the disciplinary authority agrees with the findings of the Enquiry Officer and acts upon them and a case where the disciplinary authority disagrees with the findings of the Enquiry Officer. In the former, it is not always necessary for the disciplinary authority to record reasons while in the latter case, it is necessary for the disciplinary authority to do so."

The learned counsel for the appellant has based his arguments on these judgments in which the disciplinary authority agreeing with the report of the Enquiry Officer was not under any legal obligation to record the reasons for its agreement. In such cases, there need not be any duplication in writing a detailed order about the agreement, but, the orders are required to show that the report of the inquiring officer has been gone into by the disciplinary authority.

(9) The case in hand is not of disciplinary authority agreeing with the inquiry report but of punishment at the first instance. In this case the question is whether the representation filed by the respondent has been considered by the punishing authority as provided by rule 8. The consideration of the representation, as is inferable from the use of the words in rule 8 "and such representation has been taken into consideration" after the opportunity of representation, is not a matter of mere formality. The order should reflect such a consideration by the disciplinary authority. The mere punctuation of the words "considered" in the impugned order does not suffice the requirements of rule 8, nor fulfils the requirements of natural justice. The language of the order should demonstrate such a consideration in some way. This also flows from *A. R. Sirinivasan's case* and *Ram Chander's case*. The ratio of these cases is that in case the disciplinary authority differs from the report of the Enquiry Officer and prescribes punishment to the delinquent official, then it should give reasons. On this principle the order of punishment under rule 8, which is without regular departmental enquiry and the very first order should contain some material, in

some form, to show that the representation has been considered. I do not mean to suggest that the disciplinary authority should write a long-winding order giving detailed reasons like judgment rendered by a Court of law. The minor punishments like the withholding of the increment are not very innocuous but have a long-range effect against the punished official. These disciplinary authorities being quasi-judicial have to pass orders, which in judicial parlance have come to be known as speaking orders. This term implies that the order should speak the reasons which weighed with the authority making the order. In other words, it should reflect the mind of the authority passing the order to some extent about the reasons which led him to the conclusion against the delinquent official, contained in the orders. This Court in *Rajinder Pal Abrol* v. *State of Punjab* (9), took the same view, which was affirmed by the Supreme Court in *State of Punjab* v. *Bakhtawar Singh,* (10). In this case it was observed "That apart, the order of the Minister removing him does not disclose that he had applied his mind to the material on record". The order was not upheld as it was not a 'speaking order'. In the Full Bench decision in *Ram Chander's case*, *O. Chinnappa Reddy* J., speaking for the Court referring to *Rajinder Pal Abrol's case* observed, "the findings recorded by the Minister were the very first findings recorded in the matter and one would, therefore, expect a speaking order from the Minister". The requirement of the principles of natural justice, therefore, is that the order of punishment even under rule 8, should be a speaking order in the sense that it should contain the reasons, may be in brief, which weighed with the disciplinary authority to award that punishment. On similar grounds in *Ram Dass's case* my learned brother P. C. Jain, J., following *Bhagat Raja's case*, expressed the following view:—

> "There is no shadow of doubt left that the impugned orders are illegal and must be quashed. I am unable to persuade myself to accept the contention of the learned counsel for the State that any action taken under Rule 8 does not require the authority to pass a speaking order. The learned counsel had ignored the provisions of rule 4; under this rule, a penalty can be imposed upon members of the services only if good and sufficient reasons are shown. The existence of good and sufficient reasons can only be found

(9) 1971 S.L.R. 130.

(10) A.I.R. 1972 S.C. 2083.

out from the reading of the orders which admittedly do not exist in the present case."

I am in respectful agreement with the view expressed in *Ram Dass's case*. In the case in hand the impugned order is as follows:—

"Reference your explanation, dated the 30th June, 1964, in reply to Punjab Government Memorandum No. 7759-B-(ASO-2) 6315713, dated the 4th December, 1963, on the subject noted above.

2. Your explanation has been carefully considered and the same has been found to be unsatisfactory. The Governor of Punjab is accordingly pleased to impose on you the penalty of stoppage of your next one increment without cumulative effect.

3. A copy of this communication is being placed on your personal confidential record".

It does not show if the representation was taken into consideration as the principles of natural justice require. In view of what has been stated above, the writing of the words, "carefully considered and the same has been found to be unsatisfactory" does not satisfy the requirements. The judgment under appeal correctly decided the point in issue and we do not find any ground to interfere in it.

(10) The net result of the above discussion is that the appeal is dismissed and the parties are left to bear their own costs.

Prem Chand Jain, J.—I agree.

K. T. S.

REVISIONAL CIVIL

Before R. S. Narula, C.J.

MANJIT KAUR,—*Petitioner.*

versus

GURDIAL SINGH GANGAWALA,—*Respondent.*

Civil Revision No. 287 *of* 1977

August 8, 1977.

Code of Civil Procedure (V *of* 1908)—*Order* 9 *Rule* 9—*Hindu Marriage Act* (*XXV of* 1955) *as amended by Marriage Laws* (*Amendment*) *Act* (*LXVIII of* 1976)—*Sections* 10, 13 *and* 21—*Petition for*