IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 17th OF AUGUST, 2026

WRIT PETITION No. 2646 of 2008

JANDEL SINGH VEER

Versus

M.P.HOUSING BOARD, AND OTHERS

Appearance:

Shri D.P.Singh - Advocate for the petitioner.

Shri Shashank Indapurkar, learned counsel for the respondent Nos. 1 and 2.

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking the following relief (s):

"It is therefore, humbly prayed that this writ petition may kindly be allowed and a writ in the nature of certiorari/mandamus or any other suitable writ, order or direction may kindly be issued and the following relief be directed to be granted to the petitioner :-

(i). That, the orders Annexure P/1 dated 7/3/2007 and P/2 dated 19/3/05 may kindly be ordered to be quashed.

(ii) That, the respondents may further be directed to refund the amount of Rs.49812/- as deposited by the petitioner on 4/12/06 pursuant to the order Annexure P/2 under protest and be further directed to pay interest @ of 15% of the paid amount.

(iii). That, any other relief (s) which this Hon'ble court deems fit and proper in the facts and circumstances of the case may also be issued in favour of the petitioner.

(iv) The cost of the petition be also awarded".

2. Learned counsel for petitioner submitted that at the relevant point of time, the petitioner was posted as Estate Officer and, on 04.03.1999, he had

issued an order regarding the distribution of work for the management of estates of the M.P. Housing Board at Morena. Mr. V.K. Sharma was given the current charge of Estate Manager, Morena, and Mr. B.S. Morya was appointed as UDC (Assistant Estate Manager-II). The work distribution was done for the purpose of smooth functioning of the Board. On 25.08.1999, a report was submitted by the Estate Manager, Morena, namely, Mr. V.K. Sharma. The aforesaid report was submitted with regard to a complaint made by one Mr. Prabhu Dayal Goyal. In the report, it was mentioned that a piece of land bearing No. 033 was allotted to Mr. Prabhu Dayal Goyal and that he had deposited the entire amount with the respondent-Board on 09.01.1998. Even after depositing the entire amount, the sale deed thereof was not executed and, on inquiry, the concerned file could not be traced. Thus, intimating all these facts, Mr. V.K. Sharma requested the petitioner to seek clarification from Mr. B.S. Morya, who was the concerned clerk.

3. On receiving the letter dated 25.08.1999, the petitioner immediately took the steps that were required to be taken and instructed the Estate Manager, Mr. V.K. Sharma, to personally get the concerned file and proceed further in the matter. This instruction was given by the petitioner on 28.08.1999 by making an endorsement on the same letter dated 25.08.1999. Mr. V.K. Sharma, the Estate Manager, Morena, received the instructions of the petitioner on 29.08.1999 and acknowledged the same. He also forwarded the matter to his clerk, Mr. Rajvir. Thereafter, the file of Mr. Prabhu Dayal Goyal was not put up before the Estate Officer, i.e., the petitioner. In the meanwhile, the charge of the office of the Estate Officer, Morena, was taken over from the petitioner with effect from 31.01.2000. Therefore, it is clear from the above facts that the proceedings

regarding the allotment of land to Mr. Prabhu Dayal Goyal and the deposit of money by him had already taken place before the petitioner was given charge of the post of Estate Officer. It was for the first time that the petitioner came to know of the aforesaid facts on 25.08.1999 and, immediately thereafter, issued directions on 28.08.1999 to take necessary steps in the matter.

4. It was further submitted that one Mr. D.W. Joshi was posted in place of the petitioner and the entire charge was handed over to him by the petitioner. Mr. Joshi remained on the post with effect from 31.01.2000 till the execution of the sale deed in favour of Mr. Prabhu Dayal Goyal, i.e., on 22.09.2000. The petitioner had already intimated the superior officer about the aforesaid facts and submitted that he had been issued a show-cause notice dated 26.05.2001 (Annexure P/6), to which the petitioner submitted a detailed reply vide Annexure P/7 dated 12/13.06.2001, mentioning various facts and grounds. However, by a non-speaking and unreasoned order dated 11.03.2005, punishment of recovery of Rs.74,718/- was imposed upon the petitioner as well as Mr. B.S. Morya, in the ratio of 2/3rd of the amount from the petitioner and 1/3rd of the amount from Mr. B.S. Morya. Since the facts and grounds mentioned by the petitioner in the reply were not considered by the disciplinary authority, therefore, the petitioner preferred an appeal (Annexure P/9). However, the appellate authority also without considering the same, rejected the appeal by a non-speaking and unreasoned order dated 07.03.2007.

5. Learned counsel for the petitioner further submitted that, during the pendency of the appeal, as the promotion order of the petitioner was issued, the petitioner deposited 2/3rd of the amount, i.e., Rs.49,812/-, on 04.12.2006 under protest. However, the orders passed by the disciplinary authority as well as the

appellate authority are non-speaking orders. As per the judgment in **O.K. Bhardwaj Vs. Union of India reported in (2001)9 SCC 180,** the Hon'ble Apex Court has held that, if the petitioner has denied the charges levelled against him, then even a minor penalty can be imposed only after holding a regular departmental inquiry. However, in the present case, no regular departmental inquiry has been conducted and no charge-sheet has been issued against the petitioner. Therefore, the petition filed by the petition deserves to be allowed and the order impugned deserves to be quashed.

6. Per contra, learned counsel for the respondents supported the impugned order and submitted that, after considering the reply, the disciplinary authority rightly imposed the punishment and the appellate authority also considered each and every aspect of the matter and thereafter rejected the appeal. Learned counsel further submitted that Mr. Prabhu Dayal Goyal had preferred an application before the Consumer Forum, which was allowed, and the Consumer Forum had directed payment of interest Rs.74,718/-. Due to the lapse on the part of the petitioner and another employee, namely, Mr. B.S. Morya, the Department had to pay Rs.74,718/- to Mr. Prabhu Dayal Goyal and, therefore, the present recovery has rightly been imposed upon the petitioner.

7. Heard learned counsel for both the parties and perused the record.

8. Before moving ahead, it would be apt to quote impugned order dated 11.03.2005 (Annexure P/2), for ready reference and convenience:

> *"तदानुसार श्री व्ही. के. शर्मा एवं श्री व्ही. एस. मौर्य को 7 दिवस में अपनी स्थिति स्पष्ट करने हेतु दिनांक 25.08.2001 को मुख्य प्रशासकीय अधिकारी द्वारा पत्र जारी किया गया था। श्री व्ही. के. शर्मा द्वारा दिनांक 27.09.2001 को प्रस्तुत जवाब में यह उल्लेख किया गया है कि उन्होने प्रकरण की सम्पूर्ण स्थिति से अधिकारियों को अवगत कराया है। परधु श्री मौर्य द्वारा दस्तावेज के हस्तान्तरण के समय प्रकरण से*

संबंधित नस्ती उनके द्वारा अन्य कर्मचारी को तान्तरण करना नहीं पाया अतः इससे स्पष्ट हो रहा है कि नस्ती के उपलब्ध न होने में श्री व्ही.एस.मौर्य दो हैं। इस आशय के सूचना पत्र उन्हे मुख्य प्रशासकीय अधिकारी द्वारा दिनांक 21.06.2002 द्वारा दिया गया है।
उपरोक्त सम्पूर्ण स्थिति से यह स्पष्ट होता है कि संबंधित गस्ती गायब होने से मण्डल को अनावश्यक रूप से राज्य उपभोक्ता फोरम के निर्णय अनुसार रूपये 74,718/- को ब्याज की हानि हुई अतः भग.प्र. सिविल सेवा अपील एवं वर्गीकरण 1966 के नियम 10 अन्तर्गत मण्डल को हुई हानि की वसूली श्री जे.एस.वीर संपति अधिकारी (तत्का. लेखा अधिकारी) एवं श्री व्ही. एस. गौर्य राहायक संपति प्रबंधक से क्रमशः 2/3 एवं 1/3 के अनुपात में वसूली की शास्ति अधिरोपित्त की जाती है। इस प्रकरण में श्री डी.डब्ल्यू. जोशी तत्का. कार्यपालन यंत्री का कार्यकाल अत्यन्त कम रहा परन्तु उनके ओर से भी कार्य में उदासीनता परिलक्षित होने से उन पर भविष्य के प्रति सचेत रहते हुए कार्यकरने की हिदायत के साथ प्रकरण समाप्त किया जाता है। श्री व्ही. के. शर्मा संपति प्रबंधक (चालू प्रभार) द्वारा प्रकरण को गंभीरता से न लेते हुये केवल औपचारिक प्रवृत्ति अपनाई अतः उनकी भी कार्य के प्रति उदासीनता परिलक्षित होने से उनको भी भविष्य के लिए सचेत किया जाता है।"

9. Perusal of impugned order reveals that without considering the detailed reply (Annexure P/7) dated 13.6.2001 non-speaking and unreasoned order dated 11.03.2005 has been passed by Disciplinary Authority. Even the appellate order is passed without taking into consideration relevant facts and grounds in the following manner :

"उक्त आदेश के विरूद्ध श्री वीर द्वारा मान उच्चन्यायालय खण्डपीठ ग्वालियर में याचिका क्रमांक 949/2005 दायर की गयी। माननीय न्यायालय द्वारा प्रकरण में सुनवाई उपरांत दिनांक 13.11.2006 को पारित निर्णय के संदर्भ में श्री वीर की अपील को सभी तथ्यों सहित मण्डल के 191 वे सम्मिलन दिनांक 24.02.2007 में विचारार्थ प्रस्तुत किया गया था।
मण्डल के सकल्प क्रमांक 3909/27/191/02/2007 द्वारा बिचार विवशे उपरान्त श्री वीर की अपील निरस्त की गई है।
श्री वीर द्वारा अधिरोपित शास्ति की राशि रूपये 49812/- मण्डल मुख्यालय में एम.आर नं 000018 दिनांक 04.12.2006 द्वारा नगद में जमा करा दी गयी है गहरा पृथक से वसूली की कार्यवाही नहीं की जानी है। "

10 From perusal of the punishment order issued by the **Disciplinary Authority dated 11.03.2005** it is clear that the Disciplinary Authority while passing the order imposing punishment upon petitioner is exercising quasi judicial powers and even the quasi judicial order must be speaking one. The

Disciplinary Authority must apply its mind to the entire facts and circumstances and record valid and justifiable reasons and all grounds in support of its conclusion. However, in the present case, the impugned punishment order does not appear to be a speaking order. Even the appellate authority has also not considered the facts and grounds mentioned in the appeal and without considering the entire facts and circumstances brought on record with well justifiable reasons, rejected the appeal by non speaking order.

11. It is a settled position in law that when a discretion is vested in an authority to exercise a particular power, the same is required to be exercised with due diligence, and in reasonable and rational manner. The Hon'ble Supreme Court in *catena* of decisions has reiterated time and again the necessity and importance of giving reasons by the authority in support of its decision. It has been held that the face of an order passed by a quasi-judicial authority or even by an administrative authority affecting the rights of parties must be speaking one. The affected party must know how his/her case or defence was considered before passing the prejudicial order.

12. The decision of the Hon'ble Supreme Court in the case of **State of Punjab vs. Bandip Singh and others reported in (2016) 1 SCC 724** is relevant to quote. In the said decision, it had been held by the Hon'ble Supreme Court that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion.

13. In the same judgment in paragraph 7, the Hon'ble Supreme Court clarifies that the Government does not have *carte blanche* to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. Paragraph 7 of the said decision is quoted as under:-

> *"7. The same principle was upheld more recently in Ram Kishun v. State of U.P. (2012) 11 SCC 511 : (2013) 1 SCC (Civ) 382. However, we must hasten to clarify that the Government does not have a carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons.*
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> *This has already been discussed threadbare in several decisions of this Court, including in Sterling Computers Ltd. v. M & N Publications Ltd (1993) 1 SCC 445, Tata Cellular v. Union of India (1994) 6 SCC 651, Air India Ltd. v. Cochin International Airport Ltd. (2000) 2 SCC 617, B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. (2006) 11 SCC 548 and Jagdish Mandal v. State of Orissa (2007) 14 SCC 517" 31.*

14. Also the decision of the Hon'ble Supreme Court in the case of ***Kranti Associates Pvt. Ltd. and another v/s Masood Ahmed Khan and others cited in (2010) 9 SCC 496*** highlights this point. The Hon'ble Supreme Court in paragraph 15 opined that the face of an order passed by a quasi judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the inscrutable face of a sphinx. In paragraph 47 the Honb'le Supreme Court summarized its discussion. The relevant sub-paragraphs of the said summary are quoted as **under**:-

> *"47. Summarising the above discussion, this Court holds:*
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> *(f) Reasons have virtually become as indispensable a component of a decisionmaking process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

(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 lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(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.

(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 Stasbourg Jurisprudence. See Ruiz torija v. Spain (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,"adequate and intelligent reasons must be given for judicial decisions".

15. As disciplinary authority as well as appellate authority have issued non-speaking and unreasoned order, the Hon'ble Supreme Court in the case **Oryx Fisheries Pvt.Ltd vs Union Of India & Ors; (2010) 13 SCC 427** has held as under:-

"41. In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

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.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

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.

g. Reasons facilitate the process of judicial review by superior Courts.

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.

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.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

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.

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.

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". 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".

42. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

43. In Institute of Chartered Accountants of India v. L.K. Ratna and others,(1986) 4 SCC 537, it has been held:

> "......after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

44. For the reasons aforesaid, this Court quashes the show cause notice as also the order dated 19.03.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed."

16. The Hon'ble Apex Court, in the case of ***O.K. Bhardwaj vs. Union of India & Ors. (2001) 9 SCC 180,*** has held as under:-

> "3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

17. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with. As disciplinary authority has issued a non-speaking and unreasoned order and charges are factual and they are denied by the delinquent/petitioner, an enquiry should also be called for and as there is no enquiry regular departmental enquiry has been conducted before awarding the minor punishment.

18. Keeping in view the facts and circumstances of the case, impugned order dated 11.03.2005 and appeal rejection order dated 07.03.2007 are hereby quashed. The respondents are directed to give all consequential benefit to petitioner within a period of three months from the date of receipt of certified copy of this order.

16. Consequently, the respondents are directed to refund the aforesaid amount of Rs.49,812/- to the petitioner within a period of three months from the date of receipt of certified copy of this order. If the respondents do not pay the aforesaid amount within the time limit, then the respondents are directed to pay the aforesaid amount with interest at the rate of 6% per annum. As the petitioner has already retired, therefore, no liberty is granted to the respondents to take fresh action.

17. With the aforesaid, this petition is disposed of.

18. Pending interlocutory applications (if any) are disposed of.

(ANAND SINGH BAHRAWAT)
JUDGE

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