

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 448 of 2006.

Judgment reserved on 22.8.2007.

Date of decision 28.9.2007.

Brigadier D.S.Grewal

...Petitioner.

Versus

Union of India and another

...Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?¹ Yes.

For the Petitioner:

Mr. B.C.Negi, Advocate.

For the Respondents:

Mr. Sandeep Sharma,
Asstt. Solicitor General
of India.

Dev Darshan Sud, J.

The petitioner has approached this Court under Article 226 of the Constitution of India praying that the order dated 13.4.2006 (Annexure P-5) passed by the Under Secretary to the Government of India dismissing the statutory appeal preferred by the petitioner against the order dated 5.8.2005 recording "severe displeasure" against the petitioner, be quashed

¹ *Whether reports of Local Papers may be allowed to see the judgment? Yes.*

and set aside. A further prayer is made that the amount deposited by the petitioner for the losses attributed to him be refunded.

The petitioner had been awarded punishment of severe displeasure (recordable). By an order dated 27.7.2005 for his alleged act of not obtaining replacement of defective spares. The petitioner approached this Court by way of CWP 813 of 2005 which was disposed of on 14.12.2005 as under:

"This writ petition is directed against the order dated 27th July, 2005, whereby the petitioner has been awarded punishment of severe displeasure (recordable) for the lapse on his part in regard to not taking adequate steps to obtain replacement of items purchased by Central Armoured Fighting Vehicle Depot, Kirkee, through local purchase which were returned by 512 Army Base Workshop as being defective, within the warranty period. The alleged lapse on the part of the petitioner had caused accumulation of defective stores in Central Armoured Fighting Vehicle Depot, Kirkee, thereby causing loss to the State. Against this order, the petitioner could have preferred a statutory appeal but without

availing the alternative remedy the petitioner has come to this Court.

During the course of hearing of this writ petition, learned counsel for the petitioner submits that he may be permitted to withdraw the present writ petition so as to enable the petitioner to avail the remedy of statutory appeal.

We find that the request made by the petitioner is just and reasonable. Accordingly we permit the petitioner to withdraw the present writ petition with liberty to file statutory appeal. In case the statutory appeal is filed within one month from today the same shall be decided on merits by passing a speaking order by the respondents. The respondents shall not take defence of statutory appeal being barred by time, provided the same is filed within one month from today. We expect that the statutory appeal would be decided within three months from the date of filing the statutory appeal.

The writ petition is disposed of in view of the terms indicated above."

The petitioner has now approached this Court again by way of the present writ petition alleging

breach of principles of natural justice, as the appeal has been dismissed without recording reasons and does not show application of mind to the contentions raised by the petitioner, but merely reproduces language recording the complaint made by the petitioner. The other facts are not being noticed here, as during the course of arguments, submissions were made on the legality of the order Annexure P-5 dismissing the statutory complaint of the petitioner and to refund of Rs.37,241/- deposited by the petitioner on 13.1.2005 and Rs.44,448/- deposited on 4.7.2005. The petitioner has since retired from service. It was the contention of the learned counsel appearing for the petitioner that the matter was not infructuous as the punishment awarded would be a stigma with which he would have to live throughout his life and his existence would be worse than that of death.

I have heard the learned counsel for the parties and have gone through the record.

Turning to Annexure P-5, the order rejecting the appeal filed by the petitioner, I find that it does not give any reasons and simply dismisses the appeal by holding that the provisions of the Army Act & Rules had been complied with. This is hardly a satisfactory way

of dealing with a statutory appeal. It is by now well settled that an order entailing civil consequences must contain reasons for its decision. This proposition of law is by now well settled. A reference may be made to Nibaran Chandra Bag, v. Mahendra Nath Ghughu (deceased), after him his heir and legal representative (AIR 1963 SC 1895); M/S Travancore Rayons Ltd. v. The Union of India and others (AIR 1971 SC 862); The Siemens Engineering and Manufacturing Co. of India Ltd. v. The Union of India and another (AIR 1976 SC 1785); Institute of Chartered Accountants of India v. L.K.Ratna and others (AIR 1987 SC 71) and Omar Usman Chamadia v. Abdul and another (2004) 13 SCC 234.

The proposition of law laid down in these cases does not need any reiteration. Merely stating that a particular provision has been complied with or not, without reference to the material on record will not by itself be sufficient compliance of these principles. The petitioner was serving as a high ranking officer and the entry which had been made in his service record attracts disability of being barred for being considered for promotion to the higher rank and stigmatizing him for life. A reading of the appellate order leaves no doubt in my mind that it has

been passed in a cursory manner without application of mind. This Court had also summoned the record relating to the disciplinary proceedings. On going through the same, this Court was of the opinion that even at the stage of consideration of the show cause notice to the petitioner, there was no proper consideration on the points urged by him. However, no finding is being given on this point as the relief of the petitioner is being restricted only to quashing of the order imposing punishment and refund of the money without any other consequential benefits. The order is, therefore, quashed and set aside as being violative of Article 14 of the Constitution of India.

Adverting to the other point raised by the learned counsel appearing for the petitioner that the amount which had been deposited by him was not under any statutory rule, but was purely a voluntary act, I find that the submission of the learned counsel is well founded. By a communication dated 14.10.2004, the petitioner has been directed to deposit a proportionate sum of Rs.81,689/-. The letter reads:

“

Headquarters,
Southern
Command,
Pune- 411001

B/2402692/DV-2

14 Oct 2004.

IC-24744K Brig
DS Grewal
att with MITS Pune

DISCP OFFERS; IC-24744 K BRIG DS
GREWAL OF HQ 16 CORPS ATT WITH MITS
PUNE

1. It has been observed that you, while performing the duties of Comdt CAFVD Kirkee between the period of 01 Jan 1998 to 04 Aug 2000, have either lapsed in not obtaining free replacement of defective items as mentioned in Appx A & B which were within the warranty period or to dispose of defective items in accordance with the laid down procedure, thereby causing a loss to the state.
2. The Army Cdr has directed that proportionately a sum of Rs.81,689/- (Rupees eighty one thousand six hundred eighty nine only) be paid by you to make good the part of loss sustained by the state. Under the provisions para 160 (b) (i) (aa), FR- Vol -II, you are hereby allowed to deposit the said amount under the head 110 (C) 217/417/03 (Ord Stores) into Govt treasury through MRO and

fwd the necessary receipt as proof,
to this office.

3. The above is without any prejudice
to any adm action / disciplinary
action that may be taken against you
for the lapses committed by you.

Sd/-
(RK Panda)
Brig
Brig (Pers & Adm)
For GOC-in-C."

Encl: As above.

The petitioner protested his innocence and in
compliance with these directions deposited the amount.

Two communications may be noticed here:

"Registered /SDS

Training Branch (ST)
Headquarters
Army Training Command,
Shimla - 171003.

24744/DSG/03

13 Jan 2005.

Headquarters
Southern Command
Pune - 411 001.

DISCP OFFRs:IC - 24744 K BRIG DS GREWAL

1. Ref:-

- (a) HQ Southern Command letter No
B/2402692/DV-2 dated 14 Oct 2004;
(b) Brig DS Grewal's letter No 24744/DSG/01
dated 12 Nov 2004.
(c) HQ Southern Command letter No.
B/2402692/DV-2 dated 15 Dec 2004.

2. It is most humbly submitted once again that there has been no lapse on my part in not obtaining free replacements of defective items as mentioned in Appx 'A' and 'B' which were within warranty period or to dispose off defective items in accordance with the laid down procedure while performing the duties of Comdt CAFVD Kirkee between the period 01 Jan 98 to 04 Aug 2000, as alleged in HQ Southern Command letter cited at Para 1(a) *ibid*.
3. It is honourably submitted that the submissions made vide my letter cited at para 1(b) *ibid* are factual, relevant, valid and based on evidence on record and may please be noted.
4. As submitted vide Para 34 of my letter cited at Para 1(b) *ibid*, the value of the orders placed by Brig VK Nijhawan (Appx 'A' of HQ Southern Command letter cited at Para 1(a) (*ibid*) is not correct. The total actual replaceable value of the three items was Rs.76,656/- and not Rs.1,87,776/- as it totals up in Appx 'A' cited *ibid*. The difference in value of the balance qtys of the three items (Rs.1,87,776 - Rs.76,656 = Rs.1,11,120/-) i.e. Rs.1,11,120/- pertains to quantities rendered defective earlier and being much beyond warranty period perhaps were beyond

replacement even prior to the command of Brig VK Nijhawan, my predecessor.

5. As has been discerned from Appx 'A' and 'B' of HQ Southern Command letter cited at para 1(a) *ibid*, I was asked to make a proportional payment as follows:

- (a) Appx 'A' @ 40% of Rs.1,87,776/- = Rs.75,110/-
(b) Appx 'B' @ 30% of Rs.21,930/- = Rs. 6,579/-

Total Rs.81,689/-

As the actual replaceable value of the three items in Appx 'A' is Rs.76,656/- and not Rs.1,87,776/-, applying the same analogy and norms the alleged proportional payment amounts to Rs.37,241/- as follows:

- (a) Appx 'A' @ 40% of Rs.76,656/- = Rs.30,662/-
(b) Appx 'B' @ 30% of Rs.21,930/- = Rs. 6,579/-

Total Rs.37,241/-

6. Now as per Para 3 of HQ Southern Command letter cited at Para 1(c) *ibid*, I have again been directed to make the necessary payment by 15 Jan 2005.

7. According to me nothing is due against me and no irregularity was committed or found in the S of E. Even though nothing is due, I as directed by the Army Cdr have deposited the necessary amount of Rs.37,241/- (Rupees Thirty Seven Thousand Two Hundred Forty One only) in the Govt Treasury of State Bank

of India, Shimla under protest to buy solace and peace of mind.

8. Two copies of SBI Shimla Treasury Receipt No. 461846 dated 13 Jan 2005 in original and triplicate for a sum of Rs.37,241/- (Rupees Thirty Seven Thousand Two Hundred Forty One only) are fwd herewith.

9. Please acknowledge receipt.

Sd/-
(DS

Grewal)

Brig
BGS (ST)

Encls: Two copies of SBI Shimla Treasury Receipt No 461846 dated 13 Jan 2005 in original and triplicate for a sum of Rs.37,241/-."

"REGISTERED SDS
Training Branch (ST)
Headquarters
Army Training Command,
Shimla - 171 003.

24744/DSG/-07

04 Jul 2005.

Headquarters
Southern Command (DV-2)
Pune -411 001.

DISCP OFFRS ; IC - 24744K BRIG DS GREWAL

1. Please ref to HQ Southern Command Sig No A-1632 dated 29 Jun 2005.
2. IC-24744K Brig DS Grewal had deposited Rs.37,241/- (Rupees Thirty Seven Thousand Two Hundred Forty One only) in the Treasury and the TR No. 461846

dated 13 Jan 2005 was fwd to HQ Southern Command vide HQ ARTRAC letter No 24744/DSG/03 dated 13 Jan 2005.

3. Now as directed vide Sig ibid Rs.44,448/- (Rupees Forty Four Thousand Four Hundred Forty Eight only) has been deposited in the Govt Treasury at Shimla. This completes the sum of Rs.81,689/- (Rupees Eighty One Thousand Six Hundred Eighty Nine only) deposited in the Govt Treasury by the officer as directed by HQ Southern Command.
4. Two copies of SBI Shimla Treasury Receipt No. 28 dated 04 Jul 2005 in original and triplicate for a sum of Rs.44,448/- (Rupees Forty Four Thousand Four Hundred Forty Eight only) are fwd herewith please.
5. Please ack receipt.

Sd/-
(DS Grewal)
Brig
BGS (ST)

Encls: Two copies of SBI Shimla Treasury Receipt No 28 dated 04 Jul 2005 in original and triplicate for a sum of Rs.44,448/-."

No statutory rule or authority has been brought to my notice under which this amount could be claimed by the respondents. It is undisputed that this amount has been deposited by the petitioner. Learned Assistant Solicitor General submits that the petitioner

was responsible for the acts for which he was charge sheeted and that he was liable to make good the amount. He submits that the Army is a disciplined force and this Court acting under Article 226 of the Constitution of India will not interfere in the disciplinary proceedings culminating in the punishment awarded to the petitioner which in any event is very lenient. He submits that rule 160(b)(i)(aa), F.R. - Vol. II authorizes the government to effect these recoveries. As I have held, the appellate order is a non speaking order which does not disclose application of mind of the deciding authority on substantial and weighty grounds urged by the petitioner for consideration. There is no doubt in my mind that this order deserves to be quashed and set aside. This Court is not undertaking reappreciation of evidence, but only reminding the appellate authority of its constitutional duty. Power of judicial review of this Court under Article 226 cannot be excluded under the rubric "matters relating to disciplined force". Surely, this Court is entitled to know as to what were the reasons and the material on the basis of which the appellate order was passed. The material should disclose that the authority has considered the points raised by the

officer who is charged with indiscipline and dealt with these points on the basis of material on record and not merely by reproduction of grounds taken by the petitioner by holding that they are not based on any merit. It is not the quantum or sufficiency of reasons, but the reasons themselves which are being tested by this Court. On the question of recovery of money, I do not find any rule which supports the case of the respondents authorizing recovery of money from the petitioner. His communications are explicit when he states that he wants to buy solace and peace of mind. His mental condition can be well imagined.

In the facts and circumstances of this case, this writ petition is allowed. The appellate order Annexure P-5 dismissing the statutory appeal of the petitioner is quashed and set aside. Consequently, order conveying "severe displeasure (recordable)" is also quashed and set aside. A further direction is issued that the respondents shall refund a sum of Rs.81,689/- to the petitioner forthwith.

I have deliberately refrained from expressing any opinion on the other grounds raised by the petitioner challenging the legality of the order. I have also not entered into a scrutiny of the evidence

before the Court of Inquiry or the reply to the show cause notice filed by the petitioner raising number of grounds for setting aside the disciplinary order since a further direction is being issued that barring the two reliefs granted above, the petitioner will not be entitled to any further relief as a consequence of this order. He will not be entitled to any promotion or monetary benefits. This writ petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.

September 28, 2007 (PC).

(Dev Darshan Sud) , J.

CWP No. 448 of 2006.

28.9.2007 Present: Mr. B.C.Negi, counsel for the
petitioner.

Mr. Sandeep Sharma, Assistant
Solicitor General of India,
for the respondents.

Writ petition disposed of vide
separate judgment of the day placed on the file.

September 28, 2007. (PC). (Dev Darshan Sud), J.