**KERALA HIGH COURT**

P.J. Joseph

Vs

Superintendent of Post Offices

(M Ansari, C.J. T Raghavan, J.)

14.09.1960

**JUDGMENT**

**Ansari, C.J.**

1. This writ petition seeks to vacate the order terminating the petitioner's tenure, who, till July 1, 1952, was the non-departmental branch Post Master at Erumapramattom, Erattupetta, Meenachil Taluk. By the order of the Inspector of Post Offices, Kottayam, he was temporarily removed from the service, pending inquiry into the failure to credit in the accounts the value of V. P. Articles, and criminal prosecution was also launched against him in connection with the aforesaid failures to credit the value. The First Class Magistrate, Meenachil, inquired into the complaints against him for the offence under Section 409 I.P.C., the criminal case before the aforesaid Magistrate being C.C. No. 79/53. After examining the prosecution witnesses, the Magistrate, on November 29, 1957, ordered petitioner's discharge under Sec. 253 (1), Criminal P.C., and, on April 2, 1958, the writ petitioner requested the postal authorities for re-employment. He sent a reminder, 22 days later, and the reply, he received on April 28, 1958, was that the question of his reinstatement was under consideration. No further communication was received till October 23, 1958, when the writ petitioner received a memo dismissing him. aS the petitioner's Advocate has attacked the form, in which the document had been written, we would quote it in extenso. It has been produced as Ext. P 7, and reads thus:

> "Shri P. J. Joseph, Extra-departmental Branch Postmaster, Erumapramattom, who is out of duty from 1-7-1952, is hereby removed from service for unsatisfactory work".

It is common ground that no appeal was filed before the appellate authority, and the petitioner filed this writ petition on December 12, 1958.

2. The grounds, on which the petitioner's Advocate seeks to vacate the order, may be summarised under three heads. These are that:

(1) The notice under Article 311 (2) has not been given, and the failure makes the order illegal; that (2) The dismissing authority was discharging quasi-judicial functions, and failure to afford the petitioner reasonable opportunity of meeting the case against him, violates the principles of natural justice; and that (3) The dismissal order assigns no reason lor the conclusion of the petitioner's work being unsatisfactory, arbitrarily takes away the right of appeal, and should be vacated.

3. The reply to the aforesaid objections is that, as the writ petitioner does not belong to the Post Office service, he was not a public servant, and, therefore, Article 311 would not apply. The next challenge is met by relying on the Rules which provided that where an agent is being removed because of his work being not satisfactory, he need not be given notice of the proposed punishment. The reply to the last argument is that the function when dismissing the petitioner, is administrative, and not quasi-judicial; with the result that failure to assign reasons for the order would not be fatal to its legality, nor the error can be made a ground for invoking this Court's powers under Article 226. The learned Judge hearing the writ petition, considered the question of petitioner's being a member of the public services to be of sufficient importance and has referred the case to the Division Bench.

4. The petitioner's learned advocate has accepted the Postmaster General, in exercise of his legal powers having framed certain Rules concerning extra departmental agents, which governed the petitioner's employment, and are to be found in the Posts and Telegraphs Manual, Volume III, p. 44. For purposes of our decision, the relevant Rules read as follows :

"2. Penalties : The following penalties only may, for good and sufficient reason and as hereinafter provided, be imposed upon these employees, namely:--
(i) Recovery from allowance of the whole or part of any pecuniary loss caused to Government by negligence Or breach of rules.
(ii) Removal or dismissal from service for some specific offence, such as participation in fraud, etc., and.
(iii) Removal from service for unsatisfactory work or doubtful character.

3. Procedure : No order imposing a penalty specified in preceding rule, other than an order o removal from service for unsatisfactory work or for doubtful character or an order based on facts which have led to his conviction in a court of law, shall be passed against an employee unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation, if any, has been taken into consideration before the order is passed : Provided that the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and they can be waived without injustice to the employee concerned. Note: When an employee has to be removed! on account of abolition of post or in conversion into one of different status, the formalities prescribed above are not necessary.

4. Record of proceedings : The authority imposing any penalty under these rules shall maintain a record showing :

(a) the allegations upon which he proceeded against the employee punished;
(b) the employee's representation, if any, and the evidence taken, if any; and
(c) the finding and the grounds thereof.
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13. An employee shall be entitled to appeal, as hereinafter provided, from an order imposing upon him, any of the penalties specified in Rules 2, 5, 7, 10 and 11 above. He may appeal only to One higher authority, viz., to the authority immediately superior to the authority imposing the penalty". It is clear that having regard to the aforesaid particular rule, an opportunity for meeting the case, where the dismissal contemplated be for unsatisfactory work is not envisaged; and, therefore, the second ground for vacating the order is obviously not sustainable. It is equally clear that the party aggrieved is not without a fair opportunity of meeting the case, on which he is punished, for the Rules require the employee being punishable for good and sufficient reason which gives the employee the opportunity of showing the incorrectness of the case at the appellate stage.
We feel these Rules not only rest on the principles of natural justice of affording the party proceeded against opportunity of showing the incorrectness of the case against him; but where the rule requiring good and sufficient reasons be not complied with, the party's right of appeal becomes adversely affected, and he may well claim direction to do what the legal rule requires the authority to do, to assign reasons, and, for this purpose, our jurisdiction under Article 226 may well be invoked.

5. That apart, there are judicial pronouncements, which insist on administrative orders assigning reasons for the conclusions, and such pronouncements have received legislative recognition. Thus, in the United States Section 8 (b) of the American Administrative Procedure Act, requires administrative decisions to be accompanied by findings- and conclusions, as well as the reasons or basis thereof, upon all the material issues of law or facts presented on the record. Also Section 12 of the English Tribunals and Inquiries Act, 1958, requires reasons for such a decision as is mentioned in paragraph (a) or (b) of Sub-section (1) of the section, whether given in pursuance of that sub-section or of any other statutory provision, which reasons shall be taken to form part of the decision and accordingly to be incorporated in the record. It follows that when Rule 4 requires findings and the grounds thereof to be given by the punishing authority, it is providing for what has become the accepted rule of administrative procedure. Even where there be no express provisions, and administrative authorities be discharging quasi-judicial functions, judicial pronouncements insist on reasons being given for the order. There are series of such observations in America. Times, in Wichita Railroad and Light Co. v. Public Utilities Commission, (1922) 67 Law Ed 124 at p. 130, it has been held that a valid order of the commission under the Act, must contain a finding of fact after hearing and investigation, upon which the order is founded and

that, for lack of such a finding, the order in the case was void. So the absence of a finding by the requisite officer, in Mahler v. Eby, (1923) 68 Law Ed 549 at p. 550, on the undesirability of residents sought to be deported as undesirable aliens, was held fatal to the validity of the warrant for deportation. In Florida v. United States, (1930) 75 Law Ed 291, it was held that the Interstate Commerce Commission must have appropriate finding upon evidence to be supported. Again, it was held in United *State v. Chicago M. and St. P. and P. Co.*[1], that the Court must know that a decision means before the duty becomes theirs to say whether it is right or wrong. The English rule we find not to be different; for, Lord Cairns in Overseers of the Poor of Walsall v. London and North Western Rly. Co., (1878) 4 AC 30 at p. 40, has observed :

> "But supposing that the Court of Quarter Sessions did not adopt that course, there was still another mode by which any question of law which appeared to the court of Quarter Sessions doubtful, might be left open for the exercise of the judgment of a higher Tribunal, AH that was necessary was that the Court of Quarter Sessions in making its order should not make it unspeaking Or unintelligible order, but should, in some way state upon the face of the order, the elements which had led to the decision of the Court of Quarter Sessions. If the Court of Quarter Sessions stated upon the face of the order by way of recital, that the facts were so and so, and the grounds of its decision were such as were so stated, then the order became upon the face of it, a speaking order; and if that which was stated upon the face of the Order, in the opinion of any party, was not such as to warrant the order, then that party might go to the Court of Queen's Bench and point to the order as one which told its own story, arid ask the Court of Queen's Bench to remove it by certiorari, arid when so removed to pass judgment upon it, whether it should or should not be quashed", "Speaking order' in the aforesaid observation, has been explained by Lord Goddard, C. J. in *Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw*[2], in these words :
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> "When Lord Cairns, L. C., speaks of an unspeaking or unintelligible order he obviously means an order which gives no reasons, or does not explain in any way why the court made the order but simply states that the court made such and such a conviction, order for removal or for quashing the poor rate, or other order of that sort, giving no reasons for doing so. It may not be unintelligible in one sense, but it is unintelligible in that it does not tell the. superior court why the inferior court made that order".

In this country, Subba Rao, J., has in Mannarghat Union Motor Services Ltd. v. Regional Transport Authority, Malabar, AIR 1953 Mad 59, held that order under Section 57 (7) of the Motor Vehicles Act, requires reasons to be given for issuing a permit and in such a manner that an Appellate Court may be in a position to canvass the correctness of the reasons given. In M. Ramayya v. State of Andhra AIR 1956 Andhra 217, it was held that the orders of the tribunals must 'ex facie' disclose the reasons, which operated on them in granting or refusing a permit. It follows that where the order by administrative authorities be quasi-judicial, it must be 'speaking

order', and absence of reasons in it, would be fatal to its legality. The complaint by the petitioner is that he was suspended in 1952, and had not been allowed to do any work thereafter; that the criminal complaint against him has been found not to be established; that he has been thereafter dismissed for unsatisfactory conduct; but he does not know what that conduct is, and is not, from the record, in a position to exercise properly the right of appeal, which the Rules give him. We feel there is substance in the complaint, for, where one does not know the facts, on which the conclusion against one is drawn, it would be impossible to challenge it or lead rebuttal.

6. It was next argued that the order is administrative, and is not required to be speaking order'. This argument overlooks that a quasi-judicial approach is required of the punishing authority; for, it is only on good and sufficient reasons that such employee can be punished, and that good and sufficient reasons can be challenged before the appellate authority, winch is required to examine the sufficiency of the ground. In these circumstances, the punishing authority cannot be treated to bo, determining a question of policy, and the order cannot be administrative.

7. It follows that the third ground for vacating the order has force, and the writ petition is allowed on the ground of the exercise of the quasi- judicial power of the punishing authority being vitiated by legal error of not assigning reasons for the petitioner's conduct being unsatisfactory. Accordingly, the writ petition is allowed, and the order of October 23, 1958, is vacated. It is obvious that we cannot issue mandamus for reinstating the petitioner. Accordingly, only the order of October 23, 1958, without prejudice to the right of the authority to take future legal action, is vacated. The parties will bear their costs.

Cases Referred.

1(1934) 79 Law Ed 1023 at p. 1032
2(1951) 1 KB 711 at p. 718