

in the judgment. The other factors to which I have made reference above, seem to have not been at all canvassed, and are conspicuous by the absence of their consideration. With the greatest respect, I am of the view that *Om Parkash and others' case* (supra), is not correctly decided and has to be necessarily overruled.

15. The solitary and the basic issue herein having been decided against the petitioners, the writ petition is without merit and has to be dismissed. However, in view of the earlier precedent in favour of the writ petitioners, we would decline to burden them with costs.

N. K. S.

Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

DAYA WANTI and others,—Appellants.

versus

STATE OF PUNJAB,—Respondent.

Regular Second Appeal No. 1825 of 1972.

July 30, 1981.

Constitution of India, 1950—Article 311—Departmental Inquiry—Detailed order dismissing the delinquent official passed on the file—Operational portion of the order without stating the reasons communicated to the official—Non-communication of the reasons—Whether makes the order invalid—Rules of natural justice—Whether violated.

Held, that it is true that the recording of the reasons and disclosure thereof is not a mere formality but from this it cannot be inferred that the Government is required by any principle of natural justice to communicate the reasoned order to the delinquent officer and not its operational portion only. The delinquent officer would be entitled on his request to the disclosure or supply of the reasons for the passing of that order to enable him to take recourse to the Court. But till such a request is made, no principle of natural justice requires the Government to necessarily supply the detailed order to the delinquent officer nor the non-supply of the detailed order can render the order void or invalid. (Para 4).

Daya Wanti and others v. State of Punjab (S. P. Goyal, J.)

H. K. Khanna vs. Union of India, 1971 (1) S.L.R. 618.

OVERRULED.

Regular Second Appeal from the decree of the Court of Shri Dev Raj Saini, Additional District Judge, Patiala, dated the 29th day of June, 1972, reversing that of Shri Radha Krishan Bhattas, Senior Sub-Judge, Patiala, dated 26th May, 1970, and dismissing the suit of the plaintiffs and leaving the parties to bear their own costs.

K. P. Bhandari, Advocate with S. P. Soni, Advocate, for the appellants.

D. N. Rampal, Advocate, for the State.

JUDGMENT

S. P. Goyal, J.

(1) Pirthi Chand, a Sub-Inspector in the department of Consolidation of Holdings, was charge-sheeted for having taken a bribe of Rs. 50 from one Pritam Singh and after holding departmental enquiry, was dismissed from service on March 30, 1965. He died on November 12, 1966. Thereafter this suit was filed by his widow and minor sons on August 27, 1968, for declaration that the order of dismissal was illegal and void and for the recovery of Rs. 3,000 from the Government on account of pay and allowances due to Pirthi Chand till his death. Although a number of grounds were urged in the plaint to challenge the order of dismissal but the one which was pressed into service and prevailed with the trial Court was that the disciplinary authority had not passed a reasoned order. Consequently the impugned order was declared void and a decree in the amount of Rs. 3,000 was granted to the plaintiff.

(2) On appeal the learned District Judge found that the order Exhibit D. 10 which was stated to be the order of dismissal and taken as such by the trial Court, was only a communication of the operational portion of that order and that the detailed and reasoned order of dismissal passed by the Minister on March 7, 1965, was available on the record and proved in the case by the statement of D.W. 1. Consequently, the judgment of the trial Court was reversed and the suit dismissed. Aggrieved thereby the plaintiffs have come up in this second appeal.

(3) The principal ground urged to assail the judgment of the learned District Judge was that the enquiry proceedings being *quasi* judicial in nature, the order communicated to the delinquent officer has to contain the reason and the availability of the reasoned order on the file would not satisfy that requirement as held in *Shri H. K. Khanna, Ex. S.A.S. Accountant v. The Union of India Ministry of Finance, New Delhi and others* (1). For the view that the order communicated to the delinquent officer has to contain the reasons, in *Khanna's case* (supra), Tuli J., relied mainly on the following observation of the Supreme Court in *Pragdas Umar Vaishay v. Union of India and others* (2):—

“Recording of reasons and disclosure thereof is not a mere formality. The party affected by the order has a right to approach this Court in appeal, and an effective challenge against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order.”

(4) With due respect to the learned Judge, we are unable to find anything in the said observations which could justify the view that the order communicated to the delinquent officer must contain the reasons for passing that order. All that has been said that the recording of reasons and disclosure thereof was not a mere formality. From this observation it cannot be inferred that the Government was required by any principle of natural justice to communicate the reasoned order to the delinquent officer and not its operational portion only. The delinquent officer would be entitled on his request to the disclosure or supply of the reasons for the passing of that order to enable him to take recourse to the Court. But till such a request is made, no principle of natural justice requires the Government to necessarily supply the detailed order to the delinquent officer nor the non-supply of the detailed order can, in our view, render the order void or invalid. Moreover, in *Prag Dass's case* (supra) a reasoned order was neither available nor was ever passed on the file. The impugned order was consequently declared to be

(1) 1971 (1) S.L.R. 618.

(2) Civil Appeal 657/67, decided on 17th August, 1967.

Daya Wanti and others v. State of Punjab (S. P. Goyal, J.)

void because of the non-passing of a reasoned order and the observations noticed above have to be interpreted in that context and could not furnish ground for holding that even non-mentioning of the detailed reasons in the order communicated would render the order of dismissal void even though it may be a well reasoned order. The learned Judge also relied on *Khanna's case* (supra), *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala and others* (3), and a Full Bench decision of this Court in *The State of Punjab v. Bhagat Ram Patanga* (4). In *Harinagar Sugar Mills case* (supra), again the order of the Central Government passed under the Companies Act overruling the order of the Directors refusing to register the transfer was quashed as it was not supported by reasons. Similarly in *Bhagat Ram Patanga's case* (supra) the Full Bench of this Court quashed the order removing a Municipal Commissioner because no reasons were given for passing that order and there was no such question before the Full Bench that the order communicated has to be a detailed and reasoned order. The reliance on these decisions by the learned Judge was thus wholly misplaced. Consequently, we are of the considered view that *Khanna's case* (supra) was not decided correctly and have no hesitation in overruling the same.

(5) The ancillary argument raised was that the order of dismissal is only the one which was communicated to the appellant and the other order written on the file by the Minister concerned was in the nature of an advice to the Governor because anything written on the file does not become an order unless it is expressed in the name of the Governor and authenticated by a competent authority. In support of this argument reference was made to the decision of the Supreme Court in *Bachittar Singh v. State of Punjab and another* (5), but the facts of that case and the observation made therein have no bearing on the present case. The Revenue Minister, according to the rules of business of the Government, was competent to deal with this matter and pass the final order. No provision of law has been brought to our notice which requires that whole of the order containing the discussion of the evidence and reasons for

(3) A.J.R. 1961 S.C. 1669.

(4) I.L.R. (1969) 12 Pb. & Hary. 347.

(5) A.I.R. 1963 S.C. 395.

the conclusion should be authenticated in the name of the Governor. It is only the final decision culminating in the order of dismissal which is communicated to delinquent officer and which need be expressed in the name of the Governor and authenticated by a competent authority. The contention raised, therefore, has no merit.

(6) Lastly it was contended that as in the order by the Revenue Minister no reference has been made to the explanation submitted by the delinquent officer nor any reasons are given for its rejection, it is evident that there was no proper application of mind and the explanation was termed as 'unsatisfactory' mechanically. However, we are not impressed by this argument. Not only in the order all the facts constituting the allegations and the evidence led in support thereof were mentioned, even the advice of the Public Service Commission was sought before passing the order of punishment. A similar order passed under similar circumstances was upheld by the Supreme Court in *State of Madras v. A. R. Srinivasan* (6), whereas in the decision relied upon by the learned counsel in *Union of India v. B. K. Dutta* (7), neither there was any reference to the explanation nor was there any advice of the Public Service Commission.

(7) For the reasons recorded above, we find no merit in this appeal and the same is hereby dismissed but without any order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

FULL BENCH.

Before S. S. Sandhawalia, C.J., D. S. Tewatia, J. and K. S. Tiwana, J.

MATHURA DASS KUNDAN LAL,—Petitioner

versus

THE STATE OF PUNJAB,—Respondent.

G.S.T. Reference No. 11 of 1974.

September 24, 1981.

*Punjab General Sales Tax Act (No. 16 of 1948)—Section 5(1-A)
—Sale of goods by a registered dealer to an unregistered dealer—
Certificate in prescribed form issued by the latter showing payment*

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

(7) 1974 (1) S.L.R. 376.