Union Of India & Ors vs E.G. Nambudiri on 23 April, 1991

Equivalent citations: 1991 AIR 1216, 1991 SCR (2) 451, AIR 1991 SUPREME COURT 1216, 1991 (3) SCC 38, 1991 AIR SCW 1190, 1991 LAB. I. C. 1256, (1991) 2 SCR 451 (SC), 1991 (2) UJ (SC) 303, (1991) 2 JT 285 (SC), 1991 (2) JT 285, 1991 (2) SCR 451, 1991 SCC (L&S) 813, (1991) 78 FJR 536, (1991) 62 FACLR 850, (1991) 2 LABLJ 594, (1991) 2 LAB LN 48, (1991) 2 SERVLR 675, (1991) 17 ATC 104, (1991) 1 CURLR 812

Author: K.N. Singh

Bench: K.N. Singh, P.B. Sawant

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
E.G. NAMBUDIRI

DATE OF JUDGMENT23/04/1991

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
SAWANT, P.B.

CITATION:
1991 AIR 1216 1991 SCR (2) 451
1991 SCC (3) 38 JT 1991 (2) 285
1991 SCALE (1)783

ACT:
Service Law-Civil Servant-confidential reports-Adverse remarks-Representation against adverse remarks-Rajection of representation-Held rejection of representation neither adversely affects any vested right of Government servant nor does visit him with any civil consequences-In the absence of any statutory rule or provision the competent authority is under no obligation to record or communicate reasons for its decision to Government servant.

Confidential report-Remark about integrity of employee, "Nothing adverse has come to notice"-Held neutral and not adverse in nature.

Administrative Law-Administrative authority-Natural

justice-Duty to give reasons.

HEADNOTE:

The respondent, a Section Officer in the office of the Chief Controller of Import and Exports, was communicated adverse remarks for the year 1984. He made a representation against the adverse remarks but the same was rejected by the Ministry of Commerce by its order dated 6.1.1986. Thereafter he made a Memorial to the President and the Government by its order dated 14.8.86 partially expunged the adverse remarks. The respondent filed a petition before the Central Administrative Trubunal challenging the order rejecting his representation on the ground that it did not contain any reasons. The Tribunal by its order dated 27.7.87 quashed both the order dated 6.1.86 as well as 14.8.86 by holding that the orders were vitiated in law in the absence of reasons. In appeal to this Court by the Union of India, it was contended on behalf of the respondent that the principles of natural justice require the superior authority to records reasons in rejecting the Government servant's representation made against the adverse remarks as the order of rejection affected the respondent's right.

Allowing the appeal, this Court,

HELD: 1. The superior authority while considering the represen-

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tation of a Government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the Government servant. There is no rule or administrative order for recording reasons in reacting such a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reasons. The decision, rejecting such a representation does not adversely affect any vested right of the Government servant nor does it visit him with any civil consequences. It does not mean that the competent authority has licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the Confidential Reports. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reason. In many cases having regard to infinite variations of circumstances it may not be possible to disclose reasons, for the opinion formed about the work and conduct or

character of the Government servant. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In Governmental functioning before any orde is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its ipinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence ali-unde before the court to justify its action. [459G-H, 460A, E-F-H, 461A-B]

Gurdial Singh Fijji v. State of Punjab & Ors., [1979] 3 SCR 518, referred to.

2 The President was under no legal obligation to record reasons in rejecting the respondent's representation against the adverse remarks. Consequently, the order of the President was not vitiated in law. The Central Administrative Tribunal committed error in quashing the order of the President as well as the order of the Ministry of Com-

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merce dated 6.1.1986. Accordingly, the Tribunal's order dated 27.7.1987 is set aside. [461C-E]

3. The purpose of the rules of natural justice is to prevent miscarriage of justice and the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of both quasi-judicial as well as administrative enquiry, an unjust decision in an administrative enquiry may have more far reaching effect than decision in a quasijudicial enquiry. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the right involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state

reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. [458H, 459A-D]

State of Orissa v. Dr. (Miss) Binapani Dei & Ors., [1967] 2 SCR 625; Mohinder Singh Gill & Ors. v. The Chief Election Commissioner, New Delhi & Ors., [1978] 2 SCR 272; A. K. Kraipak & Ors. v. Union of India & Ors., [1970] 1 SCR 457 and Regina v. Gaming Board for Great Britain ex. p. Benaim and Khaida, [1970] 2 QB 417, referred to.

3.1. Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefor desirable that reasons should be stated. [459F]

4. Ordinarily, Courts and Tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an

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administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide it is always open to the authority concerned to place reasons before the Court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by communicated to the Government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order. [457H, 458A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1976 of 1991.

From the Judgment and Order dated 27.7.1987 of the Central Administrative Tribunal, Delhi in Regn. No. O.A.No. 511 of 1986.

V.C. Mahajan, C.V.S. Rao, A.K. Srivastava and P.Parmeshwaran for the Appeallants.

Dr. D.C. Vohra, P.K. Bansal and S.K. Bisaria for the Respondent.

The Judgment of Court was delivered by SINGH, J. Leave granted.

This appeal is directed against the order of the Central Administrative Tribunal, Principal Bench, Delhi, quashing the order of the Ministry of Commerce dated 6.1.1986 rejecting the respondent's representation against remarks awarded to him.

E.G. Nambudiri respondent is a Section Officer in the office of Chief Controller of Import and Exports, Ministry of Commerce. By a memorandum dated 7th May, 1985, the Director communicated adverse remarks awarded to the respondent for the year ending 1984. These remarks were under:

> "1. That you were not associated with the important work of the section such as the open house discussions, monthly analysis of the returns received from regional offices, complaints and port Officers meetings.
>
> 2. That the quality of performance and application of knowledge, delegated authority and conceptual and professional skills on the jobs is very poor.
>
> 3. That you had a casual attitude to the work assigned. Your devotion to duty was insufficient. That subordinates used to complain that they could not work under you, as you could not give proper guidance.
>
> 4. That your job did not involve contact with the public indications and your intellectual honesty and innovative opaity are average.
>
> 5. That nothing adverse has come to notice regarding your integrity.
>
> 6. That you were given advice/warning at various levels both orally and in writing but you did not react to these."

The respondent made representation against the adverse remarks but the same was rejected by the order dated 6.1.1986. The respondent, thereafter, made a memorial to the President of India against the adverse remarks, as a result of which the adverse remarks as contained in Item Nos. 1 to 4 as quoted above were expunged, whereas the remaining adverse entries were maintained. The Govt'.s decision was communicated by a memorandum dated 14.8.1986. But before the aforesaid decision of the Government partially expunging the adverse remarks could be communicated to the respondent, he filed a petition before the Central Administrative Tribunal challenging the order of

the Ministry of Commerce dated 6.1.1986 rejecting his representation made against the adverse entries. The respondent challenged the order dated 6.1.1986 rejecting his representation on the ground that it did not contain any reasons. Plea of mala fide was also raised against the Joint Director, Ministry of Commerce, who had awarded the adverse remarks to the respondent. The Tribunal by its order dated 27.7.1987 quashed the Government Order as contained in the communication letter dated 6.1.1986 and also subsequent order dated 14.8.1986 on the ground that those orders were vitiated in law in the absence of reasons.

The Tribunal held that it was a basic principle of natural justice of every quasi-judicial process, that order should contain reasons. Arriving at a just decision is the aim of both quasi-judicial as well as administrative inquiries, an unjust decision in an administrative enquiry may have more far reaching effect than in a quasi-Judicial enquiry, therefore, it was necessary that in rejecting the representation against an adverse entry, reasons must be stated and in the absence of reasons the order would be arbitrary and liable to be quashed. Placing reliance on a number of decisions of High Courts, the Tribunal held that a bald communication rejecting the representation made against the adverse entries does not meet the requirement of law. The Tribunal further held that in the absence of reasons it would follow that the competent authority rejected the representation without applying its mind to the grounds raised in the representation.

Learned counsel for the parties conceded that there are no statutory rules framed under Article 309 of the Constitution regulating the award of entries in the character roll of a Central Government employee or providing for filing of representation against the adverse entries, or its disposal. The entire field in this regard is regulated by administrative directions issued from time to time. Under these directions the character roll of Government servants is required to be maintained wherein the entries are made every year by superior competent authority regarding the work, conduct and character of the Government servant. These entries are confidential in nature, which contain the assessment of the work and conduct of the Government servant, reflecting his efficiency or defect in his work and conduct. The confidential reports, contain general assessment of character, conduct and qualities of a Govt. Servant which may include comments about his good work, drive, initiative, devotion to duty and integrity. These entries also reflect the inefficiency, delay, lack of initiative, carelessness in handling the problems, or any defect in character and integrity. These entries contain reference to any penalty which may have been awarded to a government servant in departmental proceedings. These entries are important in nature as on the basis of these entries, a Government servant's suitability to the office is assessed for the purposes of his confirmation, promotion and even for retention in service. Any adverse remark awarded against a Government servant is communicated to him to afford him opportunity of explaining the correct position by means of a representation. The competent authority is required to examine the adverse remarks in consultation, if necessary, with the reporting officer and counter signing authority. If the competent authority finds that the remarks are justified and there are no sufficient grounds for interference, he may reject the representation and the Government servant is informed accordingly. If, however, the competent authority finds that the adverse remarks are incorrect, unfounded or unjustified, he would expunge the same and inform the Government servant. The competent authority may having regard to the facts and circumstances of the cast modify, or tone down the remarks. The administrative instructions issued by the Government do not require the competent authority to

record reasons either in accepting or rejecting the representation of a Government servant, made against adverse entries.

Entries made in the character roll and confidential record of a Government servant are confidential and those do not by themselves affect any right of the Government servant, but those entries assume importance and play vital role in the matter relating to confirmation, crossing of efficiency bar, promotion and retention in service. Once an adverse report is recorded, the principles of natural justice require the reporting authority to communicate the same to the Government servant to enable him to improve his work and conduct and also to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. The superior authority competent to decide the representation is required to consider the explanation offered by the Government servant before taking a decision in the matter. Any adverse report which is not communicated to the Government servant, or if he is denied the opportunity of making representation to the superior authority cannot be considered against him. See: Gurdial Singh Fijji v. State of Punjab & Ors., [1979] 3 SCR

518. In the circumstances it is necessary that the authority must consider the explanation offered by the Government servant and to decide the same in a fair and just manner. The question then arises whether in considering and deciding the representation against report, the authorities are duty bound to record reasons, or to communicate the same to the person concerned. Ordinarily, Courts and Tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide it is always open to the authority concerned to place reasons before the Court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records. Reasons are not necessary to be communicated to the Government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order.

On behalf of the respondent it was contended that principles of natural justice require the superior authority to record reasons in rejecting the Government servant's representation made against the adverse remarks as the order of rejection affected the respondent's right. It is true that the distinction between judicial act and administrative act has withered away and the principles of natural justice are now applied even to administrative orders which involve civil consequences, as held by this Court in State of Orissa v. Dr. (Miss) Binapani Dei & Ors., [1967] 2 SCR 625 What is a civil consequence has been answered by this Court in Mohinder Singh Gill & Ors. v. The Chief Election Commissioner, New Delhi & Ors., [1978] 2 SCR 272 Krishna Iyer, J. speaking for the

Constitution Bench observed:

> "But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequences" undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and nonpecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."

The purpose of the rules of natural justice is to prevent miscarriage of justice and it is no more in doubt that the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of both quasi-judicial as well as administrative enquire, an unjust decision in an administrative enquiry may have more far reaching effect than decision in a quasi-judicial enquiry. Now, there is no doubt that the principles of natural justice are applicable even to administrative inquiries. See: A.K. Kraipak & Ors. v. Union of India & Ors., [1970] 1 SCR 457.

The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of it decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See: Regina v. Gaming Board for Great Britain ex p. Benaim and Khaida [1970] 2 QB 417 at 431. Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons should be stated.

There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a Government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the Government servant. The decision, rejecting the representation does not adversely affect any vested right of the Government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for

the opinion formed about the work and conduct or character of the Government servant. In the instant case adverse remarks as contained in item Nos. 1 to 4 were expunged but those at serial numbers 5 and 6 were not expunged and the respondent's representation to that extent was rejected. On a careful scrutiny of the two remarks, it would appear that observation contained in Item No. 5 "that nothing adverse has come to notice regarding your integrity"

is not adverse to the respondent's work and conduct. These remarks are neutral in nature, and they do not adversely comment upon the respondent's work, conduct or character, though they are no commendatory in nature. As regards the remarks at Serial No. 6, they are self-explanatory, which show that inspite of oral and written warnings the respondent the respondent did not improve. If the superior authority was not satisfied with the explanation of the respondent as cantained in his representation, what reasons could be stated, except that the authority was not satisfied with the explanation. The superior authority was not obliged to write detail judgment or order giving detais of the warnings or the material on which he formed opinion.

There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the office awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. it is always open to an administrative authority to produce evidence alinude before the court to justify its

action.

The President was under no legal obligation to record reasons in rejecting the respondent's representation against the adverse remarks. Consequently, the order of the president was not vitiated in law. The Central Administrative Tribunal committed error in quashing the order of the president as well as the order of the Ministry of Commerce dated 6.1.1986. Assuming that there was some defect in the order rejecting the respondent's representation, the Tribunal was not justified in holding that the adverse entries awarded to the respondent should be treated as having been expunged.

We accordingly allow the appeal, set aside the order of the Tribunal dated 27.7.1987. There will be no order as to costs.

T.N.A Appeal allowed.