IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28273 of 2013 (O&M)
Date of decision: February 04, 2015

Gurdeep Singh …Petitioner

Versus

State of Punjab and ors. ---Respondents

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CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. Harish Sharma,Advocate for the petitioner.

Mr.Ajaib Singh, Addl. A.G., Punjab

None for remaining respondents.

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HARINDER SINGH SIDHU,J.(ORAL)

The petitioner, who is working as House Tax Inspector, in Municipal Corporation, Ludhiana, was awarded the punishment of stoppage of two increments with cumulative effect vide order dated 17.02.2010(Annexure P-10).

Against the aforesaid order, the petitioner preferred a statutory appeal in terms of the provisions of Rule 19(2) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (in short 'the 1970 Rules').

It is the case of the petitioner that the said appeal has been dismissed merely on the ground that the petitioner remained absent from hearing on 23.03.2012 which according to him is impermissible.

Learned counsel for the petitioner contends that the appeal was required to have been disposed of on merits by passing a speaking order. In this context he refers to Rule 19(2) of the 1970 Rules the relevant part whereof is reproduced below:

> *“19(2) In the case of an appeal against an order imposing the penalties specified in Rule 5 or enhancing any penalty imposed under the said rule, the appellate authority shall consider:-*
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> *(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;*
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> *(b) Whether the findings of the punishing authority are warranted by the evidence on the record, and*
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> *(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;*
>
> *and pass orders:-*
>
> *(i) confirming, enhancing, reducing or setting aside*

the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;........"

By the aforesaid Rule, a statutory duty is imposed on the appellate authority to consider and decide whether the procedure laid down in the Rules has been complied with, whether the findings are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe. A persusal of the above rules do not contemplate dismissing the statutory appeal merely on the ground of absence of the appellant.

It is well settled by a catena of judgments that the term consider and decide contemplates passing a speaking order by the appellate authority.

Accordingly, the Writ Petition is allowed. The order dated 23.02.2012 (Annexure P-13) is quashed. The matter is remitted to the Appellate authority to decide the appeal afresh in accordance with the provisions of the 1970 Rules.

04.02.2015 **(HARINDER SINGH SIDHU)**

gian **JUDGE**