

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 28.07.2016

CWP No.26105 of 2015

Roshani

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Abhinav Sood, Advocate, for
Mr. Vikram Singh, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

The complaint and the grievance in this case filed by the widow of late E/ASI Krishan Kumar, No.26/Karnal is against the appellate order dated 25.09.2013 (Annex P-2) passed by the Inspector General of Police, Karnal Range, Karnal describing the same as a non-speaking order which contains no reasons. Rule 16.31, of the Punjab Police Rules, 1934, as applicable to the State of Haryana, obligate the appellate authority to record reasons. The said provision reads as follows:

“Every order passed in appeal shall contain the reasons therefore. A copy of every appellate order and the reason therefore shall be given free of cost to the appellant.”

It is pointed out that against the orders in appeal, a revision was preferred before the Director General of Police, Haryana, which has been rejected on the ground of delay on 16.02.2015.

The necessity of passing reasoned orders which affect rights of the citizen has become a constitutional duty of Officers, who pass quasi judicial orders ever after the law was laid down by the Constitution Bench of

the Supreme Court in S.N.Mukherjee Vs. Union of India, AIR 1990 SC 1984. On this short ground, the impugned order dated 25.09.2013 (Annex P-2) is not sustainable.

Moreover, the appellate order has been passed against a dead person. The husband of the petitioner was dismissed from service by the Superintendent of Police, Karnal on 08.11.2012 and died on 01.02.2013. His family should have been informed that the appeal would be taken up for final disposal and if they wished, they could appear and present their case. This would have guaranteed observance of principles of natural justice. On this count also, the order has to fall.

Still further, learned counsel for the petitioner produces an order passed by this Court in CWP No.26123 of 2013 (O&M) titled 'Prem Singh Vs. State of Haryana & others' decided on 12.05.2016, which is a case involving a co-delinquent involved in the same episode which led to the dismissal of the petitioner's husband, Prem Singh and others. This Court set aside the order, as it was found to virtually contain no reasons and directed the appellate authority to decide the appeal afresh by a reasoned order within the time specified. The Court relied on Rule 16.31 of the Punjab Police Rules. In the re-consideration exercise, an order has been passed in Prem Singh's case on 24.06.2016 whereby the penalty of dismissal has been reduced and converted to withholding of 15% of the pension for five years. It is well-settled that in the matter of punishments, the principles of equality under Article 14 of the Constitution have to be observed. This is truer when the petitioner and Prem Singh were involved in the same charge-sheet and faced inquiry proceedings on the same subject matter, which related to the same episode in Karnal, when a posse of policemen had to accompany ten accused persons from custody in jail for appearance in the Karnal Courts in

the midst of which transportation several of the accused fled away while three were caught hold off by the arms of the law.

Notice of motion.

On the asking of the Court, Ms. Shruti Jain Goel, AAG, Haryana, accepts notice. A copy of the paper-book has been handed over to Ms. Goel in the Court itself.

Having heard learned counsel for the parties, I feel there is no need to receive written statement since the matter is covered by the orders passed in Prem Singh's case and the process if resorted to would also waste further time of the Court only to remand the matter at the end of the day.

Accordingly, the petition is partially allowed. The impugned order dated 25.09.2013 (Annex P-2) is set aside. The case is remanded with a direction to the appellate authority to pass a reasoned order after offering opportunity of hearing to any literate member of the family acquainted with the facts of the case to represent the estate of the late husband of the petitioner. The consideration will take place within four months and the final orders shall be communicated to the petitioner forthwith.

Since the appellate order has been faulted for want of reasons, the order in revision dated 16.02.2015 (Annex P-4) is automatically nullified so that parties are restored to the position where the first rectifiable error occurred which caused grave prejudice i.e. at the appellate stage. Narration of facts of the case, even when done elaborately, would not make for a speaking order when they are not accompanied by reasons in support of conclusions.

28.07.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No