IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2275-1991 (O&M)
Date of Decision:-20.04.2018.

Ram Dass

.....Appellant

Versus

State of Haryana and another

......Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Mr. M.S. Joshi, Advocate for the appellant.

Mr. Rohit Arya, AAG, Haryana.

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P.B. BAJANTHRI, J. (Oral)

Appellant has questioned the validity of the Appellate Court judgment dated 17.07.1991.

2.) Appellant was subjected to disciplinary proceedings which was concluded in imposing penalty of stoppage of one increment with cumulative effect. Appellate preferred departmental appeal against the order of penalty dated 24.01.1986 and it was rejected by the Appellate Authority on 13.07.1987 Thus, appellant filed suit before the Trial Court. Trial Court decreed the suit. Respondent department preferred appeal before the Appellate Court. Appellate Court allowed the departmental appeal. Hence, the present Regular Second Appeal.

3.) Appellate Court in para 9, elaborately held that disciplinary authority, if he is agreeing with the Inquiry Officer's report, he need not assign reasons and report the contentions of the appellant. That apart it is stated that that reply/explanation on the Inquiry Officer's report and show cause notice, appellant has reiterated whatever reply submitted against the charge-sheet. Therefore, question of appreciating the contention of the appellant against Inquiry Officer's report need not be recorded. Whereas, the order of penalty dated 24.01.1986 reads as under:-

ORDER

No. /AE-3/E-1I Dated: Chandigarh, the

A charge-sheet under rule 7 of the Punjab Civil Services (Punishment & Appeal) Rules, 1952 was issued to Shri Ram Dass Inspector, Haryana Roadways, Jind vide this office memo No.27543/AE3/E-II dated 16.8.84. The following charge was framed against him:-

"Shri Ram Dass Inspector, while posted as Ticket Stock Incharge, in Haryana Roadways Jind failed to implement notification No.RPGT/81/309 dated 26.8.81 received by him on 29.8.81 in which additional surcharge on the passenger tax was revised by Rajasthan Government, with the result, Haryana Roadways, has to suffer loss of Rs.3040/-.

2. In the reply Shri Ram Dass Inspector had denied the charge levelled against him. The General Manager, Haryana Roadways, Jind was appointed as Enquiry Officer to hold regular departmental enquiry vide this office order No.1600/AE3/EII dated 30.10.84 . The Enquiry Officer has submitted his findings wherein the charge against Shri Ram Dass Inspector stands proved.

3. On consideration of the enquiry/report, a show-cause-notice alongwith a copy of enquiry report was issued vide this office memo No.13113/AE3/dated 29.4.85 to Shri Ram Dass Inspector in which the following punishment was proposed:-

"Two increments with commutative effect be stopped"

The official in his reply with reference to show cause notice has repeated those grounds which were *already explained in the reply to this chargesheet issued vide this office memo dated 16.8.84. He was heard in person at his request by me on 15.1.1986. He could not prove any solid ground to prove himself un-guilty before me.*

However, taking a lienent view, one increment with cumulative effect is stopped.

Dated: the S.C. Dhosiwal,
24th , Jan, 1986 Transport Commissioner,
Haryana."

Further rejection of the appellant's appeal is a 2 line order by the Appellate Authority stating that no grounds has been made out. Translation of Exhibit P-7 communication/order on appeal reads as under:-

"Copy No.24/79/86-6 Pari dated 19.06.1987 From Commissioner and Secretary, Haryana Government, Transport Department. To Transport Commissioner, Haryana.

Subject: Appeal of Sh. Ram Dass Inspector

With reference to your letter Number 13556/AE3/dated 27.04.1987 on the subject cited above.

Government has rejected appeal of Sh. Ram Dass Inspector because appeal of appellant is not on merit. Record of employee is being returned.

Office of Transport Commissioner, Haryana

Letter Number:- 22812/AE3 Dated 13-7-87

One copy is being sent to the General Manager, Haryana State Roadways, Jind. Enquiry file Page 1 to 216 is being sent. Kindly acknowledge the receipt and employee be informed of the decision.

sd/-
For Transport Commissioner
Haryana."

Perusal of the disciplinary as well as appellate authority's order, it is evident that it is not in accordance with the relevant statutory rule to the extent how the disciplinary authority has to consider and pass order so also appellate authority's order. In other words, both the orders are non-speaking. Assuming that appellant's contention is reiterated on the Inquiry Officer's report and show cause notice, at the same time disciplinary authority is bound to consider each of the contentions for the reasons that show cause notice is issued along with the Inquiry Officer's report and seeking explanation. If the same is not considered, it amounts to empty formality of issuance of show cause notice and furnishing copy of the Inquiry Officer's report. In view of these facts and circumstances, Appellate Court has erred in holding that disciplinary authority need not consider the contentions of the appellant if it is reiterated against charge memo. That apart it is to be noticed that as and when reply on the charge-sheet is received by the disciplinary authority, disciplinary authority has not rejected the appellant's reply while appointing Inquiry Officer. In other words, each of the contentions raised by the appellant against the charge-sheet have not been considered at the time of appointing Inquiry Officer and rejected so as to contend that disciplinary authority need not re-consider the same issue which was subject matter of reply to the charge memo. No material has been placed on record to show that disciplinary authority has considered appellant's explanation on the charge-sheet and its rejection. Even Appellate Court has not apprised appellate authority's order which is 2 ½ line order. The appellate authority is required to consider the appeal according to Rule 11 of the Punishment and Appeal Rules, 1987. Extract of Rule 11 reads as under:-

> *"**11. Order which may be passed by appellate authority.** (1) In the case of appeal against an*

> *order under Rule 9 or any penalty specified in Rule 4, the appellate authority shall consider:-*
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> *(a) whether the facts on which the order was based have been established;*
>
> *(b) whether the facts established afford sufficient ground for taking action ; and*
>
> *(c) whether the penalty is excessive, adequate or inadequate and after such consideration, shall pass such order as it thinks proper:*
>
> *Provided that no penalty shall be increased unless opportunity is given to the person concerned to show cause why such penalty should not be increased.*
>
> *(2) An authority from whose order, an appeal is preferred under these Rules shall give effect to any order made by the appellate authority."*

None of the above issues are dealt by the Appellate authority. Accordingly, Trial/Appellate Court judgment dated 22.12.1990/17.07.1991 are set aside. Matter is remanded to the disciplinary authority to pass a speaking order while considering each of the contentions raised by the appellant in his explanation on the show cause notice read with the Inquiry Officer's report. Such decision shall be taken within a period of 3 months from the date of receipt of certified copy of this order and communicate the decision to the appellant, at the earliest.

4.) Appeal stands allowed.

(P.B. BAJANTHRI)
JUDGE

April 20, 2018.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.