

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

**CWP No.11514 of 2017 (O&M)
Date of decision : February 06, 2020**

Sant Singh

..... Petitioner

Versus

Punjab State Civil Supplies Corporation Limited and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. Athar Ahmed, Advocate for the respondents

HARSIMRAN SINGH SETHI J. (ORAL)

The grievance, which is raised in the present writ petition is that the petitioner has been wrongly punished, vide order dated 29.03.2011 (Annexure P-3) and a recovery of an amount of ₹1,09,604/- has been imposed upon him. Further grievance of the petitioner is that even the appeal preferred by him against the order of punishment dated 29.03.2011 (Annexure P-3) has been rejected by totally cryptic and non-speaking order (Annexure P-5).

At the time of the hearing, learned counsel for the petitioner restricts his claim qua the order dated 02.12.2015 (Annexure P-5) rejecting the appeal filed by the petitioner against the punishment order dated 29.03.2011 (Annexure P-3) being cryptic and non-speaking.

Learned counsel for the respondents states that the details of the case and the conclusion as well have been given by the Appellate Authority and therefore, the said order cannot be treated as cryptic and non-speaking in any manner.

The only question for determination before this Court in the present writ petition is whether, the Appellate Authority is bound to pass a speaking order on the appeal dealing with the objections raised by a delinquent against the punishment order and further whether, the order dated 02.12.2015 (Annexure P-5) by which the appeal has been dismissed by the Appellate Authority, is a speaking order as required to be passed by the Appellate Authority.

The law with regard to the obligations upon the Appellate Authority to pass a reasoned order, was settled by Hon'ble the Supreme Court of India, far back in 1986, while deciding a Civil Appeal No.1621 of 1986, decided on 02.05.1986, titled as ***“Ram Chander vs Union of India and others”***, and held that the appeal cannot be decided in a mechanical way just by reproducing the facts and then summarily rejecting the same, Hon'ble the Supreme Court of India held that the appeal has to be considered with due application of mind, which implies giving reasons for the decision arrived at. The relevant paragraph of the said judgment is as under:

“9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under rule 27(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified

in r. 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.”

Thereafter, once again question came up before Hon'ble the Supreme Court of India as to whether, the Appellate Authority can dismiss the appeal without giving reasons for the same. Hon'ble the Supreme Court of India while deciding the Civil Appeal No.3411 of 1998, titled as “**S. Ramanathan vs The Chief Judicial Magistrate, Chengalpattu**”, on 20.02.2001, held that where an appeal is dismissed just by saying that “there is no reason to interfere with the punishment, hence, the appeal is dismissed”, the said order cannot be treated as a speaking order and cannot be sustained. The relevant paragraphs of the said judgment are as under:

“2. The delinquent submitted his explanation to the charges and ultimately he was found guilty of all the charges. The Chief Judicial Magistrate who was the Disciplinary Authority agreed with the findings of the Inquiry Officer and came to hold that the delinquent should be dismissed from service and accordingly an order of dismissal was passed against him. The disciplinary authority further held that the loss to the tune of Rs.1,27,529.30 sustained by the Government of Tamil Nadu will be recorded from the delinquent personally from the amount; due to him from the Government of Tamil Nadu and from the security deposit made by him and from out of the properties

belonging to him or owned by him. The delinquent preferred as appeal under the provisions of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules [for short “the Rules”] assailing the order of punishment. The Appellate Authority dismissed the appeal by order dated 16.1.21985, which is extracted hereinabove.

“The charges are sufficiently established. There is also no reason to interfere with the punishment. Hence the appeal petition of Thiru S. Ramanathan is dismissed.”

3. The appellant assailed this order by filing a writ petition in the High Court. The High Court however refused to interfere with the order in exercise of its jurisdiction under Article 226 of the Constitution of India and dismissed the writ petition and thus the present appeal by grant of special leave.

4. It may be mentioned that when the matter was listed before this Court, by order dated 13th February, 1998 this Court issued notice limited to the question about the direction regarding recovery of Rs. 1,27,529.30. Subsequently, the court granted leave, obviously with reference to the notice that had been issued and therefore we are concerned in the present appeal with the legality of the direction for recovery of the aforesaid amount, and not with the legality of the order dismissal, in respect of which notice had not been issued when the matter came up before this Court. Thus, the order of dismissal of the appellant from service remains unchallenged now.

5. Mr. Goyal, appearing for the appellants contends that though under the relevant Rule 8(v) of the Rules, recovery could be ordered but the impugned order of the Chief Judicial Magistrate is contrary to the said

Rule and an appeal having been preferred and the Appellate Authority not having indicated any reasons for dismissal of the same and not passing a speaking order, that order cannot be sustained and the High Court committed error in not interfering with the said order of the Appellate Authority.

6. Having considered the provisions of Rule 8(v) of the Rules as well as the appellate order, as has been indicated in Annexure P-15 dated 6.12.1985, we have no hesitation to come to the conclusion that the aforesaid appellate order cannot be held to be a speaking order and, therefore, the same cannot be sustained in law. We, therefore, set aside the appellate order so far as it relates to affirming the direction of the Disciplinary Authority directing recovery of Rs.1,27,529.30 paise from the delinquent and remit the matter to the Appellate Authority for reconsideration of the same by passing a reasoned order thereon. The Appellate Authority would do well in disposing of the appeal in respect of the direction regarding recovery of the amount from the appellant within a period of three months from today. This appeal is disposed of accordingly.

A Co-ordinate Bench of this Court while deciding CWP No.25664 of 2015, titled as **“Tejinder Singh vs Punjab State Power Corporation Limited and others”**, on 09.11.2016, held that where the Appellate Authority decides an appeal without giving any reason, the said order cannot be sustained as the Appellate Authority is under obligation to record reasons for its decision. The relevant paragraph of the said judgment is as under:

“Learned counsel for the petitioner contends that the

nonspeaking, cryptic impugned appellate order dated 24.02.2015 (P-15) passed without any reasons, deserves to be set aside being in violation of the settled principle of law as laid down by the Hon'ble Supreme Court in case S. Ramanathan Versus The Chief Judicial Magistrate, Chengalpattu 2002 (10) SCC 473 and Ram Chander Versus Union of India and Others 1986(3) SCC 103. Reliance is also placed on the judgment of this Court passed in case Om Parkash and another Versus Government of India and others 2004 (5) PLR 340 as well as the Hon'ble Bombay High Court in case Anil Amrut Atre Versus District and Sessions Judge and another 2003(1) SLR 423. He, thus, submits that the order needs to be remanded back to the Appellate Authority.

On the other hand, learned counsel for the respondents does not contest the proposition laid down in the above cited judgments, however, half-heartedly has tried to defend the appellate order.

After hearing learned counsel for the parties and perusing the the impugned appellate order dated 24.02.2015 (P-15), it is apparent that the present petition is liable to be allowed as in the impugned appellate order P-15, concededly, no reasons whatsoever have been given, let alone dealing with the factual contentions raised by the petitioner in his Statutory Appeal. It is well settled that the Appellate Authority is under an obligation to record reasons for its decision as concededly laid down in the aforesaid cited judgments. That being the position, the impugned appellate order dated 24.02.2015 (P-15) cannot be sustained.”

In the present case, the appeal of the petitioner has been

dismissed by just recording :

“After considering above facts, Appellate Committee confirmed the punishment awarded to the appellant.”

This shows that there is no application of mind, in respect of the objections taken by the petitioner against the order of punishment. That being so, the decision rendered by the Appellate Authority is contrary to law and hence, cannot be sustained keeping in view the settled principle of law as noticed before.

Accordingly, the order rejecting the appeal dated 02.12.2015 (Annexure P-5) is set aside. The respondents will be at liberty to pass a fresh order on the appeal of the petitioner, in accordance with law, within a period of three months from the date of receipt of certified copy of this order.

Writ petition is partly allowed, in the abovenoted terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 06, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes