

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

(220)

CWP No.15007-2017

Date of Decision : 19.02.2020

Mohinder 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. Sumeet Puri, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (Oral)

In the present writ petition, the grievance which is being raised is that the order dated 02.12.2015 (Annexure P-13) passed by the Appellate Authority by which appeal of the petitioner has been rejected, is cryptic and non-speaking and does not consider the objections, raised by the petitioner before the Appellate Authority against the order of punishment dated 31.08.2010 (Annexure P-11).

The facts as stated in the writ petition are that the petitioner was initially appointed as salesman in the respondent-Corporation in the year 1976. He was promoted as Sub-Inspector in the year 1984 and while working on the said post, petitioner retired after attaining the age of superannuation on 31.12.2004. After the retirement of the petitioner, a charge-sheet dated 25.01.2005 was issued to him. In the said charge-sheet,

the allegations were that the petitioner was responsible for the shortage of the wheat stock at Nabha Centre, where the petitioner remained posted.

As the reply filed to the charge-sheet by the petitioner was not found satisfactory, the respondent-Corporation held a regular departmental enquiry against the petitioner and vide enquiry report dated 12.08.2005, petitioner was held guilty by the Enquiry Officer in respect of the allegations alleged against him in the charge-sheet dated 25.01.2005 (Annexure P-7). After the enquiry report was sent to the petitioner for his comments, he submitted a detailed reply on 07.01.2010, raising grievance/objections against the findings of the Enquiry Officer. After considering the relevant facts, the Disciplinary Authority/Punishing Authority passed an order dated 31.08.2010, imposing recovery of Rs.23,33,486.54/- (Annexure P-11).

Against the order dated 31.08.2010 (Annexure P-11) by which punishment of recovery was imposed upon the petitioner, the petitioner preferred an appeal raising grievances with regard to the enquiry report as well as order passed by the Disciplinary Authority imposing punishment of the recovery. Appellate Authority rejected the appeal of the petitioner on 02.12.2015 (Annexure P-13).

In the present writ petition, petitioner is challenging the order dated 31.08.2010 (Annexure P-11) by which petitioner was imposed punishment and the order dated 02.12.2015 (Annexure P-13) by which appeal filed by the petitioner, has been rejected.

Upon notice of motion, reply has been filed by the respondents. In the reply, respondents are defending the order of recovery, keeping in view the finding of the Enquiry Officer, wherein the petitioner was held guilty for the shortage of the wheat stock at Nabha Centre. Further, even the

order passed by the Appellate Authority is also being defended on the ground that the appeal of the petitioner was rejected after due consideration of the facts and circumstances of the case.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Though, in the present writ petition, the order of punishment dated 31.08.2010 (Annexure P-11) is also under challenge. But, at the time of hearing, the learned counsel for the petitioner restricts his argument to that the order passed by the Appellate Authority on 02.12.2015 (Annexure P-13) is totally cryptic and non-speaking and does not deal with the objection raised by the petitioner and, therefore, cannot be sustained in the eyes of law and is liable to be set aside with the direction to the Appellate Authority to decide his appeal afresh.

Learned counsel for the respondents argues that order dated 02.12.2015 (Annexure P-13) passed by the Appellate Authority is perfectly valid and legal and order (Annexure P-13) clearly states that the objections raised in appeal filed by the petitioner has been considered by the enquiry officer while conducting the enquiry and as those objections have already been rejected by the Enquiry Officer, hence, the same does not require reconsideration at their level once again.

One of the objection raised by the petitioner in his appeal is that the respondent could not have served a charge-sheet to him after retirement. Once, the jurisdiction to issue a charge-sheet was contended before the Appellate Authority, it was incumbent upon the Appellate Authority to consider the said objection as well while deciding appeal.

The relevant portion of the appeal filed by the petitioner is as

under:

“Keeping in view the above facts, grounds realties and documents the following points are required to be considered by you:-

- i) The disciplinary proceedings have been initiated against me after my retirement.
- ii) After the issuance of charge sheet, the enquiry officer did not give me the proper opportunity of hearing and I was not given opportunity to cross-examine witnesses. The ex parte enquiry initiated against me after my retirement is bad and illegal.
- iii) Recovery case was filed against me in a wrong Court and double lockers with me were exonerated without any reason.
- iv) No action was taken against Sh. Labh Singh for misappropriation of wheat stocks despite my written complaints.
- v) In this case, recovery orders have been passed only against me, but no action has been taken against my colleagues and my supervisory officers.
- vi) The instructions issued by Pb. Govt. regarding storage of stock in the open plinth should be kept in mind, while taking decision in the matter.

A bare perusal of the above would show that the petitioner raised six objections for consideration of the Appellate Authority in his appeal. The Appellate Authority was bound to consider all those objections while deciding the appeal filed by the petitioner. In fact, in the order by which the appeal of the petitioner has been rejected, no such consideration has been given to the objections, which were raised by the petitioner in his appeal. Appeal is also considered as extension of the disciplinary proceedings. The rules of the natural justice envisages due application of mind by the authorities in either accepting or rejecting a particular appeal.

In the present case, the order which has been passed by the

Appellate Authority is cryptic and non-speaking and does not considers the

objections raised by the petitioner in his appeal before the Appellate Authority.

Hon'ble Supreme Court of India while deciding Civil Appeal No.3411 of 1998, titled S.Ramanathan Versus The Chief Judicial Magistrate, Chengalpattu, on 20.02.2001, held that Appellate Authority has to pass a detailed speaking order either accepting or rejecting the appeal and merely passing an order saying that the contentions raised in the appeal has been considered and are not found meritorious, is a cryptic order which cannot be sustained in the eyes of law. The relevant paragraph of the judgment is as under:-

“5. Mr. Goyal, appearing for the appellants contends that through 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 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 06.12.1985, 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 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.

Kumar Versus State of Haryana and another, decided on 18.05.2007, again held that the cryptic order passed by the Appellate Authority cannot be sustained in the eyes of law and the Appellate Authority is bound to record the reasons for arriving at a particular decision. The relevant paragraph of the judgment is as under:-

“4. Having heard learned counsel for the parties and perusing the paper book, we are of the considered view that the order dated 11.10.2004 (P-12) dismissing the appeal filed by the petitioner is not sustainable in the eyes of law. A perusal of Regulation 18 of the Regulations shows that all the rules of Haryana Civil Services (Punishment and Appeal) Rules, 1987, as applicable to the State of Haryana (for brevity, 'the 1987 Rules') would apply in matters relating to discipline, penalty and appeals to the members of the service of HUDA till such time HUDA frames its own regulations subject to the condition that the nature of penalty and the authority to impose such penalties as well as the appellate authority would be as specified in Appendix C and CI of the Regulations. Rule 9 of 1987 Rules recognises the right of appeal of an employee and according to Rule 11 the appellate authority is required to pass orders on the appeal. There is an obligation imposed by Rule 11 and the same reads as under:-

"11. Order which may be passed by appellate authority, -

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(1) In the case of appeal against an order under rule 9 or any penalty specified in rule 4, the appellate authority shall consider;

(a) whether the facts on which the order was based have been established;

(b) where 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 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."

5. A perusal of the aforementioned rule shows that appellate authority is under an obligation to consider various aspects. It is required to be considered as to whether the facts on which the order is based were established and such facts afford sufficient ground for taking the action. It is further required to be considered whether the penalty is excessive, adequate or inadequate and then order by the appellate authority is required to be passed.

6. We may observe that the appellate authority is the only competent authority for re-appreciating evidence and to reach a conclusion different than the one recorded by the punishing authority. The Civil Court or the High Court in writ jurisdiction would not be competent to reverse the findings of fact except on the limited ground that the findings were bald, perverse and being without any evidence. (See : Apparel Export Promotion Council V. A.K.Chopra, 1999 (1) SCT 642 : (1999) 1 SCC 759). Moreover, it is well settled that reasons are necessary link between the evidence/facts and the conclusions reached. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of ***Union of India v. M.L. Copper***, AIR 1974 Supreme Court 87.

7. It is further evident from perusal of Rule 9 of the Rules that the appellate authority is required to 'consider' the case of the appellant and then pass order. The use of word 'consider' in Rule 9 necessarily implies due application of mind. For the aforementioned proposition we draw support from a judgment of Hon'ble the Supreme Court in the case of ***R.P. Bhatt v. Union of India***, (1986)2 SCC 651. Dealing with a similar rule, it has been observed in para 4 as under :-

"4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof."

8. The wholesome principle stated in the aforementioned para would fully apply to the facts of the present case. It becomes evident that the appellate order is a cryptic order and does not fulfill the requirement of Rule 9 of the Rules. There is no reason given. The order has simply been conveyed to the petitioner that his appeal has been dismissed. Therefore, the order is liable to be set aside.”

A co-ordinate Bench of this Court in CWP-25664-2015 (O&M), titled *Tejinder Singh Versus Punjab State Power Corporation Limited and others*, decided on 09.11.2016, held 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.”

A bare perusal of the above would show that as per the settled principles of law, Appellate Authority is under an obligation to record reasons for its decision. In the present case, even the objections raised by the petitioner against the order of punishment have not even been noticed what to talk deciding the same.

Keeping in view of the above, the order dated 02.12.2015 (Annexure P-13) passed by the Appellate Authority is contrary to the settled principles of law and is accordingly is set aside. The Appellate Authority is directed to pass appropriate speaking order afresh in accordance with rules, regulations as well as settled principles law within three months from the date of receipt of certified copy of this Court.

The writ petition is allowed in the above said terms.

(HARSIMRAN SINGH SETHI)
JUDGE

19.02.2020
Pardeep

Whether reasoned/speaking? Yes/No

Whether reportable? Yes/No