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

CWP-6349-2021 (O&M)

Date of Decision: 25.05.2022

SAHIB SINGH

.... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Randhawa, Advocate, for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR.J

The instant writ petition has been filed seeking to challenge the order of termination, dated 02.04.2018 (Annexure P-1); order dated 08.03.2019 (Annexure P-5) whereby the appeal of the petitioner has been dismissed and order dated 02.08.2019 (Annexure P-6) whereby his second appeal has been dismissed.

In brief, the facts are that the petitioner was appointed as Constable on 22.07.1992 and posted in Second Battalion I.R.B. Ladda Kothi Sangrur. In May 2017, the petitioner was on a sabbatical from the department because his wife was suffering from epilepsy and general weakness. Due to mental ailment of his wife, the petitioner himself suffered from stress and agony. On account of remaining absent from duty w.e.f. 06.06.2017 to 14.09.2017 i.e. 100 days 06 hours 15 minutes, a departmental enquiry was initiated against him and the charge levelled against him was his absence from duty without getting his leave sanctioned. Ms. Gurpreet Kaur,

Assistant Commandant, PPS, Second I.R.B. Ladda Kothi, Sangrur, was appointed as Enquiry Officer, who concluded that the petitioner was guilty of the charges levelled against him. The petitioner was served with a show cause notice to defend himself and eventually, he was served with termination order whereby he was dismissed from service. He challenged the termination order before the first Appellate Authority. However, the Appellate Authority upheld the order of dismissal. The petitioner preferred second appeal and a mercy petition thereafter, which too stood dismissed.

Learned counsel appearing on behalf of the petitioner argues that the departmental enquiry was conducted in a vague and arbitrary manner, and without following the procedure for imposing major penalties provided in Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. It is also argued that the appeal filed against the order of dismissal stand dismissed being non-maintainable, which order is non-speaking order. It is submitted that the petitioner had taken several grounds in the appeal and primarily had submitted that his wife remained unwell and he has to look after her, which has not been taken into consideration.

To the argument of learned counsel for the petitioner that the order of the Appellate Authority is non-speaking and deserves to be set aside, learned counsel appearing on behalf of the respondent-State would submit that the petitioner herein had been given an opportunity of personal hearing and thereafter, his appeal has been dismissed as non-maintainable. It is submitted that Rule 16.29 of the Punjab Police Rules, provides for an appeal, which reads as under:-

“16.29. Right of appeal. - (1) Appeals shall lie only against

orders of dismissal or reduction or stoppage of increment or forfeiture of approved service for increment.

(2) There shall be one appeal only from the original order, and the order of the appellate authority shall be final.

(3) A copy of the original order appealable shall be supplied to the person concerned free of cost.

(4) Any person wishing to appeal under sub-rule (1) may apply to the Superintendent for a copy of the complete record, or any portion thereof. Such copies shall not be given during the pendency of the original proceedings for the facilitating of cross-examination or the preparation of the defence. Copies of the record of preliminary enquiries [rule 16.24 (viii)] shall not be given for purposes of appeal.

Such application shall bear a court-fee stamp of the value of two annas, unless the applicant is in Jail, and shall be accompanied by a deposit of the copying fees chargeable under the scale in force in the civil courts of the district.

(5) The copy of such record shall be given with as little delay as possible, and the Superintendent shall certify to its correctness and to the date on which it was given to the applicant.

(6) The appellate authority in cases of reduction and dismissal is as indicated in the following table :-

Officer by whom original order of punishment in framed	Appellate authority
Deputy Superintendent (Administrative), Government Railway Police, Deputy Superintendent, in charge of Railway Police Sub-Division.	Assistant Inspector-General, Government Railway Police
Superintendent of Police, Senior Assistant Superintendent of Police, Lahore, [Officer-in-charge of Police Constables Training Centre], Deputy Superintendent of Police, Punjab Armed Police, Lahaul and Spiti.	Deputy Inspector-General of Police and Assistant Inspector-General, Provincial Additional Police (designated as Commandant, Provincial Additional Police)
Deputy Inspector-General of Police, Assistant Inspector General Government Railway Police, Assistant Inspector-General, Provincial Additional Police, (designated as Commandant	Provincial Additional Police), Assistant Inspector-General of Police (Traffic) Inspector-General of Police

(7) Appeals against reduction shall be presented through the Superintendent of Police of the district in which the appellant is serving; but in the case of officers serving directly under a Deputy Inspector-General of Police appeals shall be forwarded through such Deputy Inspector-General of Police. Appeals against dismissal shall be forwarded direct to the appellate authority.

Rule 16.31 stipulates that every order passed in appeal shall contain the reasons therefor.

I have heard learned counsel for the petitioner as well as learned State counsel and have also perused the order as passed by the Appellate

Authority, which is reproduced as under:-

“.....On the petition filed by the petitioner Constable Sahib Singh No.2-IRB/485 against the order of dismissal, he was given opportunity of personal hearing on 06.03.2019. During the personal hearing, the undersigned being not agreed to the facts narrated by the petitioner, the petition being non-maintainable without going over the merits of the same and hence disposed off. The same may kindly be informed to the appellant and sent to this office.”

No doubt the Appellate Authority had given the petitioner a personal hearing and but had dismissed the appeal being non-maintainable without going over into the merits of the same. Therefore, a reading of the said order would clearly reflect that the appeal has been dismissed merely being non-maintainable.

Taking into account the fact that the appeal is maintainable against an order of dismissal as envisaged under Rule 16.29 and a reading of Rule 16.31 also envisages the disposal of an appeal by a speaking order, which is clearly lacking in the instant case. The Additional Director General of Police has not cited any reason for dismissal of the appeal or given any cogent reasons therein and merely dismissed it as non-maintainable. Therefore, in view of the provisions of Rules 16.29 and 16.31 wherein there is a provision for an appeal which is supposed to be disposed of by containing reasons thereunder, this Court has no hesitation in setting aside the order of the Appellate Authority since the same shows total non-application of mind. The matter is remanded back to the Appellate Authority to decide the appeal afresh within a period of three months after giving the

petitioner an opportunity of personal hearing. Consequently, the writ petition stands allowed and the impugned order 08.03.2019 (Annexure P-5) passed by the Appellate Authority. The subsequent order dated 02.08.2019 (Annexure P-6) also stand set aside accordingly.

Since the main petition itself has been disposed of, the application i.e. CM No.8125 of 2022 seeking stay of proceedings has become infructuous and disposed of as such.

25.05.2022

sanjeev

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No