

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(239)

CWP No. 26225 of 2018  
Date of Decision : 16.05.2022

Anil Sandhir

...Petitioner

Versus

State of Punjab and others

...Respondents

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. R.K. Arora, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, D.A.G., Punjab.

\*\*\*

**Harsimran Singh Sethi J. (Oral)**

The present petition has been filed challenging the order dated 09.03.2018 having endorsement dated 22.03.2018 (Annexure P-5), by which the petitioner was imposed penalty of cut in pension for a period of three years to the tune of 5% as well as the order dated 25.05.2018 (Annexure P-8) passed in appeal.

Learned counsel for the petitioner argues that it is a settled principle of law that even the appellate order needs to be a reasoned order giving the reason for accepting or declining the appeal so that, the employee should know as to what weighed with the authorities concerned while passing an order in appeal. Learned counsel for the petitioner submits that in the present case, the order passed in appeal is totally cryptic and non-speaking, which shows that there is no application of mind while deciding

the appeal of the petitioner, which was a detailed one and has raised number of ground in support of the appeal.

Upon notice of motion, the respondents have filed the reply, wherein, it has been mentioned that a show cause notice was given to the petitioner alleging certain allegations and after the petitioner filed the reply, an order was passed by the authorities concerned on 09.03.2018 having endorsement dated 22.03.2018 (Annexure P-5) imposing the punishment of cut of 5% in pension for a period of three years and the appeal of the petitioner filed was also rejected and, therefore, no grievance can be raised by the petitioner.

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

It is a settled principle of law that even while deciding an appeal, the appellate authority has to record reasons for accepting or declining the prayer in the appeal. The said reasons are to be mentioned so that the employee should know as to what weighed with the mind of the authorities while passing the order in appeal. In the present case, the appeal filed by the petitioner has been dismissed by recording the following order :-

*“On the above cited subject, this is with reference to your appeal dated 30.03.2018.*

*2. The appeal filed by you before the Hon'ble Secretary, School Education against the punishment of 5% cut in pension for three years has been considered and the same is consigned to record.”*

A bare perusal of the above would show that it is only a

statement, which has been mentioned in order dated 25.05.2018 (Annexure P-8) rather than the reasons, which weighed with the mind in rejecting the appeal filed by the petitioner. A bare perusal of the appeal filed by the petitioner, which has also been annexed with the petition, shows that number of grounds were taken by the petitioner against the impugned order including the violations of the principle of the natural justice, which have not at all been considered or adverted to while deciding the appeal.

As per the settled principle of law settled by the Division Bench in CWP No. 16957 of 2004 titled as ***Raj Kumar Vs. State of Haryana and another***, decided on 18.05.2007, the appellate order has to be reasoned one. The relevant paragraph of the said judgment are as under :-

“xxx            xxx            xxx            xxx            xxx

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.  
– (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. 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 SC 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.”*

In the present case, the impugned order dated 25.05.2018 (Annexure P-8) passed in appeal is totally cryptic and non-speaking and is contrary to the settled principle of law and cannot be sustained and consequently set-aside. Let the appeal filed by the petitioner dated 30.03.2018 (Annexure P-7) be decided afresh in accordance with law by passing an appropriate speaking order within a period of eight weeks of the receipt of copy of this order.

Petition is disposed of in above terms.

**May 16, 2022**  
*kanchan*

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

✓  
*Whether speaking/reasoned : Yes/No*

✓  
*Whether reportable : Yes/No*