

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

**CWP No.27652 of 2018
Date of Decision:-31.03.2022**

Madan Mohan

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present:- Mr. Jatinderpal Singh, Advocate
for the petitioner.

Mr. Kannan Malik, AAG, Punjab.

HARSIMRAN SINGH SETHI J.(Oral)

In the present petition, the challenge is to the order dated 11.01.2018 (Annexure P-18) vide which the petitioner was imposed a punishment of 25% cut in the pension for indefinite period as well as the order dated 21.06.2018 (Annexure P-20) by which the appeal filed by the petitioner against the said order, has been rejected.

Learned counsel for the petitioner argues that in the present case, the appeal filed by the petitioner has been rejected by passing a cryptic and non-speaking order whereas, as per the settled principles of law, all the points raised by the petitioner in his appeal, are to be discussed and findings are to be recorded by the Appellate Authority, as to why the same could not find favour while passing the order on the appeal preferred.

Learned counsel submits that in the present case, no finding has been recorded on the grounds, which have been taken by the petitioner in appeal and therefore, the impugned order is liable to be set aside on this ground alone.

Learned State counsel submits that though all the factual position has been noticed and the consideration was given to the grounds raised, which is clear from the wording of the order passed in the appeal and therefore the petitioner cannot raise any grievance. Learned State counsel concedes that all the grounds raised by the petitioner have not been dealt separately while passing an order on appeal.

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

In the present case, the only question which has been raised by learned counsel for the petitioner is that the order passed in appeal is totally cryptic and non-speaking and is liable to be set aside keeping in view the settled principles of law. It is the settled principle of law that even while deciding the appeal, all the grounds raised by an aggrieved party are to be taken into consideration and appropriate orders are to be passed dealing with those said grounds. Merely by cryptic and non-speaking order, the appeal cannot be rejected as the delinquent concerned will not be able to know the reasons which weighed with the appellate authority while passing order in the appeal. The order in appeal has to be a speaking order dealing with all the grounds keeping in view the settled principles of law as settled in ***CWP No.16957 of 2004, titled 'Raj Kumar vs. State of Haryana and another', decided on 18.5.2007.*** The relevant paragraph of the judgment is

reproduced as under :-

“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.”

The same question of law has also been settled by the Supreme Court in ***Civil Appeal No.3615 of 2011, titled 'U.P. Avas Evam Vikas Parishad vs. Sheo Narain Kushwaha and others', decided on 25.4.2011.***

The relevant paragraphs of the said judgment are reproduced as under :-

“7. Unless the order is reasoned, there will be no way of knowing whether the appellate court has examined the appeal before deciding that it did not deserve admission. As a limited right to appeal to Supreme Court is available against the appellate judgments of the High Court, unless there are reasons in the order of dismissal, it will not be possible for the Supreme Court to examine whether the High Court has rightly rejected the appeal. The appellant who has filed the first appeal in pursuance of a statutory right to file such appeal, paying necessary court fee, can legitimately expect reappreciation of the evidence and redetermination of the questions raised, unless the statute providing for the appeal provides otherwise.

8. This court has repeatedly pointed out that any dismissal of an first appeal even at the preliminary hearing stage, should be supported by brief reasons. In ***Kiranmal Zumerlal Borana Marwadi vs. Dnyanoba Bajirao Khot - [1983 (4) SCC 223]*** this court observed :

“As numerous points both of law and facts appear to have been raised in the appeal, which again were sought to be canvassed before us, in fairness to the parties and to us, some reasons ought to have appeared in the judgment indicating what appealed to the High 5 Court to be in entire agreement with the learned trial Judge. Let it be remembered that it was the first appeal against the decision of the trial Court and therein the appellant can and has raised serious questions of law and disputed decision on facts. We,

therefore, think that this is pre-eminently a fit case which ought to have been admitted and disposed of on merits.”

In Jayanmti De vs. Abani Kanta Barat - AIR 2000 SC 3578: (2000 AIR SCW 3740-1) this Court observed thus :

“We are not satisfied that the High Court has considered the appeal on merits. Even if the dismissal is under Order 41 Rule 11 and the High Court is not required under Sub-rule (4) to record in brief its grounds for doing so, it is not a carte blanche to enable the appellate court to avoid recording any reason whatsoever. We think that the appeal required consideration on merits. We, therefore, set aside the impugned order and remit the appeal to the High Court for disposal of the same on merits and in accordance with law by stating the reasons.”

In the present case, the operative part of the order dated 21.06.2018 (Annexure P-20) passed by the Appellate Authority, while deciding the appeal is as under :-

“ xxx xxx xxx

Thus upon careful perusal of the available record and the comments received, it has been decided that the charge of Sh. Madan Mohan is serious and is fully proved. Still taking a lenient view and while disposing off his appeal, an order is passed to impose a cut of 25% in his basic pension for a period of only ten (10) years.”

Prior to the said operative part only the factual position has been noticed and not even the grounds which have been raised by the petitioner in his appeal have been considered. That being so, the order cannot sustain in the eyes of law and the same is accordingly set aside. The appellate authority is directed to pass an appropriate speaking order

afresh on the appeal preferred by the petitioner within a period of two months of the date of receipt of copy of this order.

The present petition is disposed of in the above terms.

It will be in the interest of justice that while passing the order on appeal, the petitioner will also be granted an opportunity of personal hearing so as to present his case.

March 31, 2022
Vijay Asija

(**HARSIMRAN SINGH SETHI**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No