

CM-3600-C-2021;
CM-3601-C-2021;
CM-3602-C-2021 in/and
RSA-680-2021

2023:PHHC:069439

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(247)

CM-3600-C-2021;
CM-3601-C-2021;
CM-3602-C-2021 in/and
RSA-680-2021
Date of Decision : 12.05.2023

Madhu Bala

...Appellant

Versus

Punjab State Power Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Kumar Jindal, Advocate for the appellant.

Mr. Dhruv Walia, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

CM-3600-C-2021

Present application has been filed seeking condonation of delay of 30 days in re-filing the appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed and delay of 30 days in re-filing the appeal is condoned.

CM-3601-C-2021

Application is allowed, as prayed for.

CM-3602-C-2021

Present application has been filed for placing on record

Annexures A-1 to A-4.

Application is allowed and documents as Annexures A-1 to A-4 are taken on record with all just exceptions.

RSA-680-2021

1. The present regular second appeal has been filed challenging the judgment and decree of the trial court dated 24.08.2017 by which the suit filed by the appellant-plaintiff has been dismissed as well as against the judgment and decree of the lower appellate court dated 13.08.2019 wherein, the appeal preferred by the appellant-plaintiff has also been dismissed by upholding the judgment and decree of the trial court dated 24.08.2017.

2. Learned counsel appearing on behalf of the appellant-plaintiff has only raised one argument that the order passed in appeal by the authorities concerned is totally cryptic and non-speaking and does not give even a single reason for rejecting the objections raised by the appellant-plaintiff before the authorities concerned qua the imposition of punishment. Learned counsel submits that as per the settled principle of law, once the objections have been raised against the order of punishment in appeal, it becomes obligatory upon the appellate authority to decide the appeal by dealing with each and every objection so that the appellant-plaintiff should come to know as to what weighed with the mind of appellate authority while accepting or rejecting those objections.

3. Notice of motion.

4. Mr. Dhruv Walia, Advocate, who is present in Court, accepts notice on behalf of the respondents.

5. Learned counsel for the respondent-Corporation after going through the order passed in appeal, which has been attached at page-102 of the paper book, submits that the order does not discuss the grounds taken in appeal while arriving at a conclusion. He only submits that though, it cannot be said that there is no application of mind but the order is not happily worded.

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

7. It is a settled principle of law that the appellate authority is required to decide all the objections/grounds taken by an employee while filing an appeal against the order, which causes prejudice to him/her. The law on this issue is settled by the Division Bench of this Court in CWP No. 16957 of 2004 titled as ***Raj Kumar Vs. State of Haryana and another***, decided on 18.05.2007. The relevant paragraphs 4 to 8 of the said judgment are 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, -

(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 observed that the appellate authority is the only competent authority for re-appreciating evidence and to reach

a conclusion different from the once 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 bad, perverse and being without any evidence. (See: [Apparel Export Promotion Counsel v. A.K. Chopra](#) . 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](#) .

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](#) . 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 that 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 fulfil 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.”

8. A bare perusal of the order passed in appeal, copy of which has been appended as at page 102 and is on record of the court below as Ex. P9. From the record, it is also clear that while filing the appeal, various objections were taken, which is clear from Ex. P8 i.e. copy of the appeal preferred against the order passed. The order passed in appeal by the authorities concerned is not a speaking order so as to ascertain what weighed in the mind of the appellate authority while dismissing the appeal. Rather the grounds taken in appeal have not been even noticed while denying the said application. The order passed in appeal is contrary to the settled principle of law in ***Raj Kumar’s case (supra)***. The courts below have not at all considered the said fact while rejecting the claim qua the order passed in appeal dated 10.07.2013, which was also under challenge in the civil suit.

9. Consequently, the appeal is allowed to the extent that the order dated 10.07.2013 is set-aside and the case is remanded back to the authorities concerned for passing an appropriate order afresh on the appeal preferred by the appellant-plaintiff challenging the punishment dated

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11.10.2006. It will be appreciated in case the fresh order is passed by the concerned authorities within a period of eight weeks of the receipt of copy of this order.

10. Disposed of.

May 12, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No