



CWP-488-2000 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-488-2000 (O&M)
Date of Decision :31.07.2024

Gurbachan Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Talwar, Advocate with
Mr. Nikhil Sehrawat & Mr. Dishant Jindal, Advocates
for the petitioner.

Mr. T.P.S. Chawla, Sr. DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present petition, grievance being raised by the petitioner is qua the order of imposing punishment of recovery of amount upon the petitioner vide order dated 16.03.1998 (Annexure P/8) as well as to the order dated 28.09.1998 (Annexure P/10) passed by the appellate authority in an appeal preferred by the petitioner.

At the time of hearing, learned counsel for the petitioner submits that the order passed by the appellate authority in an appeal is totally cryptic and non-speaking and not even a single ground raised in the appeal, challenging the order of punishment, has been dealt with by the appellate authority hence, keeping in view the settled principle of law, order 28.09.1998 (Annexure P/10) passed in an appeal is liable to be set aside.

Learned counsel for the respondent-State submits that once, the

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detailed enquiry has been held and punishing authority after considering all the facts passed the order of punishment and once, it has already come on record that impugned order was passed after due consideration of enquiry proceedings, the appellate authority is not required to pass order with detailed reasons.

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 all the executive orders are to be speaking order so as to give reasons for arriving at a particular conclusion.

In the present case, prima facie, order dated 28.09.1998 (Annexure P/10) passed by the appellate authority in appeal preferred by the petitioner, is cryptic and non-speaking and does not give any reason for arriving at a conclusion that appeal filed by the petitioner does not have any merit so as to invite rejection.

The argument being raised by the learned counsel for the respondents that once, on the basis of the enquiry conducted, detailed order has been passed imposing punishment of recovery of amount upon the petitioner, appellate authority is not required to pass in detail a reasoned order while deciding the appeal of the petitioner, cannot be accepted.

Though, the punishment is based upon the detailed enquiry report but appeal is preferred raising the objection that the punishment imposed is incorrect and also for considering all the factors, which the punishing authority might have ignored while passing the order of



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punishment hence, the grounds raised in the appeal are liable to be dealt with by the appellate authority while passing order in appeal so as to show that appeal filed by the employee concerned is considered by the appellate authority while passing appropriate order hence, the ground raised by the learned counsel for the respondents that detailed order is not required to be passed by the appellate authority, cannot be accepted.

Even otherwise, as per the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.1621-1986 titled as Ram Chander vs. Union of India and others, decided on 02.05.1986**, appellate authority is under an obligation to record reasons for its decision. Relevant paragraphs of the said judgment are as under:-

"8. So also in **Tara Chand Khatri vs. Municipal Corporation of Delhi & oths.** [1977] 2 S.C.R. 198 this Court observed that there was a vital difference between an order of reversal by the appellate authority and an order of affirmance. **Tara Chand Khatri v. Municipal Corporation of Delhi & Ors.** and the omission to give reasons for the decision may not by itself be a sufficient ground for passing such order, relying on the test laid down by Subba Rao, J. in **Madhya Pradesh Industries Ltd. v. Union of India** [1966] 1 S.C.R. 466.

"Ordinarily, the appellate or revisional authority shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the Appellate Tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons."

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, r. 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under r. 27(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. R. 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in r. 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has

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different shades of meaning and must in r.22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.”

Keeping in view the above, order dated 28.09.1998 (Annexure P/10) passed by the appellate authority in an appeal preferred by the petitioner cannot sustain in the eyes of law and the same is accordingly set aside. The Appellate Authority is directed to pass a fresh speaking order in an appeal preferred by the petitioner within a period of 08 weeks from the date of receipt of certified copy of this order.

It will be appreciated in case, opportunity of personal hearing be also given to the petitioner to explain his case before passing appropriate order by the appellate authority.

It may be noticed that this Court is not expressing any opinion on the merits as the same is to be decided by the appellate authority after considering the grounds mentioned in the appeal.

Present petition is partly allowed in above terms

Civil miscellaneous application pending, if any, is also disposed of.

July 31, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No