Before Daya Chaudhary, J.

DR. ASHOK KUMAR MONGA—*Petitioner*

versus

STATE OF PUNJAB—*Respondents*

CWP No. 14029 of 2013

August 29, 2016

Constitution of India, 1950, Articles 14 and 226 - Punjab Civil Services (Punishment and Appeal) Rules, 1970, Rule 19 - Penalty of stoppage of two annual increments without future effect – Appeal – Plea of non recording of reasons and discrimination - Case of petitioner at par with co-accused as same allegations were levelled but different punishments awarded, however, second penalty of 5% cut in pension imposed upon co-accused set aside by giving warning, whereas, petitioner awarded punishment of stoppage of two increments as well as warning – Held, as per Rule 19 Rules, 1970, appellate authority has to "consider" whether findings of punishing authority are warranted by evidence on record and also as to whether punishment imposed is severe or adequate - No such consideration done by appellate authority, thus, impugned order passed by appellate authority totally non-speaking and unreasoned which are contrary to principles of natural justice and Article 14 Constitution of India therefore, liable to be set aside.

Held that on perusal of orders passed by the appellate authority, it is clear that no reason, whatsoever, has been assigned while upholding the order of punishing authority as well as the order of rejecting the appeal. It has also not been mentioned as to how the case of the petitioner has been treated differently from his co-accused, whereas, the charges were same.

(Para 11)

Held that as per Rule 19 of the Rules, 1970, the appellate authority has to "consider" whether the findings of the punishing authority are warranted by the evidence on record and also as to whether the punishment imposed is severe or adequate.

(Para 12)

Held that in the present case, no such consideration has been done by the appellate authority and as such, the impugned order passed by the appellate authority is totally non-speaking.

(Para 13)

Held that by applying the law position as discussed above, it is clear that the order passed by the appellate authority being non-speaking and unreasoned, as to how the appellate authority was agreeing with the punishment awarded by the punishing authority when same allegations were levelled against the petitioner as well as co-accused Dr. Kuldip Rai, whereas, different punishments have been awarded which are contrary to principles of natural justice and Article 14 of the Constitution of India, is liable to be set aside.

(Para 18)

Puneet Gupta,Advocate, *for the petitioner.*

L.S. Virk, Addl. A.G., Punjab for the respondent-State.

DAYA CHAUDHARY, J.

(1) The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing of orders dated 29.04.2011 (Annexure P-11), 27.09.2011 (Annexure P-13), 05.03.2012 (Annexure P-15) and 07.11.2012 (Annexure P-19), whereby, the penalty of stoppage of two annual increments without future effect has been imposed upon the petitioner and the appeal filed against said order has also been rejected.

(2) Briefly, the facts of the case as made out in the petition are that the petitioner was posted as an Emergency Medical Officer (EMO) at Civil Hospital, Bathinda. On 21.10.2008, while he was on duty, one Shri Hargobind Singh, an accused in case registered under Sections 107/151 of the Code of Criminal Procedure, 1973 was brought for medical checkup at Civil Hospital, Bathinda. As per medical checkup conducted by the present petitioner, it was found that there was no external mark of fresh injury. On 22.10.2008, the District and Sessions Judge, Bathinda visited and inspected the jail. Accused made a complaint of pain in his right leg and abrasion on the right arm. He also made a complaint that he was beaten up by the opposite party as well as by the police officials. On the basis of complaint made by the accused, the District and Sessions Judge passed the order of conducting medical examination by the Board of Doctors. Thereafter, the Medico-legal report was prepared by the Board of Doctors and a copy, thereof, was sent to the District and Sessions Judge, Bathinda. An inquiry was ordered to be conducted against both the doctors i.e the present

petitioner and one Dr. Kuldip Rai for not reporting the multiple injuries at the time of medical checkup of accused Sh. Hargobind Singh. Thereafter, vide letter dated 12.11.2008, the petitioner was asked to clarify his position to which he filed his reply stating therein that there was no fresh injury inflicted on the person of the prisoner. Even the accused did not mention any fresh injuries and the report was prepared as per his statement, which was duly signed. The replies submitted by both the doctors including the present petitioner were not found to be satisfactory and they were warned to be careful in future. The petitioner was issued a charge sheet dated 18.06.2009, wherein, two allegations were levelled against him i.e the injuries of the accused were not properly mentioned and the petitioner had misused his designation and was negligent in duty. The inquiry was conducted by I.A.S. Officer (Retd.) and petitioner as well as another doctor, namely, Dr. Kuldip Rai were held guilty of charge No.1 i.e not properly inspecting the injuries of the accused Sh. Hargobind Singh but were exonerated of the second charge i.e misuse of designation/negligence in duty. The petitioner submitted reply to the report but as the same was not found to be satisfactory. Two annual increments of the petitioner were stopped without future effect vide order dated 29.04.2011.

(3) Against the said order dated 29.04.2011, the petitioner filed an appeal which was rejected on 27.09.2011. The petitioner filed the second appeal before the Health and Family Welfare Minister, Government of Punjab, Chandigarh, which was also dismissed. Thereafter, again the petitioner filed another appeal stating therein that the same allegations were levelled against Dr. Kuldip Rai and vide order dated 29.06.2011, the penalty of 5% cut in pension was imposed upon the said doctor but in appeal, he was exonerated vide order dated 25.10.2011 after giving a personal hearing, whereas, no opportunity of hearing was given to him.

(4) The present petition has been filed against the order of imposition of penalty of stoppage of two annual increments without future effect as well as the order passed in two appeals.

(5) Learned counsel for the petitioner submits that the allegations against the present petitioner and his co-accused Dr. Kuldip Rai were same but he was exonerated, whereas, the petitioner has been held guilty of said charge. The Appellate Authority has not given any finding and the appeal has been dismissed without affording any sufficient reason and even without giving any opportunity of personal hearing. Learned counsel also submits that even the second appeal was

also rejected and nothing was mentioned as to how the case of Dr. Kuldip Rai was different from the case of the present petitioner when the allegations against both the doctors were same. Learned counsel further submits that the penalty of warning has been imposed upon both the doctors i.e the present petitioner and Dr. Kuldip Rai but the penalty of 5% cut imposed upon Dr. Kuldip Rai has been set aside. Same allegations were there against the petitioner also but two penalties have been imposed upon the petitioner. Learned counsel also submits that Rule 19 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (here-in-after referred to as "the Rules, 1970) provides that the Appellate Authority has to "consider" whether the findings of the punishing authority are warranted by the evidence on record and also as to whether the punishment imposed is severe or adequate. At the end, learned counsel for the petitioner submits that the orders passed by the punishing authority as well as by the appellate authority are non-speaking and are passed without recording of any findings.

(6) Learned counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in cases ***Ram Chander*** *versus* ***Union of India and others***[1]***; Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank*** *versus* ***Jagdish Sharan Varshney and others***[2]***; Sengara Singh and others*** *versus* ***State of Punjab and others***[3]***; State of U.P*** *versus* ***Raj Pal Singh***[4] as well as judgments of this Court in cases ***Hari Singh*** versus ***State of Punjab and another***[5]***; Pritam Singh*** *versus* ***Haryana State Electricity Board***[6]***; R.S. Bhatti*** *versus* ***State of Haryana***[7] in support of his contentions.

(7) Learned counsel for the respondent-State opposes the submissions made by learned counsel for the petitioner and submits that the petitioner participated in the inquiry proceedings and he was found guilty on the basis of appreciation of evidence and thereafter, the punishment of stoppage of two increments without cumulative effect was awarded. The appeal was also rejected by giving sufficient

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[1] 1986(3) SCC 103
[2] 2009(4) SCC 240
[3] 1983(4) SCC 225
[4] 2002 (1) SCT 205
[5] 2004(2) SCT 413
[6] 1995(2) SCT 754
[7] 2001 (1) SCT 1156

opportunity of personal hearing. The appeal was also rejected by giving sufficient opportunity of personal hearing.

(8) Heard the arguments of learned counsel for the parties and have also perused the impugned orders as well as other documents available on the file.

(9) The facts relating to levelling of allegations in the charge sheet and conducting of inquiry are not disputed. The impugned orders have been challenged only on the ground that the case of the petitioner was at par with co-accused Dr. Kuldip Rai, whereas, different punishments have been awarded. It is also the argument of learned counsel for the petitioner that no opportunity of personal hearing was given to the petitioner and as such, the impugned orders are violative of principles of natural justice.

(10) On perusal of orders passed by the appellate authority, it is apparent that no findings have been recorded as to how he was agreeing with the findings recorded by the punishing authority in spite of specifically mentioning in the grounds of appeal that his case was at par with co-accused Dr. Kuldip Rai as same allegations were there, whereas, said Dr. Kuldip Rai has been exonerated. The issue of parity has not been discussed at all. It is also not disputed that the penalty of warning had been imposed upon both i.e the present petitioner and Dr. Kuldip Rai. However, the second penalty of 5% cut in pension imposed upon Dr. Kuldip Rai has been set aside by giving warning, whereas, the petitioner has been awarded punishment of stoppage of two increments as well as warning.

(11) On perusal of orders passed by the appellate authority, it is clear that no reason, whatsoever, has been assigned while upholding the order of punishing authority as well as the order of rejecting the appeal. It has also not been mentioned as to how the case of the petitioner has been treated differently from his co-accused, whereas, the charges were same.

(12) As per Rule 19 of the Rules, 1970, the appellate authority has to "consider" whether the findings of the punishing authority are warranted by the evidence on record and also as to whether the punishment imposed is severe or adequate.

(13) In the present case, no such consideration has been done by the appellate authority and as such, the impugned order passed by the appellate authority is totally non-speaking. Rule 19 of the Rules, 1970 is reproduced as under :-

"19. Consideration of appeal –

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 4 and having regards to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposed any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rule, the appellate authority shall consider –

a. Whether the procedure laid down in these rules has been complied with, and if not, whether such non- compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice ;

b. Whether the findings of the punishing authority are warranted by the evidence on the record ; and

c. Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe ; and pass orders –

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that –

(i) the Commissioner shall be consulted in all cases where such consultation is necessary ;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall, subject to the provision of rule 13, itself hold such inquiry or direct that such inquiry be held in accordance with the provision of Rule 8 and thereafter, on a consideration of the proceeding of such inquiry make such orders as it may deem fit ;

(iii) if the enhanced penalty which the appellate authority propose to impose is one of the penalties specified in clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall make such orders as it may deem fit ; and

(iv) no orders imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provision of Rule 10 of making a representation against such enhanced penalty."

(14) On perusal of above said Rules; facts and circumstances of the case as mentioned above, it appears that the appellate authority has not applied its mind, whereas, the reasons are necessary to be recorded.

(15) Same view was held in judgment of Hon'ble the Apex Court in ***Jagdish Sharan Varshney's*** *case (supra)*. The relevant portion of said judgment is reproduced as under :-

"5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in *Prabhu Dayal Grover* case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in *Divl. Forest Officer* versus *Madhusudhan Rao (vide SCC para 20: JT para 19)* and in *M.P. Industries Ltd.* versus *Union of India, Siemens Engg. & Mfg. Co. of India Ltd.* versus *Union of India (vide SCC para 6 : AIR para 6), etc.*

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

> 8.The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.N. Mukherjee* versus *Union of India*, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation. requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.
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> 9. No doubt, in *S.N. Mukherjee* case, it has been observed that : (SCC p. 613, para 36)
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> "36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

(16) The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one- line orders stating that they agree with the view of the lower authority.

> 10.For the same reason, the decision of this Court in *State of Madras* versus *A.R. Srinivasan (*vide AIR para 15) has also to be understood as explained by us above.
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> 11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order."

(17) Similar views have been observed in ***Ram Chander's, Sengara Singh's, Raj Pal Singh's***, ***Hari Singh's***, ***Pritam Singh's*** and ***R.S. Bhatti's*** *cases (supra).*

(18) By applying the law position as discussed above, it is clear that the order passed by the appellate authority being non-speaking and unreasoned, as to how the appellate authority was agreeing with the

punishment awarded by the punishing authority when same allegations were levelled against the petitioner as well as co-accused Dr. Kuldip Rai, whereas, different punishments have been awarded which are contrary to principles of natural justice and Article 14 of the Constitution of India, is liable to be set aside.

(19) Accordingly, the present petition is allowed and the impugned orders dated 27.09.2011 (Annexure P-13), 05.03.2012 (Annexure P-15) and 07.11.2012 (Annexure P-19) are set aside and directions are issued to the appellate authority to reconsider the appeal and decide the same afresh by passing a speaking order preferably within a period of two months from the date of receipt of certified copy of this order.

Ritambhra Rishi