

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.1010 of 2008**

Shankar Lal Dhurve, aged about 31 years, Son Of Shri Raghuvar Ram Dhurve, Caste. Gond, Removed Police Constable, Resident Of Village - Achholi, Post & Tah. Dongargaon, Distt. Rajnandgaon (C.G)

---- **Petitioner****Versus**

1. State Of Chhattisgarh through the Secretary (Home (Police) Department, DKS Bhawan, Mantralaya, Raipur (CG)
2. The Director General Of Police Deptt. Of Home, Police Head Quarters - Raipur, District. Raipur (C.G)
3. Inspector General Of Police, Raipur Range, Raipur (C.G)
4. Superintendent Of Police District. Rajnandgaon (C.G)
5. Sub Divisional Officer (Police) Ambagarh Chowki, District Rajnandgaon (CG)
6. Anil Agrawal Sub Inspector (Police) The Then Station House Officer - Police Station Aundhi, District - Rajnandgaon (C.G)

---- **Respondents**

For Petitioner: Shri P. K. C. Tiwari, Sr. Adv. With Shri Shashi Bhushan, Adv.
For Respondent/State: Ms. Sunita Jain, Panel Lawyer

Order On Board**03/09/2015**

By this petition under Article 226 of the Constitution of India, the petitioner has assailed correctness and validity of order dated 16-08-2007 (Annexure P-1) passed by the appellate authority/respondent No.3 dismissing petitioner's appeal against the order of imposition of penalty passed on 23-06-2007 by the Superintendent of Police/respondent No.4.

2. The petitioner while working as Constable was proceeded against in a departmental enquiry by issuance of charge sheet dated 18-04-2007, in which, two charges were leveled against the petitioner. The departmental enquiry eventually

resulted in dismissal from service on the basis of enquiry report dated 03-06-2007 of the Enquiry Officer that both the charges have been found proved. The petitioner filed memo of appeal (Annexure P-7). The appellate authority, however, dismissed the appeal vide impugned order, giving rise to this petition.

3. Amongst various submissions, one of the submission made by learned counsel for the petitioner is that the appellate authority did not apply its mind to the grounds raised by the petitioner in his appeal. He submits that the order does not reflect that the appellate authority considered the grounds, re-assessed the evidence and then recorded his own finding with regard to guilt of the petitioner. Relying upon the judgment of this Court in the case of **Ramlal and four others vs. State of M.P. And others**¹, submits that the order of the appellate authority is unsustainable in law as it is in complete violation of the provisions contained in Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 and the Police Regulations applicable in the case.

4. On the other hand, learned State counsel sought to defend the order passed by the appellate authority on the ground that while affirming the order of penalty, the appellate authority is not required to give detailed reasons but only brief reasons are sufficient while affirming order of penalty.

5. The petitioner has suffered major penalty of dismissal from service on serious charges. Against the order of dismissal from service, the petitioner preferred an appeal. A copy of memo of appeal is annexed along with the petition as Annexure P-7, which shows that the petitioner has raised elaborate grounds in his appeal seeking indulgence of the appellate authority.

6. The appellate authority in its order dated 16-08-2007 recorded as under:-

“अपीलार्थी द्वारा प्रस्तुत अपील, विभागीय जांच नस्ती अ-ब, टीप व आदेश, सेवा पुस्तिका/इतिहास एवं पुलिस अधीक्षक राजनांदगांव की कंडिकावार टीप का अध्ययन किया गया तथा

¹ Decided on 08-09-2014 (W.P.S.No.1825-2005 and batch of petitions)

अपीलार्थी को समक्ष में भी सुना गया। अध्ययनोपरांत यह पाया गया कि अपीलार्थी ने अपनी अपील में ऐसा कोई ठोस तथ्य या मुद्दा उल्लेख नहीं किया है, जिससे उसे किसी प्रकार का लाभ मिल सके या उसके विरुद्ध प्रमाणित पाए गए आरोपों की प्रमाणिकता में कोई कमी आ सके। अतः पूर्ण विचारोपरांत पुलिस अधीक्षक राजनांदगांव द्वारा पारित दण्डादेश को यथावत कायम रखते हुए अपीलार्थी भूतपूर्व आरक्षक 762 शंकरलाल धुर्वे द्वारा प्रस्तुत अपील निरस्त की जाती है।”

7. A bare perusal of the aforesaid order shows that there is no consideration of any of the ground as per provisions of law. In identical situation, examining the appellate order which was almost similar as the appellate order in the present case, this Court examined the statutory scheme of Rules of 1966 and Police Regulations, it was held:-

15. Clause 213 of the Chhattisgarh Police Regulations provides that the provisions contained in C.G. Civil Services (Classification, Control and Appeal) Rules 1966 shall regulate penalty and appeal in respect of police officers. It has been held by the High Court of Madhya Pradesh in the matter of **Krishna Narayan Shivpyare Dixit Vs. State of M.P and others, 1985, M.P.L.J., 343** that regulations 213 does not exclude the operation of M.P. Civil Service (Classification, Control & Appeal) Rules, 1966. As no specific provisions had been made in Police Regulations to prescribe the manner in which the appeal against the order of punishment shall be decided by the Appellate Authority, the provisions contained in C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 prescribing mode and manner of exercise of appellate power by the Appellate Authority are applicable.

16. It is well settled that the Appellate Authority while considering the appeal acts in quasi-judicial capacity. Relevant provision contained in C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 for consideration of an appeal are as under:-

“27. 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 9 and having regard 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 imposing any of

the penalties specified in rule 10 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 provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the records; and
- (c) whether the penalty or 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.”

17. Appellate Authority is therefore obliged under the law to exercise its statutory power of appeal in accordance with the provisions contained in Rules 27 of the Rules of 1966. Consequently, while exercising its appellate jurisdiction, Appellate Authority is duty bound to exercise the same in the manner prescribed in Rule 27 (2) of the Rules of 1966. Rules mandatorily require the Appellate Authority to consider whether the procedure laid down in the Rules has been complied with and if not whether such non-compliance resulted in violation of any provision of the Constitution of India or in the failure of justice; whether findings of the disciplinary authority are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe. The Appellate Authority is therefore under statutory obligations to consider the appeal in the manner as laid down in the Rules as aforesaid and then may confirm enhance, reduce or set aside the penalty or remit the case to the Authority which imposed or enhanced the penalty or to any other Authority with such direction as deem fit in the circumstances of the case. The scheme of Rule 27 therefore clearly implies that the Appellate Authority has to pass speaking order indicating that points raised by the petitioner has been considered. In case the objection of the petitioner is not acceptable he has to give the reasons for not accepting the same. It is thus the duty of Authority to apply its mind while deciding the appeal and he is obliged to give clear finding on the charges of the penalty. The powers

of Authority being quasi-judicial in nature are required to be performed in all seriousness with a view to do justice with the appellant.

18. Though it is now well settled proposition of law that an Appellate Authority or Revisional Authority is not required to give detail reasons while agreeing with and confirming order passed by the Disciplinary Authority, as held in the cases of **Tara Chand Khatri Vs. Municipal Corporation of Delhi and others, 1977 (1) SCC 472**; **Divisional Forest Officer, Kothagudem and others Vs. Madhusudhan Rao, 2008 (3) SCC 469**, but if in the scheme of the statutory rules governing terms and conditions of service such a duty is cast on Appellate Authority to give reasons even in the case of an order of affirmation, the Appellate Authority is obliged to give reasons by applying its mind while considering the appeal in the manner prescribed under the Rules.

19. In the case of **Ram Chander Vs. Union of India and others, 1986 (3) SCC 103** taking into consideration the Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968, which is quite similar to the rules applicable in the present case it was held as under :-

“4. The duty to give reasons is an incident of the judicial process. So, in R.P. Bhatt v. Union of India (1986 (2) SCC 651), this Court, in somewhat similar circumstances, interpreting R.27(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 which provision is in pari materia with R.22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968, observed :

"It is clear upon the terms of R.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 of the provisions of the Constitution of India or in the 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 remit back the case to the authority which imposed the same.

It was held that the word 'consider' in Rule.27(2) of the Rules implied 'due application of mind'. The Court emphasized that the

Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decisions. There was in that case, as here, no indication in the impugned order that the Director-General, Border Road Organization, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms :

"(1) In terms of Rule 22(2) of the Railways Servants (Discipline & Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under :

(a) by the evidence on record, the findings of the disciplinary authority are warranted ; and

(b) the penalty of removal from service imposed on you is merited.

(2) The Railway Board have therefore rejected the appeal preferred by you."

5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

In the same judgment, the Supreme Court, pointing out distinction based on scheme of statutory rules relating to consideration of an appeal explained as below :

“ 8. So also in *Tara Chand Khatri v. Municipal Corporation of Delhi & Ors.* [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 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."

20. 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 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.

21. Even in a case where there is no duty cast on Appellate Authority to give reasons in case of order of affirmation, Supreme Court held in the case of **Divisional Forest Officer, Kothagudem and others** (supra).

“20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given,

but some brief reasons should be indicated even in an order affirming the views of the lower forum.”

22. Recently in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others, 2009**

(4) SCC 240, Supreme Court has held 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's case (supra) 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 Divisional Forest Officer vs. Madhusudan Rao, JT 2008 (2) SC 253 (vide SCC para-20: JT para-19), and in Madhya Pradesh Industries Ltd. vs. Union of India, AIR 1966 SC 671, Siemens Engineering & Manufacturing Co. of India Ltd. vs. Union of India, AIR 1976 SC 1785 (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 the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594 :1990 SC (Cri.)669, 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 minimizes 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.

9. No doubt, in S.N.Mukherjee's case (supra), it has been observed ("SCC p 613, para 36)) that:

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." 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 vs. Srinivasan*, AIR 1966 SC 1827 (vide AIR para 15)) has also to be understood as explained by us above."

8. If the orders, passed by the Appellate Authority and other Authorities are scrutinized by applying aforesaid principle of law laid down keeping in view statutory requirement as to the manner of consideration of an appeal, it leads to inevitable conclusion that the order passed by the Appellate Authority does not contain any reason whatsoever and is a mechanical affirmation without considering the appeal according to the statutory service rules much less application of mind to the specific grounds raised by the petitioner in his appeal. Therefore, the orders passed by the Appellate Authority affirming the order passed in departmental enquiry is unsustainable in law and liable to be set aside.

9. In view of the above finding, I do not propose to go into other aspects of the matter relating to validity of the order of punishment recorded by the Disciplinary Authority on the ground raised by the petitioner in the petition as argued by learned counsel for the petitioner.

10. Relying upon the order of the Supreme Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank** (supra), the petition is partly allowed. Impugned order dated 16-08-2007 passed by the Appellate Authority is hereby set aside. The matter is remanded back to the Appellate Authority to decide the appeal filed by the petitioner, afresh in accordance with law.

11. Taking into consideration the fact that order of punishment was passed long back, it would be proper to direct the Appellate Authority to decide the

appeal of the petitioner afresh, as early as possible, preferably within a period of 4 months from the date of receipt of a copy of this order.

12. The petition is accordingly partly allowed to the manner and extent indicated above.

Sd/-

Manindra Mohan Shrivastava

Judge