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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.4835 of 2004**

Bhagwan Das, S/o late Ramlal, aged about 55 yeres, (Ex-Head Constable No.239), Police Line Dantewada, District Dantewada, at present Constable No.31 Police Line, Harda, Posted at Police Line Harda (M.P.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Home Department, Mantralaya, Raipur, District Raipur (CG).
2. Director General of Police, (Administration) Police Head Quarter Raipur, District Raipur (CG).
3. Inspector General of Police, Bastar Range, Jagdalpur.
4. The Superintendent of Police, Dantewada (CG)..

----Respondents

For Petitioner : Mr. Akash Pandey, Advocate
 For State :Mr. Arun Sao, Deputy Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

23/10/2017

(1) In a departmental enquiry, punishment for reduction in the rank was imposed by the respondent authorities against the petitioner, against which the petitioner preferred an appeal before the Appellate Authority. The Appellate Authority by impugned order dated 27.09.2003 has dismissed the appeal finding no merit.

(2) Feeling aggrieved against the order of the Appellate Authority, the writ petition under Article 226/227 of the Constitution of India has been preferred by the petitioner herein.

(3) Learned counsel appearing for the petitioner would submit that the petitioner's appeal has not been considered and decided by the Appellate Authority in accordance with Rule 27 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 and therefore, the impugned order is liable to be set aside.

(4) Learned counsel appearing for the State would support the impugned order and oppose the submission made by learned counsel for the petitioner.

(5) I have heard learned counsel appearing for the parties, considered their rival submission made herein above and also gone through the impugned order with utmost circumspection.

(6) Rule 27 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 provides 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 rules, 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 record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

(7) The word "consider" has been considered by the Supreme Court in the matter of **Chairman, Life Insurance Corporation of India & Others Vs. A. Masilamani** reported in **(2013) 6 SCC 530** and held in paragraph-19 which provides as under:-

"19. The word "consider" is of great significance. The dictionary meaning of the same, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order.

(8) A careful perusal of the impugned order would show that the Appellate Authority has not considered and decided the petitioner's appeal, whether the procedure laid down in these rules

has been complied with; whether the findings of the disciplinary authority are warranted by the evidence on the record; and whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and passed an order of dismissal from service against the petitioner by simply holding that no ground has been established to interfere with the order imposing penalty, which is impermissible and contrary to Rule 27 of the Rules 1966.

(9) After hearing the learned counsel appearing for the parties and in view of the aforesaid settled legal position, the impugned order dated 27.09.2003 is hereby set aside. The present petition is allowed. The matter is remitted back to the appellate authority for hearing the dismissal appeal afresh in accordance with law and said appeal would be considered and decided in accordance with law after hearing the affected parties, expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

Sd/-

(Sanjay K. Agrawal)
Judge

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