

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 5464 of 2005**

Rambir Bhagat (Dead), S/o Late Shri Pariba Ram Bhagat, Terminated Constable (Police), Presently resided at Village Basta, Post Office Lokhandi, District Jashpur (C.G) Through

1. Smt. Sita Mani, Wd/o Late Shri Rambir Bhagat, aged about 40 years, R/o Village Basta, Post Office Lokhandi, Distt. Jashpur (C.G.)
2. Ku. Subhadra, D/o Late Shri Rambir Bhagat, aged about 19 years, R/o Village Basta, Post Office Lokhandi, Distt. Jashpur (C.G.)
3. Ku. Sarita, D/o Late Shri Rambir Bhagat, R/o Village Basta, Post Office Lokhandi, Distt. Jashpur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Home Affairs, D.K.S. Building, Mantralaya, Raipur (C.G.)
2. Inspector General of Police, Bastar Range, Jagdalpur (C.G.)
3. Superintendent of Police, Bijapur, District Bijapur (C.G.)

---- Respondents

For Petitioners : Mr. S.S. Baghel, Advocate.

For Respondents/State: Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****07/11/2017**

(1) The petitioner was subjected to departmental enquiry and upon conclusion of departmental enquiry, Disciplinary Authority inflicted the punishment of removal from service to the petitioner. Against the order of removal from service, he preferred appeal before the appellate authority i.e. Inspector General of Police, Range Jagdalpur. The

appellate Authority, by its order dated 05.03.2004, dismissed the appeal finding no merit.

(2) Feeling aggrieved and dissatisfied with the order of Disciplinary Authority as affirmed by the Appellate Authority, instant writ petition has been filed questioning the same.

(3) Learned counsel for the petitioner would submit that appeal, preferred by the petitioner against the order of disciplinary authority, has been dismissed by the appellate authority without any consideration and without complying with the provisions of Rule 27 of the M.P./C.G. Civil Services (Classification, Control & Appeal) Rules, 1960 (henceforth "CCA Rules, 1960) and, therefore, the same is liable to be dismissed.

(4) On the other hand, counsel for the State would support the impugned order.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(6) Rule 27 of the CCA Rules, 1960 is 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 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”

(7) Thus, the appellate authority was required to consider the appeal in light of Rule 27(2) of the CCA Rules 1966. The appellate Authority has not considered the appeal in its proper perspective and simply held that no such ground has been established in the appeal and dismissed the appeal, which is impermissible in law as the appellate authority is required to consider whether procedure laid down in this rule 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 and even the question of penalty has not been considered by the appellate authority.

(8) In view of above, the impugned order is quashed. The matter is remitted back to the appellate authority for hearing and disposal in accordance with Rule 27(2) of the CCA Rules, 1966 within a period of three months from the date of receipt of certified copy of this order.

(9) Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

