

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No.6160 of 2005**

Devendra Kumar Dwivedi Son of Shri Devraj Dwivedi, aged about 32 years, Resident of Village Bhuiyadol, District Sidhi (M.P.)

----Petitioner**Versus**

- 1.** State of Chhattisgarh through the Secretary, Department of Home, D.K.S. Bhawan, Mantralaya, Raipur (CG)
- 2.** The Commandant, 2nd Battalion, Special Armed Force, Sakri, Bilaspur, District Bilaspur (CG)
- 3.** The Deputy Inspector General of Police, Bilaspur (CG)
- 4.** The Director General of Police, Police Head Quarter, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Bhaskar Payasi, Advocate
For Respondents	:	Mr.Shashank Thakur, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****21/08/2017**

1. Learned counsel for the petitioner would submit that the petitioner's appeal has been dismissed by respondent No.3 by non-speaking and unreasoned order, whereas the order of dismissal has been affirmed. He would further submit that the Appellate Authority was required to consider the appeal filed by the petitioner in its proper prospective strictly in accordance with law, therefore, the impugned order dated 28.9.2002 passed by respondent No.3 deserves to be set aside. He would also submit that

the enquiry officer has in fact also worked as prosecutor, therefore, the enquiry has vitiated.

2. On the other hand, learned State Counsel would support the impugned order.
3. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
4. It is correct to say that respondent No.3/Deputy Inspector General of Police has not considered the appeal in its proper prospective and only recorded a finding that enquiry has been done in accordance with law and charges have been found proved. It is incorrect and improper way of deciding the appeal.
5. Rules of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter called as 'Act of 1966') are applicable in which Rule 27 provides for consideration of appeal as under:-

“27. Consideration of appeal.-

(1) xxx xxx xxx

(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;"

6. A careful perusal of the aforesaid rules would show that the Appellate Authority was required to consider the aforesaid fact while deciding the appeal that whether the procedure laid down in these rules has been complied with or not and whether the findings of the disciplinary authority are warranted. That has not been considered.
7. In view of non-compliance of Rule 27 of the Rules of 1966 by the Appellate Authority, the impugned order dated 28.9.2002 (Annexure P/7) passed by respondent No.3 is hereby set aside. The Appellate Authority is directed to consider and pass a fresh order considering the requirement of Rule 27 of the Rules of 1966 within a period of three months from the date of receipt/production of copy of this order.
8. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-