

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6801 of 2016**

Jayant Dasgupta S/o Shri S D Gupta, Aged About 58 Years Presently
 Posted At Duldula, District Jashpur As Assistant Grade III, R/o Qtr
 No. 895, Hemu Nagar, P S Torwa, Tah & Distt Bilaspur
 (Chhattisgarh) **---- Petitioner**

Versus

1. Chhattisgarh State Power Distribution Company Limited Through Its
 Managing Director Managing Director, Dangania, Raipur,
 (Chhattisgarh)
2. Chief Engineer, C S P D C L, Tifra, Bilaspur, District Bilaspur,
 (Chhattisgarh)
3. Superintending Engineer, Operation & Maintenance Circle, Tifra,
 Bilaspur, (Chhattisgarh)
4. Executive Engineer, O & M Division, C S P D C L, Pemndra Road,
 District Bilaspur, (Chhattisgarh)
5. Executive Engineer, O & M Division, C S P D C L, Jashpur
 (Chhattisgarh) **---- Respondents**

For Petitioner	:	Mr. Saleem Kazi, Advocate
For Respondents	:	Mr. Jitendra Pali, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****03/10/2017**

Heard.

1. In this case, the respondents have taken preliminary objection with regard to maintainability of the petition on the ground that the petitioner has suffered from delay and laches in as much as the order was passed in appeal on 16.09.2013 whereas the writ petition has been filed by the petitioner challenging the order passed in appeal in the month of December, 2016 i.e. more than 3 years and 3 months.

2. After going through the contents of the petition and reply, it is found that the petitioner's appeal was dismissed by completely non-speaking order on 16.09.2013 and it is also a fact that a criminal case was also pending against the petitioner. The petitioner was finally acquitted of the charges in the criminal case on 11.02.2014 which related to similar allegations of misappropriation. It appears that after the petitioner was acquitted, the petitioner again started making representation and finally approached this Court.
3. Taking into consideration the totality of the circumstances and decision of the Supreme Court in the case of **Basawaraj & another Vs. SPL. Land Acquisition Officer**, 2013 (14) SCC 81, I am not inclined to throw out the petition only on the ground of delay and laches.
4. Though number of grounds have been urged in this petition, to my mind, the impugned order passed in appeal deserves to be set aside on the short ground of it being totally non-speaking in nature.
5. Undisputedly, the provision relating to Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 applicable in the case of Government Servant are also applicable to govern the disciplinary action in the matter of disciplinary action against the employee in the services of the respondent -Electricity Company.
6. In that view of the matter, the order impugned passed in appeal cannot be sustained in law in view of the law laid down by this Court in the case of **Soniram Dhruv Versus State of Madhya Pradesh and others, [W.P.(S.)No.1367 of 2005] decided on 05.02.2010**.
7. This Court, in the case of Soniram Dhruv (supra) clearly held that the exercise of power of appeal is not an empty formality. Where an appeal has preferred against the order of penalty, the authority is duty bound to apply its mind to the ground raised in appeal and then pass a speaking and reasoned order. This Court held thus :

“17. 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 mechanical affirmation without considering the appeal according to the statutory service rules muchless application of mind to the specific grounds raised by the petitioner in his appeal. Therefore, the orders passed by the Appellate Authority and other Higher Authorities affirming the order passed in appeal are unsustainable in law and liable to be set aside.”

8. In view of the above settled legal position, applying the same to the facts of the present case and what has been stated in the impugned order passed in appeal, the appellate exercise appears to be mechanical in manner and without application of mind to the ground which were raised by the appellant in appeal. Therefore, the impugned order is set aside and the matter is remitted to the Appellate Authority for due and proper consideration of petitioner's appeal in accordance with law laid down by this Court in the case of Soniram Dhruv (supra).

9. The petition is allowed.

**Sd/-
(Manindra Mohan Shrivastava)
Judge**