

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.5003 of 2015**

K.R. Dharshyankar, son of Shri J.R. Dharshyankar, aged about 56 years, Occupation Service, presently posted as In-Charge Executive Engineer, Public Works Department, Division Pathalgaon, Police Station Pathalgaon, District Jashpur, Civil & Revenue District Jashpur.

---- Petitioner**Versus**

1. State of Chhattigarh through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur.
2. The Deputy Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur.
3. Chief Engineer, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (CG).
4. Superintending Engineer, Public Works Department, Ambikapur (CG).

--- Respondents

For Petitioner : Dr. I.K. Dwivedi and Mr. Azad Siddiqui, Advocate
 For State : Mr. Sangharsh Pandey, Dy.Government Advocate

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

15/01/2018

(1) Learned counsel appearing for the petitioner would submit that in a departmental enquiry, the petitioner was inflicted with the penalty of stoppage of two annual increments with cumulative effect.

(2) On appeal being preferred by the petitioner before the appellate authority, the appellate authority has reduced penalty of stoppage of two annual increments from cumulative effect to non-cumulative effect by impugned order dated 01.07.2015, but the appellate authority has not considered the case of petitioner qua requirement of

Rule-27(2)(a) & (b) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (for short, 'the Rules, 1966), therefore, impugned order to the extent of quantum of punishment is unsustainable and bad in law.

(3) On the other hand, learned counsel appearing for the State/respondents would support the impugned order.

(4) I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.

(5) Rule 27(2)(a) &(b) of the Rules, 1966 provides as under:-

“27. Consideration of appeal-(1) xxxxxxxx

(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;

(c) xxxxxx

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.

(6) A careful perusal of the record would show that the appellate authority has considered the case of petitioner qua provisions contained in Rule 27(2)(c) of Rules, 1966, but he has not considered the petitioner's case qua the provisions contained in Rule 27(2)(a) & (b) of the Rules, 1966; 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 and whether the findings of the disciplinary authority are warranted by the evidence on the record. There is no finding recorded in that regard and it is unreasoned and non-speaking order to that extent, therefore, it would be expedient to set aside the impugned order. Accordingly, the impugned order is hereby partly set aside and the appellate authority is directed to consider and decide the case of petitioner qua requirement of provisions contained in Rule 27(2)(a)&(b) of the Rules, 1966 after hearing the parties, expeditiously within a period of 45 days from the date of receipt of certified copy of this order. It is made clear that part of order granting relief to the petitioner, stoppage with non-cumulative effect is not being disturbed.

(7) Accordingly, the writ petition is allowed to the extent indicated herein above. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge