

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.6296 of 2009

Prahlad Tiwari (dead) through Legal Representatives

1. Laxmi Tiwari, Wd/o Late Prahlad Tiwari, aged about 44 years,
2. Hemlata Tiwari, W/o Mahendra & D/o Late Prahlad Tiwari, aged about 35 years,
3. Vaishali Tiwari, D/o Late Prahlad Tiwari, aged about 23 years,

Petitioner No.1 & 3 are R/o House No.1266, Janata Colony, Tatibandh, Raipur, District Raipur (C.G.) & Petitioner No.2 is R/o Gram Panchayat Bhawan Ke Pass, 771, Ward No.4, Rajakhedi, Makronia Camp, Sagar (M.P.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Forest, Mantralaya, Day Kalyan Singh Bhawan, Raipur (C.G.)
2. Principal Chief Conservator of Forest, Chhattisgarh, Raipur (C.G.)
3. Chief Conservator of Forest (Admn & Non-gazetted) Chhattisgarh, Raipur (C.G.)

---- Respondents

For Petitioners: Mr. Aman Pandey, Advocate.

For Respondents / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/06/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner's services were terminated from the post of Assistant Grade-III by order dated 28-2-2007 by the Chief Conservator of Forests against which he preferred an appeal on 26-12-2007 under Rule 25 of the Chhattisgarh Civil Services (Classification, Control and

Appeal) Rules, 1966 (for short, 'the Rules of 1966'). The appeal was barred by limitation, but the petitioner some how could not prefer application for condonation of delay and ultimately, the appellate authority by order dated 18-7-2008, firstly held that the appeal is prima facie not maintainable as not filed within the period of limitation as required under Rule 25 of the Rules of 1966, yet dismissed the appeal on merits which has been called in question in this writ petition.

3. Mr. Aman Pandey, learned counsel appearing for the petitioners herein / legal representatives of the original petitioner, would firstly submit that if the appeal was barred by limitation and not filed within 45 days as required under Rule 25 of the Rules of 1966, the original petitioner / appellant ought to have been given time to file application for condonation of delay in the interest of justice, as the original petitioner / appellant could not file application for condonation of delay along with the appeal. He would secondly, submit that even if the appeal was considered, Rule 27(2) of the Rules of 1966, which prescribes the manner and consideration of appeal, ought to have complied in its letter and spirit which has not been done, as such, the order of the appellate authority deserves to be set aside on both the grounds and the writ petition deserves to be allowed.
4. Mr. Ravi Kumar Bhagat, learned State counsel, would submit that the appeal was barred by limitation, yet the learned appellate authority proceeded to decide the appeal on merits and dismissed the appeal which calls for no interference.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the material available on record with utmost circumspection.

6. At the outset, it would be appropriate to notice Rule 25 of the Rules of 1966 which provides for limitation of filing appeal against the order of termination. It states as under: -

“25. Period of limitation for appeals.—No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant :

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.”

7. A careful perusal of the aforesaid provision would show that the appellate authority shall not entertain the appeal unless such appeal is preferred within 45 days from the date on which a copy of the order appealed against is delivered to the appellant and the proviso permits filing of application for condonation of delay.
8. In the instant case, it appears that against the order dated 28-2-2007 passed by the Chief Conservator of Forests terminating the services of the petitioner, the petitioner preferred appeal in person on 26-12-2007. It appears that the appeal was not accompanied by application for condonation of delay. But, since the appeal was not supported by application for condonation of delay and it was filed admittedly after the period of 45 days, the right course available to the appellate authority was either to ask the appellant / original petitioner to file affidavit as to on which date the order has been delivered to him and secondly, even if the appeal was barred by limitation, since the petitioner has suffered the major punishment of termination of service, liberty ought to have been granted to him to file application for condonation of delay holding that the appeal is prima facie not maintainable being barred by limitation. The appellate authority ought

to have acted fairly while dealing with the Government servant who has suffered the order of dismissal from service and knocked the door of the appellate authority seeking his interference including determination of appeal in accordance with the Rules of 1966. As such, the appellate authority is totally unjustified in holding that prima facie the appeal is not maintainable being barred by limitation, at the threshold. The appellate authority ought to have ascertained the date on which the appellant / original petitioner has been served the copy of termination order and secondly, the appellant ought to have been given time to file application for condonation of delay. It is the appropriate course available to the appellate authority, but he did not do so and held the appeal to be not maintainable.

9. Not only this, the appellate authority proceeded to consider the appeal on merits, in paragraphs 1 to 19 of his order, he agreed with the findings of the enquiry officer without considering Rule 27(2) of the Rules of 1966 which provides the manner of considering the appeal. Rule 27(2) of the Rules of 1966 states 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 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;

Provided that—

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 10 and an inquiry under Rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter on consideration of the proceedings of such inquiry, make such orders as it may deem fit.

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 10 and an inquiry under Rule 14 has already been held in the case the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed, make such order as it may deem fit.

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty.”

10. A careful perusal of the aforesaid provision would show that the appellate authority is required to consider 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; whether the findings of the disciplinary authority are warranted by the evidence on records; and whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and thereafter pass orders

confirming, enhancing, reducing or setting aside the penalty. It appears that the appellate authority has failed to apply its mind to Rule 27(2)(a), (b) and (c) of the Rules of 1966.

11. As such, the order of the appellate authority dated 18-7-2008 (Annexure P-15, page 113) cannot be sustained and is hereby set aside. The appeal is restored to the file of the appellate authority and the matter is remitted to the appellate authority. The petitioners herein shall file application for condonation of delay in filing the appeal and after condoning the delay, the appellate authority shall consider and dispose of the appeal on merits in accordance with Rule 27(2) of the Rules of 1966 within three months from the date of receipt of a copy of this order.

12. The writ petition is partly allowed to the extent indicated herein-above.

No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge