

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.1010 of 2012**

- Dharmendra Kumar Dwivedi, S/o Shri S. N. Dwivedi, aged about 40 years, Occupation Service, Posted as Senior Surveyor Technical and Supervisory, Grade A, Kurjua Colliery, Hasdeo Area, SECL Bijuri, District Anuppur (M.P.)

----- Petitioner**Versus**

1. South Eastern Coal Field Limited through the Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.)
2. Director (Personnel)/Appellate Authority, South Eastern Coal Fields , Seepat Road, Bilaspur (C.G.)
3. The Sub Area Manager, Kurja Sub Area, Bijuri, District Anuppur (M.P.)
4. The Mines Superintendent-cum-Enquiry Officer, Kurja, Sub Area, Bijuri, District Anuppur (M.P.)

----- Respondents

For Petitioner
For Respondents

Mr. Rakesh Pandey, Adv.
Mr. Shailendra Shukla, Adv.

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****11/08/2021**

1. The petitioner herein calls in question the legality, validity and the correctness of the

order dated 19.01.2012 (Annexure-P/1) passed by the respondent, whereby the Appellate Authority has affirmed the order of the Disciplinary Authority dated 18/20.09.2010 (Annexure-P/11) passed by the respondent No.3, by which the major penalty of stoppage of two increments with cumulative effect and recovery of Rs.751/- from salary has been imposed upon the petitioner.

2. Mr. Pandey, learned counsel for the petitioner, would submit that though the major penalty of stoppage of two increments with cumulative effect and recovery of Rs.751/- has been inflicted upon the petitioner, but in the appeal preferred by the petitioner, the Appellate Authority did not consider and decide the appeal on its own merits and merely held that recovery of Rs.751 is not a punishment and further held that the promotion order, whereby the petitioner was promoted to the post of Senior Surveyor, has rightly been withdrawn and thereby dismissed the appeal summarily, which is not the correct way of deciding the appeal by the Appellate

Authority, as such the order of the Appellate Authority deserves to be set-aside and the matter be remitted to the Appellate Authority for considering and deciding the appeal of the petitioner afresh.

3. Mr. Shukla, learned counsel for the respondents, would support the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
5. Though the applicable standing order does not provide any manner of consideration of appeal but the Appellate Authority being the quasi judicial authority ought to have dealt with the contention raised by the petitioner against the infliction of major penalty and could have passed the reasoned and speaking order by holding that the finding recorded by the Disciplinary Authority is justified, punishment awarded is adequate and only thereafter could have recorded its decision in the appeal, but a careful perusal of the

impugned order (Annexure-P/1) would show that the Appellate Authority has firstly condoned the delay and thereafter held that the charges have been proved against the petitioner and further held that the recovery of Rs.751/- is not a punishment and further held that the petitioner was erroneously promoted to the post of Senior Surveyor Grade-I and the promotion order dated 01.01.2010 has rightly been withdrawn and thereafter held that the action of the Competent Authority is correct and justified. The Appellate Authority has not dealt with any of the contention raised by the petitioner and did not consider and decide the appeal on merits, thus it amounts to failure on the part of the Appellate Authority to decide the appeal as a quasi judicial authority.

6. It is well settled position of law that the Appellate Authority in disciplinary proceeding acts in quasi-judicial capacity and order passed has to be reasoned one and showing application of mind to the question raised by the appellant and if it is not done, the

appellate order is vitiated. (See Divisional Forest Officer, Kothagudem and others v. Madhusudhan Rao¹).

7. The Supreme Court reiterated this principle of law by observing that an Appellate Authority by deciding statutory appeal is not only required to give hearing to the Government servant, but pass a reasoned order dealing with the contention raised in the appeal. (See Deokinandan Sharma v. Union of India and others²).

8. Even if the appellate order is in agreement with that of the Disciplinary Authority, it may not be speaking order, but the Authority passing the same must show that there had been proper application of mind in compliance with the requirement of law while exercising its jurisdiction particularly when the rules required application of mind on several factors and several contentions had been raised and it was bound to assign reasons so as to enable the Court reviewing its decision

1 (2008) 3 SCC 469

2 (2001) 5 SCC 340

to ascertain as to whether it had applied its mind to the relevant factors which the rule required to do. (See Narinder Mohan Arya v. United India Insurance Co. Ltd. and others³).

9. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid that the Appellate Authority has failed to consider and decide the appeal in accordance with law and on its own merits and simply narrating the facts dismissed the appeal, which is not the correct way of deciding the appeal by the Appellate Authority. Accordingly, the impugned order dated 19.01.2012 (Annexure-P/1) is hereby set aside and the matter is remitted to the Appellate Authority to consider and decide the appeal afresh in accordance with law and on its own merits by a reasoned and speaking order within 45 days from the date of receipt of copy of this order. The petitioner is at liberty to make additional submission before the Appellate Authority within 15 days from today.

3 (2006) 4 SCC 713

10. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala