

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4094 of 2010**

Bhagwani Ram Bhatpahri, S/o Late Shri Luduram Bhatpahri, Aged about 44 years, R/o Village Jounda, Post Kond Thana Gobra, Nawapara, Abhanpur, Raipur, Chhattisgarh.

---Petitioner**Versus**

- 1.State of Chhattisgarh, Through the Secretary, Department of Forest, D.K.S. Bhawan, Raipur, Chhattisgarh.
- 2.The Conservator of Forest, At the office of Raipur, Distt. Raipur, Chhattisgarh.
- 3.The Divisional Forest Officer, Forest Division Udanti Gariyaband, Distt. Raipur, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Govind Ram Miri, Senior Advocate
with Ms. Madrima Thakur, Advocate
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board (Through Video Conferencing)

02/08/2021

- 1.By way of this writ petition, the petitioner calls in question order dated 19/07/2010 (Annexure P/7) passed by respondent No. 2 dismissing petitioner's appeal affirming the order dated 05/06/2010

(Annexure P/5) by which petitioner has been terminated from service.

2. Mr. Govind Ram Miri, learned senior counsel appearing for the petitioner, would submit that appellate authority did not consider petitioner's appeal in accordance with Rule 27(2) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter 'Rules of 1966') and dismissed it by passing a brief order in one line holding that order dated 05/06/2010 (Annexure P/5) is in accordance with law and further the decision rendered by the Supreme Court in the matter of **Avtar Singh v. Union of India**¹ has also not been considered by the appellate authority, as such, the impugned order (Annexure P/7) deserves to be set aside.

3. Mr. Ravi Bhagat, learned State counsel, would oppose the submission made by learned counsel for the petitioner and support the impugned order.

4. I have heard learned counsel for the parties at length and perused the record with utmost circumspection.

5. Sub-rules (1) and (2) of Rule 27 of the Rules of 1966 provides as under :-

¹ 2016 (8) SCC 471

"27. Consideration of appeal. - (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(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;

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."

6. A careful perusal of the aforesaid Rule would show that the appellate authority is required to record the findings as to 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 Constitution of India or in the failure of justice; whether the findings of the disciplinary authority are warranted by the evidence on the record and whether the punishment imposed is adequate, inadequate or severe.

7. In the instant case, the appellate authority has failed to consider petitioner's appeal in accordance with Rule 27(2) of the Rules of 1966 and pass a reasoned and speaking order. The order dated 05/06/2010 (Annexure P/5) by which

petitioner's service has been terminated has simply been confirmed by the appellate authority by passing a brief order holding in one line that the order dated 05/06/2010 (Annexure P/5) is in accordance with the Rules, which is not a correct way to decide an appeal particularly when Rules 27(2)(a), (b) and (c) clearly prescribes the procedure to be followed by the appellate authority while deciding an appeal. Accordingly, the impugned order dated 19/07/2010 (Annexure P/7) passed by respondent No. 2 is hereby set aside and matter is remitted to the appellate authority to consider and decide it afresh in accordance with Rule 27(2) of the Rules of 1966 after hearing the petitioner within 60 days from the date of receipt of copy of this order. Petitioner is at liberty to make additional submission in support of his appeal.

8. With the aforesaid direction, this writ petition stands disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge