

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.1180 of 2012**

- Sanjay Shrivastava, aged about 43 years, S/o Shri K. N. Shrivastava, Occupation Service, working as Patwari, Tahsil Mungeli, District Mungeli (C.G.)

----- Petitioner**Versus**

- 1.State of Chhattisgarh, through Secretary, Department of Revenue, D.K.S. Bhawan, Raipur (C.G.)
- 2.Collector, Bilaspur (C.G.)
- 3.Sub Divisional Officer (Revenue), Kota, District Bilaspur (C.G.)

----- Respondents

For Petitioner	Mr. Vinay Pandey, Advocate
For Respondent-State	Mr. Soumya Rai, PL

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****12/08/2021**

1. Proceedings of this matter have been taken up through Video Conferencing.
2. The petitioner by way of this writ petition calls in question the legality, validity and the correctness of the order dated 24.01.2012

(Annexure-P/1) passed by the Appellate Authority, the respondent No.2, whereby the Appellate Authority has dismissed the appeal preferred by the petitioner affirming the order of the Disciplinary Authority dated 30.09.2011/03.10.2011 (Annexure-P/2) passed by the respondent No.3 imposing major punishment of stoppage of two increments with cumulative effect under Rule 3 of the Chhattisgarh Civil Services (Conduct) Rules, 1965.

3. Mr. Pandey, learned counsel for the petitioner, would submit that the Appellate Authority has failed to consider and decide the appeal in accordance with Rule 27 (2) (a) (b) (c) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter would be referred to as 'the Rules of 1966'), which has caused serious prejudice to the petitioner. The Appellate Authority has only affirmed the order of the Disciplinary Authority reiterating the finding recorded by the Enquiry Officer, 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 in accordance with Rule 27(2) (a) (b) (c) of the Rules of 1966.

4. Mr. Rai, learned State counsel, would support the impugned order.
5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. Rule 27 of the Rules of 1966 provides as under:-

"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 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...."

7. 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).

8. The Supreme Court reiterated this principle of

1 (2008) 3 SCC 469

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).

9. 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 his jurisdiction particularly when the rules required application of mind on several factors and several contentions had been raised and he was bound to assign reasons so as to enable the Court reviewing its decision 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).

10. Reverting to the facts of the present case in

2 (2001) 5 SCC 340

3 (2006) 4 SCC 713

light of the aforesaid legal position, it is quite vivid that the Appellate Authority has simply agreed with the finding of the Enquiry Officer as held by the Disciplinary Authority and dismissed the appeal and no finding has been recorded as to whether the procedure has been followed or not by the Disciplinary Authority while conducting enquiry and the enquiry has been conducted in accordance with the rules and as to whether the findings are warranted by the evidence available on record and punishment awarded is adequate or excessive and it requires interference and straightway dismissed the appeal, as such the Appellate Authority has failed to consider and decide the appeal in accordance with Rule 27(2) of the Rules of 1966. Accordingly, the appellate order dated 24.01.2012 (Annexure-P/1) is hereby set-aside and the matter is remitted to the Appellate Authority to consider and decide the appeal in accordance with law and Rule 27 (2) of the Rules of 1966 and pass a reasoned and speaking order after hearing the petitioner within a period of 60 days from the date of receipt of copy of this

order.

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

Sd/-
Sanjay K. Agrawal
Judge

Nirala