

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 7510 of 2011**

J.P. Pandey S/o Lt. Shri Kamla Prasad Pandey, Age-57 years, R/o Bechan Colony Sattipara, Ward No. 21 Ambikapur District. Surguja CG

**---- Petitioner****Versus**

1. State Of Chhattisgarh, Through Secretary -Food, Civil Supplied and consumer Protection Department, C.G. Bhavan, Raipur, C.,G.,
2. Chhattisgarh State Civil Supplied Corporation Limited, through -its Managing Director, Chhattisgarh State Civil Supplies Corporation Limited Bal Ashram Compund Kacchari Chowk Raipur C.G.
3. Managing Director, Chhattisgarh State Civil Supplies Corporation Limited, Bal Ashram Compound, Kachhari Chowk, Raipur, CG
4. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, District Officer, Jashpur, District Jashpur, C.G.

**---- Respondent**


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| For petitioner   | : | Mr. Manoj Paranjpe, Advocate                                 |
| For Respondent/s | : | Mr. Animesh Tiwari, Dy. GA with Mr. Vikas A. Shrivastava, PL |

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**Hon'ble Mr. Justice P. Sam Koshy****22/11/2021**

1. The instant petition has been filed by the petitioner assailing the order Annexure P-2 dated 24.07.2010 and Annexure P-1 dated 07.10.2011. Vide order Annexure P-2 the petitioner has been inflicted with a punishment of removal from service with an order of recovery of an amount of Rs. 31,47,208/-. Against the said judgemnt the petitioner had preferred an appeal which stood rejected vide Annexure P-1 dated 07.10.2011 i.e. the order passed by the appellate authority.

2. Today when the matter is taken up for hearing, learned counsel for the petitioner submits that along with the petitioner there were six persons who were also chargesheeted on identical set of facts and who were also inflicted with punishment and in whose case the appeal stood rejected without a speaking order as in the instant case. That one such case is that of Dwarika Prasad Suryawanshi. He had challenged the similar action of the respondents i.e. the order passed for punishment and order passed in appeal by way of WPS 6244/2011.
3. According to the counsel for the petitioner in the said identical set of facts this High Court has already allowed the writ petition in so far as the order of the appellate authority being a non speaking order and have remitted the matter back to the appellate authority for re-consideration and for a fresh decision on the appeal by restoring the appeal.
4. Mr. Manoj Paranjpe citing the aforesaid judgment of this Court decided on 08.09.2021 prays that the present writ petition be also decided in similar terms.
5. Learned counsel appearing for the respondents on going through the orders submits that so far as the decision of the Appellate Authority is concerned, the matter is similar to the order of the appellate authority in the instant writ petition. The learned counsel for the respondent only tried to distinguish the order to the extent that petitioner herein was in fact the in-charge, District Manager whereas the Dwarika Prasad Suryawanshi i.e. the petitioner in WPS 6244/2011 was only a Junior Assistant. Thus, the responsibility casted upon the two petitioners were entirely different.

6. Be that as it may, one of the grounds in the present writ petition also raised by the petitioner is also that the appellate authority has not decided the appeal by a reasoned and speaking order in as much as the grounds and contentions raised in the memo of departmental appeal preferred by the petitioner have not been discussed at all, nor has he given any justification, explanation or reasons to disallow the contentions raised by the petitioner in memo of appeal.
7. The writ petition preferred by the Dwarika Prasad Suryawanshi i.e. WPS 6244/2011 also was entertained by the High Court only on the ground that the appellate authority's order was the non speaking order. This high Court in the case of Dwarika Prasad Suryawanshi(Supra) in paragraph 6 to 9 has held as under :-

“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 Rao, (2008) 3 SCC 469).

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 others, (2001) 5 SCC 340).

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 his jurisdiction particularly when the rules1 (2008) 3 SCC 4692 (2001) 5 SCC 340 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 others*, (2006) 4 SCC 713).

9. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid from the impugned order that the Appellate Authority has simply narrated the facts that departmental enquiry was instituted and time was granted to the petitioner to file reply and despite giving sufficient opportunity to the petitioner, no error has been found in the order of the Disciplinary Authority, but the Appellate Authority has failed to consider and decide the appeal in accordance with Rule 27(2) of the Rules of 1966 and did not assign any cogent reason as to whether the findings of the Disciplinary Authority are justified or not and whether the punishment is appropriate or excessive and it requires interference, particularly, the main contention that on the basis of the photocopy, no charges can be established, as such, the Appellate Authority has failed to perform its duty in deciding the appeal in accordance with Rule 27(2) of the Rules of 1966. Accordingly, the impugned order dated 10/10/2011 (Annexure P/16) is in teeth of Rule 27(2) of the Rules of 1966 and is hereby set aside. Matter is restored to the file of the Appellate Authority for hearing and disposal in accordance with law within two months from the date of receipt of a copy of this order by passing a reasoned and speaking order. Petitioner is at liberty to make additional submission (if any). It is made clear that this Court has not expressed any opinion on the merits of the matter.”

8. Given the aforesaid authoritative view of this Court in the case of **Dwarika Prasad Surayawanshi**(supra) and considering the fact that the grounds raised in the present writ petition and the impugned order of the appellate authority Annexure P-1 dated 07.10.2011 being similar if not on identical set of facts, deserves to be and is accordingly set aside on similar terms.
9. Accordingly, the present writ petition stands allowed. The matter stands remitted back to the appellate authority and departmental appeal of the petitioner also stands restored and further direction to the appellate authority for hearing and deciding the appeal in accordance with law by a reasoned and speaking order considering the contentions and

submission raised by the petitioner in the memo of appeal already preferred by him.

10. Let an appropriate decision be taken within a period of two months from the date of receipt of copy of this order. The writ petition to the extent indicated hereinabove stands allowed.
11. It is worth mentioning that this Court at this juncture has not expressed any opinion so far as merits of the case is concerned. The appellate authority is expected to take a decision strictly in accordance with the merits of the case.
12. The writ petition accordingly stands disposed of.

Sd/-  
**(P. Sam Koshy)**  
**Judge**

Rohit