

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1437 of 2009

CISF No.924520415 Constable Malkit Singh, aged about 37 years,  
S/o Late Shri Gurudayal Singh, Central Industrial Security Force Unit  
Bhilai Steel Plant, Bhilai, Tah. & Distt. Durg (C.G.)

---- Petitioner

Versus

1. Union of India, Through Secretary, Home Department, Govt. of India,  
New Delhi.
2. Dy. Director General, Central Industrial Security Force Unit Bhilai  
Steel Plant, Bhilai, Tah. & Distt. Durg (C.G.)
3. Senior Commandant, Central Industrial Security Force Unit Bhilai  
Steel Plant, Bhilai, Tah. & Distt. Durg (C.G.)

---- Respondents

-----  
For Petitioner: Mr. V.G. Tamaskar, Advocate.

For Respondents: Mr. Rajkumar Gupta, Advocate.  
-----

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/07/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. This petition is directed against the order dated 31-1-2009 passed by the appellate authority by which the petitioner's appeal preferred under Rule 49 of the Central Industrial Security Force Rules, 2001 (for short, 'the CISF Rules of 2001') has been dismissed affirming the order of the disciplinary authority dated 17-12-2008.
3. Mr. V.G. Tamaskar, learned counsel appearing for the petitioner, would submit that the appellate authority has not considered the appeal in accordance with Rule 52(2) of the CISF Rules and has not considered whether the procedure laid down in these rules has been

followed; whether the findings of the disciplinary authority are warranted on the basis of the evidence on the record; and whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate and thereafter, he could have passed order disposing of the appeal.

4. Mr. Rajkumar Gupta, learned counsel appearing for the Union of India / respondents, would oppose the writ petition and submit that looking to the misconduct committed by the petitioner, the appellate authority has rightly affirmed the order of the disciplinary authority imposing major punishment.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Before entering into the merits, it would be appropriate to notice Rule 52 of the CISF Rules of 2001 which states as under: -

**“52. Consideration of appeals.—**(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 33 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 the order imposing any of the penalties specified in rule 34, 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 on the basis of the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate 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 directions it may deem fit in the circumstances of the case;

(iii) No order imposing 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 37, of making a representation against such enhanced penalty.

xxx    xxx    xxx

xxx    xxx    xxx”

7. A careful perusal of the aforesaid provision would show that the appellate authority is required to consider the appeal and required to record finding whether the procedure laid down in the CISF Rules of 2001 has been followed 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 on the basis of the evidence on the record; and whether the penalty or the enhanced penalty imposed is excessive, or adequate, or inadequate, and thereafter he could have passed order affirming the penalty passed by the disciplinary authority. However, a careful perusal of the appellate order would show that the appellate authority in paragraph 5 of its order has recorded the contention of the petitioner and in one paragraph simply recorded a finding that the petitioner has been granted opportunity of hearing and thereafter, affirming the order of the disciplinary authority without considering the appeal in consonance with Rule 52 of the

CISF Rules of 2001, the appellate authority has passed the impugned order. No finding has been recorded by the appellate authority that the procedure laid down in the CISF Rules of 2001 has been complied with while holding the departmental enquiry and even it has not been recorded, whether the findings of the disciplinary authority are warranted on the basis of the evidence on the record and also the penalty has been affirmed without considering its adequacy or inadequacy. As such, the order passed by the appellate authority dated 30-1-2009 is in teeth of Rule 52(2) of the CISF Rules of 2001 and consequently, it is hereby set aside. The matter is remitted to the appellate authority who shall consider and dispose of the appeal afresh in accordance with law after hearing the parties within 60 days from the date of receipt of a copy of this order.

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

Sd/-  
(Sanjay K. Agrawal)  
Judge