

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.7270 of 2011

- D. L. Divyakar, S/o Late Latiram Divyakar, aged about 53 years, presently working as Lecturer at Boys Higher Secondary School, Rajpur, District Surguja (C.G.)

----- Petitioner

Versus

- 1.State of Chhattisgarh through Secretary, Department of Schedule Caste, Schedule Tribe Development, D.K.S. Bhawan, Raipur (C.G.)
- 2.The Commissioner, Department of Schedule Caste, Schedule Tribe Development, Raipur (C.G.)
- 3.The Director, Department of Schedule Caste, Schedule Tribe and Backward Caste Development, Raipur (C.G.)
- 4.B. K. Rajput, Assistant Commissioner, Tribal Development, District Bilaspur (C.G.)

----- Respondents

For Petitioner	Mr. A. K. Yadav, Advocate
For Respondent-State	Mr. Soumya Rai, PL

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

05/08/2021

1. Proceedings of this matter have been taken up through Video Conferencing.
2. The present writ petition has been preferred against the order dated 23.04.2010 (Annexure-

P/1) passed by the Additional Secretary, Department of Scheduled Caste, Scheduled Tribe Development, whereby the Appellate Authority has affirmed the order of the Disciplinary Authority dated 22.09.2008 (Annexure-P/2) passed by the respondent No.2 imposing punishment of stoppage of one pay scale with non cumulative effect and further that petitioner is only entitled for subsistence allowances for the suspension period from 14.02.2008 to 22.09.2008.

3. Mr. Yadav, learned counsel for the petitioner, would submit that the appeal preferred by the petitioner was required to be considered and decided by the Appellate Authority in accordance with Rule 27(2) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966'), which has not been done in this case and straightway the petitioner's appeal has been dismissed, which is not in consonance with Rule 27(2) of the Rules of 1966, as such the order of the Appellate Authority deserves to be set-aside and the matter be remitted to the Appellate Authority

for considering the appeal of the petitioner afresh in accordance with Rule 27(2) of the Rules of 1966.

4. On the other hand, Mr. Rai, learned State counsel, would support the impugned order.
5. I have heard learned counsel for the parties and 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 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

1 (2008) 3 SCC 469

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 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 Rule 27(2) of the Rules of 1966 and did not assign any cogent reason as

2 (2001) 5 SCC 340

3 (2006) 4 SCC 713

to whether the findings of the Disciplinary Authority are justified or not and punishment is appropriate or excessive and it requires interference, 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 appellate order dated 23.04.2010 (Annexure P-1) is hereby set-aside and the matter is remitted to the Appellate Authority to consider and decide the appeal of the petitioner in accordance with law and Rule 27 (2) of the Rules of 1966 within a period of 60 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 2 weeks from today.

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

Sd/-
Sanjay K. Agrawal
Judge

Nirala