

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.4202 of 2010

Uttam Prasad Pandey, S/o Late Shri Pyarelal Pandey, aged about 59 years, R/o M.I.G. 1/13, Pandit Ravi Shanker Shukla Nagar, Korba, Distt. Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Forest, D.K.S. Bhavan, District Raipur (C.G.)
2. Chhattisgarh Rajya Laghu Vanopaj "Vyapara Avam Vikas" Sahakari Sangh Maryadit, Raipur, Through its Chairman
3. The Managing Director, Chhattisgarh Rajya Laghu Vanopaj Sangh, Raipur (C.G.)
4. The Managing Director, Zila Union Korba, Distt. Korba (C.G.)
5. Executive Director (Establishment), Chhattisgarh Rajya Laghu Vnopaj (Vyapar and Vikas) Sahakari Sangh Maryadit, Shanker Nager, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Ashutosh Shukla, Advocate.

For Respondent No.1 / State: -

Mr. Lalit Jangde, Panel Lawyer.

For Respondents No.2 to 5: -

Mr. Yashwant Singh Thakur, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/12/2021

1. The petitioner was Accountant in respondent No.2 Society and while working as Accountant he was inflicted with major penalty of stoppage of two increments with cumulative effect and he was also imposed with the order of recovery which he challenged before the Board of Directors by filing appeal under the relevant provisions of the Chhattisgarh Rajya Laghu Vanopaj Sangh Karmachari Bharti, Vargikaran Tatha Seva Sharten Niyam, 1994 (for short, ' the Rules of

1994'). The appellate authority constituted a committee on 3-11-2008 consisting of the Officiating Director (Estt./Development), Chhattisgarh Rajya Laghu Vanopaj Sangh to be the Chairman and the Member Director of the Chhattisgarh Rajya Laghu Vanopaj Sangh, Raipur to be the Member to consider the appeal and make recommendation which the Committee recommended on 12-3-2009 and held that the charges are duly proved. Relying upon that report, the Board of Directors again in its meeting dated 13-3-2009 has accepted the recommendations of the Committee and dismissed the appeal which has been called in question in this writ petition.

2. Mr. Ashutosh Shukla, learned counsel appearing for the petitioner, would submit that the appellate authority did not hear the appeal in accordance with law and merely by constituting a Committee and accepting the recommendations of the Committee, the order of punishment has been affirmed which is not the correct way of deciding the appeal as the appellate authority itself i.e. the Board of Directors could have heard and decided the appeal on merits.
3. Mr. Lalit Jangde, learned Panel Lawyer appearing for the State / respondent No.1 and Mr. Yashwant Singh Thakur, learned counsel appearing for respondents No.2 to 5, would support the impugned appellate order.
4. 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.
5. Admittedly and undisputedly, power to hear appeal under the relevant rules has been conferred to the Board of Directors, but the Board of Directors did not hear the appeal personally and constituted a two-

Member Committee by order dated 3-11-2008 and the said Committee submitted its recommendation on 12-3-2009 holding that the charges against the petitioner herein have been duly proved and the order of major punishment is justified which has been accepted as it is by the Board of Directors in its meeting dated 13-3-2009. Rule 33 of the Rules of 1994 (page 148 of the paper book) prescribes the procedure to hear the appeal which states as under: -

33. अपील निराकरण की प्रक्रिया:-

1. अपील सरसरी तौर पर खारिज की जा सकेगी यदि नियम 94 (27) के अनुसार प्रस्तुत नहीं की गई है। तथा नियम 94 (32) में दर्शाई त्रुटि/त्रुटियों से परिपूर्ण हो।

2. अपीलीय प्राधिकारी उस अधिकारी से जिसके आदेश के विरुद्ध अपील की गई हो प्रकरण से संबंधित रिकार्ड तलब कर सकता है और मामले पर विचार करने के उपरान्त आगे जांच या निर्णय हेतु रिमांड कर सकता है।

किन्तु अधिरोपित शक्ति में तब तक वृद्धि नहीं की जायेगी जब तक कि अपीलार्थी को ऐसी बढ़ाई गई शास्ति के विरुद्ध अभ्यावेदन करने का युक्ति युक्त अवसर न दे दिया गया हो।

किन्तु आगे ऐसा कोई आदेश पारित नहीं किया जायेगा जब तक उस व्यक्ति को व्यक्तिशः सुनवाई का पर्याप्त अवसर न दे दिया गया हो।

6. A careful perusal of the aforesaid Rule would show that the appellate authority has to hear the appeal after calling for the record and even empowered to make remand and personal hearing will be afforded to the delinquent servant.
7. Reverting to the facts of the present case, in this case, no such procedure as prescribed in the Rules has been followed and no personal hearing has been afforded to the petitioner and except constituting committee and calling for recommendations of the committee and accepting the recommendations of the committee, the appeal of the petitioner has been dismissed.
8. The Supreme Court (Constitution Bench) in the matter of Gullapalli

Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and another¹, while highlighting the object of personal hearing, held as under:-

“(31) ... Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

9. The principle of law enunciated in **Gullapalli Nageswara Rao** (supra) was followed with approval by the Supreme Court in the matter of **Automotive Tyre Manufacturers Association v. Designated Authority and others**² (see paragraphs 83 and 84).
10. In the instant case, the petitioner has not been afforded opportunity of personal hearing as provided in the Rules of 1994 and even the Board of Directors have simply performed their legal obligation by constituting committee and inviting the recommendations of the committee, and accepting the recommendations of the committee, the petitioner's appeal has been dismissed holding that the charges are justified. Hearing of appeal in accordance with the Rules of 1994 is a quasi judicial power conferred to the appellate authority which is not supposed to be entrusted in the manner which has been done by the Board of Directors of the respondent Society. As such the impugned appellate order is hereby set aside and the matter is remitted to the Board of Directors to consider and decide the appeal in accordance with the Rules of 1994 within three months from the date of production of a copy of this order before it.

1 AIR 1959 SC 308

2 (2011) 2 SCC 258

11. With the aforesaid observation and direction, the writ petition is partly allowed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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