

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.7408 of 2010

Lalan Singh Paikra, S/o Shri Samal Sai, aged about 31 years, Ex-Constable No.801, S.T.F. (Distt. Police), Distt. Police Surajpur, Distt. Surguja (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Home Secretary, D.K.S. Bhawan, Raipur, Distt. Raipur (C.G.)
2. Director General of Police, State of Chhattisgarh, Raipur, Distt. Raipur (C.G.)
3. Inspector General of Police, Surguja Range, Ambikapur, Distt. Surguja (C.G.)
4. The Superintendent of Police, Distt. Police, Surajpur, Distt. Surguja (C.G.)

---- Respondents

For Petitioner: Mr. Sushil Dubey, Advocate.

For Respondents/State: Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/07/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. In a duly constituted departmental proceeding, the petitioner was inflicted with penalty of dismissal from service by order dated 9-5-2010 against which the petitioner preferred appeal before the appellate authority and the appellate authority by its impugned order dated 6-9-2010, affirmed the order of the disciplinary authority and dismissed the appeal which has been called in question in this writ petition filed by the petitioner calling in question the order of the

appellate authority as well as the disciplinary authority.

3. Mr. Sushil Dubey, learned counsel appearing for the petitioner, would submit that the petitioner's appeal was required to be decided in terms of Rule 27(2) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'the Rules of 1966'), but no finding has been recorded and simply in a casual and cryptic manner, the appeal has been dismissed without recording any finding on merits which is liable to be set aside.
4. Mr. Ravi Kumar Bhagat, learned State counsel, would support the impugned order.
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. It is not in dispute that the Rules of 1966 are applicable in the present case and Rule 27 of the said Rules for hearing the appeal is applicable to the appeal preferred by the petitioner. Rule 27(2)(a), (b) and (c) of the Rules of 1966 provides as under: -

"27. Consideration of appeal.-(1) xxx xxx xxx

(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:

xxx	xxx	xxx
xxx	xxx	xxx
xxx	xxx	xxx”

7. A careful perusal of the aforesaid rule would show that while considering the appeal, the appellate authority is required to consider 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; whether the findings of the disciplinary authority are warranted by the evidence on the records; and whether the penalty or the enhanced penalty imposed is adequate, inadequate or several, and thereafter pass orders accordingly.
8. If the impugned order is read in the light of Rule 27(2) of the Rules of 1966, it would appear that the appellate authority has not considered the appeal in accordance with Rule 27(2) of the said Rules and it is not recorded whether the procedure laid down in the rules has been followed or not, whether the findings of the disciplinary authority are warranted by the evidence on the records, and whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and by a cryptic order, the order of the disciplinary authority has been affirmed. The appellate authority has failed to perform its appellate

duty to hear the appeal of the petitioner herein filed against the order of the disciplinary authority. As such, the impugned order dated 6-9-2010 is in violation of Rule 27 of the Rules of 1966 and accordingly it is set aside. The matter is remitted to appellate authority for hearing and disposal in accordance with law within 60 days from the date of receipt of a copy of this order. The petitioner is at liberty to file additional submission before the appellate authority within 15 days from today.

9. With the aforesaid observation and direction, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma