

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3403 of 2010**

Dr. Ghanshyam Lal Chandrakar, S/o Late N.L. Chandrakar, Aged about 56 years, Occupation Government Servant, Selection Grade, Medical Officer, Government Hospital, Mahasamund, Distt. Mahasamund, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through its Secretary, Department of Health and Family Welfare, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
- 2.Director/Commissioner, Health Services, Mantralaya, D.K.S. Bhawan, Raipur, Distt. Raipur, Chhattisgarh.
- 3.Chief Medical and Health Officer, Mahasamund, Distt. Mahasamund, Chhattisgarh.
- 4.Upper Secretary, Department of Health and Family Welfare, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.

--- Respondents

For Petitioner	:-	Mr. Aman Pandey, Advocate
For State	:-	Mr. Sunil Otwnai, Addl. A.G. and Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board (Through Video Conferencing)

10/08/2021

1. This writ petition is directed against the order dated 08/05/2008 (Annexure P/14) by which the appellate authority has dismissed the appeal preferred by the petitioner affirming the order dated 11/08/2006 (Annexure P/8) passed by the disciplinary authority imposing stoppage of two increments with cumulative effect against the petitioner.

2. Mr. Aman Pandey, learned counsel for the petitioner, would submit that the appellate authority has not followed Rule 27(2) of the Rules of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 while deciding the appeal and by merely holding that no ground is made out, the appeal has been dismissed affirming the order of the disciplinary authority (Annexure P/8), as such, the impugned order dated 08/05/2008 (Annexure P/14) deserves to be set aside.

3. Mr. Sunil Otwani and Mr. Ravi Bhagat, learned State counsel, would support the impugned order.

4. I have heard learned counsel for the parties at length and perused the record.

5. Petitioner preferred the appeal, against the order dated 11/08/2006 (Annexure P/8) passed by the disciplinary authority, which has been dismissed the appellate authority by impugned order dated 08/05/2008 (Annexure P/14). However, the appeal has to be considered in line with Rule 27(2) of the Rules of 1966, which states 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...."

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**¹).

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**²).

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 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

1 (2008) 3 SCC 469

2 (2001) 5 SCC 340

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).

9. 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 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. As such, the impugned order dated 08/05/2008 (Annexure P/14) 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. The appellate authority is directed to decide the appeal within three months from the date of receipt of copy of this order by passing a reasoned and speaking order. Petitioner is at liberty to made additional submission in support of his appeal.

3 (2006) 4 SCC 713

10. With the aforesaid observation/direction, the writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet