

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 6244 of 2011**

Dwarika Prasad Suryawanshi, Aged about 54 years,
S/o Late Praja Ram Suryawanshi, Junior Assistant
(removed) At District Office, C.G. State Civil
Supplies Corporation, Janjgir, Distt. Janjgir
Champa, Chhattisgarh. R/o Jarhabhata, Mandir
Chowk, Bilaspur, Distt. Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. C.G. State Civil Supplies Corporation Limited,
Raipur, Through the Chairman /Appellate
Authority, Hitvad Campus, Avanti Vihar Colony,
Raipur, Chhattisgarh.
2. The Managing Director, C.G. State Civil Supplies
Corporation Limited, Bal Ashram Campus, Kuchery
Chowk, Raipur, Chhattisgarh.

---Respondents

For Petitioner :- Mr. R.K. Kesharvani, Advocate

For State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/09/2021

1. Petitioner herein calls in question impugned
order dated 10/10/2011 (Annexure P/16) by which

petitioner's appeal against the order of the Disciplinary Authority dated 26/05/2009 (Annexure P/1) has been dismissed by the Appellate Authority affirming the order of the Disciplinary Authority removing the petitioner from service and directing for recovery of Rs. 86,38,100/- from the petitioner.

2. Mr. R.K. Kesharvani, learned counsel for the petitioner, would submit that petitioner's appeal has been decided by the Appellate Authority in the most casual and perfunctory manner without considering Rule 27(2) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 in which the procedure for consideration of appeal by the appellate authority has been prescribed and it has been dismissed simply after narrating the facts and holding that on the basis of the photocopy, no charges are found proved, as such, no ground is made out for interference in the order of the Disciplinary Authority, which is ex-facie illegal and bad in law, therefore, the impugned order deserves to be set aside.

3. Mr. Animesh Tiwari, learned State counsel, would oppose the submission made by learned counsel

for the petitioner and submit that the instant writ petition deserves to be dismissed.

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

5. Rule 27(2) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 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

1 (2008) 3 SCC 469

2 (2001) 5 SCC 340

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).

9. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid from the impugned order that the Appellate Authority has simply narrated the facts that departmental enquiry was insituted and time was granted to the petitioner to file reply and despite giving sufficient opportunity to the petitioner, no error has been found in the order of the Disciplinary Authority, but 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 whether the punishment is appropriate or excessive and it requires interference, particularly, the main contention that on the

3 (2006) 4 SCC 713

basis of the photocopy, no charges can be established, 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 impugned order dated 10/10/2011 (Annexure P/16) 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 within two months from the date of receipt of a copy of this order by passing a reasoned and speaking order. Petitioner is at liberty to make additional submission (if any). It is made clear that this Court has not expressed any opinion on the merits of the matter.

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