

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.3994 of 2010**

- B. P. Tripathi, S/o Late Shri Bare Lal Tripathi, aged about 57 years, Occupation Service posted as Forest Ranger, Range Office Ambikapur, District Surguja, R/o Forest Colony Near Gauri Temple, Ambikapur, Distt. Surguja, C.G.

----- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Forest Department, D.K.S. Bhawan, Raipur, District Raipur (C.G.)
2. The Under Secretary, Government of Chhattisgarh, Forest Department, Mantralaya at D.K.S. Bhawan, Raipur (C.G.)
3. The Principle Chief Conservator of Forest, Chhattisgarh, Raipur, District Raipur (C.G.)
4. The Conservator of Forest, Raipur Circle, Raipur, District Raipur (C.G.)
5. The Divisional Forest Officer, Forest Division, Raipur (C.G.)

----- Respondents

For Petitioner	Mr. Bhaskar Payashi, Adv.
For Respondent-State	Mr. Animesh Tiwari, Dy. AG

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****17/06/2021**

1. The proceedings of the matter have been taken up through Video Conferencing.
2. The petitioner by way of this writ petition is challenging the legality, validity and the propriety of the orders dated 31.07.2009 (Annexure-P/1) and 25.04.2007 (Annexure-P/2) passed by the respondent Nos.2 & 3, respectively, by which the petitioner has been inflicted with the penalty of stoppage of two increments without cumulative effect.
3. Learned counsel for the petitioner would submit that though the petitioner has been inflicted with the penalty of stoppage of two increments without cumulative effect, still departmental enquiry is required to be conducted for awarding any punishment. As such, the appellate order dated 31.07.2009 (Annexure-P/1) and the order of the Disciplinary Authority dated 25.04.2007 (Annexure-P/2) deserve to be set aside. He would place reliance on the judgment rendered by the Supreme Court in the matter of **O. K. Bhardwaj vs Union of India and others**¹.

4. Learned State counsel would support the

¹ (2001) 9 SCC 180

impugned orders and submit that penalty has been imposed after following the due procedure of law.

5. I have heard learned counsel for the parties, considered their submissions made herein-above and also went through the records with utmost circumspection.
6. The contention of the learned counsel for the petitioner that before inflicting even minor penalties, departmental enquiry ought to have been conducted appears to be correct. According to the petitioner, it was raised before the Appellate Authority also, but a careful perusal of the order (Annexure-P/1) would show that the Appellate Authority recorded the facts of the case only in paragraphs 1 to 4 and in paragraph 5, without assigning any reason and without considering the contention, dismissed the appeal.
7. Rule 27 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 is applicable in the instant case, 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:

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

[(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties

specified in clauses (v) to (ix) of Rule 10 and an inquiry under Rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter on consideration of the proceedings of such inquiry, make such orders as it may deem fit.

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 10 and an inquiry under Rule 14 has already been held in the case the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed, make such order as it may deem fit].

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

8. The careful perusal of the order (Annexure-P/1) would show that the Appellate Authority has not considered as to whether the procedure laid down in the rules have been followed or not while inflicting the penalty and whether finding of the Disciplinary Authority is warranted by the record and whether the penalty is adequate or severe and only thereafter

orders could have been passed. As such, the appellate order dated 31.07.2009 (Annexure-P/1) is hereby set aside and the matter is remitted back to the Appellate Authority i.e. respondent No.2 for hearing and deciding the matter afresh in accordance with law after giving opportunity of hearing to the petitioner within a period of 2 months from the date of copy of receipt of this order.

9. With the aforesaid observation, the writ petition is partly allowed. No order as to cost (s).
10. The petitioner is at liberty to raise all the contentions, as have been raised before this Court, before the Appellate Authority as well.
11. It is made clear that this Court has not expressed any opinion on the merits of the case.

Sd/-
Sanjay K. Agrawal
Judge

Nirala