

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1089 of 2009**

Radhey Shyam Thakur, Son of Thalsingh, Aged about 36 years, Resident of Village Borgahan, Post Arjunda, Police Station Arjunda, Tahsil Gunderdehi, District Durg (CG) (Constable No.312, Police Station Antagarh)

----- **Petitioner**

Versus

- 1.State of Chhattisgarh, through Secretary, office situated at Secretariat, Raipur (CG)
- 2.The Secretary, Home Department, Office situated at Secretariat, Raipur (CG)
- 3.Police Mahanirdeshak, Police Headoffice, Raipur (CG)
- 4.Police Mahanirichhak, Bastar Range, Jagdalpur (CG)
- 5.Superintendent of Police, Kanker (CG)

----- **Respondents**

For Petitioner	:	Mr.N.S.Dhurandhar, Advocate
For Respondents/State	:	Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

24.6.2021

- 1.Proceedings of this matter have been taken-up through video conferencing.
- 2.In a departmental proceeding initiated against the petitioner for act of alleged misconduct he was inflected with penalty of dismissal from service by respondent No.5/Superintendent of Police, Kanker, agaisnt which, he preferred appeal before the appellate authority, which was required to be considered by the appellate authority in accordance with Rule 27 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966

(hereinafter called as 'the Rules of 1966'). The appellate authority by order dated 17.2.2006 dismissed the appeal summarily without considering the merits of the case, against which, he preferred mercy appeal, which was also dismissed by the impugned order dated 24.5.2007 (Annexure P-1), against which, this writ petition has been preferred.

3. Mr.N.S.Dhurandhar, learned counsel for the petitioner, would submit that firstly, the appellate authority has not considered the appeal preferred by the petitioner in the light of Rule 27(2) of the Rules of 1966 and secondly, the decision of this Court in the matter of **Kamleshwar Prasad Trivedi v. State of Chhattisgarh and others** (WPS No.2538/2007), decided on 17.10.2019 is squarely applicable to the facts of the present case.
4. On the other hand, Mr.Ravi Bhagat, learned Deputy Government Advocate appearing for the respondents/State, would support the impugned order.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. It is true that the petitioner is governed by the Chhattisgarh Police Regulations and his appeal is governed by Regulation 262 of the Police Regulations,

which states as under:-

"262. Appeal. — Every officer against whom an order may be passed under Regulation 214 and who thinks himself wronged thereby shall be entitled to prefer an appeal against such order to the authority immediately superior to the officer who passed the order of punishment and if the appeal is from an officer of the rank of Inspector or of an equivalent rank and the appeal relates to an order that that referred to in sub-head (1) of Regulation 214 and is rejected by the appellate authority, he may prefer a second appeal to the State Government."

7. Regulation 262 of the Police Regulations is silent about the procedure to be followed while considering the appeal, but how the appeal has to be decided and whether aid and assistance can be taken from the provisions contained in the Rules 1966.

8. The Madhya Pradesh in the matter of **Mahesh Kumar Shrikishan Tiwari v. State of Madhya Pradesh and Ors.**¹ (see P-22.) held that the applicability of the Control and Appeal Rules is not altogether excluded, where the Police Regulations are silent the provision of Control and Appeal Rules would apply in departmental enquiries against subordinate police staff.

9. There is no express provision with regard to the manner of hearing the appeal, therefore, following the principle of law laid down by the Madhya Pradesh High Court in **Mahesh Kumar Shrikishan Tiwari** (supra), Rule

1 1985 MPLJ 516

27 of the Rules of 1966 can be taken aid of for consideration of appeal.

10. Rule 27 of the Rules of 1966 provides 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...."

11. 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 Rao²).

12. 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 others³**).

13. 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 whether he had applied his mind to the relevant factors which the rule required to do. (See **Narinder Mohan Arya v. United India Insurance Co. Ltd. and others⁴**).

14. Reverting to the facts of the present case, in the instant case, appeal preferred by the petitioner

2 (2008) 3 SCC 469

3 (2001) 5 SCC 340

4 (2006) 4 SCC 713

has not been considered by the appellate authority in the light of clause (a) to (c) of Rule 27(2) of the Rules of 1966 and dismissed the appeal on 17.2.2006, which ought to have been considered in the light of clause (a) to (c) of Rule 27(2) of the Rules of 1966.

15. As a fallout and consequence of the aforesaid discussion, the order dated 17.2.2006 passed by appellate authority and the order dated 24.5.2007 (Annexure P-1) passed by the competent authority in mercy appeal both are hereby set aside. Appeal filed by the petitioner herein is restored to the file of appellate authority i.e. Inspector General of Police, Bastar Range, Jagdalpur. The appellate authority is directed to consider the appeal of the petitioner in accordance with Rule 27 (2) of the Rules of 1966 within 30 days from the date of receipt of a copy of this order and will decide the same after hearing the petitioner and other side, strictly in accordance with law as the matter is pending for more than 13 years.

16. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge