

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No.4396 of 2009**

Amresh (dead) through LR's

1(A) Smt.Samti Bai W/o. Late Amresh Singh, aged about 43 years

1(B) Yogendra Paikra, S/o Late Amresh Singh, aged about 21 years

1(C) Tushan Singh Paikra, S/o Late Amresh Singh, aged about 17 years

1(D) Bhupnarayan Singh Paikra, S/o Late Amresh Singh, aged about 23 years

All resident of Village Kevri, P.S. Lakhanpur, Civil & Revenue District Surguja (CG)

**----- LR's of Petitioner**

**Versus**

- 1.The State of Chhattisgarh, Through: the Secretary, Ministry of Home Affairs Department, D.K.S.Bhawan, Raipur (CG)
- 2.The Inspector General of Police, Surguja Range, District Surguja (CG)
- 3.The Superintendent of Police, Surguja, District Surguja (CG)
- 4.Shri Ravi Kurre, Investigation Officer, Sub Divisional Police Officer, Sitapur, District Surguja (CG)

**----- Respondents**

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For LR's of Petitioner : Mr.A.K.Prasad, Advocate

For Res.No.1 to 3/State: Mr.Ravi Bhagat, Dy.G.A.

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

**21.6.2021**

- 1.Proceedings of this matter have been taken-up through video conferencing.
- 2.The petitioner was subjected to regular departmental enquiry for charges levelled against him and ultimately he and one Arun Shrivastava both were dismissed by order dated 17.2.2006 (Annexure P/6),

against which, they preferred appeals. By the appellate order dated 19.6.2006 (Annexure P-1), appeal of Shri Arun Shrivastava was partly allowed and appeal of the present petitioner has been dismissed, against which, this writ petition has been filed.

3. Mr. A.K. Prasad, learned counsel for the petitioner, would submit that in a very cryptic and unreasoned order, appeal of the petitioner has been dismissed. No reason has been assigned to decide the appeal though Rule 27 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966') is applicable, but nothing has been decided in accordance with law.

4. On the other hand, Mr. Ravi Bhagat, learned Deputy Government Advocate, 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.**<sup>1</sup> (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 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:-

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<sup>1</sup> 1985 MPLJ 516

**"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 Rao<sup>2</sup>**).

**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 others**<sup>3</sup>).

- 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 others**<sup>4</sup>).

- 14.** A careful perusal of the appellate order would show that the appellate authority simply in three lines holding that the petitioner has not improved despite 23 small punishments awarded to him, he is a man of indiscipline and he is not able to correct himself, proceeded to dismiss the appeal. Either of

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3 (2001) 5 SCC 340

4 (2006) 4 SCC 713

the requirement of Rule 27(2) of the Rules of 1966 has not been considered making the order vulnerable and it is liable to be set aside.

**15.** As a fallout and consequence of the aforesaid discussion, the impugned order dated 19.6.2006 (Annexure P-1) passed by the appellate authority is hereby set-aside. The matter is remitted to the appellate authority to consider the appeal of the petitioner strictly in accordance with Rule 27 (2) of the Rules of 1966 keeping in view that other delinquent has already been reverted and his punishment of dismissal is set aside within 45 days from the date of receipt of a copy of this order after hearing legal representatives of the petitioner and other side and pass a reasoned and speaking order, strictly in accordance with law.

**16.** The writ petition is partly allowed to the extent indicated hereinabove. Legal representatives of the petitioner will entitle for benefit, if ultimately any benefit is to be awarded. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-