

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3289 of 2012**

Kailash Kumar Meshram S/o Shri Pootanlal Meshram,
Aged about 40 years, Occupation Terminated
Constable, R/o Village Gopalpur, Thana & Tahsil
Katangi, Distt. Balaghat, M.P.

---Petitioner

Versus

- 1.State of Chhattisgarh through the Secretary Home
Department, D.K.S. Bhawan Raipur, Distt. Raipur,
Chhattisgarh.
- 2.Director General of Police, Durg, Division Durg,
Distt. Durg, Chhattisgarh.
- 3.Superintendent of Police, Rajnandgaon, Distt.
Rajnandgaon, Chhattisgarh.

---Respondents

For Petitioner :- Mr. Awadh Tripathi, Advocate

For State :- Mr. Siddharth Dubey, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Th. Video Conferencing)

31/08/2021

- 1.Mr. Awadh Tripathi, learned counsel for the
petitioner, would submit that petitioner was
subjected to departmental proceeding in which he
was removed from service by order dated
09/02/2012 (Annexure P/2) against which he

preferred an appeal and by the impugned order dated 25/06/2012 (Annexure P/1), the appellate authority has affirmed the order of the disciplinary authority thereby dismissing petitioner's appeal which is ex-facie arbitrary, illegal and bad in law as Rule 27 of the Rules of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 has not been considered by the appellate authority while deciding petitioner's appeal.

2. Per contra, Mr. Siddharth Dubey, learned State counsel, would oppose the submission made by learned counsel for the petitioner.

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

4. 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...."

5. 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 Rao¹).

6. 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

¹ (2008) 3 SCC 469

in the appeal. (See Deokinandan Sharma v. Union of India and others²).

7. 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 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).

8. 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

2 (2001) 5 SCC 340

3 (2006) 4 SCC 713

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 25/06/2012 (Annexure P/1) 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 two months from the date of receipt of copy of this order by passing a reasoned and speaking order.

9. 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