

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 1227 of 2012**

Sheikh Shakeel S/o Sheikh Hussain, Aged about 50 years, R/o Naveen Bazar, Phool Chowk, Raipur, Police Station City Kotwali, Raipur, Distt. Durg, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, through Secretary, Home Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
- 2.The Director General of Police, Range Raipur, Distt. Raipur, Chhattisgarh.
- 3.The Superintendent of Jail, Central Jail, Durg, Distt. Durg, Chhattisgarh.
- 4.The Superintendent of Jail, Central Jail, Raipur, Distt. Raipur, Chhattisgarh.
- 5.The Superintendent of Jail, Sub-Jail Dongargarh, Distt. Rajnandgaon, Chhattisgarh.

---Respondents

For Petitioner :- Mr. Vikas A. Shrivastava, Advocate
For State :- Mr. Soumya Rai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07/09/2021

1. Petitioner herein calls in question impugned order dated 14/10/2011 (Annexure P/7) by which petitioner's appeal against the order of the Disciplinary Authority dated 08/07/2011 (Annexure P/6) has been dismissed by the Appellate Authority affirming the order of the Disciplinary Authority removing the petitioner from the post of Guard in Sub-Jail, Dongargarh.
2. Mr. Vikas A. Shrivastava, 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, as such, the impugned order deserves to be set aside.
3. Mr. Soumya Rai, 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 Rao¹).

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 others²).

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 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

1 (2008) 3 SCC 469

2 (2001) 5 SCC 340

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 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 whether the punishment is appropriate or excessive and it requires interference, 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 14/10/2011 (Annexure P/7) 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 three 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).

10. With the aforesaid observation/direction, the writ petition is allowed to the extent indicated herein-above. No cost(s).

11. A copy of this order be sent to the Chief Secretary, State of Chhattisgarh and to the Principal secretary, Home Department for considering/formulating a programme for training all the Appellate Officers to deal with appeals preferred by delinquent Government servants in accordance with Rule 27(2) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet