

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.776 of 2010Order reserved on: 26-7-2021Order delivered on: 2-8-2021

Rajesh Singh Shrivastava, S/o Shri Hoshiyar Singh, aged about 40 years, R/o H-8, Anupam Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Home Affairs, D.K.S. Bhawan, Raipur.
2. Directorate of Prosecution, Raipur (C.G.)

---- Respondents

 For Petitioner: Mr. Aditya Agrawal, Advocate.
 For Respondents/State: Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner calls in question the impugned order Annexure P-2 dated 15-9-2009 by which the appellate authority has confirmed the order dated 12-2-2009 (Annexure P-1) passed by the disciplinary authority inflicting major punishment of reduction to lower stage in the time scale of pay and also directing for stoppage of three annual increments with cumulative effect branding the same as arbitrary and that it amounts to imposition of two major penalties at one go and further amounts to double jeopardy to the petitioner, as such, it is liable to be set aside.
3. Return has been filed by the State / respondents supporting the orders

impugned stating inter alia that the penalty imposed upon the petitioner is one and same prescribed under Rule 10(v) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'the Rules of 1966') and as such, the writ petition deserves to be dismissed.

4. Mr. Aditya Agrawal, learned counsel appearing for the petitioner, would submit that the appellate authority has not followed the Rules of 1966 while dismissing the appeal and further, reduction of lower stage in the time scale of pay for a specified time and stoppage of three increments with cumulative effect also amounts to major punishment in terms of the decision rendered by the Supreme Court in the matter of Kulwant Singh Gill v. State of Punjab¹ and further relied upon the decision of the M.P. High Court in the matter of K.R. Shankara Kaimal v. State of M.P.². As such, the order of the appellate authority deserves to be set aside.
5. Mr. Ravi Kumar Bhagat, learned Deputy Govt. Advocate appearing for the State / respondents, would support the impugned orders and would submit that only one penalty has been imposed upon the petitioner i.e. reduction of lower stage in the time scale of pay for a specified time within the meaning of Rule 10(v) of the Rules of 1966, no two major penalties have been inflicted upon the petitioner.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. 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

1 1991 Supp (1) SCC 504

2 1995 MPLJ (N) 54

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....”

8. 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 Rao³).

9. 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 others⁴).

10. 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 others⁵**).

11. Reverting to the facts of the present case in the light of the aforesaid provision and the judgments (supra), it is quite vivid that appeal preferred by the petitioner 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 by unreasoned and non-speaking order on 15-9-2009, which ought to have been considered by the appellate authority in the light of clause (a) to (c) of Rule 27(2) of the Rules of 1966.

12. As a fallout and consequence of the aforesaid discussion, the impugned order dated 15-9-2009 (Annexure P-2) passed by the appellate authority is hereby set-aside. The appeal filed by the petitioner herein is restored to the file of the appellate authority. The appellate authority is directed to consider the appeal of the petitioner in accordance with Rule 27(2) of the Rules of 1966 within 60 days from the date of receipt of a copy of this order and will decide the same after hearing the petitioner and other side and pass a reasoned

⁴ (2001) 5 SCC 340

⁵ (2006) 4 SCC 713

and speaking order, strictly in accordance with law. The petitioner is at liberty to file additional submission before the appellate authority.

13. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma