

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1672 of 2011**

L.P.Chandrakar S/o Late Shri K.P. Chandrakar, aged about 63 years, R/o F-15, Sector-II, Avanti Vihar, Raipur (CG), retired as Assistant Manager, Central Bank of India

----- **Petitioner**

Versus

1. Central Bank of India, Through the Managing Director, Chandramukhi, Nariman Point, Mumbai 400 021
2. Appellate Authority, General Manager (Human Resources Department) Central Bank of India Central Office – Chandramukhi, Nariman Point, Mumbai 400 021
3. Disciplinary Authority, Central Bank of India, 1st Floor-C Bombay Market, G.E. Road, Raipur (CG) 492 001

----- **Respondents**

For Petitioner	: Mr.Shobhit Mishra, Advocate
For Respondents	: Mr.Anuroop Panda, Advocate

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

30.7.2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner at the relevant point of time was working as Manager in Central Bank of India. He was subjected to departmental proceedings and by order dated 19.6.2006 (Annexure P-3) he was inflicted with major penalty of reduction to a lower grade from MMG Scale-II to JMG Scale-I with initial Basic Pay in Scale-I, i.e., Rs.10,000/- p.m. i.e., reduction to Basic Pay from Rs.22,900/- in Scale-II to Rs.10,000/- amounting to reduction of Basic Pay by 24 stages in

Time Scale in terms of Regulation 4(g) of the Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (hereinafter called as 'Regulations 1976'). Questioning that order, the petitioner preferred appeal before the appellate authority in terms of Regulation 17 of the Regulations 1976. By the impugned order dated 16.11.2007 (Annexure P-2), the petitioner's appeal has been dismissed by the appellate authority. The order of the disciplinary authority as well as the order of the appellate authority have been called in question by the petitioner in this writ petition.

3. Mr. Shobhit Mishra, learned counsel for the petitioner, would submit that the appellate authority has failed to perform its duty as appellate authority and simply agreed with the finding of the disciplinary authority holding the misconduct to be serious did not consider the appeal in accordance with Regulation 17 (ii) of the Regulations 1976 holding that the findings of the disciplinary authority are justified and the penalty imposed is adequate, as such, the order of the appellate authority is in teeth of Regulation 17(ii) of the Regulations 1976 and it deserves to be set aside.

4. On the other hand, Mr. Anuroop Panda, learned counsel

for the respondents, 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. True, it is that the order of the disciplinary authority was questioned by the petitioner by way of appeal in terms of Regulation 17(ii) of the Regulations 1976. Regulation 17 of the Regulations 1976 states as under:-

"17. APPEALS:

i. An officer employee may appeal against an order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in Regulation 12. The appeal shall lie to the Appellate Authority.

ii. An appeal shall be preferred within 45 days from the date of receipt of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority. The Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that -

i. If the enhanced penalty which the Appellate Authority proposed to impose a major penalty specified in Clauses (f), (g), (h), (i) and (j) of Regulation 4 and an enquiry as provided in Regulation 6 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provision of regulation 6 and thereafter consider the record of the enquiry and pass such orders as it may deem proper.

ii. If the Appellate Authority decides to enhance the punishment but an enquiry has already been held as provided in Regulation 6, the Appellate Authority shall give a show cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the officer employee."

7. A careful perusal of the aforesaid Regulation would show that manner of consideration of appeal has been provided in Regulation 17 (ii) of the Regulations 1976 and the appellate authority is specially required to consider by application of mind that the findings recorded by the disciplinary authority are justified and the punishment awarded is adequate or it is excessive and thereafter the appeal has to be disposed of.

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 Rao**¹).

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 others**²).

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 others**³).

11. Reverting to the facts of the present case, in the instant case, the appellate order dated 16.11.2007 (Annexure P-2) would show that the appellate authority

1 (2008) 3 SCC 469

2 (2001) 5 SCC 340

3 (2006) 4 SCC 713

firstly recorded the facts of the case and thereafter reproduced the charges 1 and 2 and thereafter in two paragraphs holding the misconduct to be serious and gravity of misconduct, proceeded to dismiss the appeal without considering the grounds raised by the petitioner, whether findings are justified and whether the penalty is proper or not, as such, the appellate order dated 16.11.2007 (Annexure P-2) is in teeth of Regulation 17(ii) of the Regulations 1976. In fact, the appellate authority has failed to consider the appeal in accordance with Regulation 17(ii) of the Regulations 1976. The appellate authority ought to have considered the appeal in accordance with Regulation 17(ii) of the Regulations 1976 which clearly mandates the manner of disposing of the appeal and it could have been passed the reasoned order meeting with the grounds raised by the petitioner in accordance with Regulation 17(ii) of the Regulations 1976.

12. Accordingly, the appellate order dated 16.11.2007 (Annexure P-2) passed by the appellate authority is hereby set aside. The matter is remitted to the appellate authority to consider the appeal preferred by the petitioner afresh in accordance with Regulation 17 (ii) of the Regulations 1976 within two months from

the date of receipt of a copy of this order after hearing the petitioner and to pass a reasoned and speaking order, strictly in accordance with law. The petitioner is at liberty to make additional submission in support of his case.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-