

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.4032 of 2005**

Atul Prakash Lader, son of Shri S.P.Lader, Inspector Police, Posted at Police Training School, Rajnandgaon (Chhattisgarh)

----- **Petitioner**

Versus

- 1.State of Madhya Pradesh, through Secretary, Ministry of Home, Mantralaya, Vallabh Bhawan, Bhopal (M.P.)
2. Inspector General of Police, District Balaghat (M.P.)
- 3.The Secretary, Department of Home, Ministry of Home, Mantralaya, D.K.S. Bhawan, Raipur (Chhattisgarh)
4. Superintendent of Police, District Rajnandgaon (Chhattisgarh)
5. Director General of Police, State of Chhattisgarh, Police Head Quarters, Raipur (CG)

----- **Respondents**

For Petitioner	:	Mr.H.S.Patel, Advocate
For Res.No.3 to 5/State:		Mr.Sunil Otwani, Addl.A.G. with Mr.Ravi Bhagat, Dy.G.A.

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

15.6.2021

- 1.Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner at relevant point of time was working as Reserved Inspector. In a regular departmental proceeding held against him, the Inspector General of Police inflicted penalty of stoppage of one increment with cumulative effect by order dated 4.9.2000 (Annexure A-5). Feeling aggrieved against that order, the petitioner herein preferred appeal before the appellate authority in accordance with Regulation 262

of the Chhattisgarh Police Regulations. Learned appellate authority in a brief and cryptic order dismissed the appeal by order dated 24.7.2004 (Annexure A-8) and on mercy appeal being preferred by the petitioner, the competent authority also dismissed mercy appeal by order dated 30.9.2004 (Annexure A-10). Now, the appellate order and order in mercy appeal have been called in question by the petitioner in the instant writ petition.

3. Mr.H.S.Patel, learned counsel for the petitioner, would submit that though the petitioner's services are governed by Regulation 262 of the Police Regulations, but yet aid and assistance of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966') can be taken and it would be applicable and therefore, appeal ought to have been decided in terms of Rule 27 of the Rules of 1966 and as such, unreasoned and cryptic order passed the appellate authority is liable to be set aside. Apart from the fact that disciplinary authority was not competent to take disciplinary action against the petitioner and inflicted penalty of stoppage of one increment with cumulative effect, as such, it is liable to be set aside.

4. On the other hand, Mr.Sunil Otwani, learned Additional

Advocate General with Mr. Ravi Bhagat, learned Deputy Government Advocate appearing for respondents No.3 to 5/State, would support the impugned order and submit that the petitioner's appeal has rightly been dismissed and no interference is called for in this writ petition preferred by the petitioner.

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.¹

(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:-

"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;

¹ 1985 MPLJ 516

(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.** In the instant case, by order dated 4.9.2000 the petitioner has been inflicted penalty of stoppage of one annual increment with cumulative effect and it amounts to major penalty as held by the Supreme Court in the matter of Kulwant Singh Gill v. State of Punjab² and as such, the appellate authority was required to consider the appeal filed by the petitioner in accordance with Rule 27 of the Rules 1966 and could have clearly discussed after holding that the procedure laid down in the Rules of 1966 has been complied with, firstly, whether non-compliance of the rules has resulted in the violation of any provisions of the Constitution of India or in the failure of justice, secondly, whether the findings of the disciplinary authority are warranted by the evidence on the records and thirdly, whether the penalty imposed is adequate, inadequate or severe and pass orders confirming, enhancing, reducing or setting

² 1991 Supp (1) SCC 504

aside the penalty. However, the appellate authority on 24.7.2004 only mentioned the charges levelled against the petitioner and only in one paragraph, dismissed the appeal holding that appeal is within limitation, it has been examined and no case is made out for interference in the appeal. Operative portion of the order states as under:-

“अपीलार्थी द्वारा उपरोक्त दण्डादेश से क्षुब्ध होकर अपील प्रस्तुत किया गया है। प्रकरण से संबंधित समस्त रिकार्ड वि०जा० नस्ती “अ” “ब” /सेवापुस्तिका/सेवाइतिहास आदि रिकार्ड का बारीकी से परीक्षण/अध्ययन किया गया है। अपीलार्थी द्वारा अपील समय पर किया जाना पाया गया, प्रस्तुत अपील के सभी बिन्दुओं का गहन अध्ययन/परीक्षण पर पाया गया कि उसके द्वारा अपनी अपील में कोई तथ्य ऐसे नहीं दिये जिससे दी गई सजा में कमी की जाए। अपील में कोई नए तथ्य भी नहीं होने से अध्ययन/परीक्षण उपरान्त प्रस्तुत अपील “निरस्त” की जाती है।

सही /—
राजीव माथुर
अति०पुलिस महानिर्देशक,
(प्रशासन)
पुलिस मुख्यालय, रायपुर (छ०ग०)”

Such a procedure adopted by learned appellate authority is contrary to clause (a) to (c) of Rule 27 of the Rules 1966.

- 12.** 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).

13. 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).

14. 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).

15. Reverting to the facts of the present case in the light of aforesaid proposition of law laid down by the Supreme Court in above-stated judgments, it is quite

3 (2008) 3 SCC 469

4 (2001) 5 SCC 340

5 (2006) 4 SCC 713

that the appellate authority neither considered clause (a) to (c) of Rule 27 of the Rules 1966 nor recorded any reasons or even did not address the contentions raised by the petitioner in his memo of appeal and simply finding the appeal is within limitation and further holding that he has examined the appeal, finding no merit proceeded to dismiss the appeal. It is totally impermissible way of disposing of the appeal particularly in light of Rule 27 of the Rules of 1966.

16. As a fallout and consequence of the aforesaid discussion, the order dated 24.7.2004 (Annexure A-8) passed by appellate authority and the order dated 30.9.2004 (Annexure A-10) passed by the competent authority both are hereby set aside. Appeal filed by the petitioner herein is restored to the file of appellate authority. The appellate authority is directed to consider the appeal of the petitioner in accordance with Rule 27 of the Rules of 1966 within 45 days from the date of receipt of a copy of this order and will decide the same after hearing the petitioner and other side, strictly in accordance with law. It is stated at the Bar that appeal is pending since 2004. The Director General of Police is directed to ensure that appeal is decided within the time limit indicated

hereinabove. The petitioner is at liberty to file additional documents, if any, in support of his appeal and take all possible grounds.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-