

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 2694 of 2011**

Rakesh Choudhary, S/o Late Shri Ramdas Rao, Aged about 29 years, Terminated Constable No. 265, 2nd Battalion, Chhattisgarh Armed Force, Shakri, Distt. Bilaspur (C.G.), R/o 2nd B.N. C.A.F. New Camp, Qrt No. A/63, Shakri, Distt. Bilaspur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through Secretary, Department of Home (Police), D.K.S. Bhawan, Raipur, Chhattisgarh.
- 2.Additional Director General of Police, Armed Force Police Head Quarater, Raipur, Chhattisgarh.
- 3.Deputy Inspector General of Police, Chhattisgarh Armed Force, North Region, Bilaspur, Chhattisgarh.
- 4.Commandant, 2nd Battalion, Chhattisgarh Armed Force, Shakri, Distt. Bilaspur, Chhattisgarh.

---Respondents

For Petitioner :- Mr. Abhishek Pandey, Advocate
 For State :- Mr. Soumya Rai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board (Th. Video Conferencing)

31/08/2021

1. Petitioner calls in question the legality, validity and correctness of order dated 29/01/2011 (Annexure P/1) by which the second appeal preferred by the petitioner has been dismissed affirming the order dated 08/09/2010 (Annexure P/2) passed by the first appellate authority reaffirming the order dated 31/10/2009 (Annexure P/3) by which petitioner has been removed from service.
2. Mr. Abhishek Pandey, learned counsel for the petitioner, would submit that the second appellate authority has not followed Rule 27(2) of the Rules of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 while deciding petitioner's appeal and it has simply been dismissed by affirming the order of the disciplinary authority (Annexure P/3) without assigning any cogent reason, as such, the impugned order dated 29/01/2011 (Annexure P/1) deserves to be set aside.
3. Per contra, Mr. Soumya Rai, learned State counsel, would oppose the submission made by learned counsel for the petitioner.

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

1 (2008) 3 SCC 469

2 (2001) 5 SCC 340

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 others**³).

9. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid that the second 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 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 29/01/2011 (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 second appellate authority for hearing and disposal in accordance with law. The second appellate authority is directed to decide the appeal within two months from the date of

3 (2006) 4 SCC 713

receipt of copy of this order by passing a
reasoned and speaking order.

10. 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