

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.6994 of 2011**

Vikas Chandrakar, Aged about 23 years, S/o Bhushan Lal Chandrakar, R/o-Gazi Nagar, near Durga Temple, Virgaon, Raipur (CG)

----- **Petitioner**

Versus

- 1.State of Chhattisgarh, through the Secretary, Home Department, DKS Bhawan, Raipur (CG)
- 2.Director General of Police, Police Head Quarters, Raipur
- 3.Inspector General of Police, Durg Division, Durg (CG)
- 4.Superintendent of Police, Mahamsamund (CG)

----- **Respondents**

For Petitioner	: Mr.K.R.Nair, Advocate
For Respondents/State	: Mr.Soumya Rai, P.L.

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

3.9.2021

- 1.The petitioner herein calls in question legality, validity and correctness of the order dated 30.12.2010 (Annexure P-1) by which the appellate authority has affirmed the order of removal of the petitioner passed by the disciplinary authority on 16.7.2010 (Annexure P-8) finding no merit.
2. Mr.K.R.Nair, learned counsel for the petitioner, would submit that Rule 27 (2) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966') has not been followed while considering the appeal and contention of the petitioner has been rejected only in two paragraphs finding no merit, whereas it ought to

have been considered in accordance with clause (a) to (c) of Rule 27(2) of the Rules of 1966.

3. On the other hand, Mr. Soumya Rai, learned Panel Lawyer for the respondents/State, would support the impugned order.

4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

5. 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."

6. 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.

7. The Madhya Pradesh High Court 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.

8. 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.

9. 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;

(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....."

10. 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**²).

11. 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**³).

12. 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

2 (2008) 3 SCC 469

3 (2001) 5 SCC 340

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 others⁴).

13. Reverting to the facts of the present case in the light of the aforesaid provision and the judgments (supra), it is quite vivid that though major penalty of removal has been inflicted by the disciplinary authority, but the appellate authority has not considered the appeal in accordance with Rule 27(2) of the Rules of 1966 and only in two paragraphs contention of the petitioner has been recorded and in rest of three paragraphs, it has been rejected, but no finding has been recorded that relevant rules have been followed in making an enquiry, the findings are supported by evidence available on record and punishment is not excessive or harsh and as such, the appellate authority has failed to perform its duty in accordance with law.

14. As a fallout and consequence of the aforesaid discussion, the impugned order dated 30.12.2010 (Annexure P-1) passed by appellate authority is hereby set-aside. Appeal filed by the petitioner herein is

4 (2006) 4 SCC 713

restored to the file of 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 three months from the date of receipt of a copy of this order and will decide the same after hearing the petitioner and pass a reasoned and speaking order, strictly in accordance with law. The petitioner is at liberty to file additional submission before the appellate authority.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-