

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3811 of 2013**

Dev Kishore Digarse S/o Late Shri Bal Kishan Digarse, Aged about 32 years, Terminated Constable No. 1066 Police Station Kotwali, Jagdalpur, Civil and Revenue Distt. Jagdalpur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh through the Secretary, Home Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh.
- 2.Director General of Police, Police Headquarter Civil Line Raipur, Police Station Civil Line Raipur, Chhattisgarh.
- 3.Inspector General of Police, Office of the Inspector General of Police, Bastar Range, Lal Bagh Jagdalpur, Police Station City Kotwali, Jagdalpur, Chhattisgarh.
- 4.Superintendent of Police, Office of Superintendent of Police Bastar, Police Station City Kotwali, Jagdalpur, Chhattisgarh.
- 5.Deputy Superintendent of Police, (Enquiry Officer) Jagdalpur, Police Station City Kotwali, Jagdalpur, Chhattisgarh.

---Respondents

For Petitioner	:- Mr. Abhishek Pandey, Advocate
For State	:- Mr. Siddharth Dubey, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/10/2021

1. Petitioner herein calls in question the order dated 05/04/2013 (Annexure P/9) by which the Appellate Authority has maintained the order of the Disciplinary Authority terminating the services of the petitioner.
2. Mr. Abhishek Pandey, learned counsel for the petitioner, would submit that petitioner's appeal has been decided by the Appellate Authority in the most casual and perfunctory manner without following Rule 27(2) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. He would also submit that Presenting Officer has not been appointed in the disciplinary proceeding and the Enquiry Officer has played the role of Judge as well as the prosecutor, as such, the impugned order deserves to be set aside.
3. Mr. Siddharth Dubey, learned State counsel, would oppose the submission made by learned counsel for the petitioner and submit that the instant writ petition deserves to be dismissed.

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 Rao**¹).

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 others**²).

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 Court reviewing its decision to ascertain as to whether

1 (2008) 3 SCC 469

2 (2001) 5 SCC 340

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 others³).

9. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid that the 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 whether the 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 05/4/2013 (Annexure P/9) 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 Appellate Authority for hearing and disposal in accordance with law within two months from the date of receipt of a copy of this order by passing a reasoned and speaking order. Petitioner

³ (2006) 4 SCC 713

is at liberty to make additional submission (if any).

10. With the aforesaid observation/direction, this writ petition is allowed to the extent indicated herein-above. No cost(s)

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet