

(2021) 08 CHH CK 0011
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 799 Of 2010

Mehandi Hussain

APPELLANT

Vs

Chhattisgarh State Electricity Distribution Company Limited

RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:

Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 27, 27(2), 27(2)(a), 27(2)(b), 27(2)(c)

Citation : (2021) 08 CHH CK 0011

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Vineet Kumar Pandey, K.R.Nair

Final Decision : Allowed

Judgement

1. Proceedings of this matter have been taken up through video conferencing.
2. The petitioner calls in question legality and validity of order dated 28.1.2009 (Annexure PÂ1) by which his services have been terminated by the disciplinary authority by imposing major punishment and by the impugned order dated 25.9.2009 (Annexure PÂ5) the appellate authority has affirmed the order of the disciplinary authority terminating the services of the petitioner and thereby dismissed the appeal.
3. Mr.Vineet Kumar Pandey, learned counsel for the petitioner, would submit that appeal preferred by the petitioner was required to be considered and disposed of by the appellate authority in accordance with Rule 27 (2) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966'), which has not been done in this case and the petitioner's appeal has been dismissed, as such, the order of the appellate authority deserves to be set aside and the matter be remitted to

the appellate authority for considering the appeal of the petitioner afresh in accordance with Rule 27(2) of the Rules of 1966.

4. On the other hand, Mr.K.R.Nair, learned counsel for the respondents, would support the impugned order and submit that the Board has adopted

Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966.

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's services are governed by the Rules of 1966. Rule 27 of the Rules of 1966 provides as under:Â?

â??27. Consideration of appeal.Â?(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,Â?

(a) whether the procedure laid down in these rules has been complied with and if not, whether such nonÂ?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 ordersÂ?

(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....â??

7. It is well settled position of law that the appellate authority in disciplinary proceeding acts in quasiÂ?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 (2008) 3 SCC 469).

8. 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* (2001) 5 SCC 340).

9. 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* (2006) 4 SCC 713).

10. Reverting to the facts of the present case in the light of the aforesaid provision and principle of law laid down by the Supreme Court in the above-stated judgments (*supra*), it is quite vivid that appeal preferred by the petitioner has not been considered by the appellate authority in the light of clause (a) to (c) of Rule 27(2) of the Rules of 1966 and dismissed the appeal by unreasoned and non-speaking order on 25.9.2009 (Annexure PÂ?

5), which ought to have been considered by the appellate authority in the light of clause (a) to (c) of Rule 27(2) of the Rules of 1966.

11. As a fallout and consequence of the aforesaid discussion, the impugned order dated 25.9.2009 (Annexure PÂ5) passed by appellate authority is

hereby set-aside. The matter is remitted to the appellate authority for considering the appeal of the petitioner afresh in accordance with Rule 27 (2)

of the Rules of 1966 within 60 days from the date of receipt of a copy of this order and to pass a reasoned and speaking order after hearing the

petitioner, strictly in accordance with law. The petitioner is at liberty to make additional representation/submission before the appellate authority.

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