

(2018) 09 CHH CK 0032
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 7293 Of 2011

Sudan Prasad Bhartiya

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 04-09-2018

Acts Referred:

Chhattisgarh Civil Services (Classification, Control And Appeal) Rules, 1966 — Rule 10(5), 29

Citation : (2018) 09 CHH CK 0032

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Shobhit Kosta, Arvind Dubey

Final Decision : Allowed

Judgement

P. Sam Koshy, J

1. The challenge in this petition is to the order dated 24.06.2011 (Annexure P/7) and dated 29.10.2011 (Annexure P/10) whereby the petitioner have

been inflicted with punishment of reduction of lower time scale of pay for a period of one year under Rule 10(5) of the Chhattisgarh Civil Services

(Classification, Control and Appeal) Rules, 1966 (in short the Rules, 1966).

2. Brief facts of the case is that the petitioner while working as Forester was directed to discharge the duties of Assistant Range Officer and in the

course of discharging his duties the respondents found certain irregularities to have been committed by the petitioner. The petitioner was served with

charge sheet on 27.10.2009 to which he replied on 18.02.2010 and the disciplinary authority i.e. the Divisional Forest Officer (in short, DFO) vide its

order dated 27.07.2010 imposed punishment of censor to the petitioner holding that charge No.1 was not proved and charge No.2 stood fully proved.

3. The appellate authority i.e. the Chief Conservator of Forest (in short, CCF) subsequently had reviewed the said order vide Annexure R/2 dated

26.05.2011 remanding the matter back the disciplinary officer for passing a fresh order by reviewing the punishment order and hold that punishment of

cessor provided to the petitioner is not sufficient punishment and he deserves for a major punishment under Rule 10(5) of the Rules, 1966. Thereafter,

the disciplinary authority while reviewing the earlier order dated 27.07.2010 vide order dated 24.06.2011 (Annexure P/7) had imposed punishment of

reduction in lower time scale of pay of the petitioner for the period of one year. Against the said order the petitioner preferred an appeal before the

appellate authority. The appellate authority vide order dated 29.10.2011 (Annexure P/10) has rejected the appeal, leading to filing of the present

petition.

4. Learned counsel for the petitioner submits that for the moment the petitioner intend to assail the order of punishment only on the ground that the

disciplinary authority has not passed the impugned order dated 24.06.2011 complying with the mandatory provisions of Rule 29 of the Rules, 1966 and

therefore the order of punishment is not sustainable. He further submits that the appellate authority also has committed an error in not appreciating the

aforesaid rule provision while deciding the appeal. Therefore, the order passed by the appellate authority also deserves to be set aside.

5. The petitioner also tried to assail the order of the CCF dated 26.05.2011 (Annexure R/2) to the extent of CCF proposing punishment to be passed

by the disciplinary authority i.e. the punishment enumerated under Rule 10(5) of the Rules, 1966, which according to the petitioner was in excess of

the powers and jurisdiction of the appellate authority.

6. Given the aforesaid factual matrix of the case which is not disputed by the State counsel and going through the pleadings particularly the reply of

the State filed to the writ petition itself, it would be relevant at this juncture to refer to the proviso to Rule 29 of the Rules, 1966 which is reproduced

herein as under :

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has

been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties

specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in

those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 and except after consultation with the

Commission where such consultation is necessary.

7. A plain reading of the aforesaid proviso clause itself very clearly reflects that before review of the any decision by the reviewing authority, the least

that is expected is an opportunity of hearing to the delinquent employee and in case if there is no enquiry, at least an enquiry should be conducted

while enhancing the punishment. In the instant case since the enquiry had already been conducted, an opportunity of hearing was required to be

provided to the petitioner. Show cause notice of the proposed enhancement of punishment also ought to have been provided to the petitioner.

8. In the instant case, the aforesaid mandatory requirement of Rule 29 of Rules, 1966 has not been complied with. In the absence of said statutory

compliance, the impugned order of punishment and rejection of the appeal is not sustainable.

9. What also cannot be lost sight of is the fact that the original order of punishment was passed by the disciplinary authority on 27.07.2010. The

enhanced punishment has been passed after almost one year on 24.06.2011. The enhanced punishment being passed after about one year without any

sort of show cause notice or explanation being called from the petitioner, not even intimating the petitioner in respect of the order of the CCF or

issuing the proposed punishment order to the petitioner before issuance of the order dated 24.06.2011, the same is per se illegal, bad in law and

violative of Rule 29 of the Rules, 1966.

10. For the aforesaid reasons, the impugned order dated 24.06.2011 (Annexure P/7) and rejection of appeal dated 29.10.2011 (Annexure P/10) both

stand set aside/quashed. However, the liberty is reserved in favour of the respondents to pass a fresh order of punishment after due compliance of the

provisions of law.