

(2021) 08 CHH CK 0036
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 2898 of 2013

U.S.Daharwal

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Chhattisgarh Van Vikas Nigam Karmchari Sewa Adhiniyam, 1984 — Regulation 139

Citation : (2021) 08 CHH CK 0036

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Ashok Kumar Swarnakar, Ravi Bhagat

Final Decision : Allowed

Judgement

1. Proceedings of this matter have been taken up through video conferencing.
2. The petitioner herein calls in question legality, validity and correctness of the order dated 27.8.2013 (Annexure PÂ12) passed by the Board of Directors by which the said authority has dismissed the appeal of the petitioner affirming the order dated 28.7.2009 (Annexure PÂ8) passed by the disciplinary authority imposing punishment of reduction in lower pay scale and imposing recovery of Rs.42,41,693/Â?.
3. Mr.Ashok Kumar Swarnkar, learned counsel for the petitioner, would submit that the appellate authority/Board of Directors has dismissed the appeal filed by the petitioner without assigning any reasons, which is in teeth of the provisions contained in Regulation 139 of the Chhattisgarh Van Vikas Nigam Karmchari Sewa Adhiniyam, 1984 (hereinafter called as 'Regulation 1984'). Therefore, the order of the appellate authority deserves to be set aside.

4. None present for respondents No.2 to 4 though served.

5. I have heard learned counsel for the petitioner, considered his submission and also went through the records with utmost circumspection.

6. Regulation 139 of the Regulations 1984 provides as under:Â?

â??139. Consideration of Appeal

In the case of an appeal against an order imposing any of the penalties specified in regulation 125 or enhancing any penalty imposed under the said regulation, the appellate authority shall consider:

(A) The comments of the disciplinary authority on appeal, if any.

(B) Whether the procedure laid down in these regulations has been complied with, and if not, whether such nonÂcompliance has resulted in violation of any principle of natural justice, equity and good conscience/and consequent failure of justice.

(C) Whether the findings of the competent authority are warranted by the evidence on record; and

(D) Whether the penalty or the enhanced penalty imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

Provided that:

(a) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (v) to (ix) of regulation 125 and

in inquiry under regulation has not already been held in the case, appellate authority, subject to the provisions of regulation may itself hold such enquiry

and direct that such enquiry is held, thereafter, on a consideration of the report of such inquiry and after giving the appellant a reasonable opportunity,

as for as may be of making a representation against the penalty proposed on the basis of the evidence adduced during the enquiry make such orders

as it may deem fit;

(c) No order imposing an enhanced penalty shall be made in any case, unless the appellant has been given a reasonable opportunity, as for as may be,

making representation against such enhanced penalty.â??

7. A careful perusal of the aforesaid provisions would show that the appellate authority is required to consider whether the findings of the disciplinary

authority are justified or not, whether the procedure in the rules has been

followed in departmental enquiry and whether the punishment is justified or not, but the appellate authority did not consider anything and in one line, it has been held that the Board of Directors has decided not to entertain the appeal, which is in teeth of the provisions contained in Regulation 139 of the Regulations 1984.

8. 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 (2008) 3 SCC 469).

9. 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).

10. 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).

11. Reverting to the facts of the present case in the light of the aforesaid provision and the judgments of the Supreme Courts (supra), it is quite vivid that appeal preferred by the petitioner has not been considered by the appellate authority in the light of Regulation 139 of the Regulations 1984 and dismissed the appeal by unreasoned and non-speaking order on 27.8.2013, which ought to have been considered by the appellate authority in the light of Regulation 139 of the Regulations 1984.

12. As a fallout and consequence of the aforesaid discussion, the impugned order dated 27.8.2013 (Annexure P-12) passed by appellate authority is hereby set aside. Appeal filed by the petitioner herein is restored to the file of appellate authority. The appellate authority is directed to consider the

appeal of the petitioner in accordance with Regulation 139 of the Regulations 1984 within 60 days 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.

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