

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 20.5.2011*

+ **R.S.A.No.63/2009**

UNION OF INDIA & ANR. Appellants
Through: Mr.Ankur Chibbar, Advocate.

Versus

SHRI EX.L/N RAJ PAL SINGH Respondent
Through: Mr.Samrat Nigam, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 20.11.2007 which has reversed the finding of the trial dated 19.4.2005. Vide judgment and decree dated 19.4.2005 the suit filed by the plaintiff Raj Pal Singh seeking declaration (to the effect that the order dated 09.3.1996 dismissing the plaintiff from services be declared null and void; defendant be directed to

reinstate the plaintiff with full back wages) had been dismissed. The impugned judgment had reversed this finding. Suit of the plaintiff stood decreed.

2 Plaintiff was working as a constable in the CRPF since 17.6.1983. He was discharging his duties sincerely; he was promoted to the post of Lance Naik. On 14.5.1994 he went on leave with permission of the department; he was unfortunately implicated in a criminal case. FIR No.233/94, under Section 307 of the IPC at police station Bhajanpura had been registered against him. He was arrested and released on 31.5.1995. He reported for duty on 02.6.1995. The further case of the plaintiff is that the department was informed about the criminal case which has been registered against him for which he was subsequently acquitted on 21.8.1996. However, a departmental enquiry was initiated against him. He was served with charge sheet dated 02.2.1996 on the allegation that he had concealed this fact of the criminal case which had been registered against him. He suspended and thereafter dismissed. Contention before the Court is that the order of the Enquiry Officer dismissing him from service on 09.3.1996 is illegal and void. Suit for declaration to the said effect had been filed.

3 In the written statement the contentions raised in the plaint

were denied; it was specifically stated that the plaintiff was guilty of desertion; he reported for duty on 02.6.1994 after having deserted w.e.f. 15.5.1994 i.e. for 18 days; he had been awarded penalty of 'censure'; thereafter the aforementioned FIR had been registered against the plaintiff on 14.5.1994, which fact had not been disclosed by the plaintiff. He was rightly held guilty of the charges levelled against him. The order of the Enquiry Officer calls for no interference. Plaintiff is not entitled to relief.

4 In the replication the contention of the plaintiff was that the fact about the criminal case having been registered against him had been informed to the department by his brother Ram Krishan.

5 On the pleadings of the parties the following three issues were framed:

1. Whether the order date 9.3.96 removing the plaintiff from service is null, void, illegal and against the principles of natural justice, if so its effect?
2. Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for?
3. Relief.

6 Oral and documentary evidence was led. The trial judge was of the view that this fact against that a criminal case had been registered against him had been concealed by him; this fact had been proved; the order of the Enquiry Officer call for no interference; the trial judge had noted that the plaintiff had given

different names of his brother who had intimated the department; in one breath he had stated that Ram Kishan had informed the department whereas in the next breath he had given the name of Om Prakash who had been subsequently produced as a witness and examined as PW-2. His version had been disbelieved; court was further of the view that there has been no violation of rules of natural justice. Suit of the plaintiff stood dismissed.

7 In appeal this finding was reversed. The appellate court had reversed this finding primarily on two counts. The first reason for reversing the finding of the trial judge was that no defence assistant had been provided by the department to the plaintiff. It is an admitted fact that the services of a defence assistant were in fact not asked for to defend the charges levelled against the plaintiff; he had pleaded guilty but Enquiry Officer had nevertheless examined the witnesses of the department who had been cross-examined; no prejudice had been suffered by the defendant. In these circumstances the impugned judgment holding that the non furnishing of the defence assistant to the plaintiff had caused prejudice to him is clearly an illegality.

8 The second reason for reversing the finding of the trial was that the testimony of PW-2 had been believed. Impugned judgment had noted that PW-2 had informed the department on

17.5.1994 about the criminal case which had been registered against the plaintiff on 14.5.1994; there was no concealment on his part. The charge levelled against him was thus not proved; plaintiff was held entitled to the relief.

9 This is a second appeal. It has been admitted and on 12.8.2009 the following substantial questions law were formulated:

1. Whether the Appellate Court was right to set aside the order on the ground that petitioner was not given right of defence when he had pleaded guilty?
2. Whether the impugned order could be set aside and the respondent could be granted the relief claimed by him in the suit when he had not challenged order dated 4.7.2007 which was the order of the Appellate Authority?

10 On behalf of the appellant it has been urged that the present suit has been filed seeking declaration to the effect that order of his dismissal dated 09.3.1996 be set aside. It is pointed out that an appeal had been filed against the order of the Enquiry Officer dated 09.3.1996 which has been dismissed by the DIG on 4.7.1997. Admittedly the order of 04.7.1996 is not subject matter of the challenge. Even assuming that the suit of the plaintiff was correctly decreed, the result is that the only order dated 09.3.1996 would be set aside and the subsequent order i.e. the order of the appellate body dated 04.7.1996 would still be

prevailing. This submission of the learned counsel for the appellant is borne out from the record. Plaintiff not having challenged the order of the appellate body dated 4.7.1996 which had dismissed his appeal impugning the order dated 09.3.1996, clearly shows that the effect of the decree granted to the plaintiff by the impugned judgment would serve no purpose. The present suit had been filed on 20.8.1997; plaintiff not having challenged the order of the appellate body dated 4.7.1996 the suit challenging order of dismissal dated 09.3.1996 which had merged with the order of 04.7.1996 was not maintainable. This answers the substantial question of law no.2.

11 Learned counsel for the respondent has clearly conceded that on the first substantial question of law he does not have many words as it is an admitted case that right for a defence assistant had never been pressed. It is also on record that the plaintiff had pleaded guilty to the charges levelled against him. In these circumstances, the non-furnishing of a defence assistant did not in any manner prejudice the case of the plaintiff.

12 The testimony of PW-2 was also illegally relied upon by the appellate court. The replication of the plaintiff shows that he had named Ram Krishan as his cousin brother who had informed the department about the registration of the FIR against the plaintiff.

He had however produced Om Prakash into the witness box to substantiate this averment. Trial judge had rightly noted this assertion and had rejected the testimony of PW-2. This finding which had been upset in appeal was an illegal and perverse appreciation of the evidence.

13 Substantial question of law no.1 is accordingly answered in favour of the appellant; the trial court in a perverse manner had set aside the order of the trial judge; defence assistant not having been asked for and the plaintiff having already pleaded guilty to the charges levelled against him, he suffered no prejudice on this count. Result of the aforementioned discussion is that the appeal is allowed. Suit stands dismissed.

MAY 20, 2011
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INDERMEET KAUR, J.