

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

Reserved on: December 08, 2014

Pronounced on: January 05, 2015

+ **RSA 66/2013**

RAM KARANAppellant

Through: Mr.Puneet Verma, Advocate

versus

UOI & ORS. Respondents

Through: Roshan Lal Goel, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

J U D G M E N T

Appellant's suit for declaration and mandatory injunction qua his dismissal from service stood decreed by trial court but the first appellate court vide impugned judgment has reversed the trial court's judgment and has dismissed appellant's suit while holding that principles of natural justice have been complied with.

Factual narration finds mention in the impugned judgment and it needs no reproduction. Suffice it would be to note that appellant was a constable in Central Reserve Police Force and on 12th April, 1985, he was detained at E-Coy Quarter Guard at Mehrauli, Delhi and on checking by DSP Joginder Singh, appellant was found absent from duty. On account

of the aforesaid absence from the duty, appellant was charge-sheeted and after a departmental inquiry, punishment of confinement to the line for 28 days w.e.f. 18th March, 1986 to 14th April, 1986 with punishment of drill and forfeiture of pay and allowances was inflicted upon him vide order of 14th March, 1986. It is the case of appellant that he had preferred a statutory appeal and revision against the afore-noted punishment inflicted upon him.

Upon refusal, of appellant to undergo the punishment awarded to him vide order of 14th March, 1986, another charge-sheet was served upon appellant on 18th April, 1986, followed by a departmental inquiry resulting in termination of his service vide order of 14th May, 1986. Statutory appeal as well as revision preferred by appellant against his dismissal from service proved futile. Thereafter, appellant had filed a suit for declaration that his dismissal from service was illegal. While decreeing the suit of appellant, trial court had held that principles of natural justice stood violated as appellant was not granted due opportunity to represent his case before the Disciplinary Authority and a mandatory injunction was issued directing reinstatement of appellant in service with all consequential benefits.

Respondents had appealed against trial court judgment and the first appellate court has held that appellant in his cross-examination has admitted that he was given opportunity to cross-examine Department's witnesses and all relevant documents were supplied to him and thus, there was no violation of principles of natural justice.

At the final hearing of this second appeal, it was vehemently urged

by learned counsel for appellant that there is specific averment in the plaint regarding appellant filing statutory appeal against punishment inflicted in the first charge-sheet and during the pendency of the statutory appeal, initiation of second charge-sheet on the ground of not undergoing the punishment inflicted in the first charge-sheet, is the vital aspect which has been erroneously overlooked by the first appellate court, thereby rendering the impugned judgment unsustainable.

During the course of hearing, attention of this Court was drawn to paragraphs No.11 and 12 of appellant's *Examination-in-Chief* to point out that he was beaten by DSP Joginder Singh and in this regard, he had made a complaint to Assistant Commander but still the said Joginder Singh was not transferred.

Attention of this Court was also drawn to a Communication of 18th March, 1986, which is at page No.827 of the trial court record, and its bare perusal simply reveals that an Application of 14th March, 1986 was received from appellant regarding punishment awarded and the same was forwarded to the concerned authorities. It was submitted on behalf of appellant that no inquiry was conducted against DSP Joginder Singh and the second inquiry conducted against appellant was in utter violation of principles of natural justice. By relying upon a Division Bench decision of this Court in W.P.(C) 136/1999 titled *Prem Pal Singh v. Union of India & Ors.* decided on 28th September, 2011, learned counsel for appellant submitted that impugned judgment is liable to be set aside and trial court judgment deserves to be restored.

Learned counsel for respondent had supported the impugned

judgment to submit that the factum of appellant filing the statutory appeal against punishment inflicted in the first charge-sheet, is not established from the evidence on record and so, the dismissal of appellant's suit is justified as there is no violation of principles of natural justice. Lastly, it was submitted that the decision in *Prem Pal Singh (supra)* is no of avail to the case of appellant.

The submissions advanced by both the sides, judgment of the courts below, the evidence on record and the decision cited have been duly considered and thereupon, it becomes apparent that though appellant asserts that he had filed the statutory appeal against punishment inflicted in the first charge-sheet but appellant has nowhere deposed as to the fate of the said statutory appeal. No doubt, appellant had averred in the plaint that he had filed the statutory appeal against the punishment inflicted in the first charge-sheet but in the written statement by the respondents, it is categorically denied that any statutory appeal was filed by appellant against the punishment inflicted in the first charge-sheet. The photocopy of Communication of 18th March, 1986 on trial court record, is infact, a forwarding letter vide which appellant's application was forwarded to the Higher Authorities. Pertinently, copy of appellant's application which was forwarded is not on record. However, there is copy of appellant's application dated 23rd March, 1986 on record regarding appellant's refusal to undergo punishment awarded in the first charge-sheet and in the said application, appellant has clearly stated that appellant was not at fault and the punishment inflicted is unacceptable. There is one line in this communication that appellant had given an application of 18th March,

1986. Regarding appellant filing an application on 18th March, 1986 against the punishment inflicted in the first charge-sheet, there is no whisper in the chief examination of appellant and on behalf of appellant, there is no cross-examination of respondents' witnesses on this vital aspect.

At the hearing, learned counsel for appellant was called upon to show any material on record on the basis of which it can be said that the statutory appeal was filed by appellant against the punishment inflicted in the first charge-sheet and learned counsel for appellant was unable to do so.

In *Prem Pal Singh (supra)*, it was held that a senior officer beating the junior officer rendered the role of superior officer more grave and penalty of dismissal from service was substituted with a penalty of reprimand as awarded to the senior officer. On a bare perusal of paragraphs No.11 and 12 the Chief Examination of appellant, it becomes clear that it is nowhere said that a complaint was made against senior officer i.e. DSP Joginder Singh, nor any date of making such complaint is given, neither copy of the said complaint is placed on record. Not only this, there is no whisper in the deposition of appellant about the complaint by appellant against DSP Joginder Singh. It is settled legal position that evidence beyond pleadings cannot be looked into.

In view of the aforesaid, the ratio of the decision in *Prem Pal Singh (supra)* cannot be applied to the instant case. It is no longer *res integra* that in departmental proceedings, the merits of the case are not to be gone into and all that which is required to be seen by the Civil Court is whether

there is any violation of principles of natural justice or not vitiating the proceedings. On this aspect, Apex Court decision in *R.C. Sharma Vs. Union of India* (1976) 3 SCC 574 can be referred to with advantage.

In the considered opinion of this Court, trial court has gravely erred in going into the merits of this case while ignoring appellant's evidence of being provided due opportunity to cross-examine department's witnesses and of relevant documents being supplied to him. First Appellate Court has rightly set aside trial court judgment and has held that there is no violation of principles of natural justice. As already observed above, appellant has failed to prove that his statutory appeal was pending when the second charge-sheet was served upon him. Impugned judgment suffers from no illegality or infirmity.

Consequently, this second appeal is dismissed as there is no perversity in the impugned judgment. The parties are left to bear their own costs.

(SUNIL GAUR)
JUDGE

JANUARY 05, 2015

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