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HIGH COURT OF DELHI AT NEW DELHI

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RSA No.22/2015

Decided on : 19th January, 2015

DAYA NARAYAN PADNEY

..... Appellant

Through: Mr.J.K.Tripathi, Adv.

versus

UNION OF INDIA & ORS

.... Respondent

Through: Mr.Rajan Sabharwal, Adv

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM No.941/2015

1. For the reasons stated in the application, the delay of 30 days in filing the instant appeal is condoned and the application is allowed.

RSA No.22/2015

1. This is a regular second appeal filed by the appellant against the order of the first appellate court dated 12.09.2014.

2. I have heard the learned counsel for the appellant.
3. The contention of the learned counsel for the appellant is that the principles of natural justice have not been observed by the respondents while entertaining the departmental revision.
4. It has also been contended since he was feeling aggrieved by the order of imposition of punishment of termination, he had assailed the same by filing a suit for declaration and mandatory injunction wherein the relief with regard to assailing the order of termination and all subsequent orders was prayed for till the date of filing of the suit.
5. The suit was decreed by the learned Civil Judge. However, on appeal being filed by the respondents, the said decree and judgment passed by the trial court was set aside on the technical ground that appellant ought to have challenged the orders of the appellate authority and the revision authority which dismissed the challenges to the orders of the disciplinary authority and suit of the appellant/plaintiff was dismissed. It is contended that by passing the order dated 24.11.2012, the first appellate court had fallen into a grave error.
6. The appellant challenged the said order by filing RSA No.34/2013 before this court which allowed the same remanding

the matter back to the first appellate court to decide the same on merits. After hearing the parties, the first appellate court passed a detailed order dated 12.09.2014 and allowed the appeal of the respondents setting aside the order dated 20.05.2011 passed by the trial court.

7. I have heard considered the submissions made by the learned counsel for the appellant and have also gone through the record.

8. The sum and substance of the case is that the present appellant was a member of a para military force who was visited with the punishment of termination from service as a consequence of departmental proceedings. The said punishment of termination from service was assailed by him in appeal and then subsequently in revision before respondents themselves in terms of the statutory provisions. However, no relief was granted to the appellant by the appellate or the revision authority which led the appellant to filing a suit for declaration and mandatory injunction. In the suit, the plaintiff did not assail the order of appellate or the revision authority which ought to have been done. The order of termination

from service passed by the disciplinary authority gets merged into the order passed by appellate or revision authority.

9. Be that as it may, the appellant was erroneously granted the relief by setting aside the order of termination from service by the trial court. However, appeal filed by the respondents against the said judgment and decree passed by the trial court was allowed and the suit was dismissed. The appellant filed a regular second appeal before this court which allowed the same and remanded the matter back to the first appellate court to decide the same on merits.

10. The first appellate court vide order date 12.09.2014 has passed a reasoned judgment elaborating the doctrine of merger also. I do not find any infirmity in the order of the first appellate court. The question which had been raised by the present appellant in the second appeal with regard to non compliance of the principles of natural justice or the fact that he had claimed setting aside of the orders passed by the respondents till the time of filing of the suit are essentially questions of fact and not questions of law much less substantial questions of law.

11. Since the present appeal does not involve any substantial question of law nor has been shown to be involving one, therefore, the appeal itself is dismissed.

V.K. SHALI, J.

JANUARY 19, 2015
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