

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-:-

R.S.A No. 33 of 1994 (O&M)

Date of Decision : August 2, 2016

Union of India

..... Appellant.

VERSUS

Sulakhan Singh, Ex-Head Constable Respondents

CORAM: HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present : Mr. Vivek Singla, Advocate, for the appellant.

Mr. G.S.Bajwa, Advocate, for the respondent.

P.B.BAJANTHRI, J.(Oral)

C.M No. 9012-C of 2014

This is an application for condonation of delay of 4448 days in recalling the order dated 17.01.2002.

Heard.

The reason stated by the appellant is that on the internet Regular Second Appeal No.33 of 1994 was indicating that the matter is still pending consideration as on 28.03.2014 (Annexure A/1). Therefore, for the reasons stated in the application and affidavit delay of 4448 days is to be condoned and application is to be allowed. The same is opposed by the respondent contending that R.S.A was dismissed for non-prosecution on 17.01.2002. In view of reasons stated in the application, affidavit and annexure A/1 delay is condoned.

C.M stands disposed.

C.M No. 9013-C of 2014

This is an application for recalling of order dated 17.01.2002.

After hearing learned counsel for the parties and for the reasons mentioned in the application, the same is allowed. Order dated 17.01.2002 is recalled and R.S.A No. 33 of 1994 is ordered to be restored on its original number and stage.

R.S.A No. 33 of 1994

The main matter is also heard today itself, since matter is of the year 1998. The appellants have assailed the order of the appellate Court dated 1.10.1993, by which the respondent's appeal was allowed, while setting aside the judgment and decree of the trial Court and decreeing the suit in favour of the respondent.

The appellant was appointed as constable on 18.10.1985. He was subjected to dismissal proceedings which were concluded on 20.09.1982. Feeling aggrieved by the order of dismissal, respondent filed a suit for declaration before the trial Court and dismissal order was upheld on 26.11.1990. The respondent preferred an appeal before the appellate Court questioning the judgment and decree dated 26.11.1990. The appellate Court allowed the appeal, while reversing the judgment and decree of the trial Court on 01.10.1993. Hence appellant has preferred this appeal.

Learned counsel for the appellant submitted that the appellant has complied the rules and regulations while holding disciplinary proceedings. Department initiated enquiry against respondent herein and

there is no lacuna in the disciplinary proceedings. The disciplinary authority has imposed the penalty of dismissal from service. The trial Court allowed the respondents appeal for violation of Rule 27(C) CRPF Rules, 1955 (hereinafter referred to as 'the Rules'), that commandant officer (M.C.Sibbal), who held the enquiry in the absence of appointment order of inquiring Officer. Further it is stated that inquiring officer has examined and cross-examined the witnesses in the disciplinary proceedings. It was not taken note of that under the Rule if the commandant officer himself conducts enquiry, order of appointing an officer is not warranted. Therefore, there is no violation of Rule 27(C) of the Rules. It was further submitted that inquiring officer has not cross-examined or examined any witness. He has deposed before the trial Court, therefore, findings of the appellate Court on both the issues are incorrect and the decision of the appellate Court dated 01.10.1993, is liable to be set aside.

Per contra, learned counsel for the respondent submitted that the respondent has not been offered an opportunity under Rule 27(C) of the Rules and so also inquiring officer should have been a neutral person. He himself examined or cross-examined witnesses and the same has been taken note of. Therefore, there is no infirmity in the appellate Court's order dated 01.10.1993.

Admittedly, Rule 27(c) of the Rules empowers the commandant to hold an enquiry, if he is holding enquiry himself. Therefore, the appellate Court has erred in giving finding that there is no appointment of inquiring officer. In so far as examination and cross-examination of the witnesses by

the inquiring officer is concerned, it is to be upheld for the reasons that commandant M.C.Sibbal, who has conducted preliminary enquiry and he himself has held regular enquiry, with reference to Rule 27(c) of Rules. Thus it is evident that inquiring officer has examined and cross-examined the witnesses which is impossible. On this ground, the appellate Court order dated 1.10.1993 is upheld and the appeal stands dismissed.

No orders as to costs.

(P.B.BAJANTHRI)
JUDGE

August 2, 2016
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