
(2008) 11 PAT CK 0053
In the Patna High Court
Case No : LPA No. 948 of 1999

Pramod Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Army Act, 1950 — Section 106, 106(2)

Citation : (2008) 11 PAT CK 0053

Hon'ble Judges : Ravi Ranjan, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Ashulosh Ranjan Pandey and Abdul Wadood, for the Appellant;
Sanjay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Prasad and Ranjan, JJ.—Writ petitioner, aggrieved by the order dated 16.7 1999 passed by the Single Judge in Civil Review No. 370 of 1998 arising out of the order dated 28.10.1998 passed in C.W.J.C. No. 1040 of 1997 Reported in Pramod Kumar Vs. The Union of India (UOI) and Others, has preferred this appeal under Clause 10 of the Letters Patent. Short facts giving rise to the present application are that the writ petitioner-appellant (hereinafter referred to as the writ petitioner), who was appointed as GNR (Med.), had filed the writ application for quashing the order dated 8.11.1996 dismissing him from service. It was not in dispute that the writ petitioner had deserted the Army Service but the only submission advanced before the learned Single Judge was that he has been dismissed from service without holding any inquiry as required u/s 106 of the Army Act. I he aforesaid submission found favour with the learned Single Judge and he held the order of dismissal to be bad on the ground that no inquiry was held u/s 106 of the Army Act. Accordingly the learned Single Judge allowed the writ application and quashed the order of dismissal.

2. Aggrieved by the same the Union of India and its officers filed review application which was registered as Civil Review No. 317/1998 (Union of India &

Ors. vs. Pramod Kumar). The learned Single Judge by the impugned order allowed the application and dismissed the writ petition. The learned Single Judge while reviewing the order and dismissing the writ application observed that in view of subsection (2) of Section 106 of the Army Act, there was no necessity for holding a court of inquiry to declare the writ petitioner a deserter.

3. Mr. Pandey appearing on behalf of the appellant does not question the order passed in review on merit but contends that there being no error apparent on the face of record; the learned Single Judge erred in reviewing its order. He points out that while exercising the power of review the court does not exercise power as an appellate court and only in a case when there is error apparent on the face of the record, the power of review is exercised, In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, and our attention has been drawn to paragraph 8 of the judgment, which reads as follow:--

"Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions."

4. Mr. Sanjay Kumar, Central Government Counsel, appearing on behalf of the respondents, however, contends that there has been error apparent on the face of the record, the learned Single Judge has rightly reviewed its order.

5. Having appreciated the rival submission, we do not find any substance in the submission of Mr. Pandey and in the facts and circumstances of the case the authority relied on is of no assistance.

6. The learned Single Judge while allowing the writ application set aside the order of dismissal on the ground that no court of inquiry was held. However, while doing so it did not take into account the provision of sub-section (2) of Section 106 of the Army Act which provides that after the person declared absent does not come forward or is not apprehended he shall be deemed to be deserter. In view of the deeming provision there was no requirement at all for holding a court of inquiry as has been found by the learned Judge while reviewing the order. The learned Single Judge having rendered the order in the writ application without considering the provision of Section 106(2) of the Army Act, it cannot be said that there was no error apparent on the face of the record. When the aforesaid error was brought to the notice of the learned Single Judge it has reviewed its order and dismissed the writ petition. We do not find any merit in this appeal and it is dismissed accordingly but without any order as to cost.