
(2007) 04 AHC CK 0030
In the Allahabad High Court
Case No : C.M.W.P. No. 2151 of 1980

Sheo Shankar Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Citation : (2007) 5 ADJ 352 : (2007) 6 AWC 6058

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : V.K. Singh, H.S.N. Tripathi and S.K. Pandey, for the Appellant; Sushil Kumar Srivastava, Anand Kumar Advs. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This petition was filed by late Raj Dhari Singh. During the pendency of the writ petition, he died and was substituted by his legal heirs and representatives. The present Petitioners are sons of late Raj Dhari Singh.

2. The facts of the case are that late Raj Dhari Singh was appointed as Rakshak in the Railway Protection Force on 10.9.1957. While he was member of the Railway Protection Force at Allahabad, he was served with a charge-sheet dated 3.3.1975. The charge levelled against him was that he was found absent from duty in beat Nos. 16 to 18 from 23.11.1974 to 25.11.1974. He was served with another charge-sheet dated 21.10.1975. This time he was found absent from duty on 19.7.1975. Again, he was served with the charge-sheet dated 22.5.1976 on the allegation that he was absent from duty from 31.1.1976 to 11.2.1976. After conclusion of departmental proceedings, late Raj Dhari Singh was dismissed from service vide impugned order dated 3.9.1976. The statutory appeal of the Petitioner was also rejected vide impugned order dated 21.11.1979.

3. Aggrieved by the aforesaid orders, late Raj Dhari Singh invoked the writ jurisdiction by means of this writ petition.

4. Contention of counsel for the Petitioner is that late Raj Dhari Singh was

dismissed from service without having been heard. He urged that the order of dismissal was passed by the Respondent No. 3 who was not empowered to pass such order.

5. Per contra, standing counsel for the Union of India contended that the Assistant Security Officer was quite competent to pass dismissal order as per the provisions of Railway Protection Force, 1987. He urged that late Raj Dhari Singh was afforded sufficient opportunity to defend himself but he deliberately did not co operate in the disciplinary proceedings. He being a member of disciplined force could not be expected to remain absent on authorized leave and the order of dismissal was just, apt and proper.

6. After hearing counsels for the parties and perusal of record, it is evident that late Raj Dhari Singh was afforded sufficient opportunity of hearing but he tried to avoid hearing on one ground or the other. The findings of facts recorded by the disciplinary and appellate authorities clearly establish that he was not a fit person to be retained in the disciplined force. In view of settled principle of law laid down in *B.C. Chaturvedi v. Union of India* 1996 (L&S) 80, High Court cannot interfere with the findings of disciplinary authority based on evidence by reappreciating the evidence.

7. Late Raj Dhari Singh was member of Railway Protection Force. In *State of U.P. and Ors. v. Ashok Kumar Singh and Anr.* AIR 1976 SC 736, Hon''ble the Apex Court has held that the delinquent of that case being in service of disciplined force demanding strict adherence to rules and procedure and punishment of dismissal imposed did not warrant interference. The law laid down in the aforesaid case applies with full force to the facts and circumstances of the instant case.

8. Moreover, a perusal of record reveals that late Raj Dhari Singh had challenged the order of dismissal in Civil Misc. Writ Petition No. 1175 of 1979, which was dismissed vide judgment and order dated 18.4.1979 on the ground of availability of alternate remedy by way of statutory appeal. The statutory appeal was filed on 24.9.1979 after more than five months of dismissal of the writ petition vide judgment and order dated 18.4.1979. The statutory appeal filed by late Raj Dhari Singh has been rejected on the ground that the same was filed after more than 5 months of the prescribed period of limitation, hence it was barred by time. The case of late Raj Dhari Singh is that he contacted his counsel Sri K. P. Agarwal time and again but was never informed that the writ petition had been dismissed. Hence for want of knowledge, the appeal could not be filed within time. This plea is unacceptable for the simple reason that there exists no documentary evidence that late Raj Dhari Singh had ever enquired about the fate of his writ petition. Mere bald allegation will not be sufficient to condone delay in filing the appeal.

9. There is yet another aspect of the case, late Raj Dhari Singh was dismissed from service as far back as on 3.9.1976. More than three decades have elapsed

since then and late Raj Dhari Singh is no more alive. Sons of late Raj Dhari Singh who have been substituted in his place cannot be reinstated in service in his place. Moreover, it is apparent from record that late Raj Dhari Singh was rightly charge-sheeted for his remaining absent on unauthorized leave and there is not illegality or infirmity in the order of dismissal passed against him.

10. For the reasons stated above, it is not a fit case for interference in the writ jurisdiction.

11. The writ petition fails and is accordingly dismissed. No order as to costs.