

Hari Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-03-1998

Reported in : 1998(2)AWC1409

Judge : D.K. Seth, J.

Acts : Arms Rules, 1962 - Rule 56

Appeal No. : C.M.W.P. No. 9391 of 1981

Appellant : Hari Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : J.S. Tomar, Adv.

Judgement :

D.K. Seth, J.

1. As prayed for. leave is granted to learned counsel for the petitioner to amend the prayer portion.

2. By the impugned order dated 17.6.1981 contained in Annexure-4, the Commissioner, Moradabad Division. Moradabad rejected the petitioner's application for recalling the order dated 7.4.1981 and restoring the appeal to file.

The reason given is that no provision for restoration was shown to the Commissioner by the counsel for petitioner. The order appears to be misconceived. Inasmuch as the authority having power to dismiss is also empowered to recall. Rule 56 of the Arms Rules. 1962 prescribes the procedure to be followed by the appellate authority. It provides that 'on receipt of an appeal, the appellate authority may call for the records of the case from the authority who passed the order appealed against and after giving the appellant a reasonable opportunity of being heard, pass final orders'. Thus, the appeal has to be decided after giving reasonable opportunity. On account of strike, if the appellant is unable to appear through counsel, in that event he should be given an opportunity. Dismissal on the ground of default on such occasion amounts to denial of opportunity particularly when the application is made for recalling the order on that score.

3. Mr. A. Upadhyaya. learned standing counsel contends that the restoration application was filed beyond time. But it appears that the order was passed on 7.4.1981 and the application was decided on 17.6.1981. Even if the application was delayed, the delay is not such as to deny the appellant an opportunity.

4. Sri Upadhyaya further contends that though the counsel did not appear but the appellant had appeared and cited decisions. But the order dated 7.4.1981 does not indicate any such situation. It only mentions that the case was called out. applicant was absent, and the appeal was, therefore, dismissed in default. Therefore, this contention of learned standing counsel also cannot be sustained.

5. In that view of the matter, the order dated 17.6.1981 contained in Annexure-4 is hereby quashed and the appeal is restored to file. Let a writ of certiorari accordingly do issue. The appeal may be decided on merits after giving opportunity to the appellant in accordance with law as early as possible preferably within a period of four months from the date of communication of this order to the appellate authority without being influenced by any observations made in this order.