

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

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Court : Allahabad

Decided On : Aug-03-1999

Reported in : 1999(3)AWC2631; (1999)3UPLBEC1921

Judge : Binod Kumar Roy and;Lakshmi Bihari, JJ.

Appeal No. : C.M.W.P. No. 30378 of 1995

Appellant : Shamsher Singh

Respondent : State of U.P. and Others

Advocate for Def. : D.N. Misra, S.C. and ;P.K. Bisaria, Adv.

Advocate for Pet/Ap. : D.B. Kauser and ;N.K. Shukla, Advs.

Judgement :

Binod Kumar Roy and Lakshmi Bihari, JJ.

1. The petitioner has come up with a prayer to quash the impugned order dated 9.12.1994 imposing the punishment of curtailing 25% of his pension after holding him guilty of the charges and the order dated 5.4,1995 dismissing his appeal preferred against the aforesaid order as contained in Annexure-XI and XVI respectively to this writ petition.

2. Having heard Sri Kauser, learned counsel appearing on behalf of the petitioner and Sri P. K. Bisaria, learned standing counsel appearing on behalf of the respondents at length, we are of the view that this writ petition, in the interest of justice, has to be allowed in part, as the appeal is required to be disposed of afresh for the reasons stated as under :

3. Eight charges were framed against the petitioner, which were found to be proved by the Inquiring Officer. His report was considered, accepted and the order dated 9.12.1994 was passed. From a perusal of the Impugned appellate order, it transpires that the Appellate Authority noted 13 grievances raised by the petitioner before it. One of the grievances, as noted by the Appellate Authority itself reads thus :

(In English Translation)

'Paragraph 4.--Inquiry Officer had not given him copies of the record nor had he given him opportunity of personal hearing.'

4. In this regard, we also note the submission of Sri. P. K. Bisaria, learned standing counsel that the grounds urged by the petitioner were vague inasmuch as it is not his specific case as to which document of the record was not given to him which has caused prejudice and that it is not his case before us that the Inquiry Officer had not fixed any Specified date for his appearance before him.

5. Sri. D. N. Mishra, learned counsel appearing on behalf of respondent No. 3, contended that the petitioner without any rhyme or reason impleaded him in his personal capacity and accordingly, this writ petition, should be dismissed with cost.

6. The Appellate Authority considered the grievances in a cryptic manner in paragraph 3 of its order. Unfortunately, the Appellate Authority missed to record any finding in regard to the question No. 4 quoted above. In the peculiar facts and circumstances of the case, we are of the view that the appellate decision is vitiated. The questions urged by Sri Bisaria are required to be considered by the Appellate Authority itself.

7. Mr. Kauser. learned counsel appearing on behalf of the petitioner. made no submission before us alleging personal mala fide against the respondent No. 3. Accordingly, we expunge the name of the respondent No. 3 in so far as his personal capacity is concerned.

8. In the result, this writ petition succeeds in part. The impugned appellate order, as contained in Annexure-XVI. is quashed and the appeal is remitted back to the Appellate Authority for fresh consideration and decision in accordance with law.

9. Before parting, it is clarified that if the Government succeeds in effectively replying the questions urged on behalf of the petitioner, then in that event what orders are required to be passed by the Appellate Authority need not be stated by us.

10. In the peculiar facts and circumstances, we make no order as to cost.

11. The office is directed to handover a copy of this order within one week to Sri. P. K. Bisaria, for its intimation to and follow-up action by the Appellate Authority.