

Ghanshamdas Srivastava

Vs

State of Madhya Pradesh.

Civil Appeal No. 149 of 1969

(CJI S. M. Sikri, A. N. Ray, D. G. Palekar, S. N. Dwivedi, A. K. Kukherjea JJ)

23.02.1972

JUDGMENT

SHAH, C. J.

1. The appellant who was employed as a forest ranger by the State of Madhya Pradesh was on October 21, 1964, ordered to be suspended for certain alleged dereliction of duty. A charge-sheet along with a statement of the charge was supplied to him on the same day and he was called upon to appear before an Enquiry Officer. The appellant made representations to the Government and the Enquiry Officer that he was not being paid subsistence allowance and on that account he was unable to appear at the place of enquiry which was five hundred miles away from the place where he was residing. The Enquiry Officer proceeded to hold an enquiry ex parte. He reported his findings to the appointing authority. The appointing authority accepted the report and required the appellant to show cause why he should not be dismissed from service. The appellant's request to grant a personal hearing was rejected and an order dismissing the appellant from service was passed. The appellant then submitted a petition for quashing the order of dismissal. In that petition he stated that one of the reasons for his failure to appear was that he was not paid the subsistence allowance even though he had made repeated requests in that behalf. There was no specific denial of this averment in the petition by the State of Madhya Pradesh. In the affidavit of the State it was averred that "the petitioner also requested for subsistence allowance which case is being dealt with separately and has no relevance to the petition. The petitioner, it may be mentioned received his subsistence allowance". The petitioner was also informed that he should comply with the enquiry officer's order and proceed with the departmental enquiry. At the hearing before the High Court it appears that this matter was not agitated and the High Court rejected the petition holding that there was due compliance with the requirements of Article 311(2) of the Constitution. If the grievance raised before us by the counsel on behalf of the appellant that he was not paid the subsistence allowance and on that account he was unable to make himself present before the Enquiry Officer is true, we must hold that the proceeding before the Enquiry Officer would be vitiated and the final order of the appointing authority cannot be sustained. But since the High Court has not made any investigation into this question which has vital bearing on the appellant's case, we direct that the proceeding be remanded to the High Court and the High Court do hear the parties on the question whether the appellant was paid the subsistence allowance at any time before the disposal of the hearing before the Enquiry Officer, and whether on account of non-payment of the subsistence allowance he was unable to appear before the Enquiry Officer. The High Court will deal with and dispose of the matter on the merits and in accordance with the law. We are not expressing any opinion on the correctness or otherwise of the views expressed by the High Court in the judgment under appeal. No order as to costs.

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