

Naib Subedar Lachhman Dass

Vs

Union of India and Others

Criminal Appeal No. 8 of 1972

(Y. V. Chandrachud, P. K. Goswami, P. N. Shinghal JJ)

28.03.1977

JUDGMENT

CHANDRACHUD, J. –

1. The appellant was dismissed from service by an order of the Court Martial dated May 17, 1966. He filed an appeal from that order to the Chief of Army Staff, who by his order dated December 21, 1966 set aside the order of dismissal and substituted in its place an order of discharge with retrospective effect from July 11, 1966. Four years thereafter, the appellant filed a writ petition in the Delhi High Court on September 22, 1970 which was dismissed in limine by the High Court on November 25, 1970. This appeal by special leave is directed against that order.

2. The writ petition filed by the appellant in the High Court shows that various ill-conceived remedies were adopted by him after the Chief of Army Staff passed the order dated December 21, 1966. In December, 1968, which itself was two years later, the appellant filed a writ petition in this Court under Article 32 of the Constitution which he withdrew on March 19, 1969. In May, 1969 he filed another writ petition under Article 32 which was dismissed by this Court on September 1, 1969. He then filed a review petition on August 3, 1969 which was dismissed by this Court on December 19, 1969. In February, 1970 he again moved this Court under Article 32 but, for a change, he alleged on this occasion that Order XV of the Supreme Court Rules was ultra vires. That petition was dismissed on August 3, 1970 and one month thereafter he filed the present writ petition in the High Court.

3. It may perhaps be that the appellant was misdirected in regard to the remedies which he should have adopted, but what stares one in the face is that it was for the first time in September, 1970 that the appellant invoked the extraordinary powers of the High Court under Article 226 of the Constitution for challenging the legality of an order dated December 21, 1966. The writ petition was filed after a gross delay for which there is no satisfactory explanation and, therefore, the High Court was justified in dismissing it summarily.

4. The appeal accordingly fails and is dismissed, but there will be no orders as to costs.

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