

Yashbir Singh

Vs

Union of India and Another

Civil Appeal No. ... of 1996 (arising out of Slp (C) No. 19350 of 1994)

(CJI A.M. Ahmadi, Sujata V. Manohar JJ)

05.01.1996

ORDER

1. Special leave granted.
2. Heard counsel on both sides.
3. It appears that a departmental enquiry was initiated against the appellant and the Enquiry Officer found the charges proved against him. Thereupon, an order of dismissal from service was passed against him which he challenged by filing a departmental appeal. The Deputy Inspector General, Northern Area, CISF, by his order dated 4-11-1991 allowed the appeal, set aside the order of dismissal and held that a fresh enquiry be held against him. This view was taken on the premise that there was a violation of the principle of natural justice. The appellant was directed to report to CISF within 15 days of the receipt of the order. It was further observed that if the delinquent does not report for duty within the aforesaid period, it will be presumed he is not interested in service and an order will be passed accordingly. The delinquent surprisingly challenged this order by a writ petition in the Delhi High Court contending that the appellate authority had no power to remand the case for holding a fresh enquiry. This, it would seem, was an attempt at protracting the enquiry. The High Court ultimately dismissed the writ petition on 29-9-1992. Thereafter, the delinquent reported for duty on 6-10-1992 but he was not taken back in service because it was felt that the default clause in the order of the appellate authority permitted the appellate authority to cancel the earlier order and restore the dismissal order. The delinquent feeling aggrieved by the said order dated 19-10-1992 preferred a writ petition in the High Court. The said writ petition came to be dismissed in limine and hence this appeal by special leave.
4. There could be no doubt that the appellate authority, on coming to the conclusion that there was a violation of the principles of natural justice, in that, certain documents were not supplied to the delinquent, rightly set aside the dismissal order and directed a fresh enquiry after satisfying the requirements of natural justice. That was a perfectly just and valid order and it is difficult to comprehend why the appellant questioned the correctness of that order by way of a writ petition. The only obvious reason appears to be that he wanted to avoid the fresh enquiry or protract the same. Be that as it may, the fact is that after the petition was dismissed on 29-9-1992, he reported for duty on 6-10-1992. He was not taken back on duty and instead it was said that the dismissal order revived as he had not reported for duty within the time permitted when the dismissal order was set aside on 4-11-1991. Now once it is found that the departmental enquiry was vitiated by non-adherence to the principle of natural justice, the enquiry had to be conducted de novo and the order of dismissal could not be sustained. Till then the proceedings were on the right track. It is equal true that the delinquent did not report for duty within 15 days from 4-11-1991. It was only after his writ

petition was dismissed on 29-9-1992 that he reported for duty on 6-10-1992. He did not report for duty during the pendency of his writ petition even under protest for reasons best known to him but that should be no ground to revive an illegal order. Once it is found that it suffered from the vice of the non-compliance of the principle of natural justice, the High Court was wrong in dismissing the writ petition in limine. We, therefore, set aside that order and direct that the department may conduct and complete the enquiry as per the first part of the order of 4-11-1991 and pass appropriate orders in accordance with law.

5. We must observe that the delinquent has been responsible for the delay subsequent to 4-11-1991. Therefore, even if he succeeds in the enquiry it will be open to the authorities to deny him the monetary benefits as he must thank himself.

6. In the result, we allow this appeal, set aside the order dated 19-10-1992 and remit the matter to the Enquiry Officer to proceed with and complete the enquiry and pass orders on merits. Since he was already under suspension, he will continue to remain under suspension. There will be no order as to costs.