

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2654 OF 2003

JANARDAN SINGH

Appellant (s)

VERSUS

UNION OF INDIA

Respondent(s)

(With office report)

Date: 07/09/2010

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.M. PANCHAL
HON'BLE MR. JUSTICE DEEPAK VERMA
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s)

Mr. Satya Mitra, Adv.
Mr. Abhishek Malviya, Adv.
Mr. Ramesh Kr. Mishra, Adv.
Mr. Sanjay R. Hegde, Adv.

For Respondent(s)

Mr. Harish Chandra, Sr Adv.
Mr. D.K. Thakur, Adv.
Mr. A.K. Sharma, Adv.
Mr. Shreekant N. Terdal, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal succeeds in terms of the signed
order.

(Sonia)
Sr.P.A.

(Sneh Bala Mehra)
Court Master

(Signed order is placed on the file).
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 2654 OF 2003

JANARDAN SINGH

Appellants

VERSUS

UNION OF INDIA

Respondent

O R D E R

This appeal is directed against the judgment dated

September 18, 2002 rendered by the learned Single Judge of the High Court of Judicature at Allahabad in Second Appeal No. 1743/1980 by which the judgment of the First Appellate Court is set aside and judgment of the trial court is restored.

The appellant was appointed as a Rakshak in North Eastern Railway on March 5, 1967. The appellant was, thereafter, posted at Bareilly, UP. The appellant was on leave upto August 9, 1970 and was due to resume his duties on August 10, 1970 but failed to report to the concerned officer on August 10, 1970 though the leave period was over. According to him, due to serious sickness of his wife, he could not report for duty. The appellant remained on leave upto August 20, 1970. On September 7, 1970, the appellant was imposed a punishment of 10 days' parade drill in the training centre, Gorakhpur. Again on September 7, 1970 the appellant, after parade drill, was to report for duty from Gorakhpur

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to Bareilly but did not report for duty at Bareilly. Under these circumstances, a departmental enquiry was initiated against the appellant. A chargesheet dated November 1, 1971 was issued which according to the appellant was not served on him. At the conclusion of the departmental enquiry, the appellant was dismissed from service by an order dated September 25, 1972 which was passed by the Assistant Security Officer.

Feeling aggrieved, the appellant filed an appeal which was dismissed. Thereafter, the appellant filed Civil Suit No. 654/1976 for a declaration that the order of the Assistant Security Officer dated April 30, 1973, dismissing him from service was illegal. The learned Judge dismissed the suit on May 5, 1979. Feeling aggrieved, the appellant preferred First Appeal being Civil Appeal No. 233 of 1979 before the learned District

Judge, Gorakhpur. The same was allowed by judgment dated April 26, 1980. Feeling aggrieved, the Union of India preferred Second Appeal No. 1743 of 1980 before the High Court of Judicature at Allahabad. The said appeal was allowed and judgment of the First Appellate Court, which was in favour of the appellant was set aside. This is how the appellant has approached this Court by filing the instant appeal by special leave.

This Court has heard the learned Counsel for the

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parties and considered the documents on record. From the impugned judgment, it is evident that no substantial question of law was framed by the learned Judge of the High Court at all. In the memorandum of second appeal which was presented by the respondent herein also, no substantial question of law was suggested for consideration of the High Court. After the substitution of Section 100 of C.P.C. by Section 37 of Act 104 of 1976 with effect from February 1, 1977, the scheme envisaged by Section 100 C.P.C. is such that the memorandum of second appeal has to state, precisely, the substantial question of law involved in the appeal and second appeal, from the decree passed by the first appellate court would lie only if the High Court is satisfied that the case involves determination of a substantial question of law. Further where the High Court is satisfied that a substantial question of law is involved in the case, it has to formulate that question and appeal has to be heard on the question so formulated, though the respondent, at the time of hearing of the appeal, is entitled to argue that the case does not involve such question. The power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, is neither deemed to be taken away nor is abridged in

any manner. From the analysis of Section 100 C.P.C. it is more than sufficiently clear that if the appeal is : 4 :

entertained without formulating substantial question of law, then exercise of power by the High Court would be completely illegal and would amount to exercise of jurisdiction not vested in it by law and/or acting in the exercise of its jurisdiction illegally or with material irregularity vitiating its judgment. As explained and

ruled by this Court in Govindraju V. Mariamman (2005) 2 SCC 500, the existence of substantial question of law is the sine qua non for the exercise of jurisdiction under Section 100 of the Code. A mere glance, at the memorandum of second appeal, presented by the respondent and the impugned judgment, makes it abundantly clear that Section 100 CPC is not complied with at all. There is plethora of

case law laid down by this Court that when this Court finds that there is breach of Section 100 CPC, the judgment impugned has to be set aside and the matter has to be remitted to the High Court for deciding it afresh after requiring the respondent Union of India to comply with Section 100(3) and High Court to comply with Section 100(4) and 100(5) of CPC.

For the foregoing reasons, the appeal succeeds. The judgment dated September 18, 2002 rendered by the learned Single Judge of the High Court of Judicature at Allahabad in Second Appeal No. 1743 of 1980 is hereby set aside. The matter is remitted to the High Court for deciding it afresh after requiring the respondent-Union of

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India to comply with Section 100(3) CPC and itself complying with Section 100(4) and 100(5) of CPC. The High Court is requested to dispose of the second appeal as early as possible, without avoidable delay and preferably within six months from the date of receipt of the writ of this Court. The order passed by this Court be

forwarded to the Hon'ble the Chief Justice of Allahabad
High Court for listing the matter before the appropriate
Court as soon as possible. There shall be no order as to
the costs.

.....J.
(J.M. PANCHAL)

.....J.
(DEEPAK VERMA)

.....J.
(B.S. CHAUHAN)

NEW DELHI;
DATED SEPTEMBER 7, 2010