

ITEM NO.103

COURT NO.3

SECTION XIV

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). 203 OF 2007

ARUN PRASAD

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date: 02/05/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Appellant(s)

Mr. Deepak Bhattacharjee, Adv.

Mr. Vikas Mehta, Adv.

For Respondent(s)

Mr. A.P. Nagrath, Adv.

Mr. B.L. Anand, Adv.

Ms. Pratibha Jain, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order. The order of

er of the Division Bench of the High Court is set aside and the ord

learned single Judge passed in CWP is restored. No costs.

(Ravi P. Verma)

Court Master

(Anand Singh)

Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 203 OF 2007

ARUN PRASAD

APPELLANT(S)

Versus

UNION OF INDIA & ORS.

RESPONDENT(S)

O R D E R

The appellant was working as Managing Director in Indian Railways Construction Company (IRCON). He was due to retire on attaining the age of superannuation on 31/01/2002. He was charge-sheeted by a memorandum dated 29/01/2002. Subsequently, another charge-sheet by a memorandum dated 22/12/2003 was served on

him. He assailed the two memorandum of charges by filing a writ petition on various grounds. His writ petition was allowed and the memorandum of charges dated 29/01/2002 and 22/12/2003 were quashed. On an appeal preferred by the Union of India, the learned Division Bench of the High Court upset the well-reasoned judgment of the learned single Judge. Before this Court, counsel for the respondent fairly contended that the dispute at hand is squarely

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covered by the decision of this Court rendered in *Jaswant Singh Gill Vs. M/s. Bharat Coking Coal Ltd. & Ors.*, JT 2007 (1) SC 6. In the said case, this Court considered the similar question of law and similar provisions in rule and came to the conclusion in paragraph 11 of the judgment as under:

"The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an

employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event, the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed."

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Rule 34(2) in Jaswant Singh Gill case (supra) is akin to Rule

11 in the present case. Having considered Rule 34(2) in Jaswant

Singh Gill case (supra), we are of the view that the aforesaid decision

squarely covers the dispute in the case at hand. In the result, this

appeal must succeed.

The appeal is allowed. The order of the Division Bench of

the High Court is set aside and the order of the learned single Judge

passed in CWP is restored. No costs.

.....J.

(H.K. SEMA)

New Delhi;

.....J.

May 02, 2007.

(V.S. SIRPURKAR)