

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

C I V I L A P P E A L N O (s) . 6 9 5 5 O F 2 0 0 5

S T A T E O F O R I S S A & A N R .

A p p e l l a n t (s)

V E R S U S

R A K H A L C H A N D R A K A N U N G O & A N R .

R e s p o n d e n t (s)

(W i t h o f f i c e r e p o r t)

D a t e : 3 0 / 0 1 / 2 0 0 8 T h i s A p p e a l w a s c a l l e d o n f o r h e a r i n g t o d a y .

C O R A M :

H O N ' B L E M R . J U S T I C E H . K . S E M A
H O N ' B L E M R . J U S T I C E M A R K A N D E Y K A T J U

F o r A p p e l l a n t (s) M r . J a n a r a n j a n D a s , A d v .
 M r . S w e t a k e t u M i s r a , A d v .

F o r R e s p o n d e n t (s) M r . A r v i n d K u m a r T i w a r y , A d v .
 M r . S u d a r s h M e n o n , A d v .

U P O N h e a r i n g c o u n s e l t h e C o u r t m a d e t h e f o l l o w i n g
O R D E R

T h e a p p e a l i s a l l o w e d .
N o c o s t s .

(S . T h a p a r)
P S t o R e g i s t r a r

(A n a n d S i n g h)
C o u r t M a s t e r

T h e s i g n e d o r d e r i s p l a c e d o n t h e f i l e .
I N T H E S U P R E M E C O U R T O F I N D I A

C I V I L A P P E L L A T E J U R I S D I C T I O N

C I V I L A P P E A L N O . 6 9 5 5 O F 2 0 0 5

S T A T E O F O R I S S A & A N R .
(S)

... A P P E L L A N T

V E R S U S

R A K H A L C H A N D R A K A N U N G O & A N R .
R E S P O N D E N T (S)

...

O R D E R

Heard the parties.

Aggrieved by the Order of the High Court dated 1.11.2002 passed in S.A. No. 276 of 1998, thereby reversing the order of the trial court and appellate court, this appeal has been preferred by the State of Orissa.

Briefly stated, the facts are as follows:

The respondent was employed as L.D.C. with the Railway Magistrate Court. Departmental proceedings were initiated against him on the allegation that he has removed the certificates of the Magistrate from some old and disposed of records. He has also removed railway money receipts and tampered the case reference as well as the amount put therein by erasing, overwriting and that he has done this act with the intention of misappropriating the railway dues from the convicts etc. In the departmental proceedings he was found guilty of the charges leveled against him and by order dated 22.1.1983 he was compulsorily retired.

Aggrieved thereby, he filed a writ petition and subsequently withdrew the same. Thereafter he filed a civil suit. The trial court dismissed the suit. His appeal was also dismissed by the First Appellate Court. However, in the Second Appeal the High Court, solely on the ground that a copy of the Enquiry Report was not supplied to the delinquent officer, which caused serious prejudice to the plaintiff and on that ground, the facts recorded by the two Courts below, were reversed. It has been clearly quoted by the Trial Court and the Appellate Court that a copy of the Enquiry Report has been furnished to the delinquent officer. The findings recorded by the two courts below have been upheld in Second Appeal by recording perverse findings.

Since the only controversy was whether the copy of the Enquiry Report was served to the delinquent officer or not, this Court on 22.8.2005 directed the appellant to file a copy of Memorandum of Appeal filed before the High Court by the respondent. Pursuant to the aforesaid direction a copy of Memorandum of Appeal has been filed. There is not even a whisper in the Memorandum of Appeal that the copy of the Enquiry Report has not been furnished to the delinquent officer. Therefore, a clear finding has been recorded by the trial court and the appellate court that a copy of the Report

has been supplied to the plaintiff and his claim towards non- supply cannot, at all, be substantiated.

In our view, the High Court has committed grave miscarriage of justice in setting aside the order of compulsory retirement solely on the ground that a copy of the Enquiry Report has not been furnished to the delinquent officer. We have already said that the finding of the High Court in Second Appeal is perverse.

In the result, the appeal is allowed and the Order of the High Court passed in Second Appeal is set aside. No costs.

.....J
(H.K. S E M A)

N E W D E L H I ,
J A N U A R Y 3 0 , 2 0 0 8

.....J
(M A R K A N D E Y K A T J U)