

ITEM NO.103-(PH)

COURT NO.5

SECTION XI

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). 1329 OF 2010

UNION OF INDIA & ORS.

Appellant (s)

VERSUS

SURESH CHANDRA BHATNAGAR

Respondent(s)

Date: 24/05/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY  
HON'BLE MR. JUSTICE DEEPAK VERMA  
(VACATION BENCH)

For Appellant(s) Mr. P.P. Malhotra, ASG  
Ms. Binu Tamta, Adv.  
Mr. Gaurav Sharma, Adv.  
For Ms. Sushma Suri, Adv.

For Respondent(s) Mr. Sanjeev Bhatnagar, Adv.  
Ms. Kusum Chaudhary, Adv.

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

The appeal is dismissed in terms of the  
signed order.

(O.P. Sharma) ( Renu Diwan )  
Court Master 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(s). 1329 OF 2010

UNION OF INDIA & ORS.

Appellants

VERSUS

SURESH CHANDRA BHATNAGAR

Respondent

O R D E R

Heard learned counsel for the parties.

2. The Union of India is in appeal before us against the impugned judgment dated 29.2.2008 of the Division Bench of the High Court whereby the High court has been pleased to quash the order dated 5.11.2003 of the Central Administrative Tribunal, Lucknow Bench, Lucknow. By the said order the Central Administrative Tribunal upheld the order of compulsory retirement of the respondent dated 13.4.1999.

3. When this appeal was filed by the Union of India impugning the judgment of the High Court, this Court even though granted leave, but at no point of time granted stay of the order of the High Court.

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4. The material facts of the case are that a chargesheet dated 27.02.1997 was purportedly issued against the respondent inter alia on the ground of his unauthorised absence from duty but a controversy arose whether the said chargesheet was authorisedly served on the respondent. The High Court has noticed that matter relating to service of chargesheet on the delinquent employee is governed by Rule 30 of Central Civil Services (Classification, Control & Appeal) Rules, 1965. Learned Additional Solicitor General appearing for the appellants has not disputed the applicability of this Rule relating to service of chargesheet on the delinquent employee. The High Court after quoting the rules in the impugned judgment inter alia held that the appellants have not been able to prove service of the chargesheet on the delinquent employee personally. The High Court held that in that view of the matter, the chargesheet should have been

served on the delinquent employee by registered post in the event of refusal of acknowledgment by the delinquent employee. We are not making any observation on the correctness or otherwise on the High Court's interpretation of Rule 30 but we are making it clear that before us the appellants have not produced either the Peon C.A.No.1329/2010

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Book or its written statement filed before the Central Administrative Tribunal showing the mode of service of the chargesheet on the delinquent employee. Admittedly, the chargesheet was not sent to the delinquent employee under registered post with A.D. The High Court held that in the aforesaid facts that there has been no proper service of the chargesheet on the delinquent employee, as such the consequent inquiry in respect of the said chargesheet is also vitiated by violation of principles of natural justice. Admittedly, the inquiry was held ex-parte.

5. In the background of the aforesaid facts, the High Court after referring to the large number of judgments have held that inquiry has not been held in accordance with law and the inquiry report having been made in clear violation of principles of natural justice suffers from procedural irregularities and the order of the punishment based on the basis of such a defective inquiry is not sustainable. It is noted in this connection that before coming to the High Court, against the order of removal, the respondent filed an Original Application before the Central Administrative Tribunal and the Tribunal by its order dated 18.2.1999 directed the appellate authority to dispose of the pending statutory C.A.No.1329/2010

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appeal which was pending at the time the respondent approached the Tribunal. Pursuant to that, the appellate

authority by an order dated 13.4.1999 converted the order of removal to one of compulsory retirement. The said order of compulsory retirement was again challenged by the respondent before the Tribunal and the Tribunal by its subsequent order dated 5.11.2003 dismissed the Original Application filed by the respondent.

6. Against that order of the Tribunal again the respondent moved High Court. The High Court in the impugned judgment while setting aside the order of the Tribunal gave liberty to the appellant to proceed afresh with the departmental inquiry but the appellant instead of proceeding under the liberty given by the High Court has filed this appeal. It appears that in the meantime the respondent has reached his date of superannuation that is 13.6.2010.

7. That being the position, there is no scope for holding further inquiry at this stage. Looking into the record which is made available to us and considering the facts and circumstances of this case, we are of the opinion that there is no reason for us to take a view

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different from the view taken by the High Court, even though we do not make any final conclusion on the interpretation of Rule 30. We are taking this view specially having regard to the fact that the respondent is a Lower Division Clerk and has suffered a lot all these years. We, therefore, dismiss the appeal with the following directions:

(a) The appellants shall pay to the respondent 50% of

his entire back wages for the period between his initial order of removal from service dated 15.6.1998 till his writ petition before the High Court succeeded on 29.2.2008 and for the remaining period that is, from the month of March, 2008 till the date of superannuation of the respondent, the appellant shall pay to the respondent 100% of his pay and emoluments since no stay has been granted by this Court at any point of time and the respondent has also addressed letters to the appellant requesting him to take him back in the service after the order of the High Court. We make it clear that the aforesaid payment must be made to the respondent by the appellants within a period of three months from today.

(b) The appellants shall also on the basis of this C.A.No.1329/2010

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order must fix the pension of the respondent and shall give all the retirement benefits available to him within four months from today.

.....J.  
[ ASOK KUMAR GANGULY ]

NEW DELHI  
MAY 24, 2011

.....J.  
[ DEEPAK VERMA ]