

APR

Reserved.

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1072 of 1986

(REVIEW PETITION NO.110 of 1985)

Mahendra Singh Applicant

Vs.

Union of India and another Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This petition under O.XLVII R.1 and Section 114 of the Code of Civil Procedure for reviewing the judgment and decree passed by the Vth Additional Munsif Kanpur in suit no.703 of 1984 has been received by transfer from that Court under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant while posted as Upper Division Clerk in the Ordnance Clothing Factory, Sahjahanpur was charge sheeted for some misconduct and by way of punishment, was removed from service. On appeal, the appellate authority modified his punishment and substituted it by the punishment of reduction in rank to Lower Division Clerk for a period of 2 years. Against the said appellate order, the applicant filed suit no. 703 of 1984 in the Court of Munsif City Kanpur for a declaration that the order dated 23.4.1981 of the appellate authority is illegal and ultra-vires, the order dated 19.9.1980 of the Officer in-charge of Ordnance Parachute Factory Kanpur forfeiting his pay and allowances over and above the subsistence allowance

A2
X/8

.2.

for the period of suspension is illegal and ultra-vires and for a further declaration that the order dated 18.7.1983 of the "orks Manager shifting the date of increment of the applicant is illegal on the ground that the disciplinary authority, who had charge sheeted the applicant was not competent to do so as the General Manager was his appointing authority. The suit was contested on behalf of the defendants inter-alia on the ground that it was bad for want of valid notice under Section 80 CPC.

The trial Court framed 7 issues in the case. The main issues in the case were decided in favour of the plaintiff but issue no.5 relating to the bar under Section 80 CPC was decided against the plaintiff and the suit was accordingly dismissed with costs.

3. The present petition for review was filed by the plaintiff-applicant before the trial Court for reconsidering its finding on issue no.5 with the allegation that the defendants admitted in their written statement that a notice under Section 80 CPC was served by the plaintiff on the defendants and in view of this admission, the burden to prove that it was not a valid notice shifted to the plaintiff, and the trial Court erred in placing the burden to prove the validity of the notice on the plaintiff. The plaintiff also filed the copy of the notice U/S. 80 CPC with the review petition with the allegation that on account of the admission of the defendants in the written statement as above, the plaintiff did not think it desirable to file the copy of the notice earlier. The petition has been contested on

AV
3

.3.

behalf of the defendants and their contention is that the ground shown by the plaintiff-applicant for review is not sufficient and there being no good ground for review, the petition is liable to be dismissed.

4. We have carefully considered the contention raised on behalf of the parties and find that in paragraph 22 of the plaint it has been alleged that the plaintiff served the defendants with the notice under Section 80 CPC dated 10.2.1984. In paragraph 23, it was alleged that after the expiry ^{suit} of the statutory period of the notice, ~~it~~ was being filed. In paragraph 22 of the written statement, the defendants admitted the receipt of the notice under Section 80 CPC but stated that the notice is illegal and invalid. Issue framed in the case was to the effect whether the suit is barred by Section 80 CPC. In our opinion, it is mandatory for a plaintiff to give a statutory notice under Section 80 CPC to the Government before filing a suit and the burden never shifts on the admission of the receipt of the notice, if its validity is disputed. The plaintiff has not only to prove the service of a statutory notice but has also to prove its validity and the learned trial court committed an error in placing the burden of issue no.5 on the defendants and then giving its finding against the plaintiff in the absence of a notice or its copy on record.

A2
W

.4.

As the issue stood, the finding should have been in favour of the plaintiff as the defendants could not prove the invalidity of the notice. We are, however, of the view that the finding given by the learned Munsif ^{not} was in accordance with law and the issue as framed was not correct. The plaintiff was, therefore, liable to be confused regarding the burden and we accordingly feel inclined to permit him to produce the copy of the notice under Section 80 CPC on record to discharge this burden.

5. The copy of the notice, paper no.6-C on the record of the review petition, has been certified to be true copy by the counsel according to rules and can be read in evidence without any formal proof. We have gone through this notice and find that it contains the necessary facts of the case, the names of the defendants, the cause of action and relief to be claimed. No defect of any kind was pointed out in this notice on behalf of the defendants-respondents before us. We thus, find sufficient cause for review in this case and in view of the above consideration, we allow the review petition and hold that the plaintiff had given a valid notice under Section 80CPC to the defendants and the suit was not barred by S.80 CPC.

6. Now coming to the reliefs, which may be granted to the plaintiff, we find that as the very authority of the disciplinary authority was found missing by the trial Court in this case and the

R/S

.5.

disciplinary proceedings against the plaintiff were not initiated by a competent person, the main relief claimed by the plaintiff has to be allowed. We are, however, of the view that in the present case, the plaintiff apparently committed a gross misconduct by drawing the money of a fellow employee on his forged authority in his favour. The appellate authority took a lenient view in his case only because he had admitted his guilt and prayed for mercy. The punishment was accordingly modified. The plaintiff, however, took advantage of the technical defect in the proceedings ~~including~~ the competence of the disciplinary authority to initiate the same, we will like to give the liberty to the defendants to proceed against the plaintiff afresh for the misconduct committed by him in accordance with law, if desired.*

7. The review petition is accordingly allowed and the judgment and decree passed by the trial Court are hereby set aside. The order dated 23.4.81 of the appellate authority imposing the penalty of withholding of 2 increments is hereby set aside and in case, the defendants decide not to initiate fresh disciplinary proceedings against the plaintiff, the plaintiff will ~~also~~ be entitled to get full pay and allowances for the period of suspension and in case they decide to proceed against him, afresh, the competent disciplinary authority at the time of passing the final order therein shall decide

(A2)
6

.6.

whether the plaintiff should or should not get any pay and allowances over and above the subsistence allowance already paid to him for the period of suspension. The parties are directed to bear their own costs.

Bh
25/5/87

Member (A)

Indrajeet
25/5/87

Member (J)

Dated: May, 25 1987
kkb