

STATE OF U.P. AND ANR.

v

T.P. LAL SRIVASTAVA

SEPTEMBER 20, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

*Dismissal from service on charges of Misappropriation—Charge-sheet for committing gross irregularities—Employee not submitting his reply despite several letters—Employer holding the employee guilty of misappropriation and dismissing him from service—Employee challenging it and the High Court holding that documents not supplied to the employee and the action vitiated by error of law—On appeal held, Employer not conducted enquiry though the employee avoided giving reply—Employee had foregone his right to submit his reply—However employer not absolved of the duty to hold an ex-parte enquiry—Disciplinary authority to communicate copy of enquiry report and seek an explanation from the employee—Appropriate orders to be passed thereafter in accordance with law—Till then the employee deemed to be under suspension.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12885 of 1996.

From the Judgment and Order dated 15.3.93 of the Allahabad High Court in C.M.W.P. No. 12480 of 1987.

Irshad Ahmad for A.K. Srivastava for the Appellants.

The following Order of the Court was delivered :

Though notice was sent to the respondent on January 25, 1995, till date neither acknowledgment nor unserved cover has been received back. Under these circumstances, notice must be deemed to have been served on the respondent. He is set *ex-parte*.

Leave granted.

We have heard learned counsel for the appellant.

A This appeal by special leave arises from the judgment of the Allahabad High Court made on March 15, 1993 in Writ Petition No. 12480/87. The admitted position is that while the respondent was working as a Senior Marketing Inspector, a charge-sheet was served on him on November 23, 1984 calling upon him to explain the charges for committing gross irregularities in the movement of wheat outside the State of U.P. Instead of submitting reply to the charge-sheet, he went on dilly-dallying in submitting the reply. Several letters addressed to the respondent proved ineffective. Resultantly, the appellants took a decision on June 26, 1987 holding that the respondent was found guilty of misappropriation. Consequently, he came to be dismissed from service. The respondent challenged the same in the writ petition. The High Court has set aside the order in the impugned order holding that the documents have not been supplied to the respondent and, therefore, the action was vitiated by error of law. We do not find any justification in the view taken by the High Court; the substratum of the result is that the appellants have not conducted any enquiry though the respondent had been avoiding to give the reply. Since the respondent had avoided to submit the reply, he has forgone his right to submit his reply. Nonetheless, the appellants are not absolved of the duty to hold an ex-parte enquiry to find out whether or not the charge has been proved. In the event of the Enquiry Officer find that the charge is proved, he would submit that report to the disciplinary authority. The disciplinary authority should communicate the copy of the enquiry report to the respondent and seek an explanation for the proposed action thereon. If the respondent submits any explanation, the same may be taken into consideration and appropriate order may be passed according to law. Until then, the respondent must be deemed to be under suspension.

F The appeal is accordingly allowed, but in the circumstances, without costs.

G.N.

Appeal allowed.