

**State of Rajasthan & Anr. Vs. Gurdev Singh & Anr.
[D.B. CIVIL SPECIAL APPEAL (W) NO.332/2009]**

Date of Order :: 31.3.2009

HON'BLE MR. JUSTICE A.M. KAPADIA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. I.S. Pareek, Additional Government Counsel, for the State-appellants.

1. This special appeal is directed against the order dated 23.10.08 passed by the learned Single Judge of this Court whereby the writ petition preferred by the appellants against the order dated 23.01.07 passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur, accepting the appeal preferred by the respondent government servant against the denial of encashment of the privileged leave to him, stands dismissed.

2. It is contended by the learned counsel that as per 'Note' appended to Rule 91B(1) of the Rajasthan Service (Amendment)Rules, 2001, benefit of encashment of privileged leave cannot be extended to the Government servant, who has been compulsorily retired. A perusal of the 'Note' appended to the Rule reveals that the benefits under sub rule (1) of Rule 91B are not admissible to the Government servants retired compulsorily as a measure of penalty under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (in short 'the Rules of 1958').

3. It is not disputed before us by the learned counsel for the appellant that the compulsorily retirement of the respondent was simplicitor and not by way of punishment for any misconduct proved under the provisions of the Rules of 1958. Thus, the contention sought to be raised by the learned counsel on the strength of the 'Note' appended to the Rule 91B(1) of the Rajasthan Service Rules introduced vide Rajasthan Service (Amendment) Rules, 2001, is absolutely devoid of any merit.

4. For the aforementioned reasons, in our considered opinion, the learned Single Judge has committed no error in declining to interfere with the order passed by the Tribunal holding the respondent entitled for encashment of privileged leave. The order impugned does not warrant any interference by us in this intra court appeal.

5. Accordingly, the special appeal stands dismissed.

[SANGEET LODHA],J.

[A.M. KAPADIA],J.