

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.34/2013**

% **28<sup>th</sup> February, 2014**

DAYA NARAYAN PANDEY ..... Appellant  
Through: Mr. J.K.Tripathi, Adv.

versus

UNION OF INDIA & ORS. .... Respondents  
Through: Mr. J.K.Singh, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This regular second appeal is filed against the judgment of the first appellate court dated 24.11.2012 which has accepted the appeal of the respondents herein and set aside the judgment of the trial court dated 20.5.2011. Trial court had decreed the suit filed by the appellant-plaintiff challenging the termination of his service. The first appellate court has set aside the judgment of the trial court only on the ground that the appellant-plaintiff ought to have challenged the orders passed in appeal by the appellate authority and the revision authority which dismissed the challenges

to the orders of the disciplinary authority and the appellate authority, and  
*RSA No.34/2013* *Page 1 of 3*

that since the orders in appeal and revision were not challenged in the suit, the suit was hence liable to be dismissed.

2. In my opinion, the orders which are passed by the departmental authorities in appeals and by the authorities in revision, are not judgments of a court of law for the doctrine of merger to come in. In case whereas the right to file an appeal and revision is provided, at best that would be in confirmation of the original order but it cannot be that by not challenging the orders in appeal and revision, the suit itself has to be dismissed. Also, the relief which is prayed in the suit has to be seen in substance and not in form that really the substance of the relief in the suit was to set aside the dismissal orders and which has to be by setting aside of the orders which would have been passed to confirm the dismissal. This is so as per Order 7(7) CPC. Therefore, the first appellate court has committed an illegality in dismissing the suit on the technical ground that the orders of the appellate court and the revising authority have not been challenged, and in my opinion, they need not have been specifically challenged as stated above.

3. Accordingly, the appeal is allowed, the judgment of the first appellate court dated 24.11.2012 is set aside and the matter is remanded back to the first appellate court to decide the appeal on merits. It is observed and clarified that this court has not made any observations one way or the other

on the merits of the appeal and the appeal will be decided in accordance with law as per the stands of the respective parties as is argued before the appellate court.

4. The appeal is allowed by remanding the matter back to the first appellate court to decide the appeal on merits, in accordance with law.

5. Parties to appear before the District and Sessions Judge (Central) Tis Hazari, Delhi on 23<sup>rd</sup> April, 2014. The District and Sessions Judge will mark the first appeal for disposal to a competent court in accordance with law.

**FEBRUARY 28, 2014**  
ib

**VALMIKI J. MEHTA, J.**