

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5271 OF 2009
(Arising out of SLP(C)No.9679 OF 2006)**

KHURSHEED ANWAR KHAN

.....APPELLANT(S)

VERSUS

DISTRICT MAGISTRATE, DEORIA & ORS

....RESPONDENT(S)

O R D E R

Leave granted.

The appellant was serving as an Arms Clerk. After a departmental enquiry, he was dismissed from service w.e.f.20.09.2004. Thereafter, he challenged the same by filing a Writ Petition before the High Court of Judicature at Allahabad. By Order dt.10.03.2005, though the learned Single Judge referred to factual details about the enquiry and ultimate dismissal, however, finally dismissed the Writ Petition on the ground of availability of alternative remedy of departmental appeal.

The appellant, instead of resorting to the appeal remedy, filed a Special Appeal before the Division Bench of the High Court. By the impugned order dt.06.04.2006, the Division Bench dismissed the Special Appeal. Challenging the same, the appellant has filed the present appeal by way of Special Leave Petition.

A reading of the impugned order of the Division Bench shows that after arguing his case for some time, the counsel for appellant sought permission to file an appeal in the department. However, the Division Bench turned down his request since the matter was argued for some time and ultimately dismissed his appeal.

It is not in dispute that as per Rule 11 of the U.P. Government Servant (Punishment and Appeal) Rules, 1999, the appellant is entitled to file an appeal before the appellate authority. No doubt, the appellant has not availed such remedy at the appropriate time. Even after dismissal

of the Writ Petition by the learned Single Judge, he could have availed such remedy. But the fact remains that though he wanted to avail such remedy at the appellate stage, the Division Bench has not permitted him to file the same. Having note of the fact that the appellant has been dismissed from service, we are of the view that the appellant may be permitted to challenge the order of dismissal by resorting to Rule 11 of the U.P. Government Servant (Punishment and Appeal) Rules, 1999 as mentioned above.

The appellant is permitted to file an appeal to the Appellate Authority within a period of four weeks. On such appeal being filed, the Appellate Authority is directed to consider and dispose of the same on merits in accordance with law.

We make it clear that we have not expressed any opinion on the merits of the case.

The appeal is disposed of accordingly. There shall be no order as to costs.

.....J.
(P.SATHASIVAM)

.....J.
(R.M.LODHA)

NEW DELHI;
AUGUST 10, 2009.

JUDGMENT