

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

+ **WP(C) No.20773/2005**

% **Date of decision : 20.02.2008**

M/s.East India Transport Agency Petitioner
Through: Mr.M.Rajan, Advocate.

Versus

Govt of NCT of Delhi & Ors. Respondents
Through : Mr.L.N.Yadav, Advocate for the
respondent No.3.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

Rule.

With the consent of the parties the matter is taken up for final disposal.

The petitioner/management has impugned the order dated 16th August, 2005 dismissing his application for amendment of the written statement seeking correction of the date of chargesheet as 28th April, 1998 in place of 8th May, 1998 given in para 5(i) of the written statement.

The petitioner company is stated to be in the transport business having branches all over India and registered office at Calcutta. A charge sheet was issued to respondent No.2, employee of the petitioner, since deceased, now represented by his son Sh.Nagender Yadav. The services of the deceased respondent had been terminated by letter dated 31st December, 1998 after serving charge sheet and conducting an enquiry. On his termination he raised a dispute for reinstatement which was referred for adjudication by the Government of NCT of Delhi.

The statement of claim was filed by the respondent which was replied by the petitioner by filing a written statement. Before the evidence of the respondent could be recorded, he died and the evidence of his son was recorded after he was substituted in place of deceased respondent Sh.Ram Darash Chaudhary. The petitioner/management also concluded their evidence on 4th March, 2005 and the case was fixed for arguments.

Thereafter an application was filed by the petitioner contending that in the documents filed by the petitioner, there is no charge sheet dated 8th May, 1998 rather the charge sheets filed by the petitioner are 28th April, 1998 and in the written statement the date of chargesheet mentioned as 8th May, 1998 is on account of a typographical error. The petitioner, therefore, moved an application under Order 6 Rule 17 of the W.P(C) No.20773/2005

Code of Civil Procedure for correcting the date of charge sheet from 8th May, 1998 to 28th April, 1998 which was dismissed by the Labour Court holding that issues have been framed and parties have already led their evidence and since the matter was fixed for final arguments therefore, there was no plausible justification for seeking amendment to the written statement.

I have heard the learned counsel for the parties and have perused the petition, reply and the documents relied on by the parties. From the perusal of the record it is apparent that two chargesheets dated 28th April, 1998 were filed by the petitioner on which the reliance has been placed for taking action against the deceased respondent. The chargesheets are dated 28th April, 1998 and not 8th May, 1998.

The learned counsel for the respondent has, however, pointed out that the chargesheets dated 28th April, 1998 were issued to Sh.Ram Brij and not to the respondent and consequently the petitioner is not entitled for amendment of the written statement.

This is not disputed that the chargesheets are dated 28th April, 1998 and not 8th May, 1998 as has been mentioned in the written statement. Whether on the basis of the chargesheets dated 28th April, 1998 which were against Sh.Ram Brij, the petitioner was entitled to take action against the deceased Sh.Ram Darsh Chaudhary is to be

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adjudicated. The parties have already led their evidence. The learned counsel for the petitioner has contended that by correcting the typographical error in the written statement, no further evidence is to be led by the petitioner. In case the petitioner does not want to lead any evidence after correcting the date of chargesheet in the written statement from 8th May, 198 to 28th April, 1998, the plea of the respondent that amendment is sought merely with a view to delay the disposal of the claim of the respondent, does not survive. This also cannot be disputed that at the time of consideration whether the amendment should be allowed or not, the falsity or correctness of the plea normally is not to be considered by the Court.

The object of amendment of the pleadings is to allow either party to alter or amend his pleading in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down in various precedents. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayer should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with costs. Technicalities of law cannot be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid

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uncalled for multiplicity of litigation. Mere delay usually cannot be a ground for refusing a prayer for amendment because merits of amendment sought to be incorporated by way of amendments are not to be judged at the stage of allowing prayer for amendment. It is also fairly settled in law that the amendment of pleadings is to be allowed, if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side. Normally a clear admission made conferring certain right on a party is not allowed to be withdrawn by way of amendment by opposite party resulting in prejudice to such a right on the facts and circumstances of a given case. Mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side.

In the present case this is not disputed that two chargesheets dated 28th April, 1998 were produced by the petitioner which are addressed to Sh.Ram Brij. The petitioner wants to correct the date of the chargesheets from 8th May, 1998 to 28th April, 1998. The learned counsel for the petitioner contends that no other chargesheets other than what have already been produced on the record of the case are to be filed by the petitioner and since evidence has already been concluded

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by the parties and the matter is listed for arguments, no evidence will be led by the petitioner, in case the amendment to the written statement of the petitioner is allowed. If that be so, it is apparent that no serious prejudice shall be caused to the respondent in case amendment to the written statement is allowed correcting the date of charge sheets already filed by the petitioner.

In the circumstances in order to correct the typographical mistake in the written statement, the Labour Court ought to have allowed the amendment to the written statement allowing the petitioner to correct the date of chargesheet from 8th May, 1998 to 28th April, 1998.

Consequently, the rule is made absolute and the order dated 16th August, 2005 dismissing the application of the petitioner/management for amendment of the written statement is set aside and the application of the petitioner for amendment of the written statement so as to correct the date of chargesheets from 8th May, 1998 to 28th April, 1998 is allowed subject to a cost of Rs.5000/- payable by the petitioner to the respondent workman. Amended written statement be filed within two weeks and the replication, if any, to the amended written statement be filed within one week thereafter. Learned counsel for the petitioner has agreed that after the amendment to the written statement, no additional evidence shall be led by the petitioner/management. Parties are

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directed to appear before the Labour Court VI, Karkardooma Courts on 24th March, 2008. Considering the facts and circumstances, the parties are left to bear their own costs.

February 20th , 2008.
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ANIL KUMAR, J.