

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

+ **WP(C) No.24118/2005**

% **Date of decision : 01.04.2008**

D.T.C. Petitioner
Through: Mr.Abhinav Prasad, Advocate.

Versus

Shri Rishi Pal Respondent
Through: Nemo.

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.

1. This is a petition challenging the award dated 6th October, 2004 by which the petitioner was directed to reinstate the workman with full back wages along with all other consequential benefits and the continuity of service and awarding damages of Rs.50,000/- against the depot manager of the petitioner and directing the petitioner to deducted

the damages from the salary of the Depot Manager in suitable installments.

2. The damages of Rs.50,000/- were awarded against the Depot Manager as despite the documents produced by the workman, the order removing the respondent from the services was passed as the respondent had already been punished for his absence from January 1996 till December 1996.

3. Learned counsel for the petitioner contends that the Depot Manager on whom the damages of Rs.50,000/- has been awarded was not a party to the reference made by the appropriate government to the Industrial Tribunal nor any notice was given to him nor he was heard before awarding the damages of Rs.50,000/- against him.

4. The show cause notice of the writ petition was issued to the respondents pursuant to order dated 23rd May, 2006. Despite various opportunities granted to the respondent, the counter affidavit to the petition has not been filed. In the circumstances, the right of the respondent to file the counter affidavit is closed.

5. Learned counsel for the petitioner also contends that the workman has since been reinstated and the amounts due to him on account of his reinstatement with full back wages and all other consequential benefits with continuity of service has already been given to him and the petitioner is impugning the damages of Rs.50,000/- awarded against the depot manager without giving him a hearing.

6. The reference by the appropriate government pursuant to the complaint by the respondent was only to the effect whether the removal of the respondent from the service was illegal or justified. In the circumstances, no damages could be imposed by the Presiding Officer, Labor Court, on a Depot Manager, especially without giving him a show cause notice and giving him a hearing for the proposed action of imposing the damages of Rs.50,000/-.

7. This cannot be disputed that while exercising its powers of judicial review under Article 226 of the Constitution of India this Court does not re-appreciate the pleas and contentions and evidence and does not interfere with factual findings of the lower courts and it is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The objective of judicial review is to ascertain that a person received a fair treatment and an order is passed against a

person after hearing his pleas and contentions and after giving him a reasonable opportunity. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. In the present facts and circumstances, the damages of Rs.50,000/- has been ordered to be recovered from future salary of the depot manager in suitable installments in addition to disciplinary action against him. The allegation for such an action is that there was no justification for passing an order of removal from service against the respondent from his service on account of absence for a period of four days only from 3rd June, 1996 to 6th June, 1996 and from 16th September, 1996 to 17th September, 1996 for a period of two days only for which the workman had already been punished by way of reduction of his salary and therefore, the order to remove the workman from service was totally malafide and illegal on the part of the depot manager and this displayed a total lack of application of mind as the workman had been punished twice for the same misconduct.

8. Since the workman had been punished twice for his absence from duty for only six days, the order of removal from the service could not be sustained and had been set aside. The order of reinstatement with the full back wages and continuity of service and all consequential benefits has already been implemented by the petitioner and the learned counsel for the petitioner also states that the said portion of the

award is not being challenged.

9. From the proceedings before the Labor Court it is apparent that before awarding damages of Rs.50,000/- against the depot manager, the petitioner had not been heard nor the depot manager against whom the damages have been awarded had been heard. On what basis the damages have been awarded against the depot manager and not against others is not clear. The respondent workman had also filed an appeal against the order of his dismissal which was also dismissed. In the circumstances, how the damages could be imposed only against the depot manager who is alleged to have passed the order of dismissal with alleged malafide intentions and in irresponsible manner. An irresponsible act of passing an order without considering the pleas and contentions per se cannot be constituted as malafide. No malafides were also pleaded by the respondent. In the circumstances, the inevitable inference is that no malafides can be inferred against the depot manager only on the basis of an order of dismissal passed by him against the petitioner for absence from duty for six days for which the punishment of reduction of salary had already been awarded to him. In any case before awarding damages against the depot manager, he ought to have been heard. Consequently awarding of damages of Rs.50,000/- by the Labor Court cannot be sustained.

10. Considering the peculiar facts and circumstances the award of damages of Rs.50,000/- on the Depot Manager to be recovered from his future salary in suitable installments is set aside and to that extent the writ petition is allowed. All the pending applications are also disposed of. Parties are, however, left to bear their own costs in the facts and circumstances of the case.

April 1st , 2008.
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ANIL KUMAR, J.