

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **LPA 393/2009**

DTC

..... Appellant

Through: Ms. Avnish Ahlawat, Adv.

versus

BISHAN SINGH, COND.

..... Respondent

Through: Mr. Krishan Paul, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

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24.11.2009

CM 11279/2009 (Delay)

For the reasons stated in the application, delay in filing the appeal is condoned and the application is allowed and disposed of.

LPA 393/2009

This appeal is directed against the impugned order dated 27th March, 2009 passed by the learned single Judge dismissing the appellant's WP(C) No.6821/2004.

2. The Respondent was employed as a Conductor with the Appellant Delhi Transport Corporation (DTC) and was posted at Seema Puri Depot. It is the case of the DTC that while on duty on 20th March, 1991, at about 3:15 p.m., the respondent along with Shri Om Prakash, Driver, Shri Mahesh Chand, Driver, Shri Ram Gopal, Driver and Shri Mohd. Shahid, Conductor manhandled one Shri Harish Gupta, Depot Manager of the Nand Nagri Depot as well as one Shri P.K. Rai of the same depot. A charge sheet was issued to the respondent in regard to this incident. The Inquiry Officer held the charges to be proved. The report of the Inquiry Officer was accepted by the disciplinary authority. It is stated

that the show cause notice dated 4.12.1991 issued by the disciplinary authority to the respondent on the question of penalty was not replied to. By a letter dated 15.1.1992, the respondent was removed from service.

3. The case of the appellant DTC is that one month's wages was remitted to the respondent through money order and simultaneously an application was filed before the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act, 1947 (ID Act). The said application was registered as O.P. No. 14/1992.

4. By an order dated 22.7.2002, the Tribunal held that there was no defect in the enquiry proceedings held by the DTC. Thereafter, the Tribunal took up the issue whether full one month's wages had been remitted to the respondent at the time of his removal. On behalf of the DTC, Sh. Jai Veer Singh filed his affidavit dated 10.9.2002 and was examined as AW-1. He deposed that the Management had issued a notice salary bill of Rs.2150/- to the respondent by post on 2.11.1992. During cross-examination, he stated that he did not know the correct address of the respondent. As per the document Ex.AW1/R1, address of the respondent was shown as House No. D910/1, Ashok Nagar, Delhi – 93. Ex.AW1/R2 showed the permanent address of the respondent as Village and P.O. Khanpur, District Bulandshahar, UP. The respondent was also examined as RW-1. He denied having given his address in the Department as House No. J-315, Kartar Nagar, New Usman Pur, Shahdara, Delhi – 32.

5. The Tribunal held that the DTC had failed to establish that the money order was sent to the address of the respondent at

House No. D910/1, Ashok Nagar, Delhi – 93 or Village and P.O. Khanpur, District Bulandshahar, UP. Consequently, it was held that the appellant had not remitted the one month's wages to the respondent's correct address. It was held that DTC had not complied with the provisions of Section 33(2)(b) of the ID Act and the approval for removal of the respondent was accordingly rejected.

6. The learned single Judge noted in the impugned order that the letter dated 7.12.1990 written by the DTC to the respondent required him to report for duty and that letter showed his address as D910/1, Ashok Nagar, Delhi – 93. Consequently, it was held that the dispatch of the money order to some other address could not be accepted as due compliance with the requirement of Section 33(2)(b) of the ID Act. Consequently the writ petition was dismissed.

7. It may be noted that as regards Shri Mahesh Chand who was also charge sheeted along with the respondent for the same incident, a similar order had been passed by the Tribunal on 23.12.2002. WP(C) 1043/2004 filed by the DTC against the said order was allowed by the learned single Judge of this Court in which it was observed that a hyper technical approach cannot be adopted to defeat the very purpose of the law. As long as the money order was sent at the address given in the service record, it could not be held that there was non-compliance with the requirements of Section 33(2)(b) of the ID Act. It was for the employee to inform to management of the change of his address.

8. Learned counsel for the parties have been heard and with their consent, the appeal is taken up for final hearing.

9. Ms. Avnish Ahlawat, learned counsel appearing for the appellant DTC submits that by a letter dated 13.2.1992 addressed to the DTC, the respondent himself acknowledged that he had learnt that he had been removed from service. The said letter reads as under:

“To,

The Depot Manager,
Shahdara Depot-II,
Delhi.

Sir,

It is submitted that today on 13.2.1992 when I came to my duty, I came to know that I have been dismissed from service and also came to know that the dismissal order and Money Orders which the corporation gives, were sent to me by post, which could not be received by me and it has come back to the Depot.

Therefore, you are requested to provide me the letter of dismissal, Money Orders and a Hindi version of the decision. I shall be highly obliged and in future please address all communications to me on the following address:

Applicant
Conductor Bishan Singh
B.No. 12112 T. No.20897
Shahdara Depot -II
Dated 13.2.1992

Address D-910/1, Ashok Nagar, Delhi-93.”

10. On this request, the following endorsement was made by the Depot Manager of Shahdara-II:

“If agreed to he may be delivered the removal memo to ex-employee against his proper signatures which has been received back from the postal authority on a/c of non available of receiver. More over the postal authority may

also requested to intimate the where about of money order amount. Submitted please.”

11. It is plain from the above letter of the respondent that he was aware of the order removing him from service. He did not in the above letter state that the said removal order has been sent to the wrong address. We have also been shown the service book of the respondent. It does not contain the changed address of D-910/1, Ashok Nagar, Delhi – 93. We also find from the record of the Labour Court that the summons in the case was issued to the respondent at the address J-315, Kartar Nagar and duly received by him by signing on the reverse.

12. We are unable, therefore, to agree with the learned single Judge that the money order in respect of the one month's salary was not sent at the address available with the appellant as is evident from the service record of the respondent. If indeed the respondent was aware of the removal order, then it is futile for the respondent to contend that the money order was sent to the wrong address.

13. For the aforementioned reasons, we are not able to sustain the order of the learned single Judge and the same is hereby set aside. Consequently, the award dated 25.2.2003 passed by the Tribunal is also set aside.

14. Learned counsel appearing for the appellant informs us that pursuant to the impugned award of the Labour Court, the respondent filed execution proceedings in which, pursuant to an attachment order passed, a sum of nearly Rs.7 Lakhs has already been released to the respondent. Considering the number of years that have elapsed since the removal of the respondent

from service, we consider it appropriate to direct that the money already released to the respondent shall not be recovered from him.

15. With the above directions, the appeal is allowed. No order as to costs.

CHIEF JUSTICE

S.MURALIDHAR, J

NOVEMBER 24, 2009
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