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

***Judgment dated on May 13, 2010.***

+ CONT.CAS(C) 646/2005

PHOOL SINGH ..... Petitioner

Through: Mr.K.P. Dohare, Advocate.

versus

THOMAS VERGIS,G.M.,NORTHERN RA ..... Respondent

Through: Mr.Jagjit Singh and Mr.Harkesh Chandra,  
Advocates for respondent

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**G.S.SISTANI, J (ORAL):**

1. Counsel for the petitioner submits that contempt of court proceedings be initiated against the respondent for willfully and deliberately not complying with the judgment dated 05.08.2004.
2. Writ petition [WP(C)No.2704/2000] filed by the petitioner was finally disposed of by the Division Bench of this Court vide its judgment dated 05.08.2004. Operative portion of this judgment reads as under:

“Writ petition is accordingly allowed on this reasoning and impugned order of the Tribunal dated 17.8.1999 is quashed and so is the dismissal order of petitioner dated 14.5.1981. Respondents are directed to consider petitioner’s case for reinstatement and back wages on the analogy of the Ram Dularey’s case and pass appropriate orders within three months from the receipt of this order. With this, we also appreciate the effort put in by Amicus Curiae, Sh.Maninder Singh in rendering assistance to the Court.”

3. Counsel for petitioner submits that at the time when the aforesaid writ petition was decided a similarly situated worker by the name, Ram Dularey, had been reinstated with full wages accordingly, the petition sought similar relief. He further submits that after order dated 05.08.2004 was passed, the petitioner was reinstated, but full back wages have not been paid to the petitioner.
4. Counsel for respondent submits that in the case of Ram Dularey, the Central Administrative Tribunal, while disposing of the O.A. filed by the Ram Dularey, had passed an order by which removal of Ram Dularey from services was quashed. The respondent was, however, granted liberty to conduct a departmental enquiry in accordance with procedure and rules, within six months from the date of the judgment. It was further held that in case no enquiry is concluded or if Ram Dularey is exonerated, then he would be entitled to pay all salary allowances if he is not gainfully employed elsewhere. Counsel for respondent submits that in the case of Ram Dularey enquiry was conducted and he was found guilty and was awarded punishment of reduction of pay to the lower scale and put at the bottom of the seniority; further the period of suspension from removal to reinstatement was treated as *dies non*.
5. In view of above, it is submitted that as the case of the petitioner was to be treated at parity with the case of Ram Dularey, the petitioner would also not be entitled to any back wages.
6. Counsel for petitioner submits that during the pendency of this contempt petition this court had directed the respondent to comply with the order passed by the Division Bench and further during the pendency of the contempt proceedings, respondent had approached the Division Bench for extension of time in making the payment. It is submitted that even at that stage, respondent did not seek necessary clarification from the Division Bench neither any appeal has been filed against the

order of Division Bench and thus the order of the Division Bench has attained finality.

7. It is next submitted by counsel for the petitioner that while the Central Administrative Tribunal had granted liberty to the respondent to conduct enquiry in the case of Ram Dularey, no such liberty was granted to the respondent in the case of the petitioner. Respondent has already deposited the amount accrued in favour of the petitioner and out of the amount deposited Rs.1.0 lac has already been released to the petitioner.
8. Counsel for petitioner further submits that in the case of Ram Dularey six months time was granted to the respondent to conduct enquiry, whereas they took three years and therefore, the enquiry itself stand vitiated and thus the penalty imposed against the Ram Dularey would not be in accordance with law and Ram Dularey would be entitled to full back wages and reinstatement.
9. I have heard counsel for the parties and considered the rival contentions. It would be necessary to notice some relevant facts, which led to the filing of the writ petition filed by this petitioner, as noticed by the Division Bench in the judgment dated 5.8.2004. Petitioner was a gangman in the Northern Railways. He was suspended from the service on the complaint of one Shri U.C. Jain, Permanent Wage Inspector, alleging that that the petitioner in conspiracy with Ram Dularey and Hukum Chand had quarreled with him. Later on the petitioner, Ram Dularey and Hukum Chand were removed from the service by a common order. All the three persons approached the Labour Commissioner under the Industrial Disputes Act. Conciliations proceedings failed, however, the Ministry of Labour and Rehabilitation declined to refer the matter for adjudication vide order dated 6.1.1983. Petitioner then filed a suit for declaration that his removal from service was illegal, wrong and unjust. The suit was eventually transferred to the Central Administrative Tribunal. Meanwhile, delinquent Ram Dularey, who was

similarly placed, sought redressal of his grievances and filed an OA before the Central Administrative Tribunal and order dated 21.10.1991 was passed, by which, his removal from service was quashed and a direction for reinstatement with backwages and all consequential benefits were ordered. The OA of the petitioner was, however, dismissed. The Division Bench noticed that the only question which arose for their consideration was whether the petitioner was entitled to similar relief as was granted to his other colleagues, and accordingly allowed the writ petition. Relevant portion of the judgment reads as under:

“Writ petition is accordingly allowed on this reasoning and impugned order of the Tribunal dated 17.8.1999 is quashed and so is the dismissal order of petitioner dated 14.5.1981. Respondents are directed to consider petitioner’s case for reinstatement and back wages on the analogy of the Ram Dularey’s case and pass appropriate orders within three months from the receipt of this order.”

10. While in the case of Ram Dularey the Central Administrative Tribunal had passed a judgment on 28.10.1991, operative portion of which reads as under:

“Consequently, we allow this T.A. and quash the order of removal from service of the plaintiff/applicant. The defendants/ respondents shall be at liberty to conduct a departmental enquiry in accordance with the provisions of the Rules within a period of six months from the date of the receipt of a copy of this judgment. If no inquiry is concluded within this period or the applicant/plaintiff is found to have been exonerated, then he shall be entitled to all his pay, salary and allowances if he was not gainfully employed elsewhere during the period (the date of removal from service till the date of judgment). The parties shall bear their own costs.”

11. A careful reading of the judgment of the Division Bench as also the judgment rendered by the Central Administrative Tribunal would show that the High Court had directed the respondent to consider the case of the petitioner for reinstatement and backwages on the analogy of Ram Dularey’s case. In the case of Ram Dularey while disposing of the OA the Tribunal while quashing the order of removal of Ram Dularey from service also

granted liberty to the respondents to conduct a departmental inquiry within a period of six months. It was also made clear that in case the inquiry was not conducted within six months or in case Ram Dularey was exonerated he would be entitled to all his pay, salary and allowances, if he was not gainfully employed elsewhere.

12. Additional affidavit, which has been placed on record shows that a departmental enquiry was conducted and Ram Dularey was held guilty of the charges framed against him and a major penalty for reduction of lower stage in time scale of pay of Rs.775/- - Rs.1025/- (the then pay scale of Rs.200/- - Rs.250/-) for five years was imposed. Ram Dularey's pay was fixed at Rs.775/- and the said penalty was to operate from 1.7.1994. It is also stated in the additional affidavit that as far as the issue of backwages is concerned in the case of Ram Dularey, for the period from 15.5.1981 to his date of reinstatement i.e. 16.6.1992, was treated as dies non and in terms of the order of the Tribunal no backwages were admissible to him since he was held guilty of the charges leveled against him, which issue has now attained finality.
13. Counsel for the respondent submits that the departmental proceedings were also instituted against the petitioner, petitioner is also stated to have participated in the enquiry proceedings and by an order dated 13.5.2006 a major penalty was imposed upon the petitioner. Counsel for the petitioner submits that the petitioner has already assailed the order.
14. Taking into consideration that re-instatement and backwages were to be treated on the analogy of Ram Dularey's case and having regard to the fact that the Central Administrative Tribunal had granted liberty to the respondent to conduct a departmental inquiry against Ram Dularey and in the inquiry Ram Dularey has been found guilty, similarly an enquiry has also been conducted against the petitioner; petitioner did not challenge the enquiry proceedings but participated, and final order was passed holding the petitioner guilty which order has

also been challenged by the petitioner, there is no willful disobedience of the order of the Division Bench, however, in case petitioner succeeds in the appeal filed by the petitioner challenging the final order of inquiry, petitioner would be entitled to such relief as claimed by him. The petitioner has already received a sum of Rs.1.0 lac. Registry is directed to release the balance amount which has been deposited by the respondent together with interest accrued thereon in favour of respondent without adjusting Rs.1.0 lac, which already stands paid to the petitioner.

15. Petition stands disposed of, in above terms.

**CM.No.11619/2006**

16. In view of order passed in the petition, application stands disposed of.

**May 13, 2010**  
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**G.S. SISTANI, J.**