

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

+ LPA No.310 of 2012 & CM No.7196/2012 (for Stay)

% Reserved On: 26th July, 2012
Pronounced on: 24th August, 2012

DELHI TRANSPORT CORPORATION . . . APPELLANT

through : Mr. Anand Nandan,
Advocate.

VERSUS

HARISH BABU . . . RESPONDENT

through: Ms. Rashmi B. Singh,
Advocate.

CORAM :-

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKRI (Acting Chief Justice)

1. The charge of unauthorized absent from the duty for a period of 171 days, i.e., from 01.1.1993 to 30.11.1993, a departmental inquiry was held against the respondent [hereinafter referred to as 'the workman'] by the appellant, Delhi Transport Corporation ('DTC' for the sake of brevity). The defence of the workman in the said inquiry was that he had submitted leave applications for the entire period of his alleged unauthorized absence from the duty on the ground of sickness and had even submitted medical certificates as well. Therefore, it was not a case of unauthorized absence or lack of interest in the job as alleged in charge-sheet. Inquiry was held as per which charges stood proved. Accepting the inquiry

report, the Disciplinary Authority imposed the punishment of "removal" from services. The workman raised the industrial dispute. Preliminary issue was framed by the Labour Court on the fairness and validity of the departmental inquiry. This issue was decided vide orders dated 08.8.2008 against the DTC holding that the inquiry was not fair as proper opportunity was not granted to the workman. Inquiry was, thus, set aside and DTC was given an opportunity to adduce evidence before the Court itself in order to establish allegation of misconduct levelled against the workman.

2. The DTC examined two witnesses to establish charge of unauthorized absence. The workman examined himself on the basis of evidence produced before the Labour Court. The Labour Court returned the finding that the charge was not proved. Vide Award dated 02.2.2010, the Labour Court held the termination of workman's service as illegal and unjustified and granted relief of reinstatement with *lump sum* payment of ₹50,000/- towards backwages.
3. Feeling aggrieved, the DTC filed the Writ Petition, which has been dismissed by the learned Single Judge vide impugned order dated 07.3.2012. The DTC had questioned the orders dated 08.8.2008 vide which departmental inquiry was held to be improper. The DTC had also challenged the veracity of the Award dated 02.2.2010 whereby the Labour Court held that the charge of unauthorized leave was not proved.
4. Insofar as fairness of inquiry is concerned, the learned Single Judge has repelled the challenge of the DTC in the following words:

"13. In the enquiry, the enquiry officer had at the commencement of the enquiry asked the respondent-workman whether he was admitting the charges or not to which his reply was that he had availed of leave because of his sickness and he had submitted leave applications with medical certificate. Thereafter, the enquiry was closed without recording any evidence from either side. It alleged that after closing the enquiry proceedings the enquiry officer got some file from the management and after perusing the same at the back of the workman he held him guilty and he also observed that even the past record of the respondent was bad. The enquiry officer had no business to go into the past record of the respondent and surprisingly, even the observation was not made on the basis of any material brought on record before the enquiry officer in the presence of the respondent. In my view, that was no enquiry at all and the enquiry officer could not have taken into consideration any record which nobody had produced in the enquiry from the side of the management. There was thus total violation of the principles of natural justice. Even the learned counsel for the petitioner could not seriously defend the enquiry officer's approach in the conduct of the enquiry."

5. The aforesaid procedure adopted by the Inquiry Officer in conducting the inquiry is, *ex facie*, faulty. No doubt, past record of an employee can be seen, but that would be for the purpose of awarding punishment. A finding of guilt cannot be arrived at on the basis of past record without confronting the same to the workman. In the present case, there is a flagrant violation of *principles of natural justice* in the conduct of inquiry at two levels, viz:

- (a) On the first date, the workman is asked whether he admits the charge or not. His reply was that he had availed the leave duty to sickness and he submitted the leave application. This is neither gone into, nor the workman is giving an

opportunity to substantiate this evidence by leading evidence. On the contrary, after recording his statement, the inquiry is closed by the Inquiry Officer and no evidence is recorded from either side. Thus, not only there is evidence produced by the Management in support of the charge, but opportunity was denied to the workman also to prove his defence.

- (b) As pointed out above, past record was gone into and some material was brought on record before the Inquiry Officer after the closure of inquiry and in the absence of workman. This was clearly impermissible.

6. Such a procedure is clearly faulty and against the basic tenets of natural justice. In the case of **Roop Singh Negi Vs. Punjab National Bank and others** (2009) 2 SCC 570 almost in identical circumstances enquiry was held to be vitiated as is clear from the following discussion in the said judgment:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

7. To the same effect is the judgment of the Apex Court in ***State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha*** (2010) 2 SCC 772 wherein this principle was reiterated in the following manner:-

"An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

8. Thus, we do not find any merit in the plea of the appellant on this count and hold that the learned Labour Court was right in arriving at a finding that the departmental inquiry was not conducted fairly.
9. Thus, it takes us to the merits of the award, whereby the learned Labour Court has held that the charge against the workman was not proved by leading cogent evidence before the Labour Court. The DTC had produced two witnesses. The main witness was MW-2, Ms. Raj Kumari. She was a Junior Clerk in DTC, who did nothing but to prove a report (Ex. MW-1), which showed that for 117 days, out of the total period of absence of 171, the workman had submitted leave applications but the same were rejected and for the rest of 54 days of absence, no leave applications had been submitted. No evidence was produced to show why these leave applications

were rejected when they were submitted by medical certificates. No evidence was produced even to show that these applications were rejected and after rejection and the decision of rejection was conveyed to the workman. On this basis, learned Labour Court arrived at a finding that the DTC could not establish the charge of "unauthorized absence" from duty for 171 days. This finding is accepted by the learned Single Judge. Not only these are the pure findings of fact, the view taken by the learned Labour Court on the analysis of evidence is plausible and cannot be termed as perverse. Therefore, it does not call for any interference.

10. Same is the position with regard to the charge of 54 days absence and the finding of fact of the Labour Court as well as learned Single Judge is that this part of charge is also not proved. We would like to reproduce the discussion by the learned Single Judge in this behalf:

"16. As far as the other part of the charge that for 54 days of absence the respondent-workman had not even submitted any leave application is concerned, I am of the view that even that is not correct. The respondent-workman had claimed in his reply to the charge-sheet, claim statement filed in Labour Court and in his evidence also he had given leave application for the entire period of leave which he had taken. In his cross-examination nothing could be elicited from him which could discredit him and I see no reason to reject his testimony particularly when the management itself had not produced the material documentary evidence in its possession. In these circumstances, the respondent-workman's statement on oath that he had submitted leave applications for the entire period in question has to be believed."

11. Again, there is nothing to show that these findings are perverse. We, thus, do not find any merit in this appeal, which

is accordingly dismissed. To put the record straight, we may mention that during the pendency of this appeal, the appellant had agreed to reinstate the workman back with immediate effect, subject to the outcome of the said appeal. Orders dated 25.7.2012 reinstating the workman is, thus, already taken back on duty. Since we are dismissing the appeal, the award shall now be implemented in other respects as well.

12. This appeal is accordingly dismissed with costs quantified at Rs.10,000/-.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

AUGUST 24, 2012

pmc