

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

% **W.P. (C) 16069/2006**

+ **Date of Decision: 23rd February, 2012**

MANAGEMENT OF D.T.C. Petitioner

! **Through: Ms. Arati Mahajan Shedha, Advocate**

Versus

\$ **DHAN SINGH Respondent**

Through: Mr. K.C. Dubey, Advocate

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

This writ petition has been preferred by the petitioner (DTC) challenging the award dated 02.09.2004 of the Labour Court whereby the removal of the respondent workman from its service had been held to be illegal and his re-instatement with full back wages and other consequential benefits was ordered.

2. The respondent-workman at the time of termination of his employment was working as a driver with the petitioner. The petitioner had charged the respondent-workman vide charge sheet dated 26-12-1991 with the misconduct of unauthorized absence from duty from 13.11.1991 to 12.12.1991. The management held an also. The enquiry officer found the respondent-workman guilty

of absence without permission, negligence in performance of duties and lack of interest in his work and the disciplinary authority vide order dated 24.3.1992 imposed extreme punishment of his removal from service after accepting enquiry officer's report.

3. The respondent-workman then raised an industrial dispute in respect of his removal from service by approaching the labour authorities. The dispute was referred to the Labour Court under Section 10 of the Industrial Disputes Act with the following term of reference:-

“Whether the removal of Sh. Dhan singh is illegal and/or unjustified ,and if so ,to what relief is he entitled and what directions are necessary in this respect?”

4. The respondent-workman filed a statement of claim before the Labour Court in which he had pleaded that he was not even served any charge-sheet and the enquiry was also not conducted fairly and properly and in any case, the punishment awarded to him was highly disproportionate to the alleged act of misconduct. The petitioner-management had filed its written statement and claimed that the respondent was removed from service after serving him with a charge-sheet and relevant documents and holding a proper enquiry in which he had admitted his fault and further that punishment of removal from service was awarded to him since earlier also he had been awarded punishment 28 times for different acts of misconduct including that of remaining frequently absent from duty. The Labour Court vide order dated 23.3.2001 had

framed the following preliminary issue regarding the validity of enquiry:-

“Whether a fair and proper domestic enquiry was not conducted in accordance with principles of natural justice”

5. This issue was decided by the Labour Court in favour of the workman vide one para order dated 19.3.2004 and that order is reproduced below:-

“ Heard on the enquiry issue and perused the written statement filed by the AR for the workman. Workman remained absent from 13.11.1991 to 12.12.01 and on 13.12.91 he appeared in the office and produced medical certificates along with fitness certificate as shown by Ex.WW1/3. The same was put before the officer who accepted the medical certificate and leave application and directed him to take him on duty. It is admitted by DTC that subsequently, this period was regularized as leave without pay on medical grounds. In these circumstances ,there remained no misconduct on his part which could have been made a subject of department action. Accordingly, the enquiry report is held as perverse and is accordingly set aside”.

6. Thereafter, vide final award dated 02-09-2004 the learned Labour Court set aside the punishment awarded to the respondent-workman. Feeling aggrieved, the petitioner filed this writ petition challenging the order dated 19-03-2002 on the issue of enquiry as well as the final Award of the Labour Court.

7. Learned counsel for the petitioner had argued that this case is of workman remaining absent without prior permission and without getting leave sanctioned and since in the enquiry the respondent – workman had himself admitted his fault and had stated that he did not want any enquiry into the allegations levelled against him and had

assured the enquiry officer that in future he would be careful he could not later on say that enquiry held was not proper and the learned labour Court has also erroneously had held in a cryptic one para order that the enquiry report was perverse. Therefore, counsel further submitted, not only the order dated 19.03.2004 on the issue of enquiry but the final award also which came to be passed as a consequence of the decision on the issue of enquiry are liable to be set aside and the case of the respondent-workman deserves to be rejected by this Court in exercise of its writ jurisdiction as the decision of the labour Court is perverse.

8. On the other hand, learned counsel for the respondent - workman supported the order of the labour Court on the issue of enquiry as well as the final Award in his favour. Since in his evidence the respondent-workman had not claimed that he was not served with the charge-sheet his counsel also did not press that plea taken in the statement of claim. It was, however, contended that the management had neither proved the decision taken on the leave application submitted by the workman on 13th December, 1991 nor it had produced in the enquiry his alleged bad past record which was taken into consideration by it while imposing the extreme punishment on him. Therefore, no fault could be found in the impugned Award.

9. In order to find out whether a fair and proper enquiry was held by the petitioner – management before punishing the respondent – workman I have perused the enquiry proceedings as well as the enquiry officer's report, copies of which were filed by the petitioner –

management along with this writ petition. Enquiry officer's report shows that he had held the charges levelled against the respondent – workman proved in view of the fact that he himself had admitted before him that he was at fault and that in future he would be careful and in order to find out whether actually that was so, I had also gone through the one page enquiry proceedings held on 12th March, 1992. The date of 12th March, 1992 was the first date in the enquiry and on that day at the outset the enquiry officer had read out the charge-sheet to the respondent – workman and had asked from him whether he was admitting the charges or not. The respondent – workman had then made a statement crux of which, if read as a whole, was that the case against him should be closed as he had fallen sick about which he had sent necessary intimation from his home to his Depot but he did not know why that intimation could not reach there in time. He further claimed that he had taken leave because of his sickness in respect of which he had submitted medical certificate and fitness certificate at the time of joining of his duty (which admittedly had been submitted by him on 13th December, 1991). The enquiry officer thereafter closed the enquiry proceedings while observing that in case it would be considered necessary in the interest of justice to re-open the enquiry that could be done by the Corporation(DTC) at any time. Thereafter he submitted his report to the Disciplinary Authority to the effect that the respondent-workman had admitted his fault that he had not sent the intimation of his sickness in time.

10. In my view, from the statement made by the respondent – workman before the enquiry officer it does not appear that he had accepted that he had committed the alleged acts of misconduct. All that he had stated in his preliminary questioning by the enquiry officer was that he had sent the intimation about his sickness from his home but that could not reach the Depot in time which was not known to him. He had also given justification for not reporting for duty during the period in question and it is not the management's case that that explanation of his being sick was found to be false. He had in fact clearly stated before the enquiry officer that his case should be closed. If that prayer was not to be accepted then enquiry officer should have proceeded further with the enquiry to find out if actually the respondent-workman's absence was willful or it was due to justified reasons. The management's witness had admitted before the Labour Court in cross-examination that the medical papers which the respondent – workman had submitted at the time of joining his duty on 13th December, 1991 were accepted by the management. So, in view of the initial statement having been made by the respondent – workman in the enquiry the enquiry officer could not have closed the enquiry proceedings on the ground that respondent – workman had admitted that he had committed some misconduct. If the management's representative was not satisfied that the statement made by the respondent – workman that he had sent intimation to his Depot Manager about his falling sick he should also have asked the enquiry officer to proceed with the enquiry. Since it is admitted by the management that on 13th December, 1991 the respondent had

submitted an application along with medical papers it was required to show as to what orders had been passed on that application which the respondent claimed to be a leave application while the management claimed that that application could not be considered to be a leave application. Learned counsel for the management had not disputed that an employee can seek sanction of leave on medical grounds at least even at the time of joining and that the management can entertain it if good reasons are given but it was submitted that whether leave is sanctioned or not is a different matter that is incorrect. In this case, however, the management had not even produced in the enquiry the decision taken on the workman's application given on 13th December, 1991. I am, therefore, of the view that this in fact is a case of no enquiry at all.

11. I, therefore, do not find any merit in this writ petition and so it is dismissed.

P.K. BHASIN, J

FEBRUARY 23, 2012