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

**Date of Decision: 07.05.2013**

+ **W.P.(C) 3899/2011 and C.M.Appln. Nos. 8125/2011, 1080/2013 & 5184/2013**

PRESS TRUST OF INDIA LTD

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with  
Mr. Vinay Sabharwal & Mr. Anurag  
Ranjan, Advocates.

versus

NEERAJ BHUSHAN

..... Respondent

Through: Respondent in person.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (ORAL)**

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the industrial award dated 24.02.2011 passed by Labour Court VII (East Distt.), Karkardooma Courts, Delhi in ID No.36/2004 which was a direct petition under section 10(4A) of the Industrial Disputes Act, 1947 (the Act), as applicable to Delhi.

2. The respondent workman assailed his dismissal from service by the petitioner management on 23.04.2003. The said dismissal was premised on the domestic enquiry conducted by the petitioner management on the basis of the charge sheet dated 03.12.2002 issued to the respondent. The industrial adjudicator, while determining the preliminary issue with regard

to legality and validity of the domestic enquiry found the same to be illegal and invalid. The Labour Court then proceeded to grant an opportunity to the petitioner to establish the charges against the respondent by leading independent evidence. The order on the preliminary issue has not been assailed in these proceedings.

3. The Labour Court has examined each of the eight charges levelled against the respondent and held that none of them have been established. Consequently, the Labour Court has allowed the direct petition preferred by the respondent, and the respondent has been held entitled to reinstatement in service with continuity and full back wages from the date of his dismissal i.e. 23.04.2003 till reinstatement. The charges against the respondent in a nutshell, as noticed by the Labour Court are as follows:-

***“Charge No. 1 relates to instigation to wives of the staff members and outsiders to make criminal trespass on 22.10.2002. Charge no. 2 relates to unauthorized absence from duty w.e.f.23.10.2002 onwards. Charge no. 3 relates to making baseless and wild allegations against Sr. Manager (Administration) undermining the interests of the organization. Charge no. 4 relates to a letter got written to the General Manager on October 28, 2002 from All India General Mazdoor Trade Union, New Delhi. Charge no. 5 relates to going to various departments of the Management organization on 31.10.2002, asking the employees to participate in ‘halla bol’ rally starting 1.00 p.m. on 01.11.2002. Charge No. 6 relates to inciting the workers to indulge in violence. Charge no. 7 relates to intending to intimidate the Company’s Directors on 26.11.2002, threatening to hold dharnas at their offices. Charge No.8 relates to putting up banner, demonstrating and blocking the side gate of the PTI building on November 22, 2002.” (emphasis supplied)***

4. Mr. Sethi, learned Senior Counsel for the petitioner during his submissions has assailed the impugned Award only in respect of its findings in relation to charge Nos. 1, 2, 4, 5 and 8. Even amongst these charges, so far as charges Nos. 4 and 5 are concerned, on instructions from the petitioner the challenge to the findings of the Labour Court on these charges have not been pressed. Therefore, what remains to be examined is the Award made by the Industrial Adjudicator in relation to charge Nos. 1, 2 and 8 which have been highlighted in the above extract.

5. The first charge against the respondent was that he had instigated the wives of the staff members and outsiders to make criminal trespass in the office property of the petitioner on 22.10.2002. Learned Senior Counsel for the petitioner submits that the respondent was the General Secretary of the Press Trust of India Employees Union. The respondent was leading the agitation to press its demands against the petitioner. Mr. Sethi submits that on the basis of the evidence led before the Labour Court, the Labour Court has returned a finding that, as a matter of fact, demonstration was held at the main gate of the PTI building by the wives of the staff members on 22.10.2002 at around 1.00 p.m. Mr. Sethi points out that the respondent had altogether denied that such a demonstration had been held, and on this count the Industrial Adjudicator returned a finding against the respondent. Mr. Sethi submits that the Industrial Adjudicator, however, rejected the petitioner's case that it was the respondent who had instigated and organized the said demonstration. This finding of the Industrial Adjudicator, according to the petitioner, is inconsistent with the deposition of MW6 – Ms. Padma Alwa, which had been rejected by the Industrial Adjudicator.

Mr. Sethi submits that there was no reason to reject the deposition of Ms. Padma Alwa wherein she had clearly stated that she was an eye witness to a conversation wherein the respondent had stated that he would organize a demonstration by the wives of the staff. Mr. Sethi submits that this error in the impugned Award has led to a serious infirmity which goes to the root of the matter, and he submits that this error tantamounts to perversity in the impugned Award.

6. Mr. Sethi has drawn the attention of the Court to the following extract from the examination – in – chief of MW6 Padma Alva:

*“I say that on 9.10.02, during one of my rounds in the office on the first floor main hall, I saw Mr. Neeraj Bhushan and Mr. Vinod Kumar huddled together with Mr. Y.S.Rawat, Mr. C.L.Gupta, Mr. S.C.Sharma, Mr. Ghananand Joshi and some others whose names I do not now recollect. As soon as Mr. Neeraj Bhushan saw me, he raised the level of his speech to make it clear and audible to me, as I was standing at a distance of just a few feet from them. Whilst I was generally surveying the office, Mr. Neeraj Bhushan told the aforesaid gathering of his colleagues that they and other members of the Union must persuade, urge and literally compel their wives to come to PTI office to demonstrate. Seeing that I had already overheard Neeraj Bhushan’s exaltation, he became bolder and declared that unless something drastic was done, the back of the management could not be broken and the demonstration of spouses was just a trailer. I then informed Mr. M.K.Razdan, the then General Manager about it. Since we subsequently did not receive any written intimation of any such demonstration, we dismissed the event and did not take it seriously.”*

7. Mr. Sethi submits that the respondent cross-examined the said witnesses but this part of the statement could not be shaken. Mr. Sethi submits that, even otherwise, it was obvious that the respondent would have

been responsible for the organization of the said demonstration by the wives of the staff as, without such organization, they could not have - on their own, gathered at the building of the petitioner.

8. The Industrial Adjudicator rejected the charge against the respondent by observing as follows:

*“It is not the case of the Management that workman Neeraj Bhushan was present, when demonstration was going on, but as per show cause notice dated 18.11.2002 Ex.WW1/4, the Management in response to denial by the workman that he instigated wives of some staff members and outsiders to hold a demonstration, the Management questioned that it was reported that demonstrators, who made criminal trespass into the PTI Building, were raising abusive slogans against senior members of the Management and in support of the workman and in case they were not agents of the workman, then why they would have come and raised slogans. So, by inference, it was taken that they were all supporters of workman Neeraj Bhushan, and had come to demonstrate at the PTI building, at his instigation, for the reason that they were raising slogans and abusive slogans against the senior members of the Management and in support of the workman, and it is the deposition of MW6 Ms. Padma Alva, Chief Administrative Officer & Regional Manager, who has testified that she had heard Neeraj Bhushan telling his colleagues on 09.10.2002 that they should persuade their wives to come to the PTI building, to demonstrate. This part of the deposition of MW6, Ms. Padma Alva, cannot be believed, particularly in the light of show cause notice dated 18.11.2002 Ex.WW1/4, given by Sh. Subimal Choudhury, Sr. Manager (Administration), where the only argument on behalf of the Management was that demonstrators were raising abusive slogans against the senior members of the Management and in support of the workman and nowhere, it is mentioned that MW-Ms. Padma Alva had heard the workman asking his colleagues to persuade their wives to*

*come to PTI Building for demonstration. The evidence brought on record by the Management in the form of inferences that the demonstrators were raising slogans in favour of the workers and so, they were all demonstrating at the instigation of the workman, is not sufficient to accept as proof of the allegations, vide this charge against the workman.” (emphasis supplied)*

9. The respondent has submitted that deposition of MW6 Ms. Padma Alva with regard to so called conversation that she claims to have heard - wherein the respondent was allegedly talking about organizing a demonstration of the wives of the staff members, is patently false and has been rightly rejected by the Industrial Adjudicator. He submits that in their domestic enquiry, the same witness Padma Alva had also deposed (as MW7). In her deposition, she did not make any reference to the alleged statement of the respondent. In her deposition before the Enquiry Officer, in relation to the demonstration held on 22.10.2002, the said witness Padma Alva, inter alia, stated as follows:-

*“Yes this is a complaint I made on October 22, 2002 to the SHO of Parliament Street Police Station. In fact I even rang him up and told him to bring some women constables since there were women, who were standing in the porch demonstrating, carrying banners and placards and shouting derogatory and abusive slogans in clear violation of High Court Orders.*

*These women demonstrators were simple housewives who would not have otherwise come all the way to PTI unless instigated by someone.”*

10. The respondent submits that a perusal of the said statement shows that the said witness Padma Alva MW6 did not make any reference to the so

called conversation that she had allegedly overheard on 09.10.2002 during one of her rounds in the office on the first floor of the main hall. The respondent submits that the said so called hearing of the alleged conversation on 09.10.2002 was an afterthought, as the witness did not state in her earlier statement made before the Enquiry Officer that any such conversation took place and that she overheard the same. The respondent submits that during her cross-examination Ms. Padma Alva was also shown the proceedings Ex.MW6/W2 from pages 48 to 51 of the domestic enquiry record which was her own statement given before the Enquiry Officer.

11. In his rejoinder Mr. Sethi, learned Senior Counsel for the petitioner, submits that the respondent did not confront Ms. Padma Alva MW6 with her earlier statement, but merely exhibited her earlier statement. Had the respondent confronted the said witness with her earlier statement, she would have had the opportunity to explain the same, and also to explain as to why, when she deposed in the domestic enquiry, she did not depose regarding her hearing the conversation on 09.10.2002 in which the respondent spoke about organizing a demonstration of the wives of the staff.

12. Having heard learned Senior Counsel for the petitioner, the respondent in person and perused the impugned Award qua charge No. 1 and also perused the earlier statement of Ms. Padma Alva (MW6/W2), as also her examination-in-chief by way of affidavit before the Labour Court, I am of the view that the impugned Award on the aforesaid aspect does not call for interference. The aspect of appreciation of evidence falls within the domain of Industrial Adjudicator. This Court does not sit as an appellate forum to re-appreciate the evidence led by the parties. It cannot be said that

the findings returned by the Industrial Adjudicator on Charge No. 1 are perverse, or that any relevant or material evidence has been ignored, or irrelevant evidence taken into consideration. The Industrial Adjudicator has given his reasons for not relaying on that part of the deposition of MW6 Padma Alva, wherein she claimed to have heard the respondent speak about persuading the wives of the staff to come to PTI building to demonstrate. The Labour Court while disbelieving that part of the deposition of MW6 has placed reliance on Ex.WW1/4 i.e. the show cause notice dated 18.11.2002. A perusal of the said document which is titled as “Show Cause Notice II” shows that the same, in fact, is in the nature of a dialogue undertaken by the petitioner with the respondent, on the basis of the response given by the respondent to the earlier Show Cause Notice dated 09.11.2002. In respect of charge No. 1, all that petitioner stated in the said document Ex.WW1/4 was as follows:-

*“You have denied having instigated the wives of some staff members and outsiders to hold a demonstration within the PTI building premises on October 22, 2002. But it has been reported that the demonstrators, who made criminal trespass into the PTI Building were raising abusive slogans against the senior members of the management and in your support. If they were not your agents, why else would they come and raise slogans mentioned above and also in support of the demands made by your union?”*

13. Therefore, the only basis claimed by the petitioner in the said correspondence undertaken with the respondent - to claim that he had organized the demonstration of the wives of the staff at the PTI building premises on 22.11.2002 was *“if they were not your agents, why else would they come and raise slogans mentioned above and also in support of the*

*demands made by your union?”* The aforesaid shows that charge No. 1 was really premised on an inference sought to be drawn by the petitioner and not on the basis of any concrete evidence to link the respondent with organization of the said demonstration on 22.10.2002 at the premises of the petitioner.

14. The submission of Mr. Sethi that the witness Padma Alva was not confronted with her statement, and she was merely shown the same and, therefore, she did not get a chance to explain her earlier statement made in the enquiry proceedings cannot be accepted. The said witness was shown her earlier statement made in the domestic enquiry proceedings. If she was so desirous, she could have explained the reasons why she had not earlier specifically named the respondent for the organization of the said demonstration on 22.10.2002. However, she did not choose to offer any explanation for the said omission on her part when she first made her statement Ex.MW6/W2. It has to be appreciated that proceedings before the Labour Court or industrial adjudicator are quasi judicial proceedings and are not governed by the strict rules of evidence as contained in the Evidence Act. The proceedings at the relevant time were not conducted through qualified/experienced Advocates. The respondent was defending himself in person. The enquiry proceedings were held in the absence of the respondent and, therefore, no cross-examination of the said witness took place in the domestic enquiry proceedings. I may observe that the reasons given by the Industrial Adjudicator to disbelieve the testimony of MW6, as aforesaid, are good enough to justify the finding. The discussion, as aforesaid, founded upon the earlier statement of the same witness made in the domestic enquiry

proceedings is the additional reason why the subsequent deposition in relation to the hearing of the conversation by the witness Ms. Padma Alva on 09.10.2002, cannot be believed.

15. It is quite possible that the said demonstration may have been organized by the respondent. It is equally possible that the organization of the said demonstration was undertaken by someone else, and not the respondent. Therefore, the view taken by the Industrial Adjudicator is a plausible view and does not call for interference by this Court in the exercise of its writ jurisdiction.

16. The charge No. 2 against the respondent was regarding his unauthorized absence from duty from 23.10.2002 onwards. A perusal of the impugned Award shows that the industrial adjudicator has held the said charge as not proved on the basis that it was not a case of continued absence for a considerable length of time, and also not a case of the respondent's inability to work. The conduct of the respondent in remaining on unauthorized leave was looked at sympathetically by observing that the respondent had informed the Management about the labour agitation and – his being the General Secretary of the Workers Union, he was involved in the agitation. The Labour Court also found justification in the unauthorized absence of the respondent from duty by placing reliance upon office order dated 11.11.2002 (Ex.MW4/W1), whereby the respondent's entry was barred into the PTI building. Further, the Management vide Ex.MW4/W2 dated 28.10.2002 had decided to withhold the salary of the respondent beyond 22.10.2002. The Labour Court observes that the issue was not about the work of the Management being affected due to the respondent not

attending to his work, but of the respondent being pre-occupied in the labour agitation. The Labour Court observes that the steps taken by the Management to require the respondent to attend to his duties, were taken to resist the respondent from involving himself in the labour agitation and to weaken the agitation. The Labour Court also notices the respondent's submission that he was not a habitual absentee. His absence from work could not be termed as unauthorized, as he was on strike espousing the cause of the workmen being the General Secretary of the PTI Employees Union. The petitioner contested the respondent's claim of being on strike in terms of Section 2(q) of the Act. The petitioner placed reliance on several decisions on this aspect wherein it had, inter alia, been held that mere absence from work does not amount to taking part in strike within the meaning of that expression as used in the Act. The Labour Court while dealing with this issue, inter alia, observed as follows:-

***“There was a clear cut refusal on the part of the workman to continue to work as is clear from the communication Ex.WW1/M1, which is a telegram sent by the workman to Mr. Shakeel Ahmed, Chief News Editor of the Management, wherein he had stated that his services will be available to the company, only after a union agitation, in which he was involved, is over. It was in the knowledge of the Management that there was some labour dispute, and the employees union, of which the workman was a General Secretary, was agitating along with other office bearers of the said union who were also participating in dharna, demonstration, etc. and the action of the workman in absents during the period, the employees’ union was involved in an agitation, against the Management, is akin to a strike, as the workman was not alone and was not absents from the work, because of his individual problem. On behalf of the Management, reliance was placed on a case decided by the Hon’ble High Court of Delhi reported as Vimla***

***Mehra Vs. K.S.Mehra, 158 (2009) DLT 136, wherein it was held that any evidence, which is led beyond the pleadings, cannot be looked into. It was in the context of the workman raising the contention, of being on strike, at the stage of final arguments. This was the stand taken on behalf of the workman, may not be in so expressed words, but by sending a telegram dated 23.10.2002, the workman had made clear to the Management, that he was not able to attend to his duties, because of the agitation in which the employees union was involved. So, the absence of the workman from his duties beginning 23.10.2002, till the employees union was agitating for its demands and for the legitimate rights of its members, cannot be termed as unauthorized absence, from duties. The Management has failed to prove this charge also, against the workman.”***

17. Mr. Sethi, learned Senior Counsel for the petitioner submits that the finding of the Industrial Adjudicator on charge No. 2 is completely perverse. He submits that the office order dated 11.11.2002, whereby the entry of the respondent was barred into the office, came to be issued two weeks after the unauthorized absence of the respondent. He submits that the respondent had issued a telegram (Ex.WW1/M1) on 23.10.2002 stating that his services would be available to the company only after the agitation in which the respondent was involved is over. The Chief News Editor Mr. Shakeel Ahmed had then sent a letter dated 24.10.2002 (Ex.WW1/M4) pointing out that the respondent should attend to his duties, as he was the first and foremost an employee of the company. He was directed to immediately report for his duties stating that his unauthorized absence had affected the working of the central news desk. Mr. Sethi submits that though the respondent had denied receiving the letter dated 24.10.2002, the Labour Court found in favour of the petitioner that the said letter was delivered to

the respondent and the denial of the respondent was not correct. The Labour Court takes note of the fact that in response to the show cause notice dated 09.11.2002 (Ex.WW1/2) (wherein a clear reference was made to the letter dated 24.10.2002 sent by Mr. Shakeel Ahmed), the respondent did not deny the factum of issuance of letter dated 24.10.2002 and of its receipt by him. Even in the reply to the show cause notice dated 18.11.2002 (Ex.WW1/4), the respondent did not deny the factum of receipt of the letter dated 24.10.2002. The Labour Court observes that the respondent was aware of the fact that he was not attending to his duties from 23.10.2002 as he had himself sent a telegram on the said date.

18. Mr. Sethi submits that the telegram dated 28.10.2002 (Ex.MW4/W2) only recorded that the respondent had been issued a show cause notice for his failure to come for duty upon his leave ending on 27.10.2002 and, consequently, the General Manager had directed the respondent be paid salary till 27.10.2002 only. This document nowhere suggests, even remotely, that if the respondent were to resume his duties, he would not be paid salary for his work. Mr. Sethi submits that the respondent has not offered any explanation for his unauthorized absence between the period 23.10.2002 to 10.11.2002, even if it were to be accepted that from 11.11.2002, his entry was banned in the office. Mr. Sethi submits that the plea of the respondent that there was a strike has no merit. Neither a dispute had been raised in that regard, nor was there a reference made by the appropriate government on the aspect of strike, nor any pleading was raised before the Labour Court, nor any evidence has been led in this respect. The finding of the Industrial Adjudicator that the agitation led by the respondent

against the Management was “*akin to a strike*” is completely perverse. Mr. Sethi has drawn the attention of the Court to Section 2(q) which defines the expression, “strike” to mean, *a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.* He submits that for a valid strike, the same has to be by body of persons and not by a single person. The body of person should act in combination, or there should be a concerted refusal under a common understanding of a number of person/workmen. Mr. Sethi submits that the respondent alone, therefore, could not have gone on strike. He further submits that there was no compliance of the statutory requirements, inter alia, contained in Section 22 of the Act for going on a strike by the respondent, or the workers union.

19. Mr. Sethi submits that even in his evidence, the respondent did not choose to explain his unauthorized absence. All that he stated with regard to his absence from 23.10.2002 in his evidence by way of affidavit was the following:

*“I have never unauthorisedly absented from my duties, without informing my senior officers of the management or refused to obey lawful orders of any superior. No letter of the management dated October 24, 2002 had been served upon me and I was never asked to report for duty and none of my actions affected the working of the central news desk. Even otherwise, I never unauthorisedly absented from duty for more than five weeks.”*

20. The respondent, in his defence, has sought to place reliance on Section 18(1) of the Trade Unions Act which states that “*No suit or other*

*legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any [office – bearer] or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.”* The respondent also places reliance on Section 37 of the Trade Unions Act, which states that no such action or other legal proceeding shall lie against any person for anything, which is done in good faith, or intended to be done in pursuance of this Act or any Rules made thereunder.

21. The admitted position is that the respondent voluntarily chose not to report for work on 23.10.2002 upon expiry of his leave on 22.10.2002. Instead, he sent a telegram on the same day, stating that his services would be available to the petitioner only after the agitation in which he was involved, is over. This shows that there was a voluntary refusal to work on the part of the respondent. The respondent was called upon to report for duty by the Chief News Editor Mr. Shakeel Ahmed vide letter dated 24.10.2002 (Ex.WW1/M4). The respondent was informed that he owed his duties - first and foremost, to his employer. He also informed the respondent that due to his sudden and unauthorized absence, the working of the Central News Desk was adversely affected. Though, the respondent denied receipt of this communication, for the reasons recorded by the Labour Court, the said denial has rightly been rejected. The respondent has not challenged the

finding that he had received the communication dated 24.10.2002 (Ex.WW1/M4) issued by the petitioner. Despite the said communication, he continued to remain absent.

22. A perusal of Ex.WW1/M5 issued by the petitioner shows that the ban order dated 11.11.2002 was interpreted by the petitioner as operative only for one day. In the said document, the petitioner state as follows:

*“In your response you have referred to a ban into your entry into the PTI building. The temporary ban was based on the information that you and your supporters intended to disrupt peace on the establishment on November 12. We note that you were going around the News Room and other departments of the office this afternoon. You again did not care to report for duty.”*

23. From the aforesaid, it would be seen that the petitioner again called upon the respondent to join duties but, admittedly, he did not. Therefore, even if the period from 11.11.2002 to 18.11.2002 were to be excluded, there is no worthwhile explanation for the respondent's unauthorized absence from 23.10.2002 to 10.11.2002, and from 18/19.11.2002 onwards. In fact, the continued intent of the respondent not to join his duties becomes evident from his communication dated 25.11.2002 sent as General Secretary of the PTI Employees Union, Delhi (Ex.WW1/5). In this communication, the respondent, inter alia, stated as follows:

*“.....If you say that the office work is being affected, I would request you to begin dialogue with us and end the stalemate. And if you think the management needs more time to come to the negotiating table, what is wrong in communicating the same to us. I promise to join the office duty immediately upon receipt of such assurance and ensure that the office work is not*

*affected.”*

24. I find force in the submission of Mr. Sethi that merely because the respondent was the General Secretary of the Workers Union, it did not authorize him to indulge in misconduct and indiscipline. In case the respondent as the General Secretary of the Workers Union, was desirous of calling a strike, the same should have been done in due compliance of the provisions of the Act i.e. by giving a prior notice to the Management. His individual, voluntary and unauthorized absence from service after the expiry of his leave and despite the Managements' repeated calls to him to join his duties, would not tantamount to a valid strike. The observations made by the Industrial Adjudicator that the action of the respondent was “*akin to a strike*” has no meaning. Either there is a strike in terms of the definition contained in the Act, or there is none. Merely because the respondent may not have been a habitual absentee, his misconduct in question cannot be brushed aside. If at all, it may have a bearing on the aspect of the penalty that he may be visited with. But it cannot be said that his blatant defiance to join his duties and to remain unauthorisedly absent is not misconduct. There is absolutely no basis for the Industrial Adjudicator to conclude that because there was an ongoing agitation by the workers union of which the respondent was the General Secretary, his unauthorized absence from duties does not amount to misconduct. Even while raising an agitation, the workers are bound by the rules of discipline and must play the game by the rules. The Act provides sufficient room to the workers union to collectively agitate for their rights and to resort to collective bargaining. However, it cannot be countenanced that the Union leaders or other workers - in pursuance of their agitation, resort to misconduct. The finding of the

Industrial Adjudicator on charge No. 2 is, therefore, completely perverse and cannot be sustained. It is clearly against the evidence brought on record, as also the law. The said finding is, therefore, set aside and it is held that the charge No. 2 was duly proved against the respondent.

25. Charge No. 8 against the respondent was with regard to holding a demonstration and blocking the side gate of the PTI building on November 22, 2002 by the respondent along with other workmen. A little background may be given before discussing the Award on the said charge.

26. The petitioner preferred a civil suit bearing No. 241/2002 on the original side of this Court wherein they preferred an interim application being I.A. No. 1092/2002 under Order 39 Rules 1 and 2 read with Section 151 CPC. On this interim application, the Court passed an order of injunction against the Press Trust of India Employees Union, Delhi and the respondent herein – who was also named as a defendant in the said suit, restraining the defendants, their servants, their employees, friends and members of defendant No. 1 Union from holding any demonstration or blocking, which may directly or indirectly affect free ingress and egress to the building premises known as PTI Building, at 4, Parliament Street, New Delhi. The defendants were further restrained from demonstrating within 50 meters from the main gate of the aforesaid building. This order was passed by the court on 01.02.2002. While this order was still in force - the same having been duly served on the respondent, on 22.11.2002, dharna/demonstration was held on the side of the gate of the PTI building. Mr. Sethi submits that on account of holding of the said demonstration by the respondent on 22.11.2002, the petitioner had initiated contempt

proceedings being CCPO No.15/05 in CS(OS) No.241/02. This contempt petition was taken up for consideration by the Court on 21.08.2007 when the following order came to be passed:

*“Present: Mr. A.K. Mata, Sr. Advocate with  
Mr. Anirban Bhattacharya, Advocate for the Petitioner.*

*Mr. Harvinder Singh, Advocate for the Respondents.*

*CCPO No.15/2005 in CS (OS) No.241/2002*

*After some hearing, it is agreed that without prejudice to the rights of the parties to pursue their substantive litigation and without the respondents accepting the allegations in the petition, the respondents undertake to this Court that they will maintain proper work environment and create no impediment in the working of the petitioner nor will they obstruct any officer of the petitioner in performing the duties including in respect of follow up of litigation and other connected matters. The undertaking given by the respondents, who are present in Court, in their personal capacity and as well as office bearers of the Union, is accepted and the petition stands disposed of.*

*August 21, 2007                      SANJAY KISHAN KAUL, J. ”*

27. To prove the charge MW1/Shri H.S. Bawa led his evidence on affidavit dated 15.06.2007 in respect of charge No. 8 wherein he stated, *“that on 22<sup>nd</sup> November, afternoon Sh. Neeraj Bhushan and his several supporters put up banners and starting a dharna/demonstration blocking the side of gate of PTI building in flagrant violation of the order of the Hon’ble High Court of Delhi restraining Mr. Neeraj Bhushan or the office bearers of his union and his agents etc. from demonstrating within a radius of 50 meters or in any way blocking the ingress and egress of PTI Building. They left when SHO came and took them away at around 5.30 p.m.”*

28. The said witness was cross-examined by the respondent. From the same, it appears that the respondent did not deny the holding of the demonstration on 22.11.2002. From the line of cross-examination, it appears that the defence of the respondent to this charge was that the distance of the main gate from the side gate where the demonstration took place, was more than 50 meters. Pertinently, this witness stated in his cross-examination that the respondent was present in the demonstration.

29. The submission of Mr. Sethi, learned senior counsel for the petitioner is that while dealing with this charge the Labour Court has completely misdirected itself by proceeding on the basis that the contempt proceedings initiated by the petitioner before the High Court took care of this issue. Mr. Sethi submits that the petitioner had preserved its rights to pursue substantive litigation. At the same time, the respondent had not accepted the allegation of the petitioner in respect of the said charge. Mr. Sethi submits that the industrial dispute was pending before the Labour Court, wherein Charge No.8, as framed, was also under examination. Therefore, the petitioner had only withdrawn the contempt petition and chosen not to press for contempt, as the said conduct of the respondent - apart from amounting to contempt of Court, also tantamounted to misconduct. He submits that the petitioner did not give up its right to pursue the said charge against the respondent on account of its tantamounting to misconduct.

30. On the other hand, the respondent has drawn the attention of the Court to the evidence of Mr.H.S. Bawa, MW-1. He points out that the said witness admitted that he belonged to a rival union. It is argued that the

witness was biased against the respondent and bore animosity towards the respondent. His statement, therefore, could not be relied upon. Not only that, this witness had participated in the domestic inquiry against the respondent. Yet, when he was asked the question whether he had so participated, he stated that he did not remember. He was confronted with his own statement made in the departmental inquiry Exhibits MW-1 & 2, which bear his signature. He points out that the said witness also stated that he could not say by the demonstration on the side gate, the respondent violated the orders of the High Court. The respondent submits that he does not deny the fact that he, along with a few others, did demonstrate on the side gate of the PTI Building. He, however, submits that it was a peaceful demonstration and the access to the gate was not obstructed. He has drawn attention to Exhibits MW-1/W-1 & W-2, wherein Sh. H.S. Bawa has deposed (in the departmental proceedings) that there were 4-5 people sitting along with the respondent during the said demonstration/Dharna which took place on 22.11.2002 on the said gate of PTI Building.

31. There is merit in the submission of Mr. Sethi that the Labour Court has misdirected itself by proceeding on the basis that because the contempt proceedings had been disposed of, Charge No.8 against the respondent was also taken care of, and did not survive. The same conduct of the workman could give rise to different proceedings, including contempt proceedings, for breach of the orders of the Court and may also tantamount to misconduct. The Court did not dispose of the contempt proceedings, on merits by returning a finding in favour of the respondent and exonerating him. The Court mutually disposed of the contempt proceedings, while preserving the

right of the petitioner to pursue its other litigations which, obviously, included the industrial dispute in question.

32. However, the matter does not end there. The Labour Court goes on to discuss the said charge as follows:

*“Otherwise, starting a dharna and demonstration and putting up banners are part of legitimate means, available to the workers to further their cause and in any case, where there is employees' agitation in any establishment, some disturbance of peace cannot be avoided. From the evidence brought on record in the form of deposition of MW-1 Sh. H.S. Bawa, Sr. Manager, Security, Building & Maintenance, it cannot be concluded that action of the workman was intended to disrupt the peace of Management PTI and its working.”*

33. From the aforesaid, it would appear that the Labour Court has appreciated the evidence in the form of deposition of MW-1 Sh. H.S. Bawa, Senior Manager Security Building and Maintenance of the petitioner management. From the said deposition it cannot be said that the inference drawn by the Labour Court in favour of the respondent is perverse. As pointed out by the respondent, he was present on the side gate of the PTI Building on 22.11.2002 with just a handful of other workmen to hold a Dharna. However, the ingress and egress from the said gate was not affected. No evidence in this respect has been led by the petitioner. The statements made by the respondent in his examination-in-chief in this regard went unchallenged. I am, therefore, not inclined to interfere with the finding returned by the Labour Court on Charge No.8.

34. From the above discussion, it is clear that Charge No.2 is the only charge which stands established against the respondent. The said charge,

i.e., of unauthorised absence from duty from 23.10.2002 onwards is not a charge which can be taken lightly and brushed aside. The respondent was serving in the position of Sub-Editor. The respondent himself claims to have worked for some important assignments for the petitioner. His deliberate and conscious refusal to work by resuming his duties, undoubtedly would have led to an atmosphere of indiscipline and revolt in the organisation of the petitioner, apart from harming the work of the petitioner. In an extreme situation, the said charge would itself be sufficient to call for removal of the delinquent workman.

35. The period of unauthorised absence in the case of the respondent was about two weeks in the first instance i.e., till the date his entry was banned in the PTI Building vide order dated 11.11.2002 (Exhibit MW-4/M-1), and after 18/19.11.2002, when the ban order was clarified as only for a day and the respondent was again asked to report for duty. The unauthorised absence of the respondent, considering that he was not a habitual absentee and his absence was on account of the agitation that he was leading, could not be said to warrant such a severe punishment.

36. I have enquired from the petitioner whether the respondent could be taken back into service. The petitioner has taken instructions and states that there has been enough bad-blood created between the parties, and loss of confidence in the respondent on account of his past conduct. In the background of the case, in any event, the reinstatement of the respondent in my view, was not called for, if industrial peace is to be maintained.

37. By the impugned award, the respondent has been awarded back wages

for about eight years, which were to the tune of Rs.16 Lakhs. The petitioner was required to deposit 50% of that amount, i.e., Rs. 8 Lakhs in this Court. Out of the said amount, an amount of Rs.4 Lakhs already stands released to the respondent. Considering the fact that the salary of the respondent at the time of his removal from service was about Rs.12,000/- per month and that there has been an upward revision in the salary on account of inflation, and after taking into account the fact that the respondent would have earned increments and, maybe, even a promotion over the years - had he continued in service, as also the fact that the petitioner has not taken any work from the respondent since the date of his termination, in my view, the interest of justice would be met if the respondent is paid a further compensation of Rs.3 Lakhs by the petitioner, which would be in lieu of back wages, reinstatement in service and all his past and future claims. While fixing the said amount of compensation, I have also taken into consideration the fact that the respondent would have been liable to be subjected to a moderate punishment, since Charge No.2 stands proved against him, which would have had a bearing on his salary and income, had he continued in service. The said amount be paid to the respondent within four weeks.

38. The impugned order insofar as it directs the respondent's reinstatement in service with back wages stands, accordingly, set aside and substituted by the order made hereinabove.

39. The petition stands disposed of in the aforesaid terms.

**VIPIN SANGHI, J.**

**MAY 07, 2013**

*BSR*