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

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Date of decision: 9th July, 2014

+ **LPA 318/2014 CM Nos.6830-31/2014**

SH JITENDER MATHURIA Appellant

Through : Mr. Ajay Jawatkar, Adv.

versus

M/S HINDSUTAN PETROLEUM
CORPORATION LTD

..... Respondent

Through : Mr. Raavi Birbal, Adv.

+ **LPA 319/2014 & CM Nos.6845-46/2014**

SH JITENDER MATHURIA Appellant

Through : Mr. Ajay Jawatkar, Adv.

versus

M/S HINDUSTAN PETROLEUM
CORPORATION LTD

..... Respondent

Through : Mr. Raavi Birbal, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

CM No.6830/2014 in LPA No.318/2014 and
CM No.6845/2014 in LPA No.319/2014

For the reasons stated, the delay in filing the writ petitions
are condoned.

These applications are allowed.

LPA 318/2014 & 319/2014

1. The petitioner assails the judgment dated 11th February, 2014 passed by the learned Single Judge dismissing his writ petition WP(C)No.2923/2007 and allowing the writ petition filed by the respondent herein being WP(C)No.3747/2007. WP(C)No.3747/2007 was filed by the present respondent challenging the order dated 27th June, 2005 passed by the Tribunal vitiating the inquiry conducted by the respondents against the petitioner and award of the Central Industrial Tribunal – II, New Delhi ('Tribunal' hereafter) dated 7th September, 2006 in I.D. No.61/2003 and To the extent necessary, the facts giving rise to the present writ petitions are briefly noted hereafter.
2. Upon death of petitioner's father, an employee to the respondent, he was given appointment on compassionate basis on the 29th March, 1998 in the post of '*General Workman*'. The petitioner was appointed at the LPG Plant, Village Asauda, Bahadurgarh, Haryana which appointment he accepted without protest.

3. It appears that between the period from 1st December, 1998 to 31st January, 2000, the petitioner remained unauthorisedly absent for a period of 101 days. The respondents issued several intimations to the petitioner in this regard during the period from 2nd February, 1999 to 16th December, 1999 informing the petitioner about his unauthorized absence. These communications were of no avail. In this regard, the respondents proceeded in terms of Clause 31 (7) of the Certified Standing Orders which applied to the respondents and issued a charge sheet dated 16th February, 2000 in respect of the above unauthorized absence. In the response dated 25th March, 2000, the defence taken by the respondent was that he was seriously ill.

4. In addition, the petitioner made a grievance that the workplace was at a distance of 54-55 kms and even Shakurbasti, the point from which the company bus carried the employees for workplace at 5:30 a.m. was also 26-27 Kms. away from his residence; therefore, the petitioner was unable to get his leave application sanctioned from the plant manager before availing sick leave. In this response the petitioner admitted that he was at fault

and begged pardon also for the same. It was also pleaded that he would not repeat the mistake.

5. The respondent's response was not found satisfactory and the matter proceeded to the domestic inquiry conducted by the respondent.

6. The inquiry officer was appointed on 6th July, 2000 who had fixed the 18th July, 2000 as the first date of hearing in the inquiry proceedings.

7. The petitioner was permitted defence assistance of his choice. All reasonable requests of the petitioner as per his rights were complied with.

8. On 18th July, 2000, petitioner's request for giving charge sheet in Hindi was acceded to.

9. The record would show that the petitioner attended the inquiry upto 28th August, 2000 when the date of 20th September, 2000 was appointed as the next date of hearing. On the next date of hearing, i.e, on the 20th of September, 2000, the petitioner did not appear before the Inquiry Officer. He also absented himself from all subsequent dates.

10. The inquiry culminated in the report submitted by the Inquiry Officer on 13th February, 2001 whereby the Inquiry Officer held that the charges against the petitioner stood proved.

11. The petitioner submitted a representation on 20th April, 2001 with regard to the inquiry report. After considering the matter, by order dated 18th July, 2001, the Disciplinary Authority held that the petitioner was guilty of the charged misconduct of habitual absence without leave. Punishment of dismissal from service with immediate effect was imposed upon the petitioner. The petitioner's appeal to the appellate authority was also rejected after the consideration of the facts on record. The petitioner raised an industrial dispute. On failure of conciliation proceedings, by an order dated 22nd April, 2003, the appropriate government referred the following disputes to the Industrial Tribunal for adjudication:-

“Whether action of the management of Hindustan Petroleum Corporation Asaudah, Bahadurgarh in terminating the service of Jitender Mathuria S/o Late Sh. Radhey Shayan, General Workman with effect from 31.02.2000 is just and legal? If not, to what relief the workman is entitle to?”

12. It is noteworthy that by an order dated 27th June, 2005, the

Tribunal decided the preliminary issue regarding fairness of the inquiry against the present respondent employer. The Tribunal was persuaded to do so holding that the inquiry had proceeded ex-parte without there being evidence that the workman applicant was given intimation of the dates on which ex-parte proceedings were held. The Tribunal was further of the view that the charges against the petitioner were vague and that the management should have considered the application filed by the workman which was supported by the medical certificate but the same had not been done. The Industrial Tribunal was of the view that the petitioner had been denied opportunity to represent himself and to cross examine the management witnesses.

13. After so holding, the Tribunal granted liberty to the respondents to produce evidence in support of the charges. Upon consideration of the material on record, the Tribunal passed an Award dated 7th September, 2006 holding that termination of service of the respondent was not legal and directed his reinstatement without any backwages and without any consequential benefits within two months from the date of

publication of the Award.

14. The respondent assailed the order of the Tribunal dated 27th June, 2005 as well as the Award dated 7th September, 2006 by way of WP(C)No.3747/2007 in this Court. The petitioner was aggrieved by the rejection of his prayer for consequential benefits and backwages and challenged the Award to this extent by way of WP(C)No.2923/2007.

15. These writ petitions were considered by the learned Single Judge. The learned Single Judge accepted the WP(C)No.3747/2007 and rejected the workman's writ petition being WP(C)No.2923/2007 by the judgment dated 11th February, 2014 which has been assailed by way of the present writ petition.

16. It is submitted on behalf of the petitioner that in terms of the settlement between the petitioner and the Union whereunder a dependant of a deceased employee was to be provided with a job commensurating with the qualification and the experience at the same place, provided he or she is otherwise eligible for regular vacancy. If no regular vacancy was available, a supernumerary post was to be created. Learned counsel for the petitioner has

reiterated the above grounds urging that the respondents had wrongfully given him compassionate appointment at the LPG Gas Plant at Village Asauda, Bahadurgarh, Haryana which was about 55 Kms from his residence in the plant which was running in double shift. As a result the petitioner was required to report at 6:30 a.m. for his first shift for which he had to leave home at 4:30 a.m. If posted in the second shift, the petitioner would leave the plant at 10:30 p.m. and reach home only at 00:30 a.m. adversely affecting his health and he was compelled to avail extra leave on medical grounds.

17. Learned counsel for the petitioner has contended that unauthorised leave of 101 days was on medical grounds which was supported by 25 medical certificates and that the petitioner had produced fitness certificate on resumption of duties.

18. Learned counsel would also support the present challenge contending that the chargesheet against him was vague and submitted that the petitioner's absence on medical grounds could not be termed as misconduct.

19. The respondents are represented before us on advance notice. We have heard learned counsels for the parties.

20. We find from the record that the respondents had issued several communications to the petitioner from 2nd February, 1999 to 16th December, 1999 notifying him about the unauthorized absence which were duly received by him. In the letter dated 2nd February, 1999 the petitioner had endorsed that he shall not repeat such conduct in the future. Some other letters dated 16th December, 1999, 9th November, 2000, 21st June, 2000 and 21st August, 2000 were also sent to the petitioner. Despite receipt, no objection at all was made by the petitioner either on the timing of his duties or the location of his workplace. The petitioner never expressed difficulty in communication. The petitioner certainly did not ever inform the employer that he was unwell. No medical certificate was forwarded by him to the employer.

21. We find that the learned Single Judge has noted that even if the difficulties expressed by the petitioner were to be accepted, nothing precluded him from forwarding his application as well as medical certificates by post. This was not done.

22. So far as the objection that the charge sheet was vague and not specific as the dates of alleged unauthorized leave were not mentioned therein, the learned Single Judge has noted that the period of absence was fully within the knowledge of the petitioner and that he had also admitted the same. No dispute was raised by him thereto.

23. We may also note the petitioner's response dated 25th March, 2000 to the charge sheet dated 16th February, 2000. In this response, the petitioner has submitted that he was unable to file applications for leave on account of his sickness as well as distance from his residence to take sanctioned leave. The petitioner makes no grievance that he was not aware of the dates of his unauthorized absence. On the contrary, the communication dated 25th March, 2000 contains specific contentions on this aspect. The objection that the charge sheet was vague is an afterthought. No prejudice has resulted to the petitioner from the wording of the charges.

24. So far as finding of the Tribunal with regard to inquiry having been conducted in violation of principles of natural justice is concerned, the learned Single Judge has noted that the petitioner

was proceeded against ex-parte in the inquiry on 31st October, 2000 when neither the respondent or his defence assistance were present. It is on record that the date of hearing of 31st October, 2000 was duly communicated to the petitioner which communication stood received by him in 24th October, 2000. The petitioner certainly had sufficient time to make alternate arrangement in case he was unable to attend the inquiry on the 31st October, 2000.

25. The record further shows that in the hearing fixed on 19th October, 2000 (on which occasion the next date of 31st October, 2000 was fixed), Shri Mahabir Singh, the defence assistance of the petitioner was present. On query of the Inquiry Officer, Shri Mahabir Singh had disclosed that “*employee is not coming to the plant for so many dates and I am not having any document to present his case.*” In this background, the direction to proceed ex-parte against the petitioner in the disciplinary inquiry cannot be held to be in violation of any legal principle.

26. So far as alleged medical certificates are concerned, the petitioner had not submitted any of them to the Disciplinary Authority. The learned Single Judge has noted that these medical

certificates were sent in a bunch at the time of replying to the charge sheet and again while replying to the inquiry officer's report. This has been noted by the Disciplinary Authority in his order dated 18th July, 2001. This fact has also not been disputed before the learned Single Judge or before us.

27. The learned Single Judge has agreed with the observations of the Disciplinary Authority that the medical certificates were not supported by any report of pathology test; no prescriptions were attached nor any documents in supporting any treatment were enclosed. If the medical certificates were genuine, the petitioner would certainly have been in possession of the treatment which he would have undertaken for recovery of the sickness which entailed his absence from duty.

28. We find substance in the submission made by learned counsel for the respondents that the very fact that these medical certificates were produced for the first time while replying to the chargesheet in support of the conclusion that the same were not genuine and that the illness was also an afterthought or an excuse to justify the unauthorized absence. The fact that no leave

application was attached which ought to have been done if the employee was really suffering from serious illness compelling long leave; the absence of supporting documents in the nature of prescription; bill of purchase of medication; pathology test or other test etc. clearly supports the reasoning of the learned Single Judge and the finding of the Disciplinary Authority to the effect that the medical certificates relied upon in support of the unauthorized absence of the petitioner were not supported by documents is justified. For all these reasons, we see no reason to disagree with the findings of the learned Single Judge or the observations of the Disciplinary Authority that the medical certificates were not credible.

29. The petitioner's appointment was on compassionate basis which he had accepted fully knowing the location of his work place. No grievance was made by him at any point of time. No representation was submitted to the employer.

30. The Tribunal has also noted that merely the fact of distance between residence and the work place is not sufficient ground for not getting the leave sanctioned. The Tribunal has also accepted

the respondent's contention that sick leave cannot be treated as unauthorized absence. However, in the given facts, it was found that there is nothing to support the justification of the petitioner's absence on the ground of sickness as asserted.

31. The learned Single Judge has placed reliance on several judicial precedents in support of the findings. In **(2008) 1 SCC 224, L and T Komatsu Ltd. V. N. Udayakumar**, the court has held that the reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. The court has further stated that it is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions.

32. The conduct of the petitioner clearly manifests the belief that he could claim leave of absence as of right without permission or even submission of an application. In the judgment reported at **(1960) II LLJ 261 SC Burn & Co. Ltd. V. Their Workmen and Ors.** the Supreme Court has held that this was gross violation of

discipline and held as follows:-

“There should have been an application for leave but Roy thought that he could claim as a matter of right leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with the services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension.”

33. In *AIR 2004 SC 4161 Delhi Transport Corporation v. Sardar Singh*, the Supreme Court has observed that if an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. The conclusion regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. The Supreme Court also held that the burden was on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant material.

34. In the instant case, the petitioner has treated his employment with utter casualness despite the fact that he had been given appointment on compassionate basis upon the demise of his father. He failed to even respond to the several communications sent by the employer which clearly manifests the casualness, irresponsibility and lack of interest in his employment.

35. The learned Single Judge has also noted the observations of the Supreme Court in *(2001) 1 SCC 214, Punjab & Sind Bank & Ors. v. Sakattar Singh* noting the rule requiring giving an opportunity to the employer to rejoin duty within the stipulated time or to explain his position to the satisfaction of the Management that he has no intention of not joining duty. The Supreme Court has held that the presumption will be drawn that the employee does not require the job anymore and will stand retired from service if he fails to explain such position. The conduct of the petitioner has to be examined in this legal background. Examined against this legal background his conduct clearly manifests lack of interest in his employment as the petitioner failed to tender any explanation, let alone a satisfactory explanation, despite repeated notices from the

employer.

36. The petitioner's conduct displays utmost irresponsibility even during the disciplinary inquiry when he opted to remain absent therefrom. He also did not support his stand in his defence by leading any evidence at all and made no efforts to prove the genuineness and authenticity of the medical certificates.

37. In this background, the findings of the learned Single Judge that the inquiry was held in accordance with the principal of natural justice and that the charges against the petitioner had been duly proved in the inquiry proceedings cannot be sustained on any legally tenable grounds.

38. Before parting the case, we may note that in compliance of the order dated 6th August, 2010 passed under Section 17B of the Industrial Dispute Act during pendency of the WP(C)No.3747/2007, the respondent has paid a sum of approximately Rs.6,16,000/- to the workman.

The learned Single Judge has not directed any restitution.

39. These appeals are accordingly held to be without any merit and are hereby dismissed.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JULY 09, 2014
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