

I-R-204

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

Date of Decision: November 24, 2015

+ W.P.(C) 10381/2004

DTC

..... Petitioner

Through: Mr. Adesh Kumar Gill, Advocate

versus

ASHOK KUMAR & ANR.

..... Respondents

Through: Mr. Sugreeva Dubey, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Petitioner's application under Section 33 (2) (b) of *The Industrial Disputes Act* (henceforth referred to as the *I.D.Act*) stands rejected vide impugned order of 27th May, 2003. In the year 1991, respondent was working as a Conductor with petitioner- Corporation and on account of unauthorized absence from duty from 2nd August, 1991 to 29th August, 1991, respondent was *removed from service* vide order of 26th March, 1993 after a departmental inquiry, in which respondent did not participate. Trial court vide order of 17th February, 1997 had framed preliminary issue regarding the validity of the departmental inquiry and vide order of 13th August, 2002, the said issue has been decided against petitioner by holding that the inquiry was not validly held.

At the hearing, learned counsel for petitioner had submitted that the

order of 13th August, 2002 holding that the departmental inquiry stood vitiated, was not challenged by petitioner. Impugned order holds that the alleged misconduct of unauthorized absence from duty does not stand proved. The finding returned in the impugned order is as under:-

“ Issue No.1

To prove the issue applicant produced AW-1 Shri Dharam Vir Singh who filed his affidavit dated 6.2.2003 and further relied upon the documents EX AW1/1 to EX. AW1/7. He was cross-examined. During his cross examination witness admitted that Ashok Kumar was suspended on 14.3.91. He further admitted that the suspension was revoked on 29.7.91. He could not tell whether the acknowledgement of letters were received back or not. On the other hand respondent entered into the witness box and filed his affidavit dated 23.4.2003 in which he deposed that he was suspended on 14.3.91. He further deposed that he moved an application before the depot manager, Gazipur and the same was replied on 7.1.92 vide which he was intimated that the suspension order against him was withdrawn w.e.f. 29.7.91 but this fact was not intimated to him and no intimation was given that he shall be allowed on duty. He was also cross examined.”

To assail the impugned order, learned counsel for petitioner draws the attention of this Court to respondent's affidavit of 31st January, 2001 to point out that respondent had admitted in his evidence / affidavit that he had come know about the revocation of suspension order of 7th

January, 1992. Thus, it was submitted that the afore-noted finding in the impugned order is patently erroneous and deserves to be set aside and petitioner's application under Section 33 (2) (b) of *The I.D.Act* deserves to be allowed.

This petition is contested by learned counsel for respondent who submits that the impugned order does not suffer from any error because paragraph No.7 of respondent's affidavit cannot be read in piece meal and upon reading of respondent's aforesaid affidavit as a whole, it becomes evident that even after revocation of the suspension order, respondent was not allowed to join the duty. Thus, it is submitted that this petition has no substance and deserves dismissal.

Upon hearing and perusal of the impugned order, affidavit of 31st January, 2001 and the material on record, I find that the alleged admission of respondent has been read out of context. Paragraph No.7 of respondent's affidavit of 31st January, 2001 reads as under:-

"That the withdrawal of suspension order could be known to me only on 7.1.92 when I received the reply to my letter and immediately I reported to duty and did bring a false certificate of illness because I was not ill and I was not conveyed the message of withdrawal of my suspension order."

The finding returned in the impugned order of petitioner failing to prove the service upon respondent remains unassailable. Moreover, this Court finds that once the finding of departmental inquiry being vitiated has attained finality, then rejection of petitioner's application under

Section 33 (2) (b) of *The I.D.Act* cannot be faulted with. Impugned order suffers from no palpable error.

This petition is accordingly dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

NOVEMBER 24, 2015
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