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

Date of Decision: October 15, 2015

+ (i) **W.P.(C) 571/2002**

RANDHIR SINGH Petitioner

Through: Mr. Manish Kumar Vikkey,
Advocate

versus

D.T.C. & ORS.Respondents

Through: Ms. Charul Sarin and Mr. Ajitesh
K. Kir, Advocates for respondent-
DTC

+ (ii) **W.P.(C) 1683/2002**

DTC, I.P.ESTATE, NEW DELHI Petitioner

Through: Ms. Charul Sarin and Mr. Ajitesh
K. Kir, Advocates

versus

RANDHIR SINGH Respondent

Through: Mr. Manish Kumar Vikkey,
Advocate

+ (iii) **W.P.(C) 20015/2005 & CM APPLN.12955/2005**

RANDHIR SINGH Petitioner

Through: Mr. Manish Kumar Vikkey,
Advocate

versus

D.T.C. & ANRRespondents

Through: Ms. Charul Sarin and Mr. Ajitesh
K. Kir, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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1. With the consent of both the sides, W.P.(C) 1683/2002 was treated as the lead case as in this petition, common order of 24th August, 2001 was assailed on merits.
2. In W.P. (C) 571/2002, execution of the impugned Award was sought by resort to Section 31 of *the Industrial Disputes Act* with the prayer that petitioner-*Randhir Singh* be allowed to join the duties and he be paid the back wages.
3. In W.P.(C) 20015/2005, direction was sought to respondent No.2 to issue Recovery Certificate against *Delhi Transport Corporation (hereinafter referred to as DTC)* for the admitted amount and relief of reinstatement was also sought.
4. Since the order impugned in the above captioned three petitions is common one and the challenge to the impugned order and its execution is on the common grounds, therefore, with the consent of learned counsel for the parties, these three petitions were heard together and by this common judgment, they are being disposed of.
5. Impugned order of 24th August, 2001 (*Annexure P-1*) holds that petitioner-*DTC* has failed to prove the misconduct of respondent/workman-*Randhir Singh*, who was employed with petitioner-*DTC* as driver.
6. The facts giving rise to these petitions are noted in detail in the impugned order. It would suffice to note that at 7:35 A.M. on 8th April,

1993, respondent herein had purportedly abused and assaulted *Mr. Ram Gopal*-Assistant Cashier with petitioner-*DTC*, who was taken to hospital.

7. Regarding this incident, a Departmental Inquiry was conducted in which *Ram Gopal*-Assistant Cashier had deposed as AW-2 and while relying upon his evidence, it was held by the Inquiry Officer that respondent had mis-conducted himself by assaulting the aforesaid *Mr. Ram Gopal*-Assistant Cashier. The Disciplinary Authority upon receiving the Inquiry Report of 6th December, 1993 had issued a Memorandum of 13th December, 1993 to respondent calling upon him to show cause as to why the Inquiry Report be not accepted and he be punished accordingly.

8. It is a matter of record that respondent-*Randhir Singh* had not participated in the Inquiry Proceedings. According to respondent-*Randhir Singh*, he had no notice of the date of hearing of 3rd December, 1993 whereas according to petitioner-*DTC*, Notice of hearing of 3rd December, 1993 was sent to respondent-*Randhir Singh* by Registered Post. It is also a matter of record that no response to the Memorandum of 13th December, 1993 was given by respondent-*Randhir Singh*. The Disciplinary Authority vide order of 4th January, 1994 had inflicted the punishment of removal from service upon respondent-*Randhir Singh*. Petitioner-*DTC* had sought approval in respect of the dismissal order of 4th January, 1994 by filing an application under Section 33 (2) (b) of *The Industrial Disputes Act*. On the said application, the learned Tribunal had framed a preliminary issue, which reads as under: -

*“Whether the applicant held a legal and valid inquiry
against the respondent according to principles of natural*

justice?”

9. On the preliminary issue, the finding returned by the learned Tribunal vide order of 11th February, 1999 is that although the letter of 22nd November, 1993 intimating the next date of hearing in the Inquiry as 3rd December, 1993 was sent by Registered Post, but the acknowledgment of the delivery of this letter upon respondent is not available in the file and so, it was held that respondent was denied the opportunity of defending himself in the Inquiry. This preliminary issue was answered against petitioner-*DTC* and in favour of respondent-*Randhir Singh*. It is also a matter of record that this order of 11th February, 1999 was not assailed by petitioner-*DTC*. Trial court vide impugned order of 24th August, 2001 has returned the finding on the two additional issues, which are as under: -

“1. Whether the Respondent committed the misconduct for which he was removed from service?

2. Whether one month’s wages were paid to the Respondent as required U/s 33 (2)(b) of the I.D. Act, 1947?”

10. The finding on the first issue was in favour of respondent-*Randhir Singh* whereas the finding on the second issue was in favour of petitioner-*DTC*. Impugned order holds that the misconduct of respondent-*Randhir Singh* does not stand proved and hence, the approval to the punishment of removal from service was declined.

11. The impugned order of 24th August, 2001 is assailed by *DTC* in the above-captioned second petition. Learned counsel for petitioner-*DTC* at

the outset submits that in the impugned order of 24th August, 2001, there is reiteration of the finding on the preliminary issue and since the preliminary order of 11th February, 1999 had merged with the final order of 24th August, 2001, therefore, there was no need of challenging the preliminary order separately.

12. It was vehemently submitted by learned counsel for petitioner-*DTC* that principles of natural justice were duly complied as respondent/workman-*Randhir Singh* was given due Notice of the next date of hearing by Registered Post. Learned counsel for *DTC* has placed on record the copy of the available Inquiry Proceedings.

13. Attention of this Court was drawn to the Inquiry Officer's order-sheet of 26th October, 1993 wherein it is recorded that respondent/workman-*Randhir Singh* had stated before the Inquiry Officer that he will not participate in the domestic Inquiry till the decision of the criminal case. Though the Inquiry was postponed, but Notice by Registered Post was sent to workman-*Randhir Singh* on 19th November, 1993 for 3rd December, 1993. Attention of this Court was also drawn to the Inquiry Officer's order-sheet of 3rd December, 1993 to point out that workman-*Randhir Singh* did not appear before the Inquiry Officer which resulted in *ex parte* Inquiry. Inquiry Officer while relying upon the statement of *Ram Gopal*-Assistant Cashier, had returned the finding of guilt against workman-*Randhir Singh*, who was issued a Memorandum to show cause as to why the Inquiry Report be not accepted. Workman-*Randhir Singh* failed to respond to the aforesaid show-cause notice of 13th December, 1993 and so, the dismissal order of 4th January, 1994 was passed.

14. The learned Tribunal while deciding the preliminary issue of

Inquiry being vitiated due to non-compliance of principles of natural justice has held that denial of opportunity to workman-*Randhir Singh* to defend himself vitiated the Inquiry itself. Service of Notice upon workman-*Randhir Singh* by Registered Post was not relied upon because the acknowledgement was not available in the case file.

15. Learned Counsel for *DTC* submits that the Notice of next date of hearing sent by the Inquiry Officer to workman-*Randhir Singh* was not received back unexecuted. Thus, it raises the presumption of service of the said Notice. It is pointed out that workman-*Randhir Singh* has not disputed in his evidence recorded by the learned Tribunal that the show-cause Notice of 13th December, 1993 was received by him.

16. Learned counsel for *DTC* has placed reliance upon Apex Court's decision in *Chairman-cum-Managing Director, Coal India Limited and Ors. v. Ananta Saha and Ors.* (2001) 5 SCC 142 to submit that there is a presumption in law about the service of Notice by Registered Post and learned Tribunal has gravely erred in considering the stand of workman-*Randhir Singh* in proper perspective. It is pointed out that it is not the case of workman-*Randhir Singh* that the Notice of the next date of hearing was sent to him at the incorrect address. It was pointed out that once the Notice is sent at the correct address, then there arises the presumption of service, which workman-*Randhir Singh* has failed to rebut and so, the decision on the preliminary issue ought to be reversed.

17. On the main issue, the finding returned by the learned Tribunal is that there is no corroboration to the evidence of *Ram Gopal*-Assistant Cashier from any independent source and so, his evidence was not relied upon for want of medical evidence.

18. According to learned counsel for *DTC*, the misconduct of workman-*Randhir Singh* stands duly proved from the evidence of *Ram Gopal*-Assistant Cashier, whose evidence remains unshaken in cross-examination before the learned Tribunal, and no corroboration was required as in Domestic Inquiry, the misconduct is proved on the yardstick of preponderance of probability and not on the yardstick of criminal trial of proving it beyond reasonable doubt. According to learned counsel for *DTC*, the glaring error in the impugned order is of adopting the yardstick of criminal trial and not of Departmental Proceedings.

19. It is pointed out that the bald plea of workman-*Randhir Singh* of his being falsely implicated due to his trade union activities is unacceptable on the face of it because the evidence of *Ram Gopal*-Assistant Cashier remains unshaken. It is also pointed out that intimation of the next of hearing i.e. 3rd December, 1993 by Registered Post stands amply proved from the evidence of the Inquiry Officer (*AW-1*) and the issuance of show-cause notice to workman-*Randhir Singh* prior to the infliction of the penalty stands duly proved from the evidence of *Qamre Alam*, *DTC Depot Manager*. Thus, it was submitted by learned counsel for *DTC* that from the evidence led before the learned Tribunal, the charge of misconduct against workman-*Randhir Singh* stood duly proved and the impugned order declining the approval to the dismissal order is palpably wrong and therefore, it deserves to be quashed.

20. Learned counsel for workman-*Randhir Singh* maintains that order of 11th February, 1999 deciding the preliminary issue was never challenged and it had attained finality and once the Inquiry stands

vitiated, then nothing remains to be considered. It is pointed out that witness-*Ram Gopal*-Assistant Cashier, is an interested witness and that he has falsely implicated workman-*Randhir Singh* due to the trade union activities undertaken by workman-*Randhir Singh* and that once the Inquiry stood vitiated, then refusal to accord approval to the dismissal order of workman-*Randhir Singh* is well justified. It was further submitted that in the absence of any corroboration, the learned Tribunal has rightly concluded that the charge stands not proved and therefore, the impugned order does not suffer from any infirmity and so, the challenge to the impugned order by *DTC* deserves to be repelled and the impugned order ought to be implemented forthwith.

21. Upon considering the submissions advanced by both the sides and on perusal of the preliminary order as well as the final order, the material on record and the decisions cited, I have no hesitation in holding that the preliminary order of 11th February, 1999 stood merged with the final order of 24th August, 2001 as there is specific reference of the decision of the preliminary issue in the final order. Thus, there was no need to challenge the decision on the preliminary issue by *DTC*.

22. The intention of workman-*Randhir Singh* of not participating in the Inquiry Proceedings becomes evident upon a bare perusal of the Inquiry Officer's order-sheet of 26th October, 1993, which clearly reveals that workman-*Randhir Singh* had no intention of participating in the domestic Inquiry till the decision of the criminal case. The outcome of the criminal case is not known. However, learned counsel for workman-*Randhir Singh* maintains that he has been acquitted in the criminal case.

23. Be that as it may. Mere pendency of the criminal case is no

justification not to participate in the departmental proceedings. So far as the Notice of the next date of hearing i.e. 3rd December, 1993 being sent by Registered Post is concerned, I find that the Notice of the next date of hearing was sent by Registered post to workman-*Randhir Singh* at the correct address which raises the presumption of service of the Notice. It is, of course, a rebuttal presumption. However, workman-*Randhir Singh* has failed to rebut the presumption of service of the Notice of the next date of hearing. Workman-*Randhir Singh* in his evidence before the trial court has not stated anything about not receiving of the show-cause notice issued to him prior to the infliction of the punishment. Apex Court in *Ananta Saha (supra)* has reiterated that there is a presumption in law of receiving Notice sent by Registered Post.

24. Upon a bare perusal of the evidence of workman-*Randhir Singh* and the evidence of *Ram Gopal*-Assistant Cashier, *Qamre Aalam-DTC Depot Manager* and the Inquiry Officer recorded by the learned Tribunal, I find that there is no violation of the principles of natural justice and the learned Tribunal has gravely erred in holding that non-availability of Acknowledgement Due Card in the file would be fatal. Thus, the order of 11th February, 1999 deciding the preliminary issue of Inquiry being vitiated is unsustainable.

25. To test the finding of misconduct being not proved, I have cursorily gone through the evidence of *Ram Gopal*-Assistant Cashier recorded by the learned Tribunal and thereupon, I find that the evidence of this witness is sufficient to prove the charge of misconduct against workman-*Randhir Singh*. Merely because there is no corroboration to the evidence of *Ram Gopal*-Assistant Cashier would not justify the finding

returned in the impugned order. It is settled legal position that the evidence of material witness, unless shown to be unworthy of reliance, ought to be accepted. Thus, the finding returned in the impugned order regarding the charge of misconduct being not proved, is erroneous on the face of it.

26. Regarding the proportionality of the punishment awarded, this Court finds that the charge of assaulting the senior is subversive of discipline and so the penalty imposed is fully justified as the record file of workman-*Randhir Singh* reveals that he was ‘warned’, ‘cautioned’ and ‘censured’ on many earlier occasions. Infliction of a lesser punishment upon an employee like workman-*Randhir Singh* would be counter-productive.

27. In the considered opinion of this Court, impugned order is patently erroneous as no prudent person would arrive at a conclusion reached by the learned Tribunal in the impugned order. Consequentially, the impugned order of 24th August, 2011 as well as the order of 11th February, 1999 (*which merges with the final order of 24th August, 2001*) is hereby set aside and approval is accorded to the dismissal order of 4th January, 1994.

28. These three petitions and the pending application are accordingly disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 15, 2015

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