

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

+ Judgment delivered on: September 02, 2015

% **W.P.(C) No. 1905/2004**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. Sarfaraz Khan and Ms. Saroj
Bidawat, Advocates.

versus

SURINDER SINGH & ORS

.....Respondents

Through: Mr. Pradeep Kumar, Adv. for R-1.
Mr. Pankaj Sinha, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Challenge is to the impugned order dated 21.03.2003, passed in O.P. No. 494/93, by the Presiding Officer, Industrial Tribunal - II, Karkardooma Courts, Delhi (*hereinafter referred to as the 'learned Tribunal'*), wherein the learned Tribunal dismissed the approval application made by the present petitioner under Section 33(2)(b) of the Industrial Disputes Act, 1947, ignoring the material evidence on record.
2. The brief facts as stated are that the respondent No. 1 i.e., Shri Surinder Singh (*hereinafter referred to as the 'respondent-workman'*),

was employed as a conductor with the petitioner-management i.e., the Delhi Transport Corporation. It is alleged that the respondent-workman, during his employment with petitioner-management, remained absent from duty without requisite authorisation for a period of 65 days between March, 1992 to December, 1992. As a result, a charge-sheet being memo no. RD-3/SP/CS/85/93/1303 dated 23.04.1993 was issued to the respondent-workman alleging that the acts of the respondent-workman amounted to misconduct within the meaning of standing orders governing the conduct of DTC employees. The Senior Manager (Technical) vide memo no. RT-3/AM(T)/CS-85/93/2778 dated 28.07.1993 issued a show cause notice proposing to impose the penalty of removal from service upon the respondent-workman. The respondent-workman tendered his reply dated 06.08.1993 to the aforesaid show cause notice. Thereafter, the respondent-workman was removed from the services of the petitioner-management vide order no. RHN:III/AI(T)/CS-85/93/3073 dated 30.08.1993. The petitioner-management moved an approval application before the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act, 1947 praying for approval of the action taken i.e., removal of respondent-workman from the services of the petitioner-management. The learned Tribunal vide order dated 28.10.1998 framed the issues and further additional issue was framed on 03.09.2002.

Consequently, vide order dated 21.03.2003, the learned Tribunal rejected the approval sought by the petitioner-management and dismissed the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 on the ground that the applicant-petitioner did not produce any evidence to show that full one month's wages were remitted to the respondent as per the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947. Aggrieved by the same, the petitioner-management has preferred the present Writ Petition.

3. The learned counsel appearing on behalf of the petitioner-management had argued that the learned Tribunal had erroneously decided the issue of payment of one month's wages to the respondent-workman without appreciating the material available on record. It is further alleged that one month's wages were already paid to the respondent-workman through money order and the same was received by the respondent-workman.

The learned counsel causing appearance on behalf of the respondent-workman has submitted that onus lies on the petitioner-management to prove the contents of the approval application under Section 33(2)(b) and the petitioner-management has failed to discharge this onus. Consequently, the order dated 21.03.2003 passed by the learned Tribunal does not require any interference.

4. Para 11 of the approval application moved on behalf of the petitioner-management is reproduced hereinunder:

“11. That Management has issued Removal Order dated 30.08.1993 and has also remitted one month wages by M.O. No. 4372 & 4373 dated 30.08.2013 as required u/s 33(2)(b) of the I.D. Act. simultaneously.”

The relevant portion of the affidavit dated 03.12.2002 filed by Sh. G.K. Sabharwal, on behalf of the petitioner-management, is reproduced hereinunder:

*“The reply of the show cause notice was not satisfactory so the punishment of removal was confirmed. Along with the removal order, one month’s salary of Rs. 2364/- was sent to the workman and the same has been received by the workman. **The copies of the show cause notice, removal order, salary slip and the postal receipts are already on the file as Ex. AW-2/2 to 6.**”*
(Emphasis Supplied)

The aforesaid affidavit was taken on record vide order dated 04.12.2002, which is reproduced as under:

“The applicant has filed affidavit of Smt. Manju Sharma and Sh. G.K. Sabharwal, copy supplied to opposite side. Adj. to 24.01.03 for re-examination of witnesses.”

5. The aforesaid order dated 04.12.2002 speaks about the filing of the affidavit by Sh. G.K. Sabharwal and contents of the same are stated above. The impugned order dated 21.03.2003 is contrary to para 11 of the approval application, affidavit of Sh. G.K. Sabharwal supported with

material documents i.e., M.O. no. 4372 and 4373, alleging therein that one month's wages have already been paid, to the respondent-workman.

6. Consequently, the order dated 07.02.2003 and the impugned order dated 21.03.2003, too, is set aside. The matter is remanded back to the learned Tribunal for passing appropriate order after giving opportunities to both the parties of being heard and opportunity to lead evidence.

7. The parties are directed to appear before the learned Tribunal on 19.10.2015. It is hereby also made clear that nothing contained hereinabove is an expression of opinion on the merits of the case. The lower court record be sent back with a copy of this judgment. No order as to costs.

I.S.MEHTA, J

SEPTEMBER 02, 2015

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