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

Decided on : 11.08.2015

+ **LPA 536/2015**

JAI VIR SINGH

..... Appellant

Through: Mr Rajiv Agarwal and Mr Sachin
Kumar, Advs.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Ms Latika Chaudhary for Mrs Avnish
Ahlawat, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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No. 14572/2015 (Exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed of.

**CM No. 14571/2015 (condonation of delay) and 14573/2015 (for
condonation of delay in re-filing the matter in the Registry)**

For the reasons stated in the applications, the delay in filing/re-filing
the present LPA is condoned.

The applications stand disposed of.

LPA 536/2015

1. The appellant is aggrieved by the judgment and order dated
13.02.2013 of the learned Single Judge, whereby the award of the Labour
Court answering a reference made on 30.01.1992 was upheld.

2. The brief facts are that the workman joined the service of the erstwhile Management of the undertaking (hereinafter referred to as 'Delhi Transport Corporation' (DTC)) on 15.06.1964. He was indicted for criminal charges and stood trial on account of an accident which occurred on 31.03.1983, that took place near Machhrauli on Shershah Suri Marg, where a bus collided with a trolley parked on the road and resulted in another collision with a tempo resulting in the death of five persons. The workman was sent up for trial and was convicted subsequently for committing the offences punishable under Sections 304A of Indian Penal Code. He was issued show-cause notice on 27.05.1988, asking why he should not be proceeded with and removed from service. He replied to the show-cause notice. Ultimately, the DTC removed him from the service on 12.10.1988 primarily on the ground that he was convicted on 23.11.1987 by the competent court and sentenced to undergo two years rigorous imprisonment and also pay a fine. This resulted in a dispute which was referred to the Labour Court. The Labour Court in its award dated 31.01.1996 upheld the dismissal and answered the reference against the appellant. The Labour Court took into account the proven criminal charges and held that the imposition of penalty of removal in the circumstances could not be faulted given that the subject matter of criminal trial was not different from what was the essence of the misconduct alleged against the employee. Before the learned Single Judge, who considered the writ petition, the workman-appellant had sought to place reliance on Section 2(oo) of the Industrial Disputes Act. The learned Single Judge rejected the submissions as follows:-

“10. The Petitioner does not dispute his conviction for offence under Section 279/304A Indian Penal Code, 1860 and the dismissal of the appeal by the learned Sessions Judge. His case is that the revision was still pending. On a specific query put by this Court, the Petitioner has not been able to reply about the outcome of the revision pending before the Punjab and Haryana High Court. Thus, the respondent/ management was justified in removing the Petitioner on the proven misconduct by way of a criminal trial.

11. As regards the contention of the learned counsel for the Petitioner that in view of the office order No. 201 no punishment should have been awarded on the first conviction, the Hon'ble Supreme Court in State of Haryana & Anr. Vs. Rattan Singh (1997) 2 SCC 491 has held that non-compliance of the departmental instructions that the statements of the passengers should be recorded is a rule of prudence and is not a rule that binds or vitiates for violation. In the present case, the misconduct of the Petitioner is very serious. The Petitioner was highly rash and negligent in driving inasmuch as due to the accident 5 lives were lost and 17 persons were injured. Each case has to be considered in the light of the facts therein.

12. In Telecom District Manager & Ors. Vs. Keshab Deb (2008) 8 SCC 402 the Hon'ble Supreme Court while dealing with a case of a casual labour on daily wages who misbehaved with the senior officers, misused and damaged the Government vehicle, was arrested and directed to undergo simple imprisonment for 8 days and pay a fine of Rs. 30 for offence under Section 34(6) of the Police Act held that the employee being a daily-wager, the termination was stigmatic. It is in the light of this fact the Hon'ble Supreme Court held that the management ought to have conducted the enquiry. The said decision has no relevance to the facts of the present case as in the present case the regulations of the Petitioner permit removal on a conviction recorded in a criminal case without conducting an enquiry.”

3. This Court has considered the submissions of the appellant. The concurrent findings of the Labour Court and the learned Single Judge are that there was a complete congruency between the misconduct alleged and the criminal charges for which the appellant stood trial. In these circumstances, the question of holding a further enquiry to determine the facts that have been found by the competent court on an application of a higher standard proof, i.e., beyond reasonable doubt, would have been an empty formality. The approach of the Labour Court and the reasoning of the learned Single Judge do not disclose any error that calls for interference of the Division Bench.

4. Learned counsel for the appellant urged that the workman has since died and that certain dues, such as gratuity and other payments have been withheld. The DTC shall look into the matter and release such of the payments which are admissible to the deceased workman's legal representatives as are admissible in such circumstances in accordance with law. This shall be done within six weeks from today.

The appeal is dismissed in view of the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**AUGUST 11, 2015
BG**