

\$~R-33

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

% *Date of Decision : August 31, 2015*

+ **LPA 597/2009**

DTC

..... Appellant

Represented by: Ms.Avnish Ahlawat, Advocate with
Ms.Latika Chaudhary, Advocate

versus

MANJEET SINGH

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. With regret, we find that the impugned order has been passed by the learned Single Judge without looking into the record, and if only the same was looked into, probably the appeal was unwarranted.

2. On September 17, 1992 the respondent was served with a charge memorandum listing the charge that at 13:00 hours on June 23, 1992 he entered the office of the Depot Manager at Naraina Depot and attempted to hit Sh.M.L.Aggarwal, the Depot Manager, with a chair, table glass, pen stand and the receiver of the telephone. He tried to strangle the Depot Manager with the telephone wire.

3. Inquiry Officer was appointed and the record of the Inquiry Officer would show that apart from the Depot Manager one Smt.Santosh Kumari, the Senior Manager, G.K.Sabharwal and one Sh.Vipul Biswas were examined before the Inquiry Officer. Their statements recorded during preliminary inquiry were proved by them with further statement that they had nothing more to state. The respondent was present when the witnesses deposed. We note that the statement of Sh.M.L.Aggarwal proved the incident, the statements of the other persons corroborated the incident but since none of them were eye witnesses without particulars of what actually happened.

4. The appellant moved an application under Section 33(2)(b) of the ID Act for approval of the decision taken to dismiss respondent from service. The learned Presiding Officer held on August 26, 2002 that the termination was illegal and principally on the reason that the Inquiry Officer was a person junior in rank to Sh.M.L.Aggarwal. Since the appellant had prayed for an opportunity to be granted to lead evidence, the record of the Tribunal would show that Sh.M.L.Aggarwal, Sh.P.C.Johar and Sh.N.S.Duggal were examined by the Management in support of the charge sheet.

5. It would be useless for us to note what the witnesses said because we find that in the award dated July 21, 2003, on the issue whether the respondent committed the misconduct as alleged against him, the discussion of the evidence and the finding is as under:-

“ISSUE NO.1

To prove the issue applicant produced AW-1 Shri M.L.Aggarwal who filed its affidavit dt. 31.10.2002 in which he deposed that on 23.6.92 he was working as depot manager,

Naraina depot. On 23.6.92 at about 13:00 hours, workman entered the office of the depot at Naraina depot without permission. He further deposed that workman attempted to hit him with chair glass, pen stand and telephone receiver. He further deposed that the workman manhandled with deponent without any reason on 23.6.92. The workman disconnected the telephone receiver and its wire and tried to bind the telephone extension wire around his neck with the intention to kill him. It is further submitted that respondent on that day also broke the pen stand and also tore the banyan and shirt of deponent on 23.6.92 at about 13:00 hours. The next witness produced by applicant is AW-2 Shri P.C.Johar who filed its affidavit dated 7.2.2003 in which he deposed that on 23.6.92 at about 1:00 p.m. on driver and one staff of workshop was standing with him. He further deposed that he was enquiring from the driver about a case of tyre damage and all of sudden Sh.Patni entered the room and shouted which he did not understand. He approached the officer of depot manager. He further deposed that few people were already standing at the door of the office of the depot manager. He deposed that when he entered the office of depot manager, he saw Traffic Supervisor and Labour Welfare officer were separating Manjeet Singh from the depot manager and bring the workman outside. He further deposed that when depot manager came out of his room his shirt was torn and concerned workman left the scene abusing the depot manager. Both the witnesses of applicant were cross examined at length. On the other hand respondent entered into the witness box and denied the allegations simplicitor.

7. The applicant has failed to demonstrate its case. Consequently, it is held that applicant has failed to prove the alleged misconduct against the respondent. Issue is decided against the applicant."

6. We need not speak too much. After noting the testimony of Sh.M.L.Aggarwal and Sh.P.C.Johar the learned Labour Court has without bothering to discuss the same held that the management has failed to prove

its case.

7. Writ petition filed by the appellant has been dismissed by the learned Single Judge vide impugned order dated July 29, 2009 by recording that Sh.M.L.Aggarwal the person allegedly assaulted was not examined either before the Inquiry Officer or the Industrial Adjudicator and that other witnesses did not depose to the incident.

8. If only the learned Single Judge had read the impugned award it would have that the Labour Court had itself referred to Sh.M.L.Aggarwal being examined and had also noted the testimony of Sh.M.L.Aggarwal.

9. The record of the Labour Court shows that Sh.M.L.Aggarwal was examined and proved the incident. He was fully corroborated by Sh.P.C.Johar that the incident took place. It may be true that other witnesses, being not eye witnesses, had nothing to depose as to what happened inside the room of Sh.M.L.Aggarwal, but their testimony brings out that when the incident took place Sh.M.L.Aggarwal got very agitated and he had lodged a complaint immediately. Testimony of Sh.P.C.Johar shows that the Depot Manager has to be rescued from the respondent.

10. The appeal is allowed. Impugned order dated July 29, 2009 dismissing W.P.(C) No.18138/2005 filed by the appellant is set aside. The writ petition is allowed and the award dated July 21, 2003 is set aside. It is held that the appellant proved the misconduct committed by the respondent and for which penalty of dismissal from service is inflicted upon the respondent keeping in view the gravity of the wrong.

11. Record of the Labour Court be returned.

12. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 31, 2015
mamta