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

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Date of Decision: February 12, 2015

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LPA 767/2012

SHIV KUMAR

..... Appellant

Represented by: Mr.Atul T.N., Advocate

versus

GOVERNMENT OF NCT OF DELHI & ANR

..... Respondents

Represented by: Mr.A.K.Srivastava, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.19670/2012

Allowed as prayed for because authenticity of the two documents sought to be relied upon in the appeal being letter dated September 17, 2012, annexed as Annexure A-3 to the appeal and the reference order dated July 11, 2012 concerning reference of a dispute pertaining to claim of the workman for variable dearness allowance is not in dispute.

LPA No.767/2012

1. The appellant Shiv Kumar was employed as a Utility Hand-cum-Driver by the second respondent : M/s.Cambata Aviation Pvt. Ltd. He was assigned duties to ply vehicles for transporting baggage to the Aircrafts at Indira Gandhi Airport Terminal – II. One Gulshan Rai was the employee of the company and was assigned the job of loading the baggage. One Ram Kumar was employed as a Driver and was assigned duties to ferry the staff

up to the office of the company at the Airport Terminal.

2. It was reported that during duty hours, the three : the appellant, Ram Kumar and Gulshan Rai were consuming liquor at 01:00 hours in the equipment parking area inside the precincts of IGI Airport. The caretaker on duty objected to the same and it is his claim that he was threatened by the three with dire consequences.

3. A memo dated June 16, 1993 was issued to the three regarding what was reported by the caretaker for the response from the three. A response Ex.MW-1/4 dated June 23, 1993 was received in Hindi from the appellant in which he accepted the wrong and prayed for pardon. Since in the past the appellant used to sign in English and the response in question was in Hindi, the management considered it proper to issue a charge sheet to the appellant. Similar memos were issued to Ram Kumar and Gulshan Rai.

4. In response to the memos whereas Ram Kumar admitted the wrong and expressed apology with an assurance that he would not repeat the misdemeanour in the future, the appellant denied the charges and thus after issuing a warning to Ram Kumar and imposing the penalty of stoppage of one increment, the matter was dropped.

5. Inquiry proceeded against the petitioner and Gulshan Rai.

6. An Inquiry Officer was appointed to record evidence and submit a report. He did so on August 19, 1993 holding that the charge against the appellant was proved and so was against the co-employee Gulshan Rai, both of whom were dismissed from service with effect from September 01, 1993 vide order dated August 01, 1993.

7. The appellant raised an industrial dispute which was referred to the Labour Court by the appropriate authority reference being : *'whether the termination of the service of Sh.Shiv Kumar is illegal and/or unjustified and,*

if so, to what relief is he entitled and what directions are necessary in this respect’.

8. Vide award dated August 07, 2003 the learned Labour Court-IV answered the reference in ID No.732/1994 holding that if for the same wrong Driver Ram Kumar was let off with penalty of stoppage of one increment, the penalty of dismissal from service inflicted upon the appellant is grossly disproportionate. Noting that whereas Ram Kumar had apologized and the appellant had not, while directing appellant to be reinstated in service it was directed that only 50% back wages with continuity in service would be accorded to him, with a penalty of stoppage of two annual increments for the wrong done.

9. The company filed W.P.(C) No.16926/2004 challenging the award and highlighted that the appellant and Ram Kumar could not be equated merely with reference to the post : Driver, held by them. It was highlighted in the pleadings that whereas duties assigned to Ram Kumar did not entitle him to enter the high security area of the airport and did not require him to drive vehicles up to the aircrafts, the duties assigned to the appellant entitled him to enter the high security area and ply vehicles up to the aircrafts. It was highlighted that the slightest error by the appellant could damage an aircraft parked in the parking bays inside the airport, and thus qualitatively seen the gravity of the wrong by the appellant vis-a-vis Ram Kumar was much more.

10. Overlooking said aspect of the matter and rendering no opinion : whether or not aforesaid facts were germane and relevant to distinguish the wrong committed by the appellant vis-a-vis Ram Kumar, and thus the issue of penalty could not be decided on the plea of parity, the learned Single Judge took the view that since Ram Kumar admitted to his guilt and pleaded

for mercy and was hence let off with a minor penalty of stoppage of one increment, since the appellant chose to deny the charge and face an inquiry, he could not be equated with Ram Kumar, and thus the writ petition was allowed.

11. Against the impugned order, instant appeal was filed on October 11, 2012. It was listed for preliminary hearing before DB-I on November 26, 2012. While issuing notice in the appeal the Division Bench noted that the scope of appeal was being restricted to reinstatement of the appellant in service foregoing back wages.

12. At this stage we need to go back in the past to note what happened during the pendency of the writ petition filed by the company challenging the award dated August 07, 2003 whereunder the appellant was directed to be reinstated in service, because these facts would be relevant.

13. The company was not granted a stay, which it had prayed for by way of an interim order that the impugned award be stayed; and as a result the company had to reinstate Shiv Kumar in service. On April 11, 2005 the appellant was reinstated in service and continued to work till September 17, 2012, when a letter was issued to him terminating his services in view of the impugned judgment dated September 07, 2012 passed by the learned Single Judge.

14. Rejoining duty from April 11, 2005 and working till September 17, 2012, it is apparent that the appellant worked for 7 years, 5 months and 6 days before his services were once again terminated.

15. We have asked learned counsel for the company whether during this period any indifference to duty or a misconduct has been noted by the company as having been committed by the appellant. Learned counsel for the company very fairly states that service of the appellant during this period

of 7 years, 5 months and 6 days is without any blemish.

16. During his service with the company till his services were terminated, except for the misdemeanour of consuming alcohol with two colleagues while on duty inside the parking area of IGI Airport on June 15, 1993, no misdemeanour was ever alleged by the company against the appellant.

17. The peculiar feature of the instant case is that the appellant worked without a blemish except for what he did on June 15, 1993 with the company and after his services were terminated and he was reinstated as per the award no blemish has been committed by him when he served the company further for 7 years, 5 months and 6 days.

18. Regarding the arguable point urged by learned counsel for the company that qualitatively viewed, keeping in view the duties assigned to the appellant vis-a-vis Ram Kumar, the two could not be equated, we find that the argument is premised on the value of material things and trivialized the value of human life. The argument was that since the appellant was to drive motor vehicles carrying baggage up to the aircrafts, if in a state of aberration he drove past an aircraft causing damage, the company would have to pay a heavy amount to the owner of the aircraft, but while driving the official car in a state of aberration on a highway at a fast speed the probability of Ram Kumar causing a serious accident resulting in human death looms large in the realm of real. The material worth of the argument is apparent, but the moral worth is not.

19. We leave the argument at that and simply would bring the curtains down holding that on account of the fact that this was the only wrong committed by the appellant and after the impugned award since the company was not granted a stay of the award he was reinstated in service and worked for 7 years, 5 months and 6 days during which period he discharged his

duties diligently we are of the opinion that the appeal needs to be allowed and the impugned order dated September 07, 2011 needs to be modified. The writ petition filed by the management is liable to be allowed upholding appellant being reinstated in service but without any back wages to be paid, for which we take on record statement made by learned counsel for the appellant that the appellant would not claim any back wages as per the award nor would he claim any back wages for the period post September 12, 2012 when, in terms of the impugned decision dated September 07, 2011, services of the appellant were once again terminated.

20. Since we are rendering the decision on the peculiar facts noted hereinabove we do not deal with the decisions cited by learned counsel for the respondents for the reason each case unfolds a story of its own and a decision concerning parity would strictly speaking not to be a precedent. But for record, we note that learned counsel for the respondent has relied upon the decisions reported as JT 1996 (11) S.C. 507 Balbir Chand Vs. The Food Corporation of India Ltd. & Ors., 2005 (8) SCC 46 Obetee (P) Ltd. Vs. Mohd.Shafiq Khan, 2007 (ii) SCC 433 J.K.Sunthetics Ltd. Vs. K.P.Agrawal & Anr. and 2010 (5) SCC 775 Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M.Lad.

21. The appeal is partially allowed and disposed of in terms above without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 12, 2015/mamta