

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

Date of Decision: 07.10.2015

+ **W.P.(C) 8680/2008 & CMs 16690/2008 & 16693/2008**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr Karunesh Tandon, Adv.
versus

SHRI DAYA RAM (ASSISTANT STORE KEEPPER)

..... Respondent

Through: Mr Vikram Dua, Adv. alongwith respondent
in person

**CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

J U D G M E N T

: SUNITA GUPTA, J. (ORAL)

1. The challenge in this writ petition under Articles 226 and 227 of the Constitution is to the impugned award dated 25.03.2008 passed by the Presiding Officer, Industrial Tribunal – I, Karkardooma Courts, Delhi in ID No.37/2006.

2. The respondent – workman was working as Assistant Storekeeper at Bawana Depot in the year 1985. He was imposed the punishment whereby his next two increments were stopped with cumulative effect. An industrial dispute was raised by the respondent (hereinafter referred to as “the workman”) culminating in reference of the industrial dispute by the Secretary (Labour), Government of National Capital Territory of Delhi vide notification dated 07.07.2006 with the following terms of reference:

“Whether punishment of stoppage of next due two increments with cumulative effect imposed upon Shri Daya Ram s/o Shri Chattar Ram is illegal and /or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. Thereafter, the workman filed statement of claim alleging therein that he was employed with the management as Assistant Storekeeper. He was issued a charge-sheet alleging therein that he had tempered with the attendance register by marking his presence though he was not on duty on 08.12.1985, 13.12.1985, 21.12.1985, 24.12.1985

and 30.12.1985. The workman denied those charges vide his reply to the charge-sheet and demanded some documents from the management regarding the attendance register but the same were never supplied and the workman was also not allowed to inspect the documents. The workman had also submitted that Shri Nathu Singh who was storekeeper had inimical relations with the workman and was making false complaints against him to implead him in false case and without considering the submissions of the workman, the Depot Manager initiated enquiry without any basis. The enquiry was not held as per the principles of natural justice and without application of mind. The enquiry officer gave a perverse report and held the workman guilty without there being any evidence against him. The disciplinary authority passed the order of punishment which is illegal and arbitrary and deserves to be set aside.

4. The claim was contested by the management on the ground that the charge-sheet was based on the report of Shri Nathu Singh. The misconduct committed by the workman was of a grave and serious nature. The reply submitted by the workman was not found satisfactory as such a domestic enquiry was conducted against the workman in accordance with the principles of natural justice. The workman was found guilty of the charges. Thereafter, the disciplinary authority on the basis of the enquiry report imposed the penalty of stoppage of next due two increments with cumulative effect. The workman is not entitled to any relief and the claim is liable to be dismissed.

5. On the pleadings of the parties, following issues were framed on 09.02.2007:

- “1. Whether the enquiry conducted by the management is fair and proper? If not, its effect.
2. Whether punishment of stoppage of next due two increments with cumulative effect imposed upon Shri Daya Ram s/o Shri Chatter Ram is illegal and /or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?
3. Relief”

6. Both the parties adduced their evidence. The issue of enquiry was treated as the preliminary issue and the same was decided against the management vide order dated 19.09.2007 by holding that the enquiry report is without evidence. Vide the impugned

award dated 25.03.2008, issue no. 2 was decided against the management and the punishment of stoppage of next due two increments imposed upon the workman was set aside and the management was directed to pay arrears of the workman arising out of the aforesaid punishment within three (3) months. Aggrieved by this award, the present writ petition has been filed by the management.

7. The parties were heard at length. Besides challenging the findings on issue nos. 1 and 2, learned counsel for the petitioner – management strenuously urged that the reference was highly belated as it was made after a lapse of about 18 years of the imposed punishment. That being so, the management could not produce the relevant record which led to returning of a finding against the management.

8. A perusal of the record reveals that on 19.09.2007, the Industrial Tribunal had framed one more additional issue in the following terms:

“3(a). Whether there is a delay of 18 years in raising the industrial dispute on the part of the workman? If so, its effect? (OPP)”

9. A perusal of the impugned award reflects that framing of this additional issue probably escaped the attention of the learned Industrial Tribunal as there is absolutely no mention about framing of this issue and the effect of delay in raising the industrial dispute. It is submitted by counsel for the workman that while giving a finding on enquiry report, the Industrial Tribunal has taken note of the fact that raising an industrial dispute after a gap of 18 years does not help the management. This observation is confined to the issue of enquiry which was decided on 19.09.2007. Once the thrust of argument of the management’s case is upon the delay in raising the industrial dispute leading to weeding out of the records and, therefore, a specific issue was framed in that regard, it was incumbent upon the Industrial Tribunal to have decided this issue which may have material bearing on the case.

10. Under the circumstances, since this issue has not been decided by the Industrial Tribunal, as such the impugned award dated 25.03.2008 is hereby set aside.

11. It is fairly conceded by learned counsel for the parties that since this is only a legal issue no fresh evidence is required to be led by either of the parties. That being so, the matter is remanded back to the concerned Industrial Tribunal for giving fresh finding

on issue nos. 2, 3 and 3(a) after affording an opportunity of hearing to the parties. The parties are directed to appear before the Industrial Tribunal on 30.10.2015.

12. Trial Court record of this case as well as Trial Court record pertaining to ID No.42/2007 be sent back immediately through a Special Messenger.

The writ petition and pending applications, if any, stand disposed of accordingly.

(SUNITA GUPTA)
JUDGE

OCTOBER 07 2015/rd