

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

% *Date of decision : August 18, 2015*

+ **LPA 49/2015**

DELHI TRANSPORT CORPORATION Appellant
Represented by: Ms.Avinash Ahlawat,
Ms.Latika Chaudhary, Advs.
versus

BIR SINGH Respondent
Represented by: Mr.Ravindra S. Garia, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The respondent Bir Singh was employed as Sweeper-Cleaner in the Delhi Transport Corporation (in short the DTC) and subsequently as Conductor on April 22, 1983. Since he absented from duty from April 17, 1993 to June 09, 1993 without prior permission/ intimation of the competent authority he was declared as absconded on April 28, 1993. A charge sheet was issued to Bir Singh as to why disciplinary action be not taken wherein besides the allegation of absenting from duty from April 17, 1993 to June 09, 1993 unauthorizedly without permission from competent officer or information, it was also noted that the past record of Bir Singh showed that he was habitual of committing this type of irregularity and not taking interest in the work of DTC. The reply sent by Bir Singh was not found to be satisfactory by the DTC and thus an enquiry was conducted. On the charges having been proved a show cause notice dated June 23, 1994 was

issued as to why Bir Singh be not removed from the service of the DTC to which Bir Singh filed no reply within the stipulated time. However a belated representation was filed stating that he had filed a leave application but the same was not taken into consideration in the enquiry proceedings. Finally vide order dated August 16, 1994 Bir Singh was removed from service. An application was filed by the DTC under Section 33(2)(b) of the Industrial Disputes Act 1947 (in short the ID Act) for approval of its action which application was dismissed by the Tribunal on July 23, 2003.

2. Aggrieved by the order dated July 23, 2003 the DTC preferred a writ petition being W.P.(C) No.8871/2004 wherein this Court set aside the order of the Industrial Tribunal and remanded the matter back for consideration afresh. On remand the approval petition was allowed vide order dated January 05, 2012 and it was held that the penalty of dismissal from service on Bir Singh was justified. Aggrieved by the order dated January 05, 2012 Bir Singh filed a writ petition being W.P.(C) No.4187/2012 which was allowed by the learned Single Judge by the impugned order dated September 16, 2014 directing his reinstatement in service with continuity and 50% back wages. Hence the present appeal by the DTC.

3. The primary reason why the learned Single Judge set aside the punishment of removal from service was that Bir Singh remained absent from duty only from April 17, 1993 to June 09, 1993 for which he had given explanation and submitted medical documents. As per the medical documents from April 17, 1993 to May 24, 1993 Bir Singh was sick and thereafter his wife fell sick from May 26, 1993 to June 09, 1993. The leave was duly sanctioned for whole period though without pay and as the leave was sanctioned by the respondent there was no justification to remove him

from the service. It was held that the decision of the Supreme Court in (2004) 7 SCC 574 Delhi Transport Corporation Vs. Sardar Singh had no application to the facts of the present case.

4. In Sardar Singh (supra) the Supreme Court referring to the relevant paras of the Standing Orders of the DTC held that mere making of an application after or even before absence from work does not in any way assist the employee concerned and the requirement is to obtain the leave in advance. The relevant portion of the report notes:

“7. In all these cases almost the whole period of absence was without sanctioned leave. Mere making of an application after or even before absence from work does not in any way assist the employee concerned. The requirement is obtaining leave in advance. In all these cases the absence was without obtaining leave in advance. The relevant paras of the Standing Orders read as follows:

“4. Absence without permission.—(i) An employee shall not absent himself from his duties without having first obtained the permission from the authority or the competent officer except in the case of sudden illness. In the case of sudden illness he shall send intimation to the office immediately. If the illness lasts or is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of DTS. In no case shall an employee leave station without prior permission.

(ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his service with the organisation.

19. General provisions.—Without prejudice to the provisions of the foregoing Standing Orders, the following

acts of commission and omission shall be treated as misconduct:

*(a)-(g) ****

(h) Habitual negligence of duties and lack of interest in the authority's work."

8. *Clause 15 of the Regulations so far as relevant reads as follows:*

"(2) Discipline.—The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority:

*(i)-(v) ****

(vi) Removal from the service of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority.

****"*

9. *When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalisation. But at the same time some telltale features can*

be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

10. Great emphasis was laid by learned counsel for the respondent employee on the absence being treated as leave without pay. As was observed by this Court in State of M.P. v. Harihar Gopal [(1969) 3 SLR 274 (SC)] by a three-Judge Bench of this Court, even when an order is passed for treating absence as leave without pay after passing an order of termination, that is, for the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in the extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the governing Standing Orders unauthorised leave can be treated as misconduct.

11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised.

5. It is thus amply clear from the judgment that habitual absence can be deduced even from the period of absence and merely because the leave period is finally adjusted the same would not amount to a sanctioned leave. The Court is required to look into whether the employee was negligent and lacked interest in the work for which the burden is on the employee who claims that there was no negligence or lack of interest. Even in case of sudden illness conditions are stipulated and non-observance of the same

renders the absence unauthorized.

6. Considering the fact that Bir Singh was absent from duties from April 17, 1993 to June 09, 1993 and even without going into the aspect of past record of Bir Singh where he was repeatedly given warnings, suspended, reprimanded and punished by way of stoppage of increment for being absent for the reason the claim of Bir Singh is that past record was not supplied to him, the disciplinary authority was fully justified in directing removal from service of Bir Singh for his unauthorized absence from duty with effect from April 17, 1993 to June 09, 1993.

7. Consequently the impugned order dated September 16, 2014 is set aside and the order passed by the Tribunal is restored.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 18, 2015
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