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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 5470/2016**  
**DELHI TRANSPORT CORPORATION**

..... Petitioner

Through Mr Sarfaraz Khan, Adv.

versus

**VINOD KUMAR & ORS**

..... Respondent

Through Wife of Vinod Kumar is present in  
person

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

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

**ORDER**

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**02.11.2016**

We have heard learned counsel for the petitioner-Corporation and examined the merits of the order dated 19.04.2016 whereby the OA No.2716/2012, filed by Late Vinod Kumar has been allowed.

2. Vinod Kumar had expired on 12.05.2013, during the pendency of the said OA and the widow and children were brought on record as his legal representatives.

3. Vinod Kumar was appointed on 24.12.1985 as Retainer Crew Conductor in the petitioner-Corporation and had worked till July, 2009. Vinod Kumar, during his employment, developed and suffered from diabetes, urological and respiratory ailments and other medical problems. This affected his physical and mental health. As per the medical prescriptions placed on record, Vinod Kumar was advised medical rest on several occasions between July, 2009 and December, 2010.

4. On 14.09.2011, Vinod Kumar was examined by the Medical Board and was advised medical rest from 14.01.2011 to 15.03.2011. Thereafter he

again appeared before the Medical Board but the papers with regard to the same have not been placed on record. It was the case of Vinod Kumar that he had made several visits to the petitioner-Corporation to inquire about his service status.

5. The petitioner-Corporation vide their letter dated 20.06.2011 terminated the services of Vinod Kumar in terms of paragraph 4 (XIV) of the Executive Instructions. Vinod Kumar filed an appeal before the Regional Manager (West) and had appeared in person on 10.08.2011. The Appellate Authority remained unmoved and dismissed the appeal as communicated vide letter dated 15.11.2011. The representation dated 11.04.2012 made to the Chairman of the petitioner-Corporation was also rejected. Vinod Kumar had then filed the aforesaid OA No. 2716/2012.

6. It is the case of the petitioner corporation that services of Vinod Kumar were justifiably and legitimately terminated as per paragraph 4 of (XIV) of the Executive Instructions, for Vinod Kumar was medically unfit to work as a retainer crew conductor.

7. We are not satisfied with the aforesaid ground and justification given for the procedure followed for terminating the services of Vinod Kumar. Admittedly, no enquiry was held.

8. In ***West Bengal State Electricity Board & Ors. vs. Desh Bandhu Ghosh & Ors*** (1985) 3 SCC 116 it was held that Regulation 34 of the Board's Regulations which provided for termination of services of a permanent employee, serving three months' notice or on payment of salary for the corresponding period in lieu thereof was, on the face of it, totally arbitrary and conferred on the Board a power which was capable of vicious discrimination. It was a naked "hire and fire" rule, the time for banishing

which altogether from employer-employee relationship was fast approaching.

9. In ***Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly*** (1986) 3 SCC 156, the validity of Rule 9(i) of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules” of 1979 was challenged. The Rule read as under:

*9. Termination of employment for Acts other than misdemeanour.—* (i) The employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The Company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice.

Relying on the decision in ***Desh Bandhu Ghosh*** (supra) it was held :-

"98. No apter description of Rule 9(i) can be given than to call it “the Henry VIII clause”. It confers absolute and arbitrary power upon the Corporation. It does not even state who on behalf of the Corporation is to exercise that power. It was submitted on behalf of the appellants that it would be the Board of Directors. The impugned letters of termination, however, do not refer to any resolution or decision of the Board and even if they did, it would be irrelevant to the validity of Rule 9(i). There are no guidelines whatever laid down to indicate in what circumstances the power given by Rule 9(i) is to be exercised by the Corporation. No opportunity whatever of a hearing is at all to be afforded to the permanent employee whose service is being terminated in the exercise of this power..... Rule 9(i) is the only rule which does not state in what circumstances the power conferred by that rule is to be exercised. Thus, even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry, it is free to resort instead to Rule

9(i) in order to avoid the hassle of an inquiry. Rule 9(i) thus confers an absolute, arbitrary and unguided power upon the Corporation. It violates one of the two great rules of natural justice — the audi alteram partem rule...."

The decision in *Brojo Nath Ganguly (supra)* was approved by a Constitutional Bench of the Supreme Court in *Delhi Transport Corporation vs. DTC Mazdoor Congress & Ors.* 1991 Supp.(1) SCC 600.

10. Vinod Kumar was appointed in the petitioner-Corporation on 24.12.1985 and had developed medical ailments during his tenure as retainer crew conductor. He had worked up to June, 1988 when his services were dispensed with, and was reappointed on 28.07.1998. In all, he had worked for a period of more than 13 years. Learned counsel for the petitioner-Corporation may be correct in asserting that Section 45 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 may not be squarely applicable in this case, but the fact is that the petitioner-Corporation, which is an undertaking of the Government of NCT of Delhi, ought to have been more humane and considerate. They have failed to observe the established principles of law against the arbitrary exercise of power by the State or its instrumentalities as laid down in the afore said decisions.

11. While issuing notice in the present writ petition on 03.06.2016, we had recorded the statement of learned counsel for the petitioner-Corporation that Vinod Kumar was not covered under any pension or contributory Provident Fund Scheme. The petitioner corporation has now filed an affidavit stating therein that Vinod Kumar was covered by Contributory Provident Fund Scheme and Employees Pension Scheme, 1995. The said

amount will have to be paid, as also the as back-wages for the period from the date of his removal till his death. The amount of said back-wages will be paid to the legal heirs of deceased Vinod Kumar.

12. The back wages of Rs.1,63,239 stand deposited. The legal heirs of Vinod Kumar will appear before the Registrar concerned on 21.11.2016 when a cheque for the amount deposited and interest accrued, if any, would be issued. Learned counsel for the petitioner-Corporation will ensure that pensionary dues and the Contributory Provident Fund dues are paid to the legal heirs of deceased respondent Vinod Kumar within a period of 2 months from today.

13. The writ petition is disposed of in aforesaid terms. No costs.

**SANJIV KHANNA, J**

**SUNITA GUPTA, J**

**NOVEMBER 02, 2016/rd**