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

\+ LPA 646/2009

TRIVED PRAKASH ..... Appellant

Through Mr. N. Gautam & Ms. Swati Gautam, Advocates.

versus

DELHI TRANSPORT CORPORATION ..... Respondent

Through Mr. Purvesh Buttan, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

<u>O R D E R</u>

% **05.09.2016**

The present intra-Court appeal impugns the order dated 13th October, 2009 passed by the learned single Judge whereby the writ petition, being W.P.(C) No.6939/2001, filed by the appellant-Trived Prakash has been dismissed and the order granting approval of dismissal from service under Section 33(2)(b) of the Industrial Disputes Act, 1947 has been upheld.

2. Counsel for the appellant before the Single Judge had submitted that the respondent-Delhi Transport Corporation, the employer of the appellant had not paid special allowance of Rs.20/-, to which the appellant was entitled under the scheme for promoting small family norms.

3. By order dated 2nd August, 1994, the appellant was removed from service for having absented himself from duty in an unauthorised manner for 108 days during the period between 1st January, 1992 and 31st December, 1992. On the same day itself, an application was filed by the respondent corporation before the Industrial Tribunal under section 33(2)(b) of the Act, seeking approval of the said action. Paragraph 12 of the application had stated that the management had simultaneously remitted to the appellant, wages for one month by money order dated 2nd August, 1994, as required. One month wages was quantified at Rs. 2909/- and duly mentioned in the order of removal dated 2nd August, 1994.

4. The appellant did not deny the payment or question the amount so remitted. The order of removal was challenged.

5. By order dated 2nd January, 1999, the Industrial Tribunal rejected the challenge to the validity of the enquiry. By a subsequent order dated 25th August, 2001, the Industrial Tribunal held that the management had paid one month wages to the appellant. The Review Application filed by the appellant was dismissed on 27th August, 2001.

6. A copy of the two orders dated 25th August, 2001 and 27th August, 2001 has not been placed on record by the appellant in the present appeal, in

spite of an opportunity being granted to do so vide order dated 24th July, 2016.

7. The appellant had filed Writ Petition No. 6939/2001 challenging the orders dated 2nd January, 1999 and 25th August, 2001 and the same was dismissed by the impugned order of the Single Judge dated 13th October, 2009. The contention of the appellant was that he was not paid special allowance of Rs. 20 as per the Office order No. 22 dated 18th July, 1981. The Single Judge has held that the Special Allowance of Rs.20 for maintaining a small family would not form part of allowance or wages as provided under Section 2(rr) of the 1947 Act.

8. The relevant portion of the Office Order dated 18th July 1981 reads:-

> "… The rate of personal pay would be equal to the amount of the next increment due at the time of grant of the concession and will remain fixed during the entire service. In the case of persons drawing pay at the maximum the rate of personal pay would be equal to the amount of the increment last drawn…"

The scheme therefore, did not envisage any separate payment under a particular head, as is being suggested by the appellant. An employee under the scheme was entitled to a personal pay equal to the amount of next increment due at the time of grant of concession whish would remain fixed. In case a person was drawing pay at the maximum, he was entitled to personal pay equal to the amount of increment last drawn. Pertinently, an amount of Rs. 2909 was remitted to the appellant by Money Order dated 2nd August, 1994 and only thereafter was the application for approval of the removal of the appellant from services filed under Section 33(2)(b). The appellant had not questioned or challenged the quantum of the wages and the amount remitted at any stage for the Industrial Tribunal.

9. It is noticed that the punishment of removal was made the subject matter of a reference to the Industrial Tribunal. By order dated 6th January, 2007, the punishment was upheld and at that stage too, the appellant did not challenge the quantum of wages paid. The order dated 6th January, 2007 was challenged by the appellant in W.P. (C) No.9140/2009 which was dismissed in limine vide order dated 3rd July, 2009. The said order has attained finality.

10. In these circumstances, we find no merit in the present appeal and the same is accordingly dismissed. No order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

SEPTEMBER 05, 2016
VKR/NA