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

% **Judgment Dated: 20th September, 2016.**

+ **W.P.(C) 7450/2016**

SATYA NARAYAN YADAV

..... Petitioner

Through: **Mr.M.K.Bhardwaj and
Ms.Shriambhra Kashyap, Advocates.**

versus

DELHI METRO RAIL CORPORATION LTD. & ORS

..... Respondents

Through: **Mr.Subodh Kaushik for
Mr.V.S.R.Krishna, Advocate.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the orders dated 13th January, 2015 passed in O.A. No.93/2013 and 31st March, 2016 passed in R.A.No.328/2015 by which the O.A. and the review application filed by the petitioner were dismissed by the Tribunal.

2. The petitioner joined the respondents on 8th January, 2010 on probation for a period of two years. On 25th September, 2010, it is claimed that the respondents issued a competency certificate to the petitioner. The petitioner claims that he fell sick and was diagnosed as Pyrexia and he was advised rest. Thereafter the petitioner kept on seeking leave. Ultimately, a show cause notice was issued to the petitioner and his services were terminated.

3. Learned counsel for the petitioner has submitted that the persons identically placed and in fact persons who had remained absent for longer periods 211 days, 148 days, 204 days, 243 days, 81 days, 463 days, 206 days and 344 days, their services were not terminated but only minor penalties were awarded to them and thus the petitioner was discriminated against.

4. On this limited issue, we had asked counsel for the respondents to take instructions in the matter. An affidavit has been handed over in Court today by the counsel for the respondents giving details of each person and the reasons of their absence. It is only from this affidavit that we have confirmed the names, dates of joining and periods of absence, total number of days of absence and confirmation date.

5. Counsel for the respondents has justified the orders passed in the case of the petitioner on the ground that the petitioner had taken leave on many dates which shows lack of interest on his part to perform his job, whereas the other similar persons were on sick leave continuously.

6. We have examined the affidavit, which has been filed by the respondents. In the affidavit, it is confirmed that the following persons were confirmed on different dates despite their having remained absent for various dates, as detailed below:

S.NO.	Name and designation	Total period of absence	Confirmation date
1.	Haji Ram Meena, 9197, Maintainer	211 days	14.01.2012
2.	Jai Prakash Kumar, 8537, SC/TO	148 days	4.4.2011
3.	Narenddra Kumar, 9029, JE	204 days	14.6.2011

4.	Amita 10953, CRA	243 days	18.6.2012
5.	Vinod Kumar Bhojak, Emp.No.10959, CRA	81 days	27.10.2012
6.	Jogender Kumar, 7962, Machanist	463 days	1.4.2010
7.	Aditi Singh, 12125, SC/TO	206 days	13.12.2012
8.	Aneesh, P.V., 12523, SC/TO	344 days	1.4.2014.

7. Having regard to the affidavit, which has been filed, and which confirms that the persons, who remained on leave for periods of longer duration than the petitioner their services stand confirmed while the petitioner has been singled out.

8. We are not fully satisfied with the explanation rendered by the respondents. Accordingly, we set aside the orders passed by the Tribunal and direct the respondents to reconsider the case of the petitioner in the light of the reasons given by them in their reply-affidavit, which has been handed over by them today in the Court. We may notice that the petitioner has alleged discrimination on the part of the respondents while considering his case. The petitioner will make a representation to the respondents within a period of four weeks, which shall be considered/decided by the respondents within four weeks thereafter. The petitioner, who is present in Court, submits that in case the representation is considered by the respondents favourably, he will not claim any back wages or any other benefit. The petitioner shall remain bound by his statement made in Court today.

9. The writ petition stands disposed of in the above terms.

G.S.SISTANI
(JUDGE)

I.S.MEHTA
(JUDGE)

SEPTEMBER 20, 2016
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