

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

+ **RSA No. 401/2014**

% **26<sup>th</sup> September, 2016**

DELHI TRANSCO LIMITED ..... Appellant

Through: Ms. Avnish Ahlawat and Ms. Latika  
Chaudhary, Advocate.

versus

SHRI KANHIYA LAL ..... Respondent

Through: Mr. Sunil Dutt, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant impugning the concurrent Judgments of the courts below; of the Trial Court dated 18.2.2012 and the First Appellate Court dated 14.8.2014; by which the suit for declaration and mandatory injunction filed by the respondent/plaintiff (since deceased and now represented by his legal heirs) was decreed by declaring as null and void the termination from service Order dated 28.4.2000 and that the respondent/plaintiff was to be treated as continuing in service w.e.f 8.4.2004 with all consequential benefits.

2. The facts of the case are that the respondent/plaintiff was employed as a helper with the Delhi Electric Supply Undertaking (DESU). Delhi Vidhut Board (DVB) is the successor entity of the Delhi Electric Supply Undertaking (DESU). Respondent/plaintiff was charge-sheeted vide Memo dated 15.10.1987 that he had not reported to duty from July, 1986 and had thereafter got his card punched on different dates but had actually not reported for duty. Respondent/plaintiff filed a civil suit in October, 1989 seeking injunction against the departmental proceedings, and in which suit interim injunction was granted staying the charge sheet, however, this suit was ultimately dismissed for non-prosecution by an Order of the Civil Judge dated 30.11.1998. This order of dismissal in default is admittedly final as the earlier suit filed in October, 1989 was never got restored by the respondent/plaintiff. Appellant/defendant on 28.4.2000, after dismissal of the earlier suit on 30.11.1998, passed an Order dated 28.4.2000 of termination of services of the respondent/plaintiff. I may note that the date of the Memo/Charge Sheet is 15.10.1987, and that till when the earlier suit was filed in October, 1989, the duly contested enquiry proceedings were completed, and the Enquiry Report dated 22.5.1988 was submitted, and thereafter a Show Cause Notice dated 3.8.1989 by the disciplinary authority was issued to the respondent/plaintiff pursuant to the enquiry report holding the respondent guilty. Obviously, it is at that stage in October, 1989 that the earlier *malafide* suit was filed by the respondent/plaintiff,

and which ultimately was not pursued and hence dismissed in default in November, 1998. The Order of termination of services of the respondent/plaintiff dated 28.4.2000 was duly served upon the respondent/plaintiff, and photocopy of which is proved on record as part of the photocopy of the entire enquiry proceedings file exhibited collectively as Ex.DW1/1 (Colly.) (Ex.DW1/1 has been wrongly typed as 'de-exhibited' instead of 'exhibited' in the cross-examination of DW1 as after the expression Ex.DW1/1 OSR is written and which means Original Seen and Returned and also so noted in para 6 of the judgment of the trial court where the photocopy of the entire enquiry proceedings file is referred to be proved as Ex.DW1/1). The Order dated 28.4.2000 has been served by registered AD post upon the respondent/plaintiff on 17.5.2000. Mysterious indeed are however the ways of the government organization such as DVB, that in spite of the Termination Order dated 28.4.2000, the respondent/plaintiff kept on working and receiving his wages and then in April, 2004 it was realized that actually the respondent's/plaintiff's services were terminated vide Order dated 28.4.2000. Therefore, a Letter dated 5.4.2004/Ex.PW1/12 was served upon the respondent/plaintiff intimating the respondent/plaintiff of the factum with respect to the passing of the Termination Order dated 28.4.2000. Respondent/plaintiff consequently filed the present suit challenging the Order of termination dated 28.4.2000 and prayed for the relief of his being treated as

continuing in service with consequential benefits by declaring the Order of termination dated 28.4.2000 as null and void. This suit was filed on 10.12.2003 ie after a period of three years of limitation of receipt of the Termination Order dated 28.4.2000 which was received on 17.5.2000 in terms of AD card proved as part of Ex.DW1/1(Colly.).

3. The suit was contested by the appellant/defendant and who had placed reliance upon the finality of the Termination Order dated 28.4.2000 and that the Letter dated 5.4.2004 Ex.PW1/12 was only a factum of intimation with respect to the earlier Termination Order dated 28.4.2000 and that the Letter dated 5.4.2004 was not a termination of services order.

4. After pleadings were complete the trial court on 30.5.2007 framed the following issues:-

- “1. Whether the Plaintiff is entitled for the relief of declaration in respect of letter dated 28.4.2000 issued by Defendant no.1? OPP
2. Whether the Plaintiff is entitled for the relief of mandatory injunction? OPP
3. Relief.”

5. Evidence was led by the parties and the documents proved by the parties are as stated in paras 5 and 6 of the judgment of the trial court and which read as under:-

“5. Thereafter, the matter was fixed for Plaintiff’s evidence. The Plaintiff got himself examined as PW1 and exhibited the following documents.

Ex.PW1/3                      Copy of the notice dated 22.4.2002

|                          |                                                            |
|--------------------------|------------------------------------------------------------|
| Ex.PW1/4                 | Postal receipts dated 22.4.2002                            |
| Ex.PW1/5 &<br>Ex.PW1/6   | A.D.Cards                                                  |
| Ex.PW1/7                 | Application dated 14.5.2002                                |
| Ex.PW1/8                 | Copy of the notice dated 27.8.2003                         |
| Ex.PW1/9                 | Postal receipts                                            |
| Ex.PW1/10 &<br>Ex.PW1/11 | A.D.Cards                                                  |
| Ex.PW1/12                | Copy of letter dated 05.04.2004                            |
| Mark PW1/DX1             | Memo dated 15.10.1987                                      |
| Ex.PW1/DX2               | Enquiry report dated 22.5.1989                             |
| Ex.PW1/DX3               | Memo dated 03.8.1989                                       |
| Mark PW1/DX4             | Photocopy of the sut no.449/89                             |
| Mark PW1/DX5             | Photocopy of the order dated 21.10.1989                    |
| Mark PW1/DX6             | Copy of the order dated 30.11.1998                         |
| Mark A                   | Copy of caste certificate dated 19.3.1976                  |
| Mark B                   | Order bearing no.E/AO C(P-III)/89-90/44<br>dated 16.6.1989 |
| Mark C                   | Copy of the order dated 28.4.2000                          |

**Note:** There is no mentioning of Mark PW1/DX6 in the examination-in-chief or cross-examination.

6. Thereafter, the matter was fixed for Defendant's evidence. The defendant got examined Sh. S.K.Verma as DW1 and exhibited the following documents.

|          |                                                  |
|----------|--------------------------------------------------|
| Ex.DW1/1 | Photocopy of disciplinary enquiry (colly) (OSR)" |
|----------|--------------------------------------------------|

6. The trial court with respect to issue no.1 held that the Order dated 28.4.2000 is not found to be served upon the respondent/plaintiff and that since respondent/plaintiff continued in service even thereafter till April, 2004, hence the Order dated 28.4.2000 is liable to be declared null and void including for violating the principles of natural justice.

7. The first appellate court has upheld the findings and conclusions of the trial court.

8. For the disposal of this second appeal the following substantial questions of law are framed:-

“(i) Whether the findings of the courts below that the Termination Order dated 28.4.2000 is null and void is not a completely perverse and illegal finding because the Termination Order dated 28.4.2000 was duly served upon the respondent/plaintiff by registered post AD on 17.5.2000 and which registered post AD was proved as part of the entire enquiry proceedings file as Ex.DW1/1 (Colly.)?”

(ii) Whether the courts below have not committed complete illegality and perversity in holding that the principles of natural justice have been violated before passing of the Termination Order dated 28.4.2000 by the Disciplinary Authority after duly complying with the principles of natural justice in view of the fact that not only the respondent/plaintiff appointed a defence assistant, he also filed his defence, respondent/plaintiff cross examined the four witnesses of the appellant/defendant, respondent/plaintiff gave his statement in defence, respondent/plaintiff filed his written arguments, enquiry officer then gave her Report dated 22.5.1989 holding the respondent/plaintiff guilty of the charges, and which was followed up with the Show Cause Notice dated 3.8.1989 issued by the Disciplinary Authorities, a fresh Show Cause Notice dated 25.5.1999 was again served upon the respondent/plaintiff after dismissal of his 1989 suit and finally the Termination Order dated 28.4.2000 came to be passed terminating the services of the respondent/plaintiff ?”

9. At the outset, it may be noted, and as observed above, that, the earlier 1989 suit was filed by the respondent/plaintiff in October, 1989 when the entire enquiry proceedings were completed, enquiry report prepared and submitted by the enquiry officer, and the Show Cause Notice dated 3.8.1989

pursuant to the enquiry report holding the respondent/plaintiff guilty was issued and served upon the respondent/plaintiff. Obviously, the earlier 1989 suit which was dismissed in default was thus a completely *malafide* suit and in fact was not maintainable because the respondent/plaintiff could only have challenged the enquiry proceedings by filing a reply to the Show Cause Notices dated 3.8.1989/25.5.1999 issued by the disciplinary authority pursuant to the enquiry officer's report holding the respondent/plaintiff guilty, and not by way of a suit. Enquiry officer's report in detail has dealt with the depositions of the witnesses in the enquiry proceedings as also the cross-examination conducted by the respondent/plaintiff and has thereafter arrived at a finding holding the charges against the respondent/plaintiff as proved.

10. No doubt, the respondent/plaintiff in spite of the termination of services Order dated 28.4.2000, on account of not so unexpected ways of some government organizations, managed to continue in service till April, 2004, but, that would not in any manner dislodge the finality of the Termination Order dated 28.4.2000. The only way in which Termination Order dated 28.4.2000 could have been challenged was by filing a suit against the findings and conclusions of the enquiry officer and the consequent Termination Order dated 28.4.2000 within a period of limitation, but the respondent/plaintiff did not do so, and had continued his services only on account of negligence and oversight

of officers of the government organization/DVB. This Court in view of Section 3 of the Limitation Act, 1963 is *suo moto* bound to consider the aspect of limitation. Therefore, filing of the present suit on 10.12.2003 cannot in any manner permit the respondent/plaintiff to question the finality of the Termination Order dated 28.4.2000 which was never challenged within a period of three years of service of the same upon the respondent/plaintiff.

11. It is also seen that the appellant/defendant in the trial court has proved its case by filing affidavit by way of evidence of its officer Sh. S.K. Verma as DW1 and in whose affidavit by way of evidence the entire enquiry proceedings file; including the Termination Order dated 28.4.2000 and service thereof by registered AD post; was proved as Ex.DW1/1 (Colly.). The factum of service of the Order dated 28.4.2000 upon the respondent/plaintiff was also deposed to in the affidavit by way of evidence filed on behalf of the appellant/defendant by Sh. S.K. Verma. In the cross-examination of Sh. S.K. Verma, DW1 it is seen that there is absolutely no cross-examination that there are no signatures of the respondent/plaintiff on the AD card under which the Termination Order dated 28.4.2000 was served upon the respondent/plaintiff, and, also there is no cross-examination that the respondent/plaintiff was not served the Termination Order dated 28.4.2000. For the sake of convenience the entire cross examination of DW1 showing that there is no cross-examination

with respect to respondent/plaintiff not receiving of the Termination Order dated 28.4.2000 is reproduced as under:-

“18.01.2011

DW1 Statement of Sh. S.K.Verma, Dy. Manager (Vig.), Delhi Transco Ltd., at RPH Complex, Delhi.

ON SA

I tender my examination-in-chief by way of affidavit which bears my signature at points A & B and same is Ex.DW1/A. In my affidavit Ex.DW1/1, I have exhibited the document i.e. file of disciplinary enquiry as Ex.DW1/1 (Colly) (OSR). The document Ex.DW1/1 (Colly) is now de-exhibited. I rely upon the documents which were already exhibited as Ex.PW1/DX-1 to Ex.PW1/DX-5 in cross examination of PW1 recorded on 04.09.2009.

xxxxxx By Sh. Sunil Dutt Vashishth, counsel for plaintiff.

I am working with DTL on deputation since December, 2006. I have no personal knowledge of the case. The powers to depose on behalf of the company has been given to me as per delegation of powers, 2005, but I have not brought the same in the court today. It is correct the copy of delegation of powers, 2005 has not been filed on record. The witness pointed out the document dated 28.04.2000 which is marked as Mark C and state that the service of the plaintiff were terminated through said document on 28.04.2000.

I cannot tell the number of employees who are working in the department after order of removal of service duly passed by departmental enquiry. It can be clarified only by the Administrative Department only. I cannot tell the head of account about the salary of the employees who are working in the department forcefully. It is correct that order of removal from service against the plaintiff was passed on the basis of enquiry report dt. 23.05.1989 and same is already exhibited as Ex.PW1/DX-2. The show-cause notice dt. 03.08.1989 was served upon the plaintiff and plaintiff obtained stay order from Civil Court against said show-cause notice, therefore, no action against the plaintiff could be taken. It is correct that the suit of the plaintiff was dismissed in 1998 in which the department was restrained to take steps against the plaintiff. It is correct that there were no stay order against the said show-cause notice after 30.11.1998. It is correct that the plaintiff did not file any reply or representation against the show-cause notice dt. 03.08.1989. It is wrong to suggest that no show-cause notice dt. 25.05.1999 & memo dt. 09.06.1999 was served upon the plaintiff. I cannot say whether the plaintiff was working or not with the department during the period 30.11.1998 to 28.04.2000. Vol. I have no knowledge about the service period of the plaintiff since I joined as Dy. Manager (Vigilance) from December, 2006. The services of the plaintiff were transferred to Delhi Transco Ltd. from Delhi Vidyut Board w.e.f. 01.07.2002. It is correct that the services of the plaintiff as

well as other employees were transferred to DTL from DVB under an agreement/Delhi Electricity Reforms Act (Transfer Scheme, 2001) and due official process. It is correct that the plaintiff remained in the service of DTL upto 07.04.2004. It is correct that the management of DTL is different from DVB. Vol. As per law, Principal Secretary of Powers, Delhi Govt. is nominated.

It is correct that policies of the department use to be decided by the Directors of Board of the Company. I cannot say whether the plaintiff drawn his salary from DTL or not during the period 01.07.2001 to April, 2004. I can tell the same only after verifying from the records.

xxx Further cross deferred for want of salary and fund records of the plaintiff.xxx

RO&AC

Sd/-  
[RUCHIKA SINGLA]  
CIVIL JUDGE-01(NORTH)  
DELHI/18.01.2011

08.08.2011

DW1 Mr. S.K.Verma, Deputy Manager recalled for further cross-examination  
ON SA

XXXXXX By Sh. Sunil Dutt Vashishth, counsel for plaintiff

I have brought the salary record of the plaintiff obtained from DM (HR-1) Section which is exhibited as Ex.DW1/PX-1 (two sheets) w.e.f. 01.07.2002 to 31.03.2004. It is correct that the services of the plaintiff were terminated by DTL on 07.04.2004 on the basis of letter dt. 05.04.2004. It is correct that defendant no.2 served show-cause notice upon the plaintiff before terminating the services on 05.04.2004. Again said the defendant no.2 terminated the services of the plaintiff on the basis of memo dt. 25.05.1999. Defendant No.2 never initiated any domestic enquiry against the plaintiff. I cannot say whether any show-cause notice/memo was even served by defendant no.2 upon the plaintiff for any negligence/deficiency in service of the plaintiff. I cannot say whether the GPF etc. was deducted by the Pension Department for the period 01.07.2002 to 30.03.2004. I cannot say whether amounts of benefit i.e. GPF, Gratuity etc. has been disbursed to the plaintiff till date or not.

I do not remember the names of the officials who managed the regular services of the plaintiff with the department after his removal. Vol. I can say the same after seeing the records. Departmental enquiry was conducted against the identified persons who help the plaintiff in service. Some of the person, who were identified, belong to other companies/entities and some of them were got retired. It is correct that defendant no.2 did not impose any penalty upon the said identified persons as those persons had been transferred to some other company. The enquiry records of those persons had been sent to the respective companies for necessary action.

Deferred for 2.00 p.m.

Sd/-

RO&AC

[RUCHIKA SINGLA]  
CIVIL JUDGE-01(NORTH)  
DELHI/08.08.2011

08.08.2011

DW1 Mr. S.K.Verma, Deputy Manager recalled for further cross-examination at 2.00 p.m.

XXXX by Sh. Sunil Dutt Vashishth, counsel for plaintiff

Q Whether defendant no.2 initiated any domestic enquiry or process for penalise against the identified persons who help the plaintiff to regularize his service?

A DTL investigated the matter for identification of persons responsible for the lapse and then the matter was referred to the respective entitles for taking appropriate action against the identified persons.

I do not remember when the recommendations for enquiry or necessary action against the identified persons were sent to the concerned entities. It is wrong to suggest that the above mentioned persons were never identified or that their details were not sent to the concerned departments for further action.

It is correct that CCS(CCA) rules are applicable on the employees of our company in matters of disciplinary proceedings. There is no other internal statute/rules/regulations for disciplinary proceedings in DTL. The Promotions are governed by Recruitment Rules or policy of the company and not by CCS. The Recruitment Rules are in written and available with the Administration. It is wrong to suggest that the services of the plaintiff was terminated wrongly. I cannot say if the plaintiff is not being paid any salary or other rules w.e.f. 01.04.2004. It is wrong to suggest that I am deposing falsely.

RO&AC

Sd/-  
[RUCHIKA SINGLA]  
CIVIL JUDGE-01(NORTH)  
DELHI/08.08.2011"

12. Clearly therefore, the courts below have committed gross illegality and perversity in holding that the Termination Order dated 28.4.2000 was not served upon the respondent/plaintiff, and therefore, such finding is accordingly set aside. Accordingly, the judgments of both the courts below are set aside by

answering the first substantial question of law framed above in favour of the appellant/defendant and against the respondent/plaintiff.

13. I would also like to note at this stage itself that counsel for the appellant/defendant during the course of arguments has conceded that appellant/defendant does not seek to recover any monetary benefits which were paid to the respondent/plaintiff on account of the respondent/plaintiff illegally continuing in service from April, 2000 till April, 2004, and which legally the respondent/plaintiff would have been liable to refund; either in whole or in part; if the Termination Order dated 28.4.2000 would stand.

14. So far as the second substantial question of law is concerned that whether the removal from services of the respondent/plaintiff was bad as being violative of the principles of natural justice as held by the courts below, this conclusion of the courts below is completely illegal and perverse. Before giving reasons as to why this conclusion is illegal and perverse let me reproduce the cryptic paragraph of the trial court holding that the principles of natural justice are violated, and which para is para 12 of the trial court's judgment (which has been upheld by the first appellate court) and which para reads as under:-

“12. It is correct that once the suit for injunction vide which the departmental proceedings had been stayed was dismissed, the interim order also stood vacated. However, before reviving the departmental proceedings, it was pertinent upon the Defendant to serve upon the Plaintiff a notice regarding the same. The Defendant has alleged that such a notice was served which was dated 25.5.1999. It was also alleged that notice was duly received by Plaintiff as he had signed the

acknowledgment receipt. However, no such receipt or notice has been proved on record. Hence, it cannot be said that principles of natural justice were observed in these proceedings. It has been alleged by the Defendant that the copy of the order dated 28.4.2000 was served upon the Plaintiff. However, there is no such record to show this fact also. In view of the same, departmental proceedings are liable to be vitiated and the order dated 28.4.2000 is set aside. At the cost of repetition, it is worthwhile to note that the Defendant itself was not aware of the order of removal till the filing of the suit. The Defendant and before it the DVB allowed the Plaintiff to continue with the service even after the so-called removal. Hence, this issue is decided in favour of the Plaintiff.”

15. The findings and the conclusions of the courts below are clearly and completely illegal and perverse for the reason that the entire enquiry proceedings file was filed and proved by the appellant/defendant as Ex.DW1/1 (Colly.). This enquiry proceedings file shows that the respondent/plaintiff denied charges stated in the charge sheet, respondent/plaintiff then appointed a defence assistant, appellant/defendant led evidence of as many as four prosecution witnesses to show unauthorized absence from duty of the respondent/plaintiff and who were cross-examined by the respondent/plaintiff, respondent/plaintiff thereafter gave his statement in defence dated 10.2.1989, respondent/plaintiff also filed his written arguments dated 27.3.1989, enquiry officer thereafter gave her Report dated 22.5.1989 holding the respondent/plaintiff guilty of unauthorized absence from duty, a show cause notice was issued by the disciplinary authority on 3.5.1989 and again a fresh Show Cause Notice dated 25.5.1999 was served upon the respondent/plaintiff after dismissal in 1998 of his suit filed in the year 1989, and which was duly served upon the respondent/plaintiff as shown from his signatures appearing on

this Notice dated 25.5.1999, and then finally the impugned Termination Order dated 28.4.2000 was passed by the Disciplinary Authority which was served upon the respondent/plaintiff by registered AD post on 17.5.2000. It is reiterated that all the documents mentioned in the previous line are part of the trial court record inasmuch as the entire enquiry proceedings file was filed and proved by the appellant/defendant as Ex.DW1/1 (Colly.). I would also like to note that the same type of signatures of the respondent/plaintiff appear on the Show Cause Notice dated 25.5.1999 as also on the AD card with respect to service of the Termination Order dated 28.4.2000 showing receipt thereof on 17.5.2000 as per the AD card. In the light of such facts, and which have for some inexplicable reasons not been referred to by both the courts below, it is not understood as to how a finding could have been given by the courts below that the departmental proceedings were bad on account of violation of the principles of natural justice. Accordingly, the second substantial question of law is also answered in favour of the appellant/defendant and against the respondent/plaintiff and it is held that there was no violation of the principles of natural justice and the Termination Order dated 28.4.2000 was passed against the respondent/plaintiff after complying with the principles of natural justice.

16. In view of the above, this Regular Second Appeal is allowed. The impugned Judgments of the courts below dated 18.2.2012 and 14.8.2014 are set

aside. The suit of the respondent/plaintiff will accordingly stand dismissed, leaving the parties to bear their own costs.

**SEPTEMBER 26, 2016**  
ib

**VALMIKI J. MEHTA, J**

