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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7710/2015

Date of decision: 16th May, 2016

SURINDER SINGH

..... Petitioner

Through

Mr. Yudvir Singh Chauhan, Advocate.

versus

DELHI TRANSPORT CORPORATION & ANR. Respondent

Through

Mr. Naushad Ahmed Khan, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Surinder Singh by this writ petition impugns order dated 23rd April, 2015, whereby OA No.2442/2013 has been dismissed by the Principal Bench of the Central Administrative Tribunal.

2. The petitioner, a Driver, after a departmental enquiry had suffered an order of removal from service with effect from 3rd February, 1996. This order of removal was set aside by the Tribunal by order dated 10th August, 2009 passed in TA No. 330/2009. The operative portion of the said order relating to consequential

relief/benefits reads as under:-

“10. We hereby direct the respondents to reinstate the applicant in service but he will be entitled to 25% of the back wages till the date of his reinstatement. However, he should be deemed as to have continued in service. He is to be given fixation of salary on that basis. For the purpose of back wages salary which he was drawing as on the date of his removal alone need be taken into consideration. Implementation orders are to be issued within two months from today. We make no order as to costs.”

3. The Delhi High Court dismissed the writ petition filed by the Delhi Transport Corporation. Aggrieved, the Delhi Transport Corporation had filed Civil Appeal No.6011/2010, which was disposed of by the Supreme Court vide order dated 24th May, 2013.

The said order reads:-

“ORDER

This appeal has been preferred against the impugned judgment and order dated 20th January, 2010 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 371 of 2010 by way of which the Central Administrative Tribunal vide judgment and order dated 10th August 2009 passed in TA No. 330 of 2009 had allowed the application filed by the respondent-employee and directed the reinstatement with continuity of service and 25% of the back wages.

It is not necessary for us to go into the facts in detail. The misconduct stood proved against the respondent-employee and he has not challenged the judgment and order either of the Central

Administrative Tribunal or of the High Court. The respondent-employee had already been reinstated and he has been working since long. So far as the case of the appellant-Delhi Transport Corporation is concerned, the only grievance raised by Dr.Monika Gussain, learned counsel for the appellant had been that the respondent ought not to have been given the continuity of service, and back wages to the extent of 25% by the Tribunal.

Mr.Ghan Shyam Vasisht, learned counsel for the respondent has opposed it on the ground that in case the continuity of service is not granted, it will amount to break in service and his reinstatement will be termed as re-employment which is not permissible in law. He has also opposed the relief in further reducing the back wages below the extent of 25%.

So far as the question of continuity is concerned, the reinstatement in such a case would amount to re-employment of the workman and that will be too harsh considering the nature of the charge.

In view of the above, we do not agree with the learned counsel for the appellant relating to continuity of service and that submission does not require any further order. So far as the back wages are concerned, in lieu of 25% of the back wages, an amount of Rs.1.5 lakhs shall be paid by the Corporation to the respondent-employee in lump sum within a period of three months from today.”

4. The aforesaid order according to us is lucid and clear. On back wages, the Supreme Court had interfered and instead of 25% back wages, an amount of Rs.1.5 lakh was directed to be paid to Surinder

Singh. However, the Supreme Court had refused to interfere with the other directions given by the Tribunal. On the direction of continuity in service, the Supreme Court had observed that reinstatement would amount to re-employment resulting in break in service, which would be too harsh a punishment considering the nature of charge. Thus, the Delhi Transport Corporation had raised the question of “reinstatement” and continuity in service with reference to the directions of the Tribunal, but recording reasons, the Supreme Court had refused to interfere. Consequently, the direction of the Tribunal that Surinder Singh would be deemed to have continued in service and the said continuation of service would be counted for fixation of salary after the Surinder Singh rejoins was upheld and affirmed.

5. In these circumstances, we are of the view that the Tribunal has erred in the impugned order in holding that the Supreme Court had reversed this direction of the Tribunal in their earlier order dated 10th August, 2009. This finding of the Tribunal is erroneous and wrong.

6. Surinder Singh is deemed to have continued in service and this would be the basis for fixation of salary once he rejoined. Resultantly, Surinder Singh’s salary on rejoining would be computed after including the increments which he would have earned from the date of removal till rejoining.

7. The writ petition is allowed and the impugned order dated 23rd April, 2015 passed by the Tribunal is set aside. OA No.2442/2013 will be treated as allowed in the aforesaid terms. There will be no order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 16, 2016
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