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

% ***Date of Decision : 14th May, 2018***

+ **W.P.(C) 8237/2015**

DELH TRANSPORT CORPORATION Petitioner
Through: Ms. Manisha Tyagi, Adv.

versus

RAKESH KUMAR Respondent
Through: Mr. Anil Mittal and Ms. Komal
Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. The petitioner has challenged the Award dated 19.03.2014 passed in ID No.449/2010 by learned Presiding Officer, Industrial Tribunal, Karkardooma Court, Delhi (in short 'Industrial Adjudicator') on making a reference dated 13.10.2009 by the Government of NCT of Delhi holding that the punishment of reduction to initial stage in the time scale of Driver for a period of three years imposed upon the workman/respondent by order dated 08.07.1996 is illegal and unjustified and consequently set aside. The petitioner was directed to give the benefits to the respondent/workman which he was deprived of due to punishment.

2. The brief facts of the case are that the respondent was working as a Driver with the petitioner/management since 30.03.1984. For his unauthorised absence from duty for a period of 95 days during the period from 01.01.1995 to 31.10.1995, a charge-sheet dated 05.12.1995 was served upon him. The respondent/workman submitted his reply dated 02.01.1996 denying all the charges. Finding no merit in the reply, the petitioner/management got conducted a domestic enquiry. After receiving enquiry report against the respondent, the petitioner issued a show cause notice to the respondent. Considering the report and reply of the respondent, the Competent Authority inflicted punishment of reduction to initial stage in the time scale of Driver for three years upon the respondent vide order dated 08.07.1996. On receiving the reference dated 13.10.2009 from the Government of NCT of Delhi, the Industrial Adjudicator directed the respondent to file his statement of claim. After completion of the pleadings, the Industrial Adjudicator framed the following issues on 04.05.2011:-

1. Whether the enquiry conducted by the management/DTC against workman was not valid and proper enquiry? OPW
2. As per terms of reference.

3. The issue No.1 was treated as a preliminary issue. The parties had adduced their respective evidence on the above said preliminary issue. After hearing the parties, by an order dated

02.12.2013 the Industrial Adjudicator has decided the issue against the petitioner/management. Since the enquiry stands vitiated in terms of the order dated 02.12.2013, the Industrial Adjudicator proceeded further to adjudicate the terms of the reference.

4. Admittedly, the petitioner never challenged the finding of the Industrial Adjudicator vide order dated 02.12.2013 on the preliminary issue which has attained finality. Even the scope of the present writ petition is limited only to the subsequent Award dated 19.03.2014 on issue No.2.
5. While deciding issue No.2 the Industrial Adjudicator found that the petitioner/management has not made any prayer in its written statement that in case the enquiry stands vitiated, they may be permitted to lead evidence to prove the mis-conduct. Since, there was no evidence on behalf of the management to prove the mis-conduct, the Industrial Adjudicator by impugned Award found that the punishment of reduction of initial stage in the time scale of driver for three years imposed upon the respondent vide order dated 08.07.1996 is illegal and unjustified and the said punishment was set aside and consequentially the petitioner/management was directed to give benefits to the workman which he was deprived of.
6. The learned counsel for the petitioner submits that the Industrial Adjudicator on its own should have granted an opportunity to the petitioner to adduce evidence on the misconduct of the

respondent once the issue of enquiry was decided against the petitioner/management notwithstanding non-retention of right by it in its written statement. To buttress her arguments, she takes the support of decision of two judges Bench of the **Hon'ble Supreme Court in Divyash Pandit Vs. Management, NCCBM 2005 (2) SCC 684** in which it was held that even though the respondent management has not made a prayer for additional evidence in its written statement, power of the labour court are not fettered to require or permit the parties to lead evidence and once the enquiry was found nonest, the labour court should have given an opportunity to the respondent/management to establish the charges before passing the Award in favour of the workman.

7. Per contra, the learned counsel for the respondent submits that since the petitioner/management did not plead in its written statement in the alternative to adduce evidence in case enquiry stands vitiated, therefore the impugned award has been rightly passed by the Industrial Adjudicator.
8. I have heard learned counsel for the parties.
9. The only question involved in this writ petition for adjudication is the effect of not making a proper prayer/request in its written statement by the Management to adduce evidence before the Tribunal/Industrial Adjudicator in case the Tribunal/Industrial Adjudicator found that the domestic enquiry conducted by the management stands vitiated. Admittedly, the petitioner had not

retained any such right in its written statement to adduce evidence in case the enquiry is found to have been vitiated by the Industrial Adjudicator.

10. A constitution Bench of the **Hon'ble Supreme Court in Karnataka State Road Transport Corpn. Vs. Lakshmiddevamma (Smt) and Anr. 2001 (5) SCC 433** has settled the issue and upheld the view taken by its Division Bench in **Shambhu Nath Goyal Vs. Bank of Baroda (1983) 4 SCC 491** in which it was held that the management has right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at anytime thereafter during the proceedings before the Tribunal/Labour Court. The relevant para No.3, 6, 16 to 20 of the judgment read as under:-

“3. The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either

permission to take certain action or seeking approval of the action taken by it.”

6. Thus it is seen from the above observations of the Court in *Rajendra Jha case* that the same is decided on the facts of the said case without laying down any principle of law nor has the Court taken any view opposed to *Shambhu Nath Goyal case*. Therefore, having considered the two judgments, we are of the opinion that there is no conflict in the judgments of this Court in the cases of *Shambhu Nath Goyal* and *Rajendra Jha*.

16. While considering the decision in *Shambhu Nath Goyal case* we should bear in mind that the judgment of Varadarajan, J. therein does not refer to the case of *Cooper Engg.* However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in *Goyal case* the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in *Shambhu Nath Goyal case* need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading

evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in *Shambhu Nath Goyal case* is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in *Shambhu Nath Goyal case*. It is to be noted that this judgment was delivered on 27-9-1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see that a long-standing decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of *Shambhu Nath Goyal v. Bank of Baroda* is the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are

of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.”

11. Since the petitioner/management has admittedly not retained its right in its written statement to adduce evidence in case the findings on enquiry are vitiated, and the petitioner/management having not adduced any evidence to prove the misconduct and thus the findings of the Industrial Adjudicator in setting aside the punishment inflicted upon the respondent/workmen by order dated 08-07-1996 cannot be faulted with.
12. In the circumstances, I do not find any illegality or perversity in the impugned Award, the petition is without any merit and same is dismissed.

MAY 14, 2018

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VINOD GOEL, J.

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