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

Reserved on: 4th January, 2018

Pronounced on :3rd May, 2018

+ **W.P.(C) 12505/2004**

JAI PRAKASH ...Petitioner
Through Ms. Vibha Mahajan Seth with
Ms. Preeti, Advs.

versus

D.T.C. & ANR ... Respondents
Through Mr. Purvesh Buttan with Mr
Fahad Imtiaz, Advs.

AND

+ **W.P.(C) 12091/2005**

MANGT. OF D.T.C. ...Petitioner
Through Mr. Purvesh Buttan with Mr
Fahad Imtiaz, Advs.

versus

JAI PRAKASH ... Respondents
Through Ms. Vibha Mahajan Seth with
Ms. Preeti, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

C.HARI SHANKAR, J.

1. The present writ petitions arise from an order dated 20th January 2003, passed by the learned Industrial Tribunal-II, KKD (hereinafter referred to as “the learned Tribunal”), in O.P. No.191/1994. By the

impugned order, the application filed by the Delhi Transport Corporation (hereinafter referred to as “the DTC”) under Section 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), for approval of its decision to remove the workman Jai Prakash (hereinafter referred to as “the workman”) from service, was dismissed. W.P.(C) 12505/2004, filed by the workman, seeks implementation of the said award and, consequently, his reinstatement with full back wages, after adjustment of an amount of Rs. 5,27,548/-, which was paid to him consequent on an application, filed by him under Section 33(c) (2) of the Act. W.P.(C) 12091/2005, by the DTC, on the other hand, impugns the aforementioned order dated 20th January 2003, passed by the learned Tribunal.

2. The issue in controversy being extremely limited, a detailed allusion to facts is not necessary. A bare overview would suffice.

3. On the charge of his having remained unauthorisedly absent from 28th July 1993 to 15th October 1993, the DTC passed an order, dated 29th July 1994, removing the workman from service. As an industrial dispute relating to the workman was pending, an application was filed, under Section 33(2) (b) of the Act, before the learned Tribunal, for approval of the said decision.

4. As is the norm in such cases, a preliminary issue, as to whether a legal and valid inquiry had been held against the workman, was

framed on 05th November 1997, which was decided against the DTC *vide* a detailed order 31st October 2000. The said order was never challenged, and has, consequently, attained finality.

5. Despite the said issue, by the learned Tribunal, having been decided against it, on the issue of legality of the inquiry conducted against the workman, the DTC was, in law, entitled to lead evidence, before the learned Tribunal, to prove the charges against the workman. For this purpose, the following issues, on the merits of the case, were framed on 31st October 2000:

- “(i) Whether the respondent committed the misconduct as mentioned in the petition and alleged in the charge sheet issued by the petitioner?
- (ii) Whether the petitioner remitted one month’s wage to the respondent at the time of his removal from service?
- (iii) Relief?”

6. The DTC produced, in its defence, two witnesses, AW-1 and AW-2. AW-1 Sh. Sushil Jacob, who was the Inquiry Officer (I.O.) who had conducted the inquiry against the workman, whereas AW-2, Ms. Devinder Kaur was the Junior Clerk who deposed in her affidavit that one month’s salary was paid to the workman before his removal from service.

7. A perusal of the record of the case reveals that AW-1 merely defended the manner in which he had conducted the inquiry against the workman, whereas AW-2 restricted her deposition to stating that one month's wages had been given to the workman before removing him from service. It is clear that neither of the witnesses sought by the DTC led evidence in respect of the charges leveled against the workman.

8. The findings of the learned Tribunal, on the three issues framed by it, as contained in the impugned award read thus:

“Issue No.1

“To prove this issue, the applicant did not lead any evidence. The issue is to the effect that whether the respondent committed the misconduct. The onus to prove the issue is on the applicant. Consequently, in the absence of evidence from the side of applicant, it is held that the applicant has failed to prove the alleged misconduct of the respondent. Consequently, the issue is decided against the applicant.

Issue No.2

“To prove this issue applicant produced AW-2 Devinder Kaur who filed her affidavit Ex. AW2/A and further relied upon the documents Ex. AW2/1 TO Ex. AW2/6. In her affidavit she deposed that one month's salary as per salary certificate was sent by money order on the same date. She proved the salary certificate as Ex. AW2/1 and money order posted receipts as Ex AW3/5 and Ex. AW2/6. There is no contrary evidence as material from the side of respondent to the statement of applicant's witness. The respondent did not place any document or material on record to show that he had not received one

month's wage, remitted to him. Consequently, the issue is decided in favour of the applicant.

Issue No.3

“Keeping in view the finding on Issue No.1, the approval sought by the applicant is rejected and application under Section 33(2)(b) of I.D. Act is hereby dismissed. File be consigned to record room”.

9. The issue before this Court is, therefore, limited to examining whether Issue No.1, as framed by the learned Tribunal, based on the decision whereof the application under Section 33(2)(b) of the Act filed by the DTC was dismissed, was correctly decided.

10. Mr. Parvesh Buttan, learned counsel appearing for the DTC, has referred to various communications issued by the IO to the workman, stating that the workman did not respond thereto. He also sought to submit that the inquiry against the workman was validly conducted.

11. These submissions entirely beg the issue at hand. The learned Tribunal has dismissed the application, of the DTC, under Section 33(2)(b), of the Act on the ground that no evidence was led by the DTC to prove the charges against the workman. Despite being repeatedly queried in this regard, Mr. Parvesh Buttan is unable to point out any evidence having been produced, before the learned Tribunal, to substantiate the charges of unauthorized absence, on the basis whereof the workman was removed from service.

12. However, Ms. Vibha Mahajan Seth has, with commendable fairness placed, before this Court, a list of the witnesses examined and documentary evidence exhibited by both parties before the learned Tribunal, which reads as under,

**“LIST OF WITNESSES AND EXHIBIT DOCUMENTS
IN THE LOWER COURT RECORD**

**WITNESSES/EVIDENCE/DOCUMENTS EXHIBITED
ON BEHALF OF THE PETITIONER/DTC:**

1. Sushil Jacob, Enquiry Officer/AW1:

Tendered his Affidavit marked as Exhibit AW1/1 (page 139 of the LCR) on 13.01.2001 and relied on following documents as Exhibits AW-1/A to AW-1/D in his affidavit:

- (i) Exhibit AW-1/A (page 87 of the LCR): Charge-Sheet dated 05.11.1993;
- (ii) Exhibit AW-1/B (page 49 of the LCR): Entrustment Order dated 11.12.1993;
- (iii) Exhibit AW-1/C (page 51 of the LCR): Proceedings of Enquiry on 15.06.1994;
- (iv) Exhibit AW-1/D (page 53 of the LCR): Findings of the Enquiry Officer.

Examination-in-Chief and Cross-examination of AW1 on 13.01.2001 (page 29 of LCR)

2. Devinder Kaur/AW2:

Tendered her Affidavit marked as Exhibit AW2/A (page 143 of the LCR) on 08.02.2002 and relied on following documents as Exhibits AW-2/1 to AW-2/6 in her affidavit:

- (i) Exhibit AW-2/1 (page 177 of the LCR): Show-Cause notice dated 08.07.1994;

- (ii) Exhibit AW-2/2 (page 43 of the LCR): Order dated 29.07.1994 for removal of Jai Prakash;
- (iii) Exhibit AW-2/3 to Exhibit AW-2/5 (page 45 of the LCR): Postal Receipt, Salary Certificate and Money order sent to Jai Prakash respectively;
- (iv) Exhibit AW-2/6 (page 233 of the LCR): Detail of Notice Salary of Jai Prakash.

Examination-in-Chief and Cross-examination of AW2 on 08.02.2002 (page 33 of LCR)
Exhibit AW1/R1 (page 145 of LCR): Photocopy of Acknowledgment of Jai Prakash tendered during cross-examination.

WITNESSES/EVIDENCE/DOCUMENTS EXHIBITED
ON BEHALF OF THE
RESPONDENT/WORKMAN/RW1:

1. Jai Prakash, Workman/RW1

Tendered his Affidavit marked as Exhibit RW1/A (page 131 of the LCR) on 31.10.2000 and relied on following documents as Exhibits PW-1/A and PW-1/B in his affidavit:

- (i) Exhibits PW-1/A: Application for leave submitted by Jai Prakash with the DTC;
- (ii) Exhibits PW-1/B: Medical Certificate of Jai Prakash.

Examination-in-Chief and Cross-examination of RW1 on 31.10.2000 (page 31 of LCR).”

13. On a perusal of the various documents referred to in the above enumerations, it is seen that reference to the fact that the workman was absent from duty from 28th July, 1993 to 15th October, 1993, is to be found at various places. It is not, however, immediately clear whether all such documents were exhibited or not. A reading of the impugned order of the learned Tribunal does not indicate due application of mind on the part of the learned Tribunal, to all these

documents. While I am conscious of the fact that over a decade and a half has passed since the passing of the impugned order by the learned Tribunal, during the course of which the unfortunate workman has met his maker and has been substituted, in these proceedings, by his legal heirs, it is not possible for me, in the above circumstances, to accord my imprimatur to the impugned order which must, of needs, be set aside.

14. Consequently, the impugned order, dated 20th January, 2003, passed by the learned Tribunal, is quashed and set aside. The application of the DTC (OP 191/1994) is remitted to the learned Tribunal for being decided afresh. While doing so, the learned Tribunal shall only take into consideration oral evidence and exhibited documents, and shall not allow any additional evidence to be led. Both parties shall, needless to say, be given a fair opportunity to plead and establish their stand.

15. The learned Tribunal is also requested not to grant any unnecessary adjournment, and to hear and decide the application of the DTC within a period of 6 months from the date of receipt, by it, of a certified copy of this judgment.

16. The Registry is directed to transmit a certified copy of this judgment to the learned Tribunal, as expeditiously as possible, for due compliance.

17. It is further directed that no payments, which might have been made to the workman during the pendency of these proceedings, would be recovered, irrespective of the outcome of the *de novo* proceedings as directed *supra*.

18. It is clarified that nothing stated hereinabove is intended to operate as an expression of opinion, by this Court, even tentative, regarding the merits of the application filed by the DTC under Section 33(2)(b) of the ID Act.

19. There shall be no order as to costs.

MAY 03, 2018
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C. HARI SHANKAR, J.