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

Date of Decision-19.07.2018

+ W.P.(C) No.3789/2006

DTC

..... Petitioner

Through: Ms.Avnish Ahlawat, Adv.

versus

RAJBIR SINGH

..... Respondent

Through: Mr.R.K. Shokeen & Mr.Harsh
Panwar, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

1. Vide the present petition, the petitioner/DTC has impugned award dated 08.09.2005 passed by the Presiding Officer, Industrial Tribunal-II in ID No.211/2001.
2. The brief facts as emerge from the record are that the respondent had been appointed as a Driver with the petitioner/DTC initially on daily wages and was thereafter regularized w.e.f. 18.01.1983. It is the petitioner's case that the respondent was involved in repeated acts of negligence due to which he had been issued warnings from time to time and on 14.05.1993, he was issued a charge-sheet, pursuant where to an inquiry was held against him. Based on the report of Inquiry Officer holding him guilty of the charge, a memorandum dated 10.08.1993 was issued to the respondent, to which, no

reply was submitted by him. In these circumstances, the respondent was terminated from service vide order dated 01.10.1993, leading to a reference being made to the Industrial Tribunal on the following terms:-

“Whether the punishment imposed upon Sh.Rajbir Singh, s/o Sh. Chandgi Ram, by the management vide their order dt. 1.10.1993 is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. Before the Tribunal, the case set up by the respondent was that neither any charge-sheet had been issued to him nor any inquiry had been held against him. The learned Tribunal, however, after framing the issues mentioned below including the issue as to whether the punishment was imposed on the respondent after holding a proper inquiry, answered the reference in favour of the respondent by holding that the petitioner’s application under Section 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as ‘I.D. Act’) having been rejected, vide order dated 20.09.1999 the termination of the petitioner could not be sustained:-

- 1) Whether the action of the management imposing punishment is without holding a proper enquiry? OPW
- 2) If issue No.1 is decided in favour of workman whether the workman has committed the alleged misconduct? OPM
- 3) Whether the order of the punishment is illegal and unjustified? OPW
- 4) Terms of reference.

4. It is the common case of the learned counsel for the parties that the petitioner’s application under Section 33(2)(b) of the I.D. Act had been

rejected vide order dated 20.09.1999, the said rejection was upheld by the learned Single Judge in a Division Bench of this Court. However, the matter was carried to the Apex Court by the petitioner wherein the Supreme Court in the case entitled ***DTC vs. Sardar Singh [2004 (7) SCC 574]*** set aside the order of the Tribunal, learned Single Judge and the Division Bench of this Court and accordingly, the approval under Section 33(2)(b) of the I.D. Act stood granted to the petitioner/DTC.

5. In view of this conceded position that the very basis of the impugned award which was the rejection of the petitioner's application under Section 33(2)(b) of the I.D. Act no longer holds good, as a result of the Supreme Court's decision in the case of ***Sardar Singh (supra)***, learned counsel for the parties are ad idem that the impugned award is not sustainable and jointly pray that the same may be set aside and the matter may be remanded back to the Industrial Tribunal for considering the other issues as framed by the Tribunal. However, learned counsel for the respondent submits that keeping in view the fact that the matter has remained pending in this Court for the last 12 years and the respondent was dismissed from service in the year 1993, the Tribunal may be directed to consider the matter in an expeditious manner.

6. In light of the admitted position, that as a result of the Supreme Court's aforesaid decision, the petitioner's application under Section 33(2)(b) of the I.D. Act stands allowed which ground alone was the basis of the impugned award, and the issue regarding the validity of the inquiry was not considered, the impugned award is quashed. As it is also undisputed that the other issues, including the issue regarding holding of an inquiry were not considered by the Tribunal, while setting aside the impugned award, the

matter is remanded back to the Industrial Tribunal-II, Karkardooma Courts, Delhi for fresh consideration on all the issues as framed by the Tribunal.

7. Keeping in view the long period for which the matter has remained pending before this Court, the Industrial Tribunal is requested to consider the matter in an expeditious manner and decide the same preferably within a period of six months after giving due notice to the parties.

8. It is made clear that this Court has not made any observations regarding the merits of the rival contentions of the parties.

9. The writ petition is allowed and disposed of in the aforesaid terms with no order as to costs.

(REKHA PALLI)
JUDGE

JULY 19, 2018
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