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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision : 18th May, 2018***
+ **W.P.(C) 5297/2018**

ROSHAN LAL

..... Petitioner

Through: Mr. D.K. Sharma, Advocate.

versus

M/S DELHI JAL BOARD THROUGH ITS EXECUTIVE
OFFICER

..... Respondent

Through: Mr. Sumeet Pushkarna, standing
counsel,

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (*Oral*)

On an advance copy of the writ petition having been served,
Mr.Sumeet Pushkarna, Standing Counsel appears for the respondent.

CM No. 20549/2018 (exemption)

Exemptions allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5297/2018

1. The petitioner has impugned the Award dated 11.10.2017 in LIR No.3014/2016 passed by learned Presiding Officer, Labour Court, Karkardooma Courts Delhi (in short "Industrial

Adjudicator”) on making a reference No.F.24 (41)/11/Lab./CD/213 dated 17.08.2011 in the following terms:

“Whether services of Shri Roshan Lal s/o Late Sri Raj have been terminated illegally/and or unjustifiably by the Management; and if yes, to what relief is he entitled?”

2. The Industrial Adjudicator has answered the reference against the petitioner/workmen.
3. The relevant facts giving rise to file of the present writ petition are that the petitioner was initially appointed as a Beldar on muster roll w.e.f. 19.10.1989 and his services were regularised w.e.f. 01.04.1995 by an order dated 10.09.1998. The petitioner remained absent from his duty during the period from 23.11.2002 to 30.12.2004 without any prior information and taking permission. During this period, the respondent/management issued letters dated 24.01.2003, 26.02.2003 and 31.03.2003 asking him to resume his duties. The respondent lastly sent a letter dated 13.05.2003 asking the petitioner to join his duty within 2 days. However, the petitioner neither sent any reply to the letter nor resumed his duties. The respondent/management got conducted a regular departmental enquiry against the petitioner vide memo dated 13.10.2003 but the petitioner did not turn up. Enquiry Report proved the charge against the petitioner. After considering the reply dated 05.11.2004, the Disciplinary Authority imposed punishment of

removal from service upon the petitioner and the services of the petitioner were terminated on 02.08.2005.

4. After receiving the reference dated 17.11.2011 and on completion of the pleadings of the parties the Industrial Adjudicator framed the following issues on 20.12.2012:
 1. Whether the enquiry conducted by the Management against the workman was in violation of principles of natural justice? If so, its effect/ OPW
 2. As per terms of reference.
5. Admittedly, the first issue was treated as a preliminary issue on which both the parties adduced their respective evidence. However, the preliminary issue was decided by the Industrial Adjudicator on 16.02.2017 against the petitioner and in favour of the respondent/management.
6. Admittedly, the findings dated 16.02.2017 on the aforesaid preliminary issue regarding the enquiry were not challenged by the petitioner/workman and has attained finality. Even the scope of the writ petition is challenge to award dated 11.10.2017 of the Industrial Adjudicator.
7. The learned counsel for the petitioner has argued only on the proportionality of the punishment of removal imposed upon the petitioner by the management. He submits that the petitioner has never absented himself from duty prior to 23.11.2002 and because of his sickness he remained absent and keeping in view the long period of services of the petitioner with no stigma, at

the most, the punishment could have been stopping of some of his increments. He urged that the punishment of removal from service is disproportionate to his misconduct. He submits that a lenient view should have been taken by the respondent/management and the Industrial Adjudicator should have interfered with the punishment so inflicted upon the petitioner.

8. Per contra, learned counsel for the respondent submits that the impugned Award has been passed by the Industrial Adjudicator after due appreciation of evidence. He submits that the petitioner remained absent from duty for more than a year without any information or justification. He further submits that punishment of termination awarded to the petitioner is not disproportionate to his misconduct keeping in view the long absence from duty.
9. The scope of judicial review in disciplinary matters has come up for consideration before the **Hon'ble Supreme Court** time and again. In **B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749**, the **Hon'ble Supreme Court** has held that the High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion. The Para No.18 of the judgment reads as under:-

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the

discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

10. The **Hon’ble Supreme Court in DG, RPF Vs. Sai Babu (2003) 4 SCC 331** again elaborated the legal position about the extent of power of the High Court or Tribunal to interfere with the punishment thus imposed. The para No.6 of the judgment reads as under:-

“6... Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.”

11. Again in **State of Meghalaya Vs. Mecken Singh N. Marak (2008) 7 SCC 580**, the **Hon’ble Supreme Court** reiterated that

scope of interference is very limited and para No.14 of the judgment reads as under:-

“14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.”

12. **The Hon’ble Supreme Court in Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad (2010) 5 SCC 775** has discussed the entire law so developed on the power of the High Court/Tribunal to interfere with the punishment awarded to the employee by the Disciplinary Authority and para No.14 reads as under:-

“14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock

the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.

13. In view of this settled position in law, the High Court/Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority/Appellate Authority unless such discretion suffers from illegality or material procedural irregularity as that would shock the conscience of the High Court/Tribunal.
14. The question of long absence of the workman and his consequent termination came up for consideration before the **Hon'ble Supreme Court in Delhi Transport Corporation Vs. Sardar Singh 2004 (7) SCC 576** and held that when an employee absent himself from duty even without sanction leave, for a very long period, it prima facie shows the lack of interest in work. It was further held that the conclusion regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly when the same is unauthorized. However, the burden is on the employee, who claims that there was no negligence or lack of interest established by placing relevant material.

15. The petitioner remained unauthorisedly absent from duty for more than one year i.e. from 23.11.2002 to 30.12.2014. He did not join the duty despite issuance of aforesaid four letters dated 24.01.2003, 26.02.2003, 31.03.2003 and 13.05.2003 by the respondent/management. The petitioner did not adduce any evidence that he remained confined to bed during such period or was otherwise handicapped to write a letter to the respondent. In the circumstances, the punishment awarded by the competent authority on the petitioner for termination of his services has rightly been not interfered by the Industrial Adjudicator by the impugned Award.
16. I do not find any merit in the petition and same, is hereby, dismissed.

MAY 18, 2018

"sandeep"

**(VINOD GOEL)
JUDGE**