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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12375 OF 2018

Sunder B. Sawant

.. Petitioner

Vs.

Divisional Controller

MSRTC & Anr.

.. Respondents

Mr. Rohit D. Joshi for the petitioner.

Mr. Y.P. Deshmukh for the respondents.

CORAM : A.K. MENON, J.

DATED : 23RD JANUARY, 2019.

P.C. :

1. The challenge in this writ petition is to the award dated 20th July, 2016 and judgment in review dated 29th January, 2018. The award is an exparte award inasmuch as the respondent herein (first party before the Labour Court) did not remain present despite service of notice as recorded in paragraph 5 of the award. The reference therefore proceeded without the respondent's written statement on record. The petitioner was heard, arguments were advanced and four substantial issues were framed. All issues have been answered in the negative.
2. The challenge essentially was to the conduct of the enquiry and the contention of the petitioner was that the findings of the enquiry officer

were perverse being violative of principles of natural justice resulting in unfair labour practice and therefore he claimed to be entitled to reinstatement with full back wages and continuity of service.

3. The learned counsel for the petitioner submitted that the petitioner was not given a proper opportunity during the enquiry which was therefore unfair and therefore, interference is called for. He submitted that upon the reference being answered in the negative, a review application came to be filed and in the review application the Court held that the review was not maintainable for the reasons recorded. He assailed the reasons in the order on review and submitted that there was an error on the face of the record which the Labour Court failed to consider. Even otherwise, according to the learned counsel for the petitioner, the award makes it evident that the petitioner was not afforded a proper opportunity to make out his case.
4. The petition is opposed on behalf of the corporation. It is pointed out that the award being an *ex parte* award, the petitioner had full opportunity of presenting his case which he did. He has invited my attention to the findings on the above. On perusal of the reasons and the issues referred to above, the Labour Court has found that although the petitioner had assailed the enquiry the petitioner did not produce

before the Labour Court the charge sheet, reply thereto or the findings of the enquiry officer. The petitioner only relied upon the oral evidence led by him before the Labour Court.

5. The fact remains that the petitioner had sufficient time and opportunity to present all evidence at his command since his termination had occasioned six months prior to the demand notice issued on behalf of the petitioner. The award, therefore, after considering the submissions of the petitioner has found that the petitioner had in his evidence admitted that the charge sheet was issued under several clauses of the Disciplinary and Appeal Procedure and that those charges amounted to major misconduct.
6. For all the aforesaid reasons, the award held in the negative in review. No error apparent in the face of record was found. In the circumstances, both the award and the order on review dated 29th January, 2018 cannot be faulted. No perversity or illegality is evident. The orders impugned in this petition do not call for any interference.
7. Petition is accordingly dismissed.

(A.K.MENON,J.)