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

Date of Decision :- 20.02.2019

+ W.P.(C) 559/2007

BIRI SINGH

..... Petitioner

Through Mr.P.C.Misra, Adv.

versus

D.T.C.

..... Respondent

Through Ms.Bhakti Pasrija Sethi, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioner/workman impugns the Award dated 14.09.2006 passed by the learned Labour Court in I.D.No.427/06/96, whereunder his claim of having been illegally terminated from his services, has been rejected.
2. At the outset, the facts emerging from the record that are deemed essential for the adjudication of the petition may be noted.
3. The petitioner/workman having been appointed as a Conductor with the respondent/DTC in 1983, was issued a charge-sheet on 06.05.1991 alleging that on 19/20.04.1991, when he was on duty in Bus No.9065, his bus was inspected by the Checking Team at Safdarjung Airport and it was found that he had not issued tickets to 12 passengers travelling in the said bus, despite having accepted the fare for the same. It was further alleged that the petitioner had refused to co-operate with the checking staff, who had submitted a report regarding the inspection.
4. Based on the charge-sheet, a domestic inquiry was held against the petitioner, wherein the charges against him were found to be proved.

Pursuant thereto, an order removing him from service was passed on 06.05.1992. However, since an industrial dispute between the parties was already pending, the respondent filed an application u/s 33 (2)(b) of the Industrial Disputes Act, 1947, seeking permission of the learned Labour Court to remove the petitioner from service, which approval is stated to have been granted. Being aggrieved by his termination, the petitioner raised an industrial dispute, which was referred to the Labour Court in the following terms:-

“ whether the removal from service of Sh.Biri Singh is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

5. Before the learned Labour Court, the respondent relied on the inquiry report in support of the removal order, whereupon the Court framed an issue regarding the validity and legality of the inquiry.
6. Vide its order dated 01.02.2005, the learned Labour Court held that the inquiry against the petitioner was held in violation of the principles of natural justice and that the findings of the inquiry officer were perverse. Accordingly, the respondent was granted an opportunity to lead evidence before the learned Labour Court in respect of the petitioner's alleged misconduct.
7. The respondent thereafter examined two witnesses, namely Mr.Suresh Chand, Junior Clerk and Mr.Ishwar Singh, the concerned ATI. On the other hand, the petitioner examined himself as his sole witness. Based on the evidence led before it, the learned Labour Court concluded that the petitioner's removal from service was legal and justified and vide its Award

dated 14.09.2006, declined to grant any relief to the petitioner.

8. Mr.Mishra, the learned counsel for the petitioner states that the impugned award shows clear non-application of mind as it does not even deal with the defence raised by the petitioner. He further draws my attention to certain specific observations, regarding the statements of the passenger and the checking staff, made by the learned Labour Court in its earlier order dated 01.09.2005 while deciding the issue of the validity of the inquiry against the respondent. He, thus, contends that even though it was open for to pass an award on the basis of the evidence led before it, it was also incumbent upon it to consider the defence of the petitioner before deciding whether he could be held guilty of any misconduct. He, therefore, states that the impugned award, which only discusses the respondent's evidence, is liable to be set aside on this ground.

9. On the other hand, Ms. Bhakti, learned counsel for the respondent while supporting the impugned award states that it bears no infirmity as the learned Labour Court has, after considering the entire evidence led before it, arrived upon a categorical conclusion that the petitioner's removal from service was justified. She further states that even otherwise, the petitioner has been repeatedly indulging in similar acts of misconduct in the past as well and merely because the respondent had not taken any action against him then, the same would not be a ground to show any further leniency toward him. She, therefore, prays that the writ petition be dismissed

10. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

11. The basic plea raised by the learned counsel for the petitioner is that the Labour Court has, while arriving at the conclusion that the petitioner was

guilty of misconduct, has failed to consider the petitioner's defence by simply accepting the version of the respondent and that too by ignoring the findings in its earlier order dated 01.09.2005. Having carefully perused the impugned award, I find merit in the petitioner's contention that the learned Labour Court has failed to deal with the petitioner's evidence or defence entirely and has merely discussed the respondent's evidence, based on which it has concluded that the petitioner was guilty of misconduct. It needs no reiteration that the Labour Court while performing adjudicatory functions, is expected to arrive at any conclusion after dealing with the stand of both sides, and not merely the evidence led by the management.

12. In the present case, once the issue of the legality of the domestic inquiry was held against the management, any findings of misconduct against the petitioner could be based only on the evidence led before the Court. In these circumstances, it was incumbent upon the Court to refer to the evidence of both sides and give its reasons for holding the petitioner guilty of misconduct. The findings in the impugned award are conspicuously silent regarding the version of the petitioner and on the other hand, it appears that the learned Labour Court was unduly swayed by the fact that the petitioner was unable to establish any enmity with the checking officials. While doing so, the learned Labour Court failed to appreciate the effect of the representation made by the petitioner soon after the incident as also the admitted position that the petitioner was not found to be in possession of any excess cash, he may have collected by way of fare from 12 passengers, as alleged by the respondent/management.

13. For the aforesaid reasons, the impugned award is wholly unsustainable and is set aside. However, keeping in view the nature of the

allegations against the petitioner, the matter is remanded back to the learned Labour Court for deciding the matter afresh after considering not only the respondent's version and evidence but also the specific pleas raised by the petitioner.

14. Keeping in view the fact that the matter pertains to an incident of the year 1991, the learned Labour Court is requested to decide the matter as expeditiously as possible and, in any case, not later than three months.

15. The writ petition is allowed in the aforesaid terms.

FEBRUARY 20, 2019

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**(REKHA PALLI)
JUDGE**