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

+ LPA 654/2019

ROSHAN LAL

..... Appellant

Through: Mr. Vishal Tewari, Advocate

versus

DELHI JAL BOARD

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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09.10.2019

C.M.Appln.44471/2019 (Exemption)

Allowed subject to all just exceptions.

LPA 654/2019 & C.M.Appln.44470/2019 (by the appellant u/S 5 r/w Section 14 of the Limitation Act for condonation of delay of 442 days in filing the appeal), C.M.Appln.44472/2019 (by the appellant u/S 151 CPC for additional documents)

1. The appellant/petitioner is aggrieved by the order dated 18.05.2018, passed by the learned Single Judge dismissing a petition filed by him impugning the Award dated 11.10.2017, passed by the learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi, answering the Reference against him.

2. By the impugned order, the petition filed by the appellant/petitioner has been dismissed by the learned Single Judge by observing that the scope

of judicial review in disciplinary matters is very narrow. Relying on several decisions of the Supreme Court, the learned Single Judge has held that it is a settled position of law that the High Court/Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority/Appellate Authority unless and until it is apparent that the said discretion suffers from the vice of illegality or material/procedural irregularity, sufficient to shock the conscience of the Court.

3. We may note that in the instant case, the appellant/petitioner was initially appointed by the respondent/Delhi Jal Board as a Beldar on the Muster Roll w.e.f. 19.10.1989. By an order dated 10.09.1998, his services were regularized w.e.f. 01.04.1995. It is an undisputed position that the appellant/petitioner remained absent from duty for a period of 768 days, from 23.11.2002 to 30.12.2004, without taking prior permission or sending any intimation to the respondent/Management. During this period, several letters were issued by the respondent/Management to the appellant/petitioner calling upon him to resume his duties, but he failed to do so. The appellant/petitioner did not even bother to give a reply or submit a representation to the respondent/Delhi Jal Board. Resultantly, a departmental inquiry was conducted against the appellant/petitioner. The appellant/petitioner failed to appear in the departmental proceedings. The Inquiry Report was submitted to the Disciplinary Authority of the respondent/Delhi Jal Board stating *inter-alia* that the charge of absence without leave was proved against him. A notice to show cause was issued to the appellant/petitioner, who replied thereto on 05.11.2004. The said reply was considered by the Disciplinary Authority and an order was issued removing him from service. The service of the appellant/petitioner was

finally terminated on 02.08.2005.

4. After waiting for a period of six years, the appellant/petitioner elected to approach the concerned authority with a Reference dated 17.11.2011. Based on the said Reference, two issues were framed by the Industrial Adjudicator on 20.12.2012. The first issue framed was with regard to the violation of principles of natural justice by the respondent/Management. The said issue was treated as a preliminary issue and decided against the appellant/petitioner on 16.02.2017. Admittedly, the appellant/petitioner did not challenge the findings on the preliminary issue returned by the Industrial Adjudicator. Instead, he filed a writ petition challenging the Award dated 11.10.2017, passed by the Industrial Adjudicator, which has been turned down by the impugned order. The learned Single Judge has observed that the burden is on an employee, who claims that there is no negligence or lack of interest on his part by placing on record the relevant material to explain the period of his absence. Holding that the appellant/petitioner had remained unauthorizedly absent from duty for a period spanning over almost two years and he did not join his duty despite several letters issued by the respondent/Management, the learned Single Judge observed that the punishment of termination of service awarded by the Competent Authority had rightly not been interfered with by the Industrial Adjudicator. Resultantly, the writ petition was dismissed as meritless.

5. We may note that the present appeal has been filed against the aforesaid order dated 18.05.2018, with a delay of 442 days. Mr. Tiwari, learned counsel for the appellant states that though the application for seeking condonation of delay (C.M.Appln.44470/2019) states that the delay is of 442 days, as a matter of fact, the delay is of 429 days, on exclusion of

the period of 30 days available in law to prefer an appeal. Even if the delay is pared down from 442 days to 429 days, we are required to examine the averments made in the application for explaining the said delay.

6. The only explanation offered by the appellant/petitioner for the delay is that the counsel appearing for him in the writ proceedings did not inform him about the dismissal of the writ petition and when the appellant/petitioner attempted to confirm the status of his petition from the website of the High Court, but could not know the exact status, he engaged another counsel. The said counsel informed him that the writ petition had been dismissed on the date of admission itself, i.e. on 18.05.2018. Thereafter, the appellant/petitioner applied for a certified copy of the order and has filed the present appeal.

7. Merely because the appellant had engaged a counsel to appear for him could not be a ground for him to simply sit back and fail to enquire about the status of his writ petition, within a reasonable time. The appellant/petitioner is seeking to lay the entire blame on his previous counsel without explaining as to why did he not keep in touch with his counsel and if the counsel had not intimated him about the status of his writ petition within a reasonable time from the date it was filed, what had prevented him from approaching his counsel. We have enquired that if the appellant was dissatisfied with the professional conduct of his counsel, did he make a complaint to the Bar Council against him. The reply is in the negative. A sketchy explanation is sought to be offered in para No.4 of the application to the effect that the appellant/petitioner had time and again tried to confirm the status of his writ petition from the website of the High Court and when he could not confirm the same, he engaged another counsel, which is neither here nor there.

8. We do not find any reason, much less just or sufficient cause, to condone a delay spanning over 429 days, if not 442 days, as stated in the application, for entertaining the present appeal. Even otherwise, on perusing the impugned judgment, we are of the opinion that the findings returned by the learned Single Judge do not warrant any interference. The appellant/petitioner appears to be a laggard from day one. He had remained absent from duty over a period of almost two years. Despite letters written to him by the respondent/Management, the appellant/petitioner did not resume duty. Even during the departmental proceedings conducted against him, the appellant/petitioner had absented himself. It was only after the disciplinary authority had issued him a notice to show cause, did the appellant/petitioner submit a reply on 05.11.2004. In the absence of any valid explanation, the Disciplinary Authority accepted the Inquiry Report and the services of the appellant were terminated.

9. In view of the aforesaid facts and circumstances, we do not find any reason to condone the delay of 442 days/429 days in filing the accompanying appeal. C.M.Appln. 44470/2019, for seeking condonation of delay in filing the appeal is dismissed. As a result, the appeal is also dismissed alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

OCTOBER 09, 2019

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