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

% *Decided on: 29.01.2020*

+ W.P.(C) 1125/2020 & CM APPL. 3733/2020

NEERAJ KASHYAP

..... Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

M/S ECE INDUSTRIES LIMITED ELEVATOR DIVISION

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns the order of the learned Labour Court dated 27.07.2019 in LIR No: 3068/16, insofar as the petitioner's claim for reinstatement in service has been rejected. He was employed with the respondent as a sales executive on 30.03.2011. He was kept on a probation period which was subsequently extended by six months on 03.04.2020. The extension was on account of a certain incident in the workplace for which the petitioner apologised, by way of a letter dated 07.04.2012. There was another altercation which, according to the petitioner, was such that he could not attend office thereafter. He refrained from attending the office from 18.04.2013. He sent four letters requesting for extension of time in rejoining, as he was allegedly not keeping well. None of the letters were supported by any medical certificate stating that he was unwell. Each of the letters seeking extension read as under:

1/5

Gmail neeraj kashyap
<neerajkashyap.nk@gmail.com>

Leave Application for Neeraj Kashyap
6 messages

Sat, Apr 20, 2013 at 8:02 AM

neeraj kashyap <neeraj.khpa@gmail.com>
To: ECE Elevators <eceliftsdelhi@gmail.com>
Cc: ecegb@stly.com, eceliftshr@gmail.com

Dear Tarun Singhal Sir,

I wish to inform you that i am suffering from pain in eyes. For some medical checkup I need leave for 4 days, i.e. 20th April, 2013 to 23rd April, 2013 (four Days).

It is requested to you, kindly grant me leave for 4 days.

Kindly consider my this Email as formal leave application for office records.

Thanking you,
Yours faithfully,
Neeraj Kashyap
Sales Executive
9899916311
New Delhi

Tue, Apr 25, 2013 at 7:45 AM
neeraj kashyap <neeraj.kashyap@gmail.com>
To: ECE Elevators <eceliftsdelhi@gmail.com>
Cc: eceegzb@sify.com,
Shah Arshad Ahmad <eceliftshw@gmail.com>

Dear Tarun Singhal Sir,

This has reference to my last email dated 20th April
2013 for Leave application.

Till date, I do not find myself in good health.

I hereby request you to grant me leave for 6 days for
medical treatment and bed rest, i.e. 25th April 2013
to 30th April 2013.

Thanks & Regards,
Neeraj Kashyap
Sales Executive
New Delhi
9899916311

[Quoted text hidden]

Wed, May 1, 2013 at 9:09 AM

127

neeraj kashyap <neeraj.khp@gmail.com>
To: ECE Elevators <eccliftsdelhi@gmail.com>
Cc: ecgzb@sify.com
Shah Arshad Ahmad <eccliftsdelhi@gmail.com>

Dear Tarun Singhal Sir,

This has reference to my e-mail dated 25th April, 2013 for Leave application.

Till date, I do not find myself in good health.

I hereby request you to extend my leave for 11 days for medical treatment and bed rest, i.e. 2013 to 11th May 2013.

Thanks & Regards,
Neeraj Kashyap
Sales Executive
New Delhi
9899916311

[Quoted text hidden]

Mon, May 13, 2013 at 7:21 AM
neeraj kashyap <neeraj.khp@gmail.com>
To: ECE Elevators <eccliftsdelhi@gmail.com>

Mr. Tarun Singhal

Dear Sir,

This has reference to my email dated 1st May 2013
for Leave application.

Till date, I do not find myself in good health.

I hereby request you to extend my leave for another

10 days for medical treatment and bed rest, i.e. 13th

May 2013 to 25th May 2013.

Thanks & Regards,

Neera Kashyap
Sales Executive
New Delhi
9899916311

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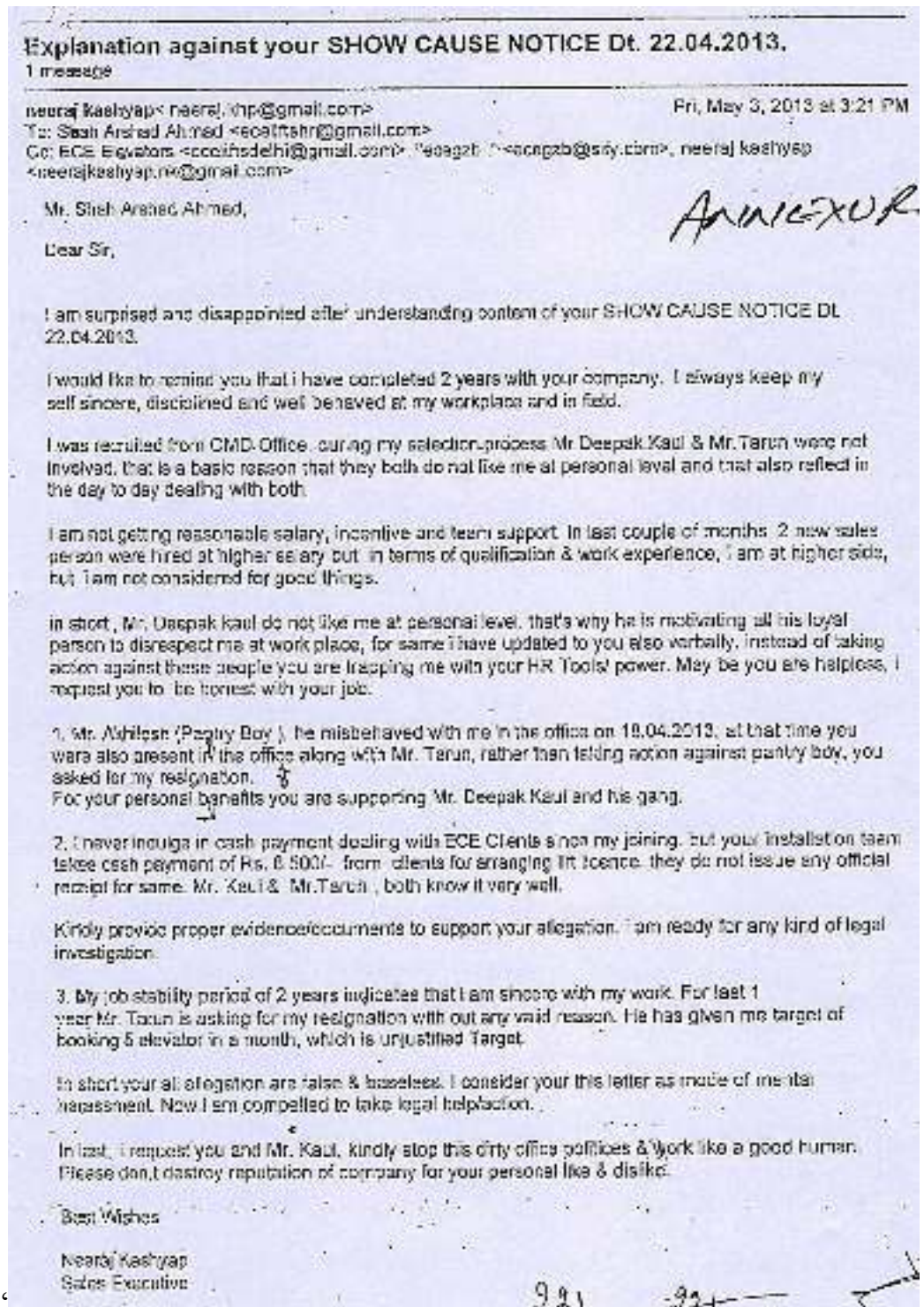
Mon, May 13, 2013 at 1:26 PM
neeraj.kashyap <neeraj.kashyap@gmail.com>
To: ECE Elevators <eceliftsdelhi@gmail.com>
Shah Arshad Ahmad <eceliftsdelhi@gmail.com>, <eceliftsdelhi@gmail.com>
[Quoted text hidden]

Mon, May 13, 2013 at 1:33 PM
neeraj.kashyap <neeraj.kashyap@gmail.com>
To: ECE Elevators <eceliftsdelhi@gmail.com>
Shah Arshad Ahmad <eceliftsdelhi@gmail.com>, <eceliftsdelhi@gmail.com>

Mr. Tarun Singhal

2. In the circumstances, proceedings were initiated against the petitioner, as to why his services should not be terminated. He chose not to participate in the proceedings, as he desired to dictate as to who should be in the inquiry committee, as well as the place where the said inquiry ought to be conducted. His various letters to the company, which are reproduced

hereunder, would show that his attitude and intent was only to challenge the management in its manner of functioning.



to: Mr. Bikash Kumar Das (bikashkumar@gmail.com)
Cc: Mr. Anil Kumar (anilkumar@gmail.com)

From:

Sh. Deepak Kumar (V.P. Marketing)
LCC Industries Ltd.
Elevator Division
New Delhi

Annexure B



Respected Sir,

I am shocked to know your opinion about me in your E-mail Dt. 30-9-22. It is very difficult to understand, why you had not taken any disciplinary action against me in the formal manner, if it was required.

I understand your all allegation are just to protect Mr. Tanu Singh for some reasons. I feel that I have shown reasonable patience and treated Mr. Singh with every consideration. After learning your last E-mail, I have lost hope of getting some reasonable support from your side.

Whatever productivity I have given in my job is much more than that, what I got from your company.

So considering me incompetent, is doing injustice with a hardworking & sincere employee.

I do not know the way of effective working in a team, where every one is against due to some personal reasons.

In short, I have reached at this conclusion that, it is not safe to work with you and your team.

Sincere Regards,

Neeraj Kashyap
(Sales Executive)
New Delhi
9899916311

.....
(Signed for file)

2022-09-27

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25 SEP 2022

Justification & explanation against Notice issued by Mr. Tarun Singhal on 28-3-2012.

From: kashyap.kanishk@yahoo.co.uk@gmail.com
To: kashyap.kanishk@gmail.com

File No: 80.002.4433174

Date: 30-March-2012

To,
Mr. Deepak Kaul (V.P. Marketing)
ECC Industries Ltd.,
Elevator Division
New Delhi

Subject: Justification & explanation against Notice issued by Mr. Tarun Singhal on 28-3-2012.

Respected Sir,

I am surprised and disappointed to receive letter (NOTICE) dt. 28-March-2012 from Mr. Tarun Singhal via my hand in the Delhi office stating that my behaviour is not congenial with my seniors & colleagues in the office. A scan copy of same is also attached herewith for your kind reference.

Respected Sir, I strongly believe that the entire allegations mentioned by Mr. Singhal, are false and baseless.

I have been a faithful employee in this company for the past 11 Months. My time at the company has been good and so far, BUT now a problem has cropped up, which threatens to disrupt my otherwise peaceful time at the company. This issue is regarding the behaviour of my immediate Boss, Mr. Tarun Singhal (Sr. Manager) and for some reason of his own, he has singled me out to harass.

Ever since, I joined his team, he has managed to find some fault with me, even if there are none. I am constantly harassed of not completing my daily work despite me meeting all my daily targets.

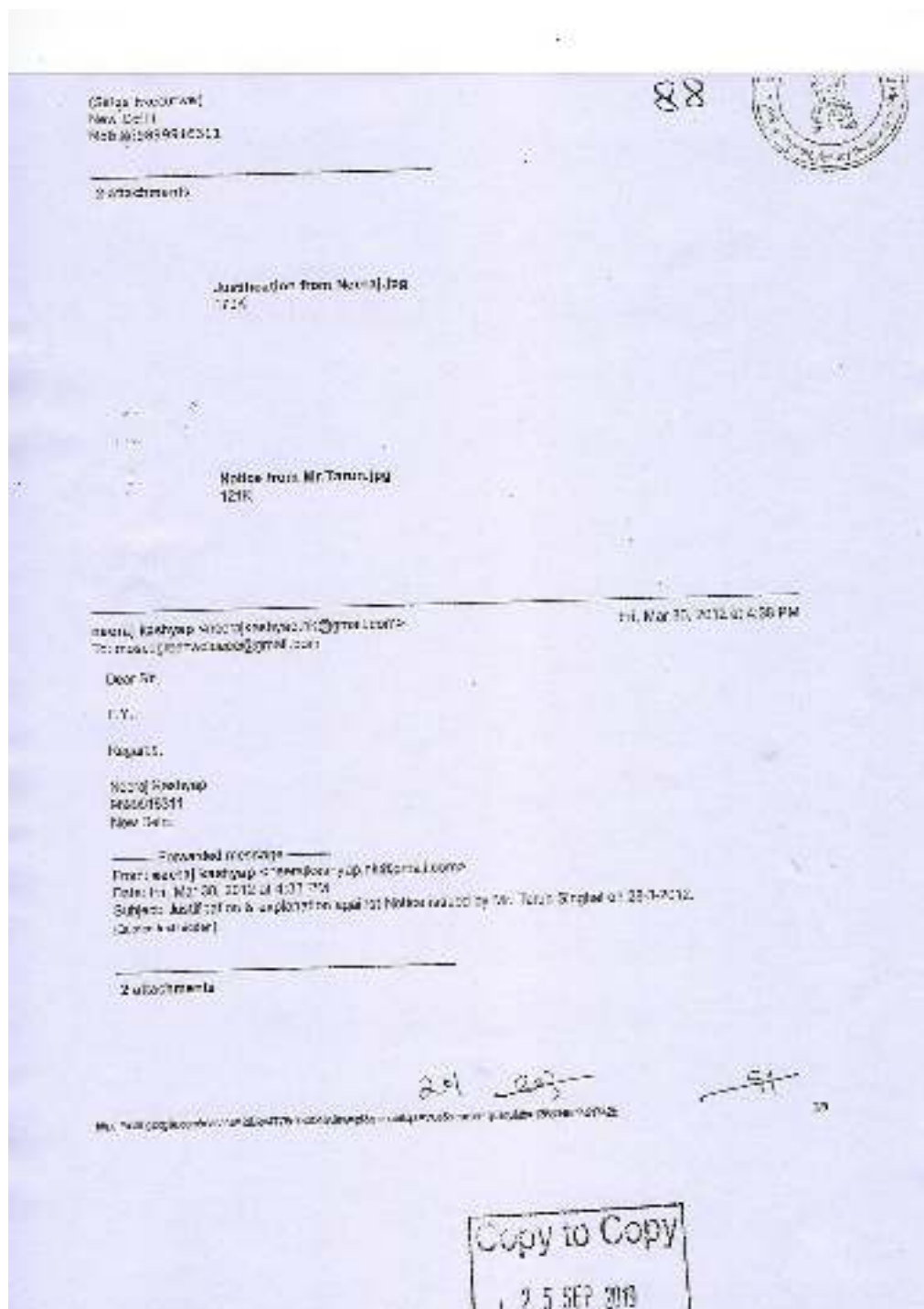
I have been left feeling hurt by Mr. Singhal's attitude towards me, and it has affected the quality of my work. I even spoke openly to him on this issue regarding me, but he denied any kind of malicious harassment towards me. Finally, I have taken this step to inform you about his behaviour, which has been causing me distress.

If this kind of injustice continues, I will be forced to consider the employment in this company. I have invested a good 11 months of my life, and would not be forced to leave this place. I have faith that you will help me sort out this issue with Mr. Singhal, and we may be able to find a way to co-exist.

Sincere Regards,

kanishk.kashyap@gmail.com

Copy to Copy



3. He addresses the senior management of the company as a “gang of people who are out to destroy him”. In his application to the learned Labour Commissioner, the only relief he sought was:

To,

The Delhi Labour Commissioner
Labour Department
New Delhi District,
1, CANNING LANE, DELHI-110 001

28/5/13
O/o Dy. Labour Commissioner (NDD)
Labour Department
Govt. of NCT of Delhi
1, Canning Lane, Social Welfare Bldg.
K.G. Marg, New Delhi-110001

Sub. : Complaint against M/s. ECE IND. LTD. for terminating from job with false allegation.

Dear Sir,

Kindly register my complaint against below mentioned company for terminating me from job with false allegation & doing harassment with me at work place.

Company Name: ECE INDUSTRIES LTD. (ELEVATOR DIVISION)

Company Address : ECE House Annexe, 28 -A, K.G Marg, DELHI-110001
011-23314237, 23314238, 23314239. eceliftsdelhi@gmail.com

Contact person : Mr. Deepak Kaul (V.P -Marketing & Sales)

Mr. Shah Arshad Ahmad (DGM - HR & Legal)

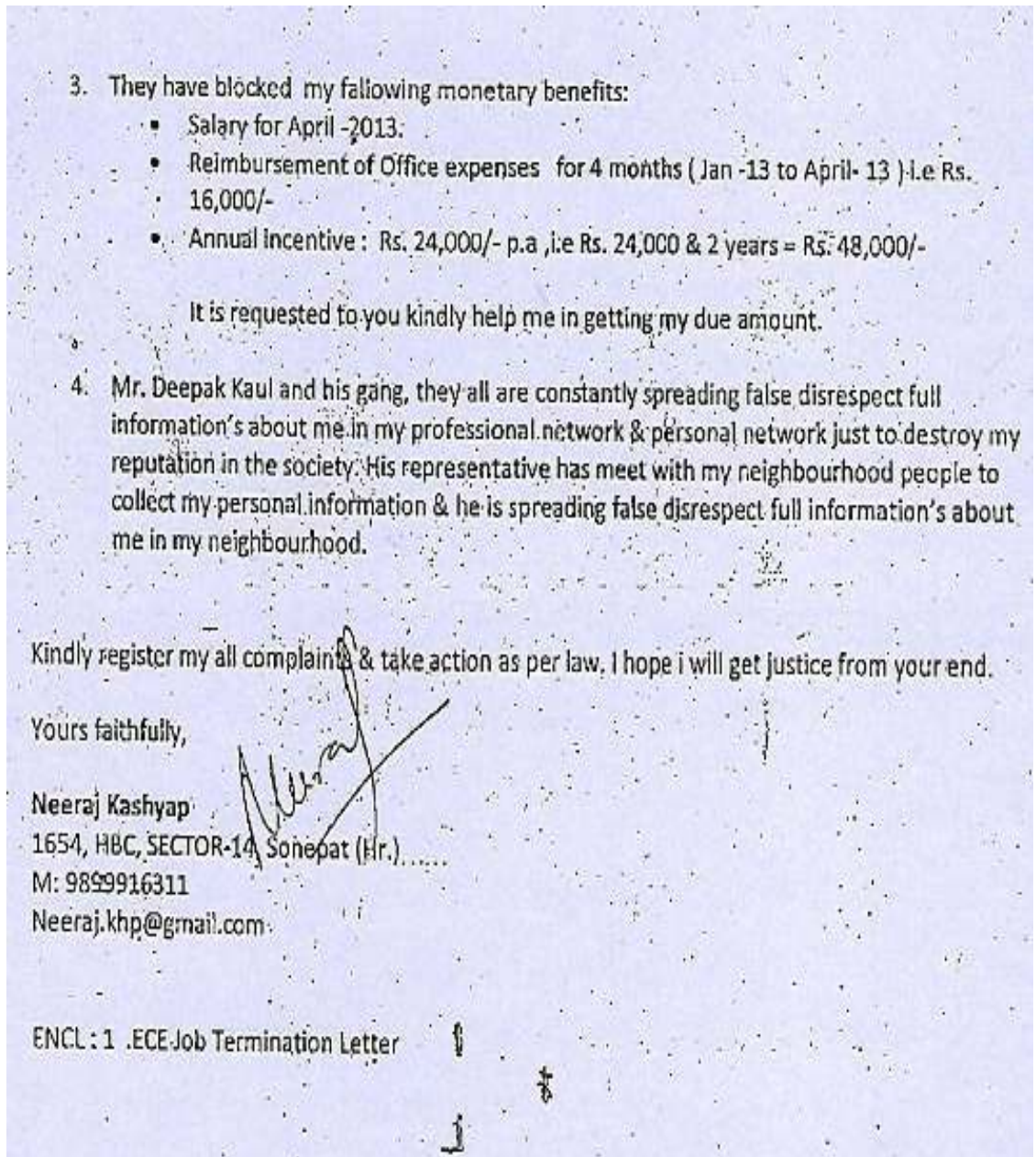
Mr. Taun Singhal (Sr. Manager -Marketing & Sales)

Kindly find below my complaints in detail:

1. I had joined above said company on 4th April 2011 in sales department at Delhi office as sales executive. I have received my job termination letter on 15th May 2013, which is based on false & baseless allegation.
2. During my job with this company, i had faced very disrespectful situation & mental harassment from Mr. Deepak Kaul and his gang. Mr. Deepak Kaul, he was constantly motivating all his staff to disrespect me without any reason. So many times he asked for my resignation.

On his instructions following staff also misbehaved with me at work place:

- Mr. Shah Arshad Ahmad (DGM - HR & Legal)
- Mr. Taun Singhal (Sr. Manager -Marketing & Sales)
- Mr. Sushant Pajnu (Sales Engineer), Note : He is close relative of Mr. Deepak Kaul
- Mrs. Hema Latwal (Computer Operator)
- Mr. Akilesh (Pantry Boy)
- Mr. Sahil kaul (Executive- Maintenance)



4. He did not seek any reimbursement and without demure or caveat accepted the entire amount paid to him. The impugned order has dealt with the issue as under:

“Issue no. 2. Whether the workman himself abandoned the job by remaining unauthorizedly absent from duty as claimed by the management, if so, its effect? O.P.M and

Issue no. 3. Whether the services of the workman were terminated by the management illegality and unjustifiably, if so, its effect? O.P. W.

Since both the issues are interconnected, hence, the same are taken up together for the purpose of their disposal.

The onus to prove issue no. 2 was upon the management whereas the onus to prove the issue no. 3 was upon the workman.

From the cross examination of the workman as well as documents placed and proved on record by him it has become manifestly clear on record that the workman had not joined his duties since 20.04.2013. Rather in his replication filed to the written statement of the management, the workman had claimed in para no. 2(b)(note) that his poor health condition as well as unfavorable office environment had compelled him to go on medical leave. However, it shall be further pertinent to mention here that the workman had failed to cite any serious ailment or disease from which he was suffering which required his bed rest and he himself had claimed that it was due to non-congenial work environment which had prompted him to apply for leave.

Hence, it becomes amply clear that workman was having no intention to work at the said place rather he was looking for one excuse or the other to remain away from his place of employment. It shall be further pertinent to

mention here that workman had admitted the document Ex. WW1/M1 which was the letter dated 27.06.2013 written by him and addressed to Labour Inspector, wherein the workman had nowhere demanded the reinstatement but only an amount of Rs. 61,501/- from the management.

Similarly, the workman had also admitted his email dated 07.04.2012 which has been placed on record as Ex. WW1/M2 which was basically an apology tendered by him to his Senior Manager Sh. Tarun Singhal. Even from the communication dated 03.05.2013 Ex. WW1/9, it becomes amply clear that workman was not adhering to the official decorum and discipline in his correspondences and even he had dared to refer the tea boy as the person who had misbehaved with him and called his seniors as a "gang", which behaviour on his part, by no stretch of imagination and considering the standards, cultures and working environment in an organization like present management, could be considered as acceptable or tolerable for running the administration smoothly.

Not only this, but also it shall be further pertinent to mention here that workman had never sent any demand notice to the management after termination of his job which also shows that he was having no requirement of reinstatement in the job as well as consequential benefits arising therefrom.

In this regard, I am further guided by the judgment of our own Hon'ble High Court of Delhi in case titled as S.N.Tiwari v/s Govt. of NOT, Delhi & Anr., W.P. (C) No. 593/2008, wherein the Hon'ble High Court of Delhi speaking through Hon'ble Mr. Justice S.N.Aggarwal (as his lordship then was), was pleased to observe as under:

"3. The Labour Court in its impugned award has relied upon a judgment of the Supreme Court in Sindhu Resettlement Corporation Ltd. Vs. Industrial Tribunal of Gujarat AIR (1968) SC 529 and also upon two judgments of this court, one of Division Bench in Fedders Loyed Corporation Vs. Lt. Governor of Deihhi and other of Single Bench in Nagender Sharma Vs. Management of M/s Rajasthan Timbers Corporation, ILR (2006) 1 Delhi 1030 and on the strength of these three judgments, it was held that since the petitioner had not made a demand for his reinstatement prior to filing of claim for his reinstatement before the Conciliation Officer, industrial dispute between the parties does not exist."

Hence, I have no hesitation in holding that in the absence of a valid demand notice sent by the workman to the management, there was no industrial dispute in existence at any point of time whatsoever. Therefore, I have no hesitation in holding that it was the workman himself who had abandoned the job and was not terminated either illegally or unjustifiably by the management.

Accordingly, issue no. 2 is answered in affirmative and decided in favour of the management and against the workman, whereas, issue no. 3 is answered in negative and decided in favour of the management and against the workman."

5. What emanates from the above is that the workman abandoned the work all by himself and chose neither to resume his duties nor to report back to the company, accordingly, his services were terminated. Hence, for the

period during which he had not carried out his work, there would be no monies payable. The same did not amount to an industrial dispute at any time whatsoever and hence, there would be no *lis* to be adjudicated.

6. There is no merit in the petition. Accordingly, it is dismissed alongwith pending application.

JANUARY 29, 2020

AB

NAJMI WAZIRI, J



न्यायमेव जयते