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

Date of Decision:- 23.01.2020

+ W.P.(C) 16776/2006 & C.M. No.13840/2006
D.T.C Petitioner
Through Ms.Manisha Tyagi, Adv.

versus

KRISHNA BAHAL Respondent
Through Ms.Rashmi B Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the Delhi Transport Corporation assails the award dated 06.04.2005 passed by the learned Central Government Industrial Tribunal, Karkardooma Courts, Delhi in ID No.95/2001. Under the impugned award, the Labour Court has, after holding that the petitioner had failed to prove any misconduct on the part of the respondent, set aside the penalty order dated 13.07.1994 passed against him.

2. The brief facts as emerge from the record are that the respondent joined the services of the petitioner/corporation on 19.04.1979 at the post of 'Clerk'. On 26.11.1993, she was served with a memo seeking her explanation for having misplaced the original papers of the petitioner's factories and municipal license while travelling to the petitioner's headquarters in a bus on 17.11.1993. In her reply to this memo, the respondent denied all the charges levelled

against her. Subsequently, the respondent was served with a charge sheet dated 03.12.1993 with a further allegation that despite misplacing the original copies of these licenses, she had not informed her superior officer of this incident till 26.11.1993.

3. In view of her denial of the charges, a departmental inquiry was conducted against the respondent wherein the inquiry officer held the charges against her to stand proved. On submission of the inquiry report, the respondent was granted an opportunity to submit her explanation, which was duly considered. Resultantly, the petitioner imposed a penalty of stoppage of two increment with cumulative effect on the respondent vide its order dated 13.07.1994.

4. Aggrieved by the imposition of this penalty, the respondent raised an industrial dispute, which came to be referred to the Industrial Tribunal. Before the Tribunal, the petitioner defended the penalty imposed on the respondent by alleging that she was guilty of serious misconduct. Based on the pleadings of the parties, the following issues were framed by the Labour Court:-

“1. Whether the action of the mgt. is without holding legal and proper enquiry? OPW

2. If issue no.1 is decided in favour of the workman then whether the workman has committed the misconduct as alleged? OPM

3. Whether the cause of workman has been duly espoused? OPW

4. Whether the punishment imposed upon the workman by the management vide order dated 13.7.94 is illegal and unjustified? OPW”

5. As noted hereinabove, issue no.1 related to the validity of the inquiry. The Labour Court, on an examination of the record,

concluded that the inquiry had been conducted without supplying relevant documents to the respondent and, resultantly, held the enquiry as being vitiated. The petitioner was, thereafter, granted an opportunity to lead evidence to prove the respondent's alleged misconduct. The petitioner, however, did not lead any evidence which could prove the respondent's misconduct but only examined the Disciplinary Authority, i.e., one Mr. Qamar Alam, as its witness who merely reiterated the contents of the inquiry report which, in any event, stood vitiated. In these circumstances, the Tribunal held that the petitioner had failed to lead any evidence whatsoever to prove the respondent's misconduct, in the light of which the allegations against her stood unproved. The Tribunal opined that in the absence of any misconduct being proved against the respondent, the penalty imposed on her was not sustainable and, accordingly, directed the petitioner to grant her all consequential benefits.

6. Assailing the said award, the present writ petition has been filed.

7. Ms.Manisha Tyagi, learned counsel for the petitioner submits that even if the enquiry stood vitiated and the petitioner did not lead any evidence to prove the misconduct, the Tribunal could not simply ignore the respondent's past conduct which showed that she had been negligent even on earlier occasions. For these reasons, she contends that the penalty imposed on the respondent could not, in any manner, be deemed as disproportionate or unjustified. In support of her contention, she places reliance on the decision of the Supreme Court in *Union of India & Ors. v. Bishamber Das Dogra* (2009) 13 SCC

102. She, therefore, prays that the impugned award be set aside.

8. On the other hand, Ms. Rashmi B Singh, learned counsel for the respondent while supporting the impugned award submits that the plea of Ms. Tyagi that the respondent's past record ought to have been considered is wholly misplaced. She submits that once the Tribunal came to a categorical conclusion that the petitioner had failed to lead any evidence whatsoever to prove misconduct on the part of the respondent, neither does the question of taking her past conduct into consideration arise nor does the decision in ***Bishamber Das Dogra (supra)*** apply to the facts of the present case. She, therefore, prays that the writ petition be dismissed.

9. I have heard learned counsel for the parties and with their assistance perused the record.

10. A perusal of the impugned award shows that once the inquiry stood vitiated on account of the petitioner's failure to supply relevant documents to the respondent during the course of the same, the petitioner was granted adequate opportunities to prove the respondent's misconduct which it failed to avail. Thus, the Tribunal was justified in holding that the petitioner had failed to lead any evidence to prove the respondent's misconduct. In fact during the course of arguments, Ms. Tyagi has not seriously disputed these findings, but has primarily urged that once the respondent's past conduct was brought on record, the Tribunal ought to have appreciated that the imposition of penalty of stoppage of two increments with cumulative effect on her was fully justified.

11. Having given my thoughtful consideration to the aforesaid

submission and perused the decision in **Bishamber Das Dogra** (*supra*), I am unable to agree with Ms.Tyagi. In the said decision, the Supreme Court was dealing with a case where the employee's misconduct stood proved and the only issue which survived for the consideration of the Court was whether, while determining the quantum of penalty to be awarded, his past conduct ought to be considered, even if does not find mention in the charge sheet. The observations of the Supreme Court in paragraph 30 of **Bishamber Das Dogra** (*supra*) reads as under:-

“30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require.”

12. When the facts of the present case are considered in the light of the decision in **Bishamber Das Dogra** (*supra*), I find that the ratio thereof is wholly inapplicable here. When the employee's misconduct is not proved, there is no question of imposing penalty on them; it is only when the misconduct is proved that it is open to the Disciplinary Authority to take into consideration the indisputable past conduct of the employee for the purpose of determining the quantum of penalty to be imposed on them. In the present case, when the petitioner had failed to prove the respondent's misconduct before the Tribunal, which finding has not been seriously assailed, I see no reason as to why the respondent's alleged past negligent conduct can be a ground

to now hold her guilty of misconduct or impose any punishment on her for the same.

13. For the aforesaid reasons, I find no infirmity in the well reasoned award passed by the Tribunal.

14. The writ petition alongwith pending application, being meritless, is dismissed with no order as to costs.

JANUARY 23, 2020/sr

REKHA PALLI, J



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