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

Date of Decision: 24th November, 2021

+ **W.P.(C) 6748/2003**
ASHOK KUMAR Petitioner

Through: Mr. G. S. Charya, Advocate (M:
9810083261)

versus

D.T.C. & ORS. Respondents

Through: Ms. Manisha Tyagi, Advocate (M:
9811007270)

12 AND

+ **W.P.(C) 8186/2004**

DELHI TRANSPORT CORPORATION Petitioner

Through: Ms. Manisha Tyagi, Advocate.

versus

ASHOK KUMAR Respondent

Through: Mr. G. S. Charya, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. These two petitions relate to the Workman, Sh. Ashok Kumar who was employed as a foreman with the Delhi Transport Corporation (*hereinafter "DTC"*). He joined service in 1982 and was made a permanent employee in 1983. An incident occurred in August, 1991 due to which he was initially suspended and thereafter terminated. A disciplinary enquiry was conducted between 1991-1992 and as per the report of the disciplinary authority dated 25th February, 1992, the termination was given effect to.

DTC issued the removal order on 24th April, 1992 as his conduct was held to amount to misconduct under the standing orders of DTC, and filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (*hereinafter "ID Act"*) before the Industrial Tribunal, for approval of the Workman's removal.

3. The said petition being ***O.P. No.168/92*** titled ***DTC v. Sh. Ashok Kumar*** was dismissed in a two-stage process. First, vide order dated 16th August, 2002, the preliminary issue of whether the enquiry against the respondent was according to the principles of natural justice or not was decided against DTC. It was held that the enquiry was vitiated on account of the absence of enquiry officer as a witness to prove the enquiry proceedings. Thereafter, since DTC had sought approval on dismissal of the Workman and the opportunity to lead evidence to prove the allegations on merit in case the enquiry was set aside, three issues were framed and the said issues were decided against the Management as per the impugned order of the Labour Court dated 2nd March, 2003. The application filed by DTC under Section 33(2)(b) was dismissed and approval sought by them was rejected. ***W.P.(C) 8186/2004*** filed by the DTC challenges this award dated 2nd March, 2003.

4. Concurrently, ***W.P. (C.) 6748/2003*** has been filed by the Workman challenging the earlier removal order dated 24th April, 1992.

5. Firstly, this court has perused the order dated 16th August, 2002 by which the enquiry was held to be vitiated. The finding in the said order read as under:

"3. On the basis of pleading following preliminary issue was framed on 11.1.94:

"Whether the applicant held a legal and valid enquiry against the respondent according to principles of

natural justice?”

4. *To prove the allegations the applicant produced AW-1 Sh. Suresh Chand who filed his affidavit Ex. AW1/A and referred the documents Ex. AW1/1 to Ex. AW1/3. In his affidavit he deposed that he had been working as Junior Clerk (Typist) with Sh. Mohd. Irfan, enquiry officer and he happened to be present during the enquiry proceedings. The enquiry proceedings started on 22.1.91 in pursuance of the charge sheet dated 30.8.91, Ex. AW1/1 and due opportunity was given to the respondent and the proceedings are Ex. AW1/2 and the finding is Ex. AW1/3. He came into the witness box as secondary evidence as Sh. Mohd. Irfan, enquiry officer has left/resigned the services and whereabouts are not known. He was cross examined. During the cross examination he admitted that he could not say about the charges on which basis the proceeding were initiated and he can identify the signatures only. He could not say how long the proceedings continued.*

5. *On the other hand the respondent entered into the witness box as RW-1 and filed his affidavit Ex. RW1/A in which he deposed that enquiry conducted was against the principle of natural justice. He was not given any opportunity to defend his case or to cross examine the witnesses.*

6. *In the nut-shell the applicant did not have the enquiry officer to prove the enquiry proceedings. The witness produced by applicant AW-1 Shri Suresh Chand has just proved the signatures on the enquiry proceedings which vitiated the enquiry proceedings. Consequently, the enquiry proceeding are hereby held to be vitiated and the issue is decided against the applicant.”*

6. A perusal of the above order shows that the only ground on which the enquiry has been vitiated is the non-production of the enquiry officer. According to Id. Counsel for DTC, the enquiry officer had left the service of DTC and could not be traced and he could therefore not be produced.

However, this by itself would not vitiate the enquiry. DTC had led the evidence of the witnesses and the Workman had also led his evidence. The opportunity for cross-examination was also given. Thus, the enquiry report could not have been rejected merely on this ground. The non-production of the Enquiry Officer cannot render the enquiry *non-est*. The same can be proved by other methods. In this case, the stenographer working in the DTC was produced. It cannot be presumed that the report is a farce merely because the Enquiry Officer was not produced.

7. Mr. Charya, Id. Counsel for the Workman, fairly concedes that merely because the Enquiry Officer was not produced, the enquiry cannot be held to be vitiated. This is also the settled position in law. Accordingly, the order dated 16th August, 2002 is not sustainable and the same is set aside.

8. For further adjudication in ***O.P. No.168/92***, the other three issues which were framed to be considered by the Labour Court are as under:

“1) *Whether the respondent committed the misconduct as alleged against him?*

2) *Whether the petitioner remitted full one month's wage to him as per provision of Section 33(2) (b) of I.D. Act?*

3) *Relief.”*

9. The said issues were decided by the Labour Court vide order dated 2nd May, 2003, where it was held that since the onus was on DTC to prove misconduct and DTC did not produce any evidence to prove the same, the first issue was decided against DTC. Ultimately, the approval sought by DTC was rejected, dismissing the application under Section 33(2)(b) of the ID Act on this ground.

10. In the opinion of this Court, since the Enquiry Report is held to be

valid, in order to prove these three issues, the evidence which was adduced in the enquiry during the enquiry proceedings as also before the Labour Court can be considered.

11. In so far as evidence in the enquiry proceedings is concerned, a perusal of the evidence on record shows that the allegations were made by one Sh. Ranjit Singh, Assistant Foreman against the Workman. The said allegations were four in number and to the following effect:

“On 11.8.91 your duty was in the depot work shop between 21:00 hrs to 5:30 hrs during which you committed following irregularities:

1. You forcibly got your attendance marked by Sh. L.N. Benket foreman at 22.15 O'clock in drunken position and told to the assistant foreman Sh. Ranjeet Singh sitting there that if you give evidence against me, I will teach you a lesson outside the depot.

2. You held him by his neck and abused him.

3. In the presence of body fitter Sh. Vijay Kumar, you beat the assistant foreman in the body section due to which, he received injury in his hand and at the left ear.

4. Security Hawaldar Sh. Mahendra Singh took at one Paua (liquor) from your pocket, which was half empty.

By doing so, you have misbehaved with higher officer and violated the rules and has breached the discipline.”

12. In respect of the above allegations, witnesses had deposed before the enquiry officer. Mr. Ranjit Singh, who is the Complainant himself deposed, and was also cross-examined.

13. In terms of the independent witnesses, Sh. L. N. Venkat, Foreman, who was the eye witness was examined. One Sh. Ran Singh, the Assistant Foreman was also cross-examined. A perusal of their evidence shows that

though Sh. Ranjit Singh had made various allegations including of physical manhandling and abuse, the other witnesses including the Foreman did not confirm any of these allegations. The only confirmation is of the occurrence of the incident, the words used by the Foreman are “आपस में बातचीत हुई कुछ वारदात हुई”. The relevant extract is as under:

“State of Sh. L.N.Venkat foreman Batch No. 9082.

On 11.8.91 my duty was in the night from 21.00 O'clock to 5.30 O'clock. In the evening after marking the attendance of assistant fitter Ashok Kuma, I marked his duty with fitter Manwal Lal. After sometime, there was some talk between Asst. Fitter Ashok Lal and Assistant foreman Ranjeet Singh and there was hot verbal arguments between both regarding same enquiry. After that we pacified both of them they went for there respective work. Around 23.30 O'clock some quarrel took place between assistant fitter Ashok Kumar and assistant foreman Ranjit Singh, Sh. Ranjit Singh called security guard Sh. Mahendra Singh. Thereafter, also reached to body section and again pacified both of them. After sometime around 00.30 one bus which was in break down condition standing in the line Ashok Kumar was send to attend the same. Thereafter they went in the morning and Sh. Ranjeet Singh was doing his duty in the morning, there was also some hot discussion between them thereafter, Assistant Foreman Sh. Ranjeet Singh gave report of the incident. I have nothing to say more.”

14. Therefore, the Foreman confirms that there was some incident/dispute/tussle between the parties. Mr Ran Singh in his statement also does not confirm the allegation. His statement is extracted below:

“Statement of Sh. Ran Singh assistant foreman T.No.9101.

On 11.8.91 my duty was in night shift in the depot work shop. After marking the attendance there was

some verbal altercation between Ashok Kumar and Ranjeet Singh. I told to Ashok Kumar to cool down. After sometime I came to know that Ashok Kumar went to Sh. Ranjeet Singh and told him something. Sh. Ranjeet Singh called the duty officer and the security guard who forbid him not to do so. Thereafter Ashok Kumar and Ranjeet Singh started doing their work. After some time, one report came for which Ashok Kumar and I went to attend and after that I went my house after finishing my duty. Later they had another enquiry to attend. I do not know what was the matter between Ranjeet Singh and him. I have nothing to say more.

Question ask by enquiry officer.

Q. Can you tell where were you at about 22.15 on 11.8.91 in the depot.

Ans. In the office of foramen.

Q. Can you tell about that Sh. Ashok Kumar (Assistant fitter) being drunk coming in foramen office and giving threat to Sh. Ranjeet Singh regarding giving evidence.

Ans. I do not know about Ashok Kumar being drunk but he gave threatening therefore quarrel took place.

Q. Whether assistant fitter Sh. Ashok Kumar abused him.

Ans. No.

Q. Can you tell that you recovered a wine bottle from the pocket of Sh. Ashok Kumar which was half empty.

Ans. No."

15. Sh. Ran Singh also denies that there was any verbal abuse by Mr Ashok Kumar and denied any knowledge of whether the Workman was in an inebriated state or not, although he does state that there was some threat

given by the Workman which led to the dispute.

16. Sh. Mahendra Singh, the Security Constable, also stated that when he reached the place, there was no dispute and nobody affirmed to him that there was any dispute.

“On this occasion difference witness Sh. Mahendra Singh security Hawaldar B.No.450 is asked to give his statement.

Statement of Mahendra Singh security hawaldar B.No. 450.

On 11.8.91 my duty was in night shift when I reached to the place of incident I did not find any quarrel there I collected all the people there and enquired from them but no one told about the quarrel after sometime foreman sent me outside to attend a breakdown case. I have to not to say anything.”

17. Thus, it is not clear from the evidence on record that the allegations were correct. Insofar as the evidence of Sh. Ran Singh is concerned, he also confirmed that there was a ‘dhamki’ which was given and a ‘jhagda’ which happened. This is the best evidence which has emerged even from the enquiry report. Thus, the allegations which were raised against the Workman have not been fully established.

18. Even the enquiry report itself holds that out of the allegations which was made, the first two were partially proved, and one was fully proved. Therefore, as per the evidence which has emerged from the enquiry report, there is no independent corroboration of the fact that the Workman was also under the influence of liquor. Under such circumstances, the question would be as to whether the award is sustainable.

19. In view of the above evidence, even after taking into consideration the Enquiry Report, the conclusions in the enquiry report that the allegations

were proved are not tenable. The impugned award dismissing the application under Section 33(2)(b) is therefore been held to be correct but on different grounds i.e. no proof of the allegations levelled. By virtue of this finding, the removal order dated 24th April, 1992 is also liable to be quashed.

20. This brings the Court to the prayer of the Workman in **W.P.(C) 6748/2003**. The Workman herein has prayed for reinstatement and that he should be allowed to perform his duties. He prays for the following reliefs:

- “(a) Quash the order of removal dated 24.4.1992 and hold that the order of removal is wholly invalid, improper and inoperative;*
- (b) Issue directions to the respondents to reinstate the petitioner and allow him to perform his duties.*
- (c). hold that the petitioner is entitled to full salary and allowances for the intervening period from the date of the impugned order of removal dated 24.4.1992 with all consequential benefits continuation of service without any break.”*

21. In view of the quashing and setting aside of the impugned removal order and the impugned award, the question is as to what should be the relief to be granted in favour of the Workman. To ascertain the same, this Court considers the following factors:

- (i) The Workman had worked for DTC for a period of 9 years between 1982 and 1991;
- (ii) The Workman superannuated in 2019;
- (iii) During this duration, for a period of 3-4 years, the Workman is also stated to have been engaged as a regular employee. Notably, vide order dated 22nd January, 2010, DTC was directed to pay revised wages as per the Minimum Wages Act, 1948 to the Workman from the date that he was regularised in service, i.e., 8th July, 2009.

Therefore, he received wages and worked as a regular employee between 2009-2013.

- (iv) For the remaining period between 2013 – 2019, he has been paid amounts under Section 17B of the ID Act.
- (v) A total sum of approximately Rs.14 lakhs has already been paid to the Workman during this period.
- (vi) From the record it emerges that the Workman has not been given any remuneration for the period from 1992 to 2003, i.e., for a period of 11 years.

22. This Court is of the opinion that the grant of back wages with all benefits, at this stage, especially, when the Workman has superannuated and also when he has not rendered any service would be inequitable. It is well-established that lumpsum compensation may be granted in lieu of back wages/reinstatement, depending upon the facts of the case at hand. In **Allahabad Bank and Ors. v. Krishan Pal Singh (SLP(C) No. 19648/2019, decided on 20th September 2021)**, recently the Supreme Court held:

“8. The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23.08.2019. During the pendency of these proceedings, the respondent – workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. The reinstatement with full back wages is not automatic in every case, where termination / dismissal is found to be not in accordance with procedure prescribed under law. Considering that the respondent was in effective service of the Bank only for

about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs.15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% per annum, till payment."

23. A similar view has also been taken by the Supreme Court in ***Ranbir Singh v. Executive Eng. P.W.D. (Civil Appeal No. 4483/2010, decided on September 2, 2021)***, and followed by this Court in ***M/s Hindustan Antibiotics Ltd. v. BN Singh (W.P.(C) 8297/2016 and CM APPL. 867/2020, decided on 28th October, 2021)***.

24. Therefore, in the overall facts and circumstances of this case, keeping in mind the amount which has already been paid under Section 17B of the ID Act, of Rs.13,93,408/-, a lumpsum compensation for the intervening period from 1992 to 1993 of Rs.10 lakhs is granted to the Workman.

25. In so far as the statutory benefits that the Workman is entitled to, viz., provident fund & gratuity, shall be released to the Workman within eight weeks from today.

26. Both these petitions are disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 24, 2021/Aman/MS