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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 25.08.2022***Pronounced on: 27.09.2022*****+ W.P.(C) 5431/2003****HARISH CHANDER**

..... Petitioner

Through: Mr. G. S. Charya, Advocate

versus

D.T.C. & ANR.

..... Respondents

Through: Mr. Uday N. Tiwari and
Ms. Saloni Singh, Advocates**+ W.P.(C) 5892/2003 & CM No. 30791/2021****D.T.C.**

..... Petitioner

Through: Mr. Uday N. Tiwari and
Ms. Saloni Singh, Advocates

versus

**HARISH CHANDER, CONDUCTOR
& ANR.**

... Respondents

Through: Mr. G. S. Charya, Advocate

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. Both these writ petitions are heard together and disposed of by this common judgment. These writ petitions arise out of the Awards dated 12.10.2001 and 20.05.2002 passed by the learned



Presiding Officer, Labour Court-IV, Karkardooma Courts, Delhi.

2. **W.P.(C) 5431/2003** is preferred by Petitioner/Sh. Harish Chander for setting aside the Award dated 20.05.2002 passed by the learned Presiding Officer, Labour Court-IV, Karkardooma Courts, Delhi whereby the learned Presiding Officer granted reinstatement to the petitioner with 50% backwages. Sh. Harish Chander (*herein after referred to as 'the delinquent'*) has filed the present writ petition for granting full backwages with continuity in service. **W.P.(C) 5892/2003** is preferred by the Petitioner/ D.T.C. for setting aside the Awards dated 12.10.2001 and 20.05.2002 passed by the learned Presiding Officer, Labour Court-IV, Karkardooma Courts, Delhi whereby Sh. Harish Chander was granted reinstatement in service with 50% backwages.

FACTS OF THE CASE

3. The facts borne out of the records leading to the present petition are that the Petitioner was brought on monthly rates of pay with effect from 23.05.1977. On 21.10.1983, petitioner along with his two other associates entered the office of Mr. K. K. Berry, Depot Manager, DTC and during the discussion, the petitioner used abusive language and assaulted the Depot Manager. Mr. K. K. Berry, Depot Manager submitted a report dated 10.10.1983 to the Assistant General Manager (Traffic). Pursuant to the report of Sh. K. K. Berry under order of Assistant General Manager, the delinquent was placed under suspension in contemplation of



disciplinary proceedings. On 21.10.1983, the delinquent was served with a charge-sheet. The delinquent filed a reply against the allegations levelled against him in the Charge-sheet. However, the competent authority was not satisfied with their reply and a regular enquiry was initiated against the delinquent. The enquiry officer submitted his report dated 10.11.1987 wherein the delinquent was found to be guilty of all the charges levelled against him. On 15.12.1987, the Disciplinary Authority agreed with the finding of the Enquiry Officer and issued a show cause notice with proposal of removal from services. On 15.01.1988, the delinquent was removed from his services w.e.f. 16.01.1988. Against the termination order, the delinquent raised an Industrial Dispute which was referred to the learned Labour Court, Delhi for adjudication. The learned Labour Court vide its Award dated 12.10.2001 decided the preliminary issue of validity of enquiry in favour of the delinquent. Thereafter, the learned Labour Court passed an Award dated 20.05.2002 directing reinstatement of the delinquent with 50% backwages. Against the impugned Awards dated 12.10.2001 and 20.05.2002 passed by the learned Presiding Officer, Labour Court-IV, Karkardooma Courts, Delhi the present writ petitions have been filed.

SUBMISSIONS ON BEHALF OF DTC

4. Mr. Uday N. Tiwari, learned counsel appearing on behalf of DTC contended that the Awards dated 12.10.2001 and 20.05.2002 passed by the learned Presiding Officer, Labour



Court-IV, Karkardooma Courts are liable to be set aside as they are based on conjecture and surmises ignoring the material evidence on record. Learned counsel further contended that the learned Labour Court erred in passing the impugned Awards dated 12.10.2001 and 20.05.2002 against the delinquent as the learned Labour Court has failed to take into consideration the testimony of Mr. K. K. Berry, who was duly cross-examined by the delinquent and proves that the delinquent used abusive language and physically assaulted Mr. K. K. Berry.

5. Learned counsel for the petitioner further contended that the learned Labour Court failed to appreciate that the delinquent was unduly delaying the enquiry proceedings on one pretext or the other by repeatedly remaining absent or by raising illegitimate demands. Learned counsel further contended that the enquiry officer accepted all the requests made by the delinquent on various occasions during the enquiry proceedings, only with an object of following the principles of natural justice. He further contended that taking into account the demeanor of the delinquent in delaying the enquiry proceedings, the observation of learned Labour Court with regard to not following the principles of natural justice by the learned Labour Court is uncalled for and perverse.
6. He further contended that the testimony of Mr. Dhan Singh is contradictory to the stand taken by the delinquent and as such no reliance can be placed on the testimony of Mr. Dhan Singh.



7. Learned counsel further contended that the learned Labour Court erred in ignoring the testimony of eyewitness, Mr. V. K. Singh and the statement of Sh. K. K. Berry, Depot Manager/complainant made before the Enquiry Officer which clearly proved the guilt of the delinquent. Learned counsel concluded his argument by contending that the learned Labour Court erred in not appreciating that physically assaulting and using abusive language against a superior officer tantamounts to a grave misconduct for which the punishment of removal is just and proper.

SUBMISSION ON BEHALF OF MR. HARISH CHANDER (THE DELINQUENT)

8. Mr. G. S. Charya, learned counsel appearing on behalf of Mr. Harish Chander (*the delinquent*) contended that no interference in the impugned Award dated 20.05.2002 is called for by this Court except for the grant of full back wages. He further contended that despite observing that the enquiry proceedings were vitiated and have been proceeded without following the principles of natural justice, the learned Labour Court erred in not granting full backwages to Mr. Harish Chander.
9. He further contended that it was proved on record that Mr. Harish Chander was not employed during the intervening period from the date of his termination to the date of reinstatement and as such he was entitled for grant of full backwages.



10. He further contended that the learned Labour Court correctly observed that the principles of natural justice have not been followed by the enquiry officer and not providing a sufficient opportunity to cross-examine Mr. V. K. Singh, Assistant Accounts Officer and Mr. K. K. Berry, Depot Manager, tantamounts to declaring the enquiry proceedings unlawful and vicious.

LEGAL ANALYSIS

11. This Court has gone through the documents placed by both the parties on record and have also heard the respective counsels with regard to perversity in the Impugned Awards. At the outset, this Court deems it appropriate to recapitulate the observations made by the learned Labour Court vide its Award dated 12.10.2001 by which the learned Labour Court held that the enquiry proceedings are bad in law and sufficient opportunity has not been given to the delinquent to prove his innocence. Relevant portion of Award dated 12.10.2001 reads as under:-

“These proceedings are liable to be set aside on the following grounds:-

- (i) The charge-sheet dated 21.10.1983 is wholly vague for want of proper particulars; averments contained in the charge-sheet were, self-contradictory.*
- (ii) It was extremely unreasonable, improper, unjust to record ex-parte evidence on 8.9.87 as the concerned workman was sick and he could be present. **Principles of natural justice warranted that the ex-parte proceedings dated 8.9.87 should have been recalled and proper and adequate opportunity ought to have been given to the workman, to cross-examine Sh.***



V.K. Singh. This had been denied with a pre-meditated move because Enquiry Officer has all along been recorded proceedings under the influence of superior officials. He had not acted in a fair and impartial manner.

(iii) That the findings recorded by the Enquiry Officer are altogether perverse and contrary to legal evidence. No legal sanctity can be attached to the said proceedings

(iv) The proceedings of enquiry initiated vide charge sheet dt.21.10.1983 are barred under principles of latches, under delay and waiver etc. The proceedings were initiated in Oct, 1983 and there was no justification to prolong the proceedings for more than 4 years, especially when Sh. Lacchman Dass had once concluded the proceedings and none had appeared. Even otherwise there was no justification to keep the matter pending for such a long time.

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20. In this case, the delinquent workman was charge-sheeted on 21.10.83 and the enquiry proceedings started in May 1987 and it is after a period of three and half years and the management has taken, a long time for initiating the enquiry proceedings against the delinquent workman but they have not acceded to the request of the delinquent workman for calling Sh. V.K. Singh, Assistant Accounts Officer for cross examination and the request of the delinquent workman was turned down by the enquiry officer for cross examining him. It is clear that the management has not given the opportunity to cross examine the management witness namely Sh. V.K. Singh and the management has also, not given any reason why they have not examined Sh. Dhan Singh in the enquiry proceedings. The management has violated the principles of natural justice by not allowing the delinquent workman to cross examine the management witness Sh. V.K. Singh.

21. In this case the management witness Sh. Dhan Singh has appeared as a defence witness on 02.12.1987 and he has supported the version of the delinquent workman and said Dhan Singh in his statement also stated that the management got recorded a written statement from him in their favour by using pressure and coercion. Perusal of the enquiry report reveals that,



the enquiry officer has not properly appreciated/considered the statement of Sh. Dhan Singh who has deposed in favour of the delinquent workman. The enquiry officer in his report stated that no effect can be given to the testimony of Sh. Dhan Singh since he has retired from the management and he appeared as a defence witness though he was cited as the prosecution witness i.e. the witness of the management and his testimony is not reliable. From this it is amply clear that the enquiry officer has not appreciated the evidence fairly and he has resorted to surmises and conjecture in order to come to his conclusion.”

12. The learned Labour Court based its decision for granting reinstatement to the delinquent on the grounds mentioned above.

Core of the above mentioned grounds are as under:

- (a) That the contents of charge-sheet are vague.
- (b) That the enquiry officer did not give an opportunity to the delinquent to cross-examine Mr. V. K. Singh and enquiry proceedings have been carried out under the pressure of the superior officers.
- (c) That there was a delay of 4 years to culminate the departmental proceedings.
- (d) That the enquiry officer failed to consider the testimony of Mr. Dhan Singh in correct perspective.

13. With regard to the contentions raised by both parties, it is relevant to peruse the Enquiry Officer's report dated 10.11.1987. The relevant portion of the enquiry report dated 10.11.1987 is as under:-

“....On 4.6.86, during the enquiry Shri Harish Chander Conductor Batch No. 9520 refused to accept the charge as leveled in the charge sheet and also to have the assistance of an employee in the enquiry. This was confirmed by Shri K.K.Beri, Regional Manager (East) in his statement and Shri Harish Chander was given the opportunity to put question in his



defence. On this he raised objection that the enquiry be conducted in Hindi. Allowing his request the enquiry was started on 3.9.86 in Hindi. On this the accused has raised objection that he has not brought his co-employee with him, so the case be adjourned to some other date. Keeping the interest of the accused in mind the same was accepted and the inquiry was again started on 7.5.87, in which the accused did not appear in the enquiry without and valid reason or permission. Thus the statement of Shri K.K. Beri (Officiating Manager (East) was recorded before Shri B.L.Patney (Labour Welfare Officer) (S), in which he confirmed his report. Because vide letter No.ANL/Vig/CR-103/84/87/2491 dated 27.4.87 he was informed that without any valid reason or permission, the enquiry will be continue in his presence.

On 1.6.87 the enquiry was again started before the Labour Welfare Officer. Shri Harish Chander Conductor Batch No. 9529 was asked to take the assistance of his co-employee Shri Deen Dayal , Conductor, Batch No. 10530, which was allowed. But when the Enquiry Officer asked Mr. V.K. Singh, Asstt. Account Officer for recording his statement, then Shri Harish Chander raised the objection that Shri K.K.Beri may be called for inquiry in front of him.', His request was accepted. Shri Harish Chander conductor, Batch No. 9529 was directed that for any reason he does not appear in the enquiry, the enquiry will continue.

On 27.7.87 during the enquiry, the accused has put questions on Shri K. K.Beri in his defence.

On 8.9.87, the enquiry was again started, in which the accused did not appear. While vide letter No.AND/Vig/CR-103/84/87/4857 dated 27.8.87 the accused was informed that without any valid reason or permission, the enquiry will be continue in his absence. So the statement of Shri V.K. Singh was recorded before the Labour Welfare Officer (S), wherein he has confirmed the incident of misbehaviour and beating with Shri K.K.Beri.

The accused was informed for the next date to his closing statement and to produce his witnesses. He was informed vide letter No.AND/Vig/CR-103/84/87/5114 dated 10.9.87 for the enquiry but the accused tried to delay the enquiry proceeding on one pretext or the other. On 6.11.1987 the accused was given final opportunity to produce his witness and his closing statement



but he moved an application to re-call Mr. V.K.Singh and also on the ground of illness of the Assistant employee asked for next date. While the request to re-call Mr. V.K. Singh in the enquiry was rejected, as the accused was informed vide letter No.AND/Vig/CR-103/84/87/5317 dated 22.9.87 the accused was already informed and thus the accused has tried to delay the matter without any reason which cannot be accepted. So far the question of the illness of the Co-Assistant is concerned which was proved wrong that he is ill, as is revealed from the Depot Manager, Sarojini Nagar Depot.

On 20.11.87, the accused again asked to re-call Mr.V.K.Singh in the enquiry which was rejected and the accused was asked to make his closing statement but the accused has requested for time upto 2.12.87 and in the interest of justice the enquiry was postponed.

On 2.11.87 the accused, in his defence has produced one ex-driver Shri Dhan Singh B. No. 2251 in the enquiry. He has stated his statement that on 10.10.83 his vehicle was standing in front of the Workshop Store and he was getting the vehicle repaired. At about 1655 the peon Phool Singh came near to me and said that the vehicle is required by the Depot Manager. After 2-4 minutes he started the vehicle and parked it adjacent to the room of the Manager. After parking the vehicle he went to the room of Depot Manager and he told to go for the office. On reaching the office, Shri Kamal Sahab (who was AGMT (T) asked to go I.P Headquarters. On reaching the I P Headquarter he was made to sit in the room and a pen and paper was given and asked to write on it. Whatever he written was turned off and thereafter what they dictated he written. Because they were his officers. He knew that whatever was written is totally false. In his closing statement the accused told that the charges are baseless and false.

The whole matter and the statements of witnesses were examined in accordance with the rules of the Corporation. Shri K.K.Beri Regional Works Manager (East) has confirmed the report in his statement. Shri Harish Chander has not asked any valid question from Shri K.K.Beri in his defence. Shri V.K. Singh ,Asstt. Accounts Officer has also stated in his statement about the misbehaviour and beating of Shri K.K. Ben. In this matter one witness who had been retired from the service of the Delhi Transport Corporation, so there is not purpose to call him. Shri K.K.Beri Regional Works Manager (East) has confirmed the report in his statement. Shri Harish Chander has not asked any



valid question from Shri K.K.Beri in his defence. Shri V.K. Singh, Asstt. Accounts Officer has also stated in his statement about the misbehaviour and beating of Shri K.K. Bery. Shri Harish Chander, Conductor, Batch No. 9529 has requested in his application to re-call Mr. K.K. Beri in the enquiry, which is rejected, because he has tried to delay the enquiry/ without any valid reason and he has been informed vide office letter NO. AND/SP/CR-103/84/87/5318 dated 22.9.1987, that the ground of illness of his Colleague is false and on that account he has made successful attempt to delay the enquiry because his colleague has taken leave for marriage, and a true copy of his leave application is enclosed with the file, while the accused is telling that he is ill.

The statement of Ex. Driver Dhan Singh B. No. 2251 is not to be accepted because if Dhan Singh had written under influence, the he should have immediately informed his senior officers. In this case Shri Dhan Singh was the witness of the prosecution but after retirement he came as witnesses for the defence side. This clearly shows that the accused got his evidence as hostile witness, therefore his evidence has got no meaning. In his concluding statement the accused has not stated any strong point .”

14. Before the Enquiry Officer, the Management/DTC has produced Sh. K. K. Berry (Depot Manager), Sh. V. K, Singh (Assistant Accounts Officer) and Mr. Mohd. Yusuf (Enquiry Officer) as Management witnesses. Sh. K. K. Berry, Depot Manager, during his statement before the enquiry officer deposed as under:-

(Translated by Translation Branch, High Court of Delhi)

“On 10.10.1983, I was busy in work at Sarojini Nagar Depot. At about 04.40 PM, Sh. Mahendra Singh, Driver, B.No. 7834, Dharamvir, Driver, B.No. 6865 and Harish Chandra, Conductor, B.No. 9529 entered my room and asked to talk on some issues.

The very first matter they raised was that of the disallowing the leaves. The second issue was excessive deduction on account of damage from the Drivers while the third matter was that of seniority wise duty of the Drivers at workshop. On this, I told them that only those leaves are disallowed which are given late as it creates hindrance in the operation. Even if it is felt that



somebody is subjected to injustice, his matter may be reconsidered on being produced. As far as the recovery of damage is concerned, such cases are dealt with according to the merit. And if in any case, somebody feels that injustice is caused to him, he may appeal before the AGM (T). And as far as the matter of seniority wise deployment of Drivers in Workshop is concerned, the matter is under consideration and will be decided soon.

On this, Sh. Harish Chandra, Conductor, B. No. 9529 and his both colleagues said, "You do not do anything for our Union, we will deal you alternatively." While saying this, they started to beat me. Sh. V.K. Singh, AAO who was present there in my office and Sh. Dhan Singh, Driver, B.No. 225 came in my rescue and ousted the three from the room."

15. Sh. K.K. Berry, Depot Manager was cross-examined by the delinquent before the Enquiry Officer and Sh. K.K. Berry during his cross-examination deposed as under:-

(Translated by Translation Branch, High Court of Delhi)

"Q. You are the officer of which department? Traffic, Engineering or Accounts?

A. I am an officer of the Engineering Department.

Q. What is your current designation?

A. Regional Manager (Technical)

Q. What is the designation of the Inquiry Officer?

A. This question may be asked to the Inquiry Officer.

Q. Who are your witnesses?

A. I have stated their names in my statement.

Q. Who used to file the ACR of your witness?

A. Whoever was his Senior Officer.

Q. Did you not use to file the ACR of Sh. V.K. Singh?

A. You can refer to the records regarding this.

Q. Did you not have a Peon at the time?



A. I don't remember but there was a Peon.

Q. Why did you not make him your witness?

A. I don't recall if he was present there at the time or not.

Q. As stated by you, "he had come to discuss some issues regarding the depot". Was an appointment sought to meet you?

A. No appointment was sought as he was a staff of the depot. Therefore, I did not consider an appointment to be necessary and decided to listen to him and resolve the matter, if significant.

Q. What happened next?

A. I resolved whatever issues he raised.

Q. But you stated that he fought with you? Is it true?

A. After listening to my reply, which was quite satisfactory in my opinion, he fought with me.

Q. Is there a remark in the Duty Officer register regarding this altercation?

A. I do not know about this. Refer to the records.

Q. Is there a remark in the Security Office regarding this?

A. I had only reported to the AGM (T).

Q. Are incidents of fighting only reported to the AGM (T) or is any action taken at the depot?

A. I considered reporting to the AGM (T) appropriate.

Q. Why did you not report to the Police?

A. I did not consider it necessary.

Q. At what time did the fight take place?

A. I have mentioned the time in my statement.

Q. Where was Harish Chandra, 9529 posted at that time?

A. Refer to the records.

Q. Were you familiar with Harish or did anyone mention his name to you?



A. Yes, I was familiar with him”

16. Mr. Dhan Singh, Driver during his examination in chief before the enquiry officer deposed as under:-

(Translated by Translation Branch, High Court of Delhi)

“On reaching I.P. Headquarter, I was made to sit in room and given a paper and pen and asked to write on it. Whatever I had written on it, was torn down. Thereupon I continued to write whatever he had told me. I wrote whatever he had told me because he was my Officer and I was his Driver, I had known that whatever he had made me to write was completely false”

17. During cross-examination by the delinquent Sh. Dhan Singh deposed as under:-

(Translated by Translation Branch, High Court of Delhi)

“Question: When you entered the room, where was the Peon?”

Answer: When I entered, he was standing at the gate of the room.

Question: Whether you had brought the Depot Manager from there by yourself or somebody else was also sitting there?

Answer: No third person was there apart from me and Depot Manager.

Question: When you entered the room then whether the Depot Manager was alone in the room or somebody else was also present in the room?

Answer: The Depot Manager was alone in the room.

Question: What are the threats given to you while you were made to write the statement?

18. Sh. V.K. Singh, Assistant Accounts Officer’s deposition before the enquiry officer reads as under:-

(Translated by Translation Branch, High Court of Delhi)



*“On 10.10.1983, at about 16.30 Hrs., I was present at the office of Sh K.K. Berry, Depot Manager for official work. Meanwhile, three employees entered the office of Sh. K.K. Berry, Depot Manager. The Depot Manager asked them for the reason of their presence and for what work they had come. The three employees told that they had to talk to me. On this, the Depot Manager asked them as to what the matter was. Thereupon they told that the duty of the Drivers at workshop should be according to seniority and a lot of damage is shown in the name Drivers. On this Sh. K.K. Berry replied that if heavy damage is made on somebody, he may appeal to the Higher Authority. The applications of Drivers and Conductors are dismissed. Whereupon Sh. K.K. Berry said that “the application which are filed late, are automatically dismissed as the absence in the Depot is increasing.” **Thereupon, the three employees stated that you did not want to do any work for our Union. We will see you.” And while saying this, they, the three, started beating him. I immediately left my seat and tried to extricate them and they ran from the room at once.** The Matador Driver Dhan Singh, came there to put signatures on his Log Book. I asked him as to who those three employees were who had quarreled there. At which, he disclosed that those employees were Sh. Harish Chandra, Conductor, B.No. 9829, Sh. Mahendra Singh, Driver, B.No. 7834 and Sh. Dharamvir, Driver, B.No. 6865. I do not wish to say anything else.”*

19. Sh. V.K. Singh, Assistant Accounts Officer deposition before the learned Labour Court reads as under:-

“I have filed my affidavit Ex. MW2/A in support of my evidence. It bears my signatures at point A and B. I rely on documents Ex – MW2/2 and Photostat copy of statement of Shri V.K. Singh Asstt. Accounts Officer is Ex MW2/1.

XXXX by AR for the workman

It is correct that the designation of then Depot Manager Shri K.K. Berry was higher than mine and I was working under him administrative control. I do not know whether any police report was made regarding this incident. I had come to the room of Depot Manager to discuss an account problem. It is incorrect to suggest that I was not present therein the room of Depot Manager at that time. It is wrong to suggest that I made the report due to the



pressure of Shri K.K. Berry under whom I was working. I do not know whether there is any remark regarding this incident in the security register. Filing of police report and giving remark in the security register is an administrative matter. It is taken care by the Depot Manager. I had given the report of this incident to AGMD and CMD in Headquarter. It is wrong to suggest that the said incident did not take place and that I had made a false report under the influence of Shri K.K. Berry. It is wrong to suggest that a wrong report is made because the workman is the vice president of the Union. It is correct that I had known the workman Shri Harish Chander before this incident had happened. It is wrong to suggest that I am deposing falsely.”

20. Mr. V.K Singh, Assistant Account officer was not produced before the Enquiry Officer. Mr. K.K Berry, Depot Manager was not produced before the learned Labour Court. Learned Labour Court held that by not producing these Witnesses, the Management/DTC has trimmed down the chances of the Workman to prove his innocence by cross-examining these two witnesses. However, this Court examined the proceedings before the Enquiry Officer in detail. It appears that the Enquiry Officer has acceded to all the requests made by the delinquent. On various occasions adjournment have been sought by the delinquent on one pretext or the other and the requests of the delinquent have been acceded to by the Enquiry Officer.
- On 04.06.1986, the delinquent demanded that the enquiry proceeding be conducted in Hindi which was acceded to and the enquiry was adjourned to 03.09.1986.
 - On 03.09.1986, he again sought an adjournment on the ground that he has not brought his colleague and the enquiry was adjourned to 07.05.1987.



- c. On 07.05.1987, the delinquent failed to appear before the enquiry officer and the enquiry was adjourned after recording of evidence of Sh. K. K. Berry, Depot Manager and the delinquent was intimidated about the next date of enquiry vide letter dated 27.04.1987.
- d. On 01.06.1987, when the delinquent was asked to make his deposition, he refused and demanded for cross-examination of Sh. K.K. Berry, Depot Manager which was acceded to and the enquiry was adjourned.
- e. On 27.07.1987, the delinquent cross-examined Sh. K.K. Berry, Depot Manager and the enquiry was re-notified.
- f. On 08.09.1987, the delinquent failed to appear despite being informed vide letter dated 27.08.1987 which was duly served upon the delinquent and on that date, statement of Sh. V.K. Singh, Assistant Accounts Officer was recorded.
- g. Vide letter dated 10.09.1987, the delinquent was notified about the next date of hearing which was duly served upon him but he failed to appear.
- h. He was again called to appear before the Enquiry Officer on 06.11.1987 but he did not appear and moved an application for adjournment citing the ill health of his colleague.
(The excuse of ill health of the colleague of the delinquent was found to be untrue by the Depot Manager, Sarojini Nagar which was recorded in the proceedings.)
- i. On 20.11.1987, the delinquent appeared and sought the presence of Sh. V.K. Singh, Assistant Accounts Officer which was



already rejected by the Enquiry Officer and hence he was asked to submit his final statement. The delinquent again sought time and the enquiry was adjourned.

- j. On 02.12.1987, the delinquent produced Mr. Dhan Singh, Driver in his defense and cross-examined him after recording of his examination-in-chief. The final statement of Mr. Harish Chander was also recorded on that date.
21. It is evident from the enquiry records that Sh. K. K. Berry, Depot Manager deposed before the Enquiry Officer and the delinquent has cross-examined Sh. K.K.Berry, Depot Manager. On the day of recording evidence of Sh. V. K. Singh, Assistant Accounts Officer, Labour Welfare Officer was present and the evidence of Sh. V.K. Singh has been recorded in his presence. However, the delinquent in order to delay the proceedings did not appear before the learned Labour Court on the date of recording the statement of Mr. V.K. Singh despite him being served with letter dated 27.08.1987. It is also evident from the record that the Enquiry Officer came to a conclusion that the reason for non-appearance of the delinquent on the day of recording evidence of Sh. V. K. Singh was intentional as despite service of notice informing him about the next date of hearing before the Enquiry Officer, the delinquent adverted to non-compliance of the directions passed by Enquiry Officer.
22. It is imperative to observe that the testimony of Mr. V.K. Singh was recorded in the presence of Labour Welfare Officer. Hence the allegation of the delinquent with regard to non-adherence of



principles of natural justice does not hold ground. No negative hypothesis can be casted with regard to enquiry proceedings being prejudicial to the cause of the delinquent as the same has been supervised by the Labour Welfare Officer who is a neutral officer. Moreover, the record further depicts that the delinquent was delaying the departmental proceedings on one pretext or the other. Moreover, the learned Labour Court failed to take into consideration the testimony of Sh. V.K. Singh, Assistant Accounts Officer was recorded by the Labour Court and he was duly cross-examined by the Authorized Representative of the delinquent. The learned Labour Court before passing the impugned Awards ignored this crucial fact that Sh. V.K. Singh testified before the Labour Court and was also cross-examined. The reasoning given by the learned Labour Court with regard to non-application of the principles of natural justice in relation to non cross-examination of Sh. V.K. Singh before the Enquiry Officer is untenable in law as he appeared before the learned Labour Court and was cross-examined by the authorized representative of the delinquent. Mr. V.K. Singh corroborated his earlier testimonies before the learned Labour Court. As such the observation made by the learned Labour Court with regard to non cross-examination is perverse and arbitrary.

23. Learned counsel for the delinquent contended that Sh. K.K. Berry, Depot Manager was not produced before the learned Labour Court for recording his evidence. It has come on record that during recording of evidence of witness by the learned



Labour Court, Sh. K. K. Berry, Depot Manager got retired. The Management/DTC has undertaken efforts to bring Sh. K. K. Berry, Depot Manager in the witness box before the learned Labour Court but they failed to produce him before the learned Labour Court. An employee who has retired cannot be forced to appear before the Court/Tribunal as a witness. In the present case, Sh. K.K. Berry appeared before the learned Labour Court in the case against the co-delinquent i.e. Mahinder Singh and deposed in conformity with his statement recorded by the Enquiry Officer. However, in the present case he showed his inability to appear and did not depose before the learned Labour Court. This Court is of the view that non production of the Sh. K. K. Berry, Depot Manager shall not vitiate the enquiry proceedings or the proceedings before the learned Labour Court as he has already deposed before the Enquiry Officer and put to cross-examination by the delinquent itself.

24. The statement/complaint made by Sh. K.K. Berry before the Assistant Manager (Traffic) and also the testimony of Sh. K.K. Berry recorded by the Enquiry Officer are corroborative and unimpeachable with his own previous statements as well as with the statement of other witnesses who were produced by the Management/DTC. It is a trite law that in a domestic enquiry the strict and sophisticated rules of evidence may not apply. The essence of a judicial approach is impartiality and observation of principles of natural justice. It was not a case of no evidence before the Enquiry Officer to support his findings. The learned



Labour Court had committed a manifest error in holding that the enquiry proceedings were perverse. The learned Labour Court should have subjected the testimonies of the witnesses to a careful scrutiny in the light of other mitigating circumstances before drawing the conclusion of setting aside the enquiry report. As such, the observation made by the learned Labour Court in relation to non-production of Mr. K. K. Berry, Depot in the witness box before the learned Labour Court and also not giving an opportunity to the delinquent to cross-examine Mr. V. K. Singh, Assistant Accounts Officer and not following the principles of natural justice does not hold any ground.

25. As regards reliance placed by the delinquent on the testimony of Mr. Dhan Singh, is concerned, perusal of the aforementioned testimony of Mr. Dhan Singh depicts that he was made to write on a piece of paper which was torn down. During cross-examination, he deposed that there was no other person except Sh. K. K. Berry, Depot Manager. However, the testimony of Sh. V. K. Singh, Assistant Accounts Officer and Sh. K.K. Berry, Depot Manager are corroborative in nature. They both averred on the same lines that the delinquent alongwith other two officials entered the office of the Depot Manager and after some discussion abused and assaulted the Depot Manager. The delinquent has not brought any evidence proving his plea of *alibi*. As per the Indian Evidence Act, the burden to prove his innocence shifts on to the delinquent when the delinquent takes a plea of *alibi*. He states that he never visited the office of Sh. K.



K. Berry, Depot Manager but no cogent evidence has been brought on record by the delinquent to prove that he never went to the office of Depot Manager on the date of incident and it was a concocted story in order to falsely implicate him in the matter. No explanation has been rendered by Mr. Dhan Singh as to why he did not make a complaint before the higher authorities about engaging him in writing false statement by Sh. K. K. Berry, Depot Manager. This Court is of the view that the conduct of the defence witness does not inspire confidence and cannot be relied upon ignoring the impregnable and corroborative testimony of Mr. V. K. Singh, Assistant Account Officer and Mr. K.K. Berry, Depot Manager. There is no reason to disbelieve the testimonies of Mr. V. K. Singh and Mr. K. K. Berry. Accordingly, this court cannot give any credence to the testimony of Mr. Dhan Singh.

26. It is settled principle of law that assaulting a superior officer at workplace is un-ignorable and such indiscipline could not be exonerated on the excuse of emotions and feeling of workmen. In the case of ***Hombe Gowda Educational Trust and Anr. v. State of Karnataka and Ors.*** reported as ***(2006) ILLJ 1004 SC***, the Hon'ble Supreme Court has held as under:-

“30. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by



rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefore....
.”

(emphasis supplied)

27. Similarly in the case of *The Management of Tournamulla Estate v. Workmen* reported as (1973) IILLJ 241 SC, the Hon’ble Supreme Court while considering the denial of gratuity to a dismissed workmen held that:-

"If a workman is guilty of a serious misconduct such as acts of violence against the management or disorderly behavior in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline, then his gratuity can be forfeited in its entirety."

(emphasis supplied)

28. From the facts narrated hereinabove and the ratio laid down by Hon’ble Supreme Court, this Court is of the view that even under the gravest of provocation, no employee can be allowed to use abusive language or assault its superior. The courts cannot allow employees to break the discipline with impunity. The learned Labour Court by condoning an act of physical violence has undermined the discipline in the organization. In the above factual backdrop, it can never be said that the learned Labour Court could have exercised its authority to interfere with the punishment of dismissal. Substituting the order of dismissal in such a case by granting reinstatement with 50% back wages, in view of this Court is wholly disproportionate to the gravity of misconduct and is unsupportable and unsustainable.



29. Accordingly, the Awards dated 12.10.2001 and 20.05.2002 passed by the learned Labour Court are hereby set aside. The appeal filed by the DTC is allowed and appeal filed by Sh. Harish Chander is dismissed alongwith pending applications.
30. Since, Sh. Harish Chander has attained the age of superannuation. It is further clarified that the proceedings under Section 17-B of the Industrial Disputes Act, 1947 are independent proceedings and not dependent upon the final order passed in the main proceedings. Hence, in view of the law laid down by the Hon'ble Supreme Court in *Dilip Mani Dubey Vs M/s SIEL Limited & Anr.* reported as **2019(4) SCC 534**, it is clarified that the payment already made by the Petitioner/Management to the Respondent/Workman under Section 17-B of the Industrial Disputes Act, 1947 is not recoverable.
31. Parties to bear their own costs.

GAURANG KANTH, J.

SEPTEMBER 27, 2022