



2023:DHC:6903



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Date of order: 18<sup>th</sup> September, 2023**  
+ **W.P.(C) 1172/2017**  
**CHANDER BHAN (DECEASED) THR LRS** ..... Petitioner  
Through: **Mr. M. Husain, Advocate**  
  
versus  
  
**DELHI TRANSPORT CORPORATION** ..... Respondent  
Through: **Mr. L. K. Passi and Ms. Leelawati Suman, Advocate**  
  
**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

1. The instant petition under Articles 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

*“It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to issue a writ of certiorari or any other appropriate writ, direction or order and set aside the impugned award dated 01.10.2016 and order dated 22.08.2016 on issue of enquiry and allow the statement of claim of workman/petitioner and treat him as reinstated to service allow full back wages and continuity of service but since he has died, the relief be moulded in monetary terms or otherwise as this Hon'ble Court may deem fit and proper in favour of his LRs, the present petitioner on the facts and circumstances of the case;*



*Any other relief which this Hon'ble Court may deem fit and proper be passed as well as the cost of the proceedings be awarded."*

2. The petitioner joined the respondent Corporation in 1977, and was working as a conductor in the respondent Corporation. During the year 1990-91, the petitioner had taken 92 leaves without intimating the authorities, thereby leading to issuance of show cause notices seeking reasons for such casualty.
3. Thereafter, the respondent Corporation constituted an inquiry committee and conducted the inquiry leading to recommendation of removal from services as a penalty. The said decision was sent to the Industrial Tribunal for approval and the same was duly approved *vide* order dated 20th November, 2001.
4. Aggrieved by the removal, the petitioner approached this Court by filing Writ Petition No. 1020/2002. In the said petition, the Coordinate Bench of this Court referred back the matter to the Learned Industrial Tribunal for fresh adjudication. The learned Tribunal again reaffirmed the earlier stance and approved the application filed by the respondent Corporation for removal of the petitioner from the services.
5. The petitioner preferred another Writ Petition No. 3358/2011, which was dismissed as withdrawn, granting liberty to the petitioner to approach the appropriate forum for adjudication of the dispute.
6. Consequently, the petitioner raised the Industrial Dispute before the learned Labour Court whereby the petitioner's contentions were rejected by



the learned Court and the removal order was upheld *vide* orders dated 22<sup>nd</sup> August, 2016 and 1<sup>st</sup> October, 2016.

7. Aggrieved by the same, the petitioner has preferred the present petition challenging the impugned orders dated 22<sup>nd</sup> August, 2016 and 1<sup>st</sup> October, 2016.

8. Learned counsel appearing on behalf of the legal representatives of the petitioner submitted that the petitioner lives in Sonapat, Haryana, and was constrained to take the said leaves due to the recurring ill health of his wife and children, during the said time period.

9. It is submitted that the petitioner had sent his leave applications along with medical certificates through his friends, however, the same were not taken under consideration by the officials of the respondent Corporation.

10. It is submitted that the respondent Corporation initiated the inquiry hastily and did not provide any chance to the petitioner to present his case leading to violation of principles of natural justice.

11. It is further submitted that the learned Tribunal failed to appreciate that the punishment of removal was too harsh and disproportionate to the wrong committed by the petitioner.

12. Hence, in view of the foregoing submissions, it is prayed on behalf of the petitioner, that the present petition may be allowed.

13. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the learned Labour Court rightly dismissed the claim raised by the petitioner.

14. It is submitted that the work and conduct of the petitioner was not



found satisfactory during the tenure of his services, and there are 13 adverse entries against the irregularities committed by the petitioner.

15. It is submitted that the petitioner had not submitted any leave application either by him, or through any friend, therefore, was issued show cause notices seeking explanation for absence from the duty.

16. It is submitted that the inquiry committee had provided sufficient opportunities to the petitioner to present his case and submit his reply to the charges made against him. Therefore, there is no violation of the principle of natural justice.

17. It is also submitted that the learned Labour Court had appreciated all the material evidence and passed a well reasoned order, therefore, the same does not suffer from any infirmity or irregularity.

18. Hence, in view of the foregoing paragraphs, it is submitted on behalf of the respondent that the present petition may be dismissed.

19. Heard the learned counsel for the parties and perused the records.

20. It is the case of the petitioner that he was wrongfully terminated from the services without providing him sufficient opportunity to present his case before the committee constituted by the respondent Corporation.

21. The petitioner has further contended that the punishment of removal of services is exorbitant and could have been avoided by the respondent Corporation as the Corporation had already made deductions from his salary for the same reasons and the learned Labour Court failed to appreciate the said evidence and wrongfully decided the case in favour of the respondent Corporation. Therefore, the petitioner preferred the present petition seeking



issuance of writ of Certiorari for quashing of the orders passed by the Learned Labour Court.

22. It is a settled principle that the jurisdiction of the Writ Court is limited to the aspect of whether the proceedings were held legally and if the Courts below had committed any material illegality while passing the impugned order. It is not the prerogative of the Writ Court to determine the factual matrix, rather the scope under Article 226 of the Indian Constitution, even though very wide, is still limited in certain aspects and it is a well settled principle that the Writ Court cannot delve into the exercise of fact finding.

23. The aforesaid principle has been upheld by the Hon'ble Supreme Court in a catena of judgments. In ***Syed Yakoob v. K.S. Radhakrishnan***, (1964) 5 SCR 64, the Hon'ble Supreme Court crystallized the principles in relation to the scope of power of the Writ Court and held as under:

*“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction*



*to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168].”*



24. In *Union of India v. P. Gunasekaran*, (2015) 2 SCC 610, the Hon'ble Supreme Court revisited the question of scope of the powers conferred to the High Court under Article 226 of the Indian Constitution and held as under:

*“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted*



*inadmissible evidence which influenced the finding;*

*(i) the finding of fact is based on no evidence.*

*13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*

*(i) reappreciate the evidence;*

*(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*

*(iii) go into the adequacy of the evidence;*

*(iv) go into the reliability of the evidence;*

*(v) interfere, if there be some legal evidence on which findings can be based.*

*(vi) correct the error of fact however grave it may appear to be;*

*(vii) go into the proportionality of punishment unless it shocks its conscience.”*

25. On perusal of the aforesaid paragraphs, it is clear that this Court cannot act as an enquiry authority and needs to confine itself to the question of whether the decision rendered by the lower Court is wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion.

26. As per material on record, the learned Court had passed two separate orders to decide the issues raised by the petitioner. The issue pertaining to the claim that the petitioner has been wrongfully removed from the services was decided by the Learned Court *vide* order dated 1<sup>st</sup> October, 2016 and it was held as under: :

*“11.The claimant was unauthorizedly absent from duty for 92 days. Claimant's case is that he had not attended to duty due to his illness and illness of his wife. He did not place on record any document which may suggest*



*that he and his wife were ill from 01.01.1990 to 31.03.1991. His contention that he had sent leave applications through Surje and Rajender Singh has also gone unsubstantiated because the claimant did not place on record copy of any leave application. He did not examine Sh. Surje and Sh. Rajender Singh. Such absence shows that he had complete lack of devotion in duty. There are 13 adverse entries in his service record. Excluding the present one, there are four more adverse entries regarding unauthorized absent. One entry is about his dishonesty as he had not given ticket after taking due fare from the passenger. Taking cue from above citations and facts, this issue is decided in favour of management and against claimant by holding that service of the claimant has been terminated rightly by the management.”*

27. On perusal of the aforesaid paragraph, it is clear that the Learned Labour Court had decided the case in favour of the respondent Corporation only after appreciating the material facts and circumstances in entirety.

28. The relevant paragraphs of the said order clearly depict that the petitioner was absent from the duty for 92 days in total and that too without providing reasonable explanation supplemented with medical proofs. The learned Labour Court further held that there were 13 adverse entries in the petitioner's record including the allegation of financial misappropriation/dishonesty. Therefore, the punishment given to the petitioner cannot be termed as exorbitant as the record as perused by the learned Labour Court clearly establishes dereliction of duty on his part leading to his removal.



29. Now coming to the issue of violation of principle of natural justice, the learned Court had referred to its order dated 22<sup>nd</sup> August, 2016, whereby it was held that the committee constituted by the respondent Corporation had provided a reasonable opportunity to the petitioner and therefore, the order passed by the committee cannot be termed as a violation of the principle of natural justice. The relevant paragraphs of the said order is reproduced herein:

*“6. The first argument of Ld. ARW is that the claimant was not given opportunity by the Enquiry Officer to be defended by co-employee. In reply, Ld. ARM argued that the claimant was given opportunity to be defended by co-employee, but the offer was spurned by claimant himself. Enquiry was conducted only on one day i.e. on 31.10.1991. Those proceedings Ex.MWL/4 prove that the claimant was very much present before the Enquiry Officer. At the very outset, the Enquiry Officer read over the contents of charge-sheet to him in Hindi. Then asked the claimant whether he wanted assistance of any co-worker or not. The claimant told Enquiry Officer that he did not want assistance of co-worker and thereafter, he made statement which was signed by him on the left side of the page. So, it cannot be said that the claimant was not given opportunity to be defended by co-employee.*

*7. The second argument of Ld. ARW is that the claimant had submitted leave applications with the management supported by medical documents through two persons namely Sh. Gaje Singh and Sh. Rajender Singh. The Enquiry Officer did not give him opportunity to examine witnesses in defence and to call a witness from management to prove leave applications and medical certificates. On the other hand, Ld. ARM ai'gued that the claimant had not told Enquiry Officer*



*that he wanted to examine any witness in defence or wanted to produce any document regarding his illness. The claimant had made statement before Enquiry Officer that he was on leave for 92 days from 01.01.1990 to 31.03.1991 because he was ill and was also suffering from some other problems. He had sent leave applications through his friends. He further told Enquiry Officer that he cannot say whether he had submitted leave applications in time. He did not tell the Enquiry Officer that he wanted to examine any witness in defence to prove that he had submitted leave applications with management. He had not requested Enquiry Officer to adjourn the matter in order to make him unable to file his medical record. In the absence of any such prayer, the Enquiry Officer cannot dream that the claimant wanted to examine any witness or produce any document in defence. Had he made any such prayer and had the Enquiry Officer rejected such prayer, then the ARM would have been totally justified to say that the Enquiry Officer had not given proper opportunity to the claimant to defend the case.*

*8. Last arguments of Ld. ARW is that the enquiry report is perverse because the Enquiry Officer did not take into account the fact that the claimant was not unauthorizedly absent and that he was on leave. He further submitted that the claimant had justified his absence before the Enquiry Officer, but he did not take into account such justification.*

*On the other hand, Ld. ARM argued that the claimant had not given any justification before Enquiry Officer regarding his absence for 92 days from 01.01.1990 to 31.03.1991.*

*9. It is correct that the claimant had made statement before Enquiry Officer that he had sent medical leave applications through, his friend annexing the medical*



*documents. He had not filed copy of leave applications or medical documents before Enquiry Officer. His bald statement was not supported by any document. He was unable to produce leave application and medical record before Enquiry Officer, he should have produced the same before this court. He did not examine said Sh. Gaje Singh and Sh. Rajender Singh through whom he had sent leave applications to the management. He did not summon any witness from management to prove that he had sent leave applications. He did not place on record any medical document to prove that he and his wife were ill from 01.01.1990 to 31.03.1991. Due to these reasons, it is held that enquiry report is not perverse.*

*10. In view of above discussion, this issue is decided in favour of management and against claimant by holding that the Enquiry Officer had not violated any principle of natural justice and that his report is not suffering from any infirmity.”*

30. On perusal of the aforesaid paragraphs, it is crystal clear that the Learned Court had rightly adjudicated the issue and appreciated the evidence on record, clearly establishing the fact that the petitioner was provided sufficient opportunity to be heard by the committee. The above cited paragraphs also make it evident that the learned court had recorded the facts correctly, which rightly rebut the submissions made by the petitioner.

31. To conclude, the instant case was rightly decided by the learned Labour Court, rendering well-considered decisions on both the issues as raised by the petitioner. As the relevant issue has been duly decided and the impugned orders afforded comprehensive consideration to it, this Court abstains from embarking upon an investigative course of action as no



2023:DHC:6903



illegality or perversity has been found in the impugned orders.

32. In light of the analysis in above paragraphs, this Court does not find any merits in this petition and hence, it is liable to be dismissed.

33. Accordingly, the instant petition stands dismissed.

34. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**SEPTEMBER 18, 2023**

**gs/av/ds**

*Click here to check corrigendum, if any*