



2026:DHC:4622



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

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+ **W.P.(C) 11798/2018 & CM. APPL. 45654/2018**

DELHI TRANSPORT COPORATIONPetitioner
Through: Mr. Uday N. Tiwary with Mr. Akshat
Tiwary, Advocates.

versus

SH. UDAIVIR SINGHRespondent
Through: Mr. Rupesh Kr. Sinha, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present writ petition filed by the management challenges the award dated 10.04.2017 passed by the Labour Court. By the impugned award, the Labour Court held that there was no illegality in the order removing the workman (respondent before this Court) from service. However, in exercise of its powers under Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act"), it directed that the workman be deemed to have retired on the date of removal; the retiral and consequential benefits were also directed to be given to him along with interest @ 9% per annum from the date of passing of the impugned award till realization. The impugned award came to be passed in the context of the following reference:

"Whether removal of Sh. Udaivir Singh, S/o Sh. Santosh Singh, from



services by the management vide order no. KJ/AJ(T)/INT-80/01/04/2914 dated 13.08.2004 is illegal and/or unjustified; and if so, to what relief is he entitled?"

2. In his statement of claim, the workman stated that he had joined the management corporation as a conductor. A charge-sheet came to be served upon him on 27.08.2001 with the charge of unauthorized absence with effect from 02.05.2001 till the date of filing of the charge-sheet. Although the workman appeared and asked the management to furnish certain documents, the same were not supplied to him. In the inquiry proceedings, he furnished medical documents pertaining to his lung-related illness but the same were not considered. He was asked to sign on blank papers with an assurance that no action would be taken against him. He was also not informed by the management that his leave application had been rejected. He denied that he ever admitted to the charge before the Inquiry Officer (I.O.). The I.O. proposed the penalty of removal, on which a show cause notice was issued to him on 29.01.2003. Though a reply to the proposed penalty was sent on 12.02.2003 the same was not considered by the management and eventually the workman was removed from service with effect from 13.08.2004.
3. The management, on the other hand, contested the claim by contending that the workman had remained absent from his duty unauthorizedly from 02.05.2001 till the date of notice, i.e., 27.08.2001. It was also stated that the workman had remained absent unauthorizedly even on earlier occasions, as under:

<i>Duration</i>	<i>Period of absence</i>	<i>Management Direction</i>
<i>01.01.1988 to 31.11.1988</i>	<i>68 days</i>	<i>Next due increment was stopped without cumulative effect.</i>
<i>01.01.1990 to 30.06.1990</i>	<i>56 days</i>	<i>Warning was given.</i>
<i>1991</i>	<i>42 days</i>	<i>Brought on initial stage of pay scale.</i>



15.10.1994 to 22.10.1994	8 days	Reprimanded
1997 (between January to May)	30 days	Three annual increments were stopped without cumulative effect.
20.09.1998 to 10.11.1998	43 days	One increment was stopped without cumulative effect.
1998	178 days (leave without pay)	
1999	110 days	
2000	184 days	

4. In the backdrop of the aforesaid contentions, the following issues were framed by the Labour Court:

- “1. Whether the enquiry conducted by the management against the workman was illegal and in violation of principles of natural justice? OPW
2. As per terms of reference”

5. After considering the inquiry proceedings and the evidence placed on record, issue no. 1 was answered in favour of the management. However, while considering issue no. 2, it was noted that the workman had neither filed any leave application before the Inquiry Officer nor before the Court. Even during the evidence of the management witness/*Praveen Kumar*, no question was put to him in cross-examination to produce the leave applications or the medical documents filed along with the management. The Labour Court also took note of the letter dated 26.07.2002 (Ex. WW1/M2) filed by the workman before the I.O. wherein, in the concluding statement, he categorically stated that he had not given any application for leave. The workman had produced two medical documents issued by the Dispensary of the MCD to justify his absence, i.e., Exhibits WW1/B and WW1/C dated 02.01.2011 and 02.08.2011 respectively, as well as another medical paper (Ex. WW2/B dated 02.11.2011).



6. On a perusal of the said documents, the Labour Court noted that the same would show that he was undergoing treatment for pleural effusion. While referring to the Supreme Court's decision in Delhi Transport Corporation Vs. Sardar Singh¹, the Labour Court held that there was no illegality in the order of the management *vide* which the workman was terminated from service. Having recorded so, the Labour Court found the punishment disproportionate on the ground that the workman had served the management for 19 years, and the order of removal was modified to the extent that the workman shall be deemed to have retired on the date of removal. As a consequence, all retiral and consequential benefits like pension (pension to not be given if he had opted for no pension) were granted.

7. Pertinently, the workman has not challenged any finding of the Labour Court. The management has assailed the decision by contending that despite evident misconduct and holding the termination to be illegal, the Labour Court erroneously exercised its jurisdiction under Section 11-A of the ID Act.

8. Learned counsel for the respondent/workman, on the other hand, defended the impugned award and submitted that the absence was due to compelling circumstances, and it was not possible for the workman to perform his duty, and as such, the absence cannot be held to be wilful. It was rather contended that the absence from duty without any application may amount to unauthorized absence, but it does not mean wilful absence.

9. In the absence of any challenge by the workman, the only issue that

¹ 2004 (7) SCC 574



arises for consideration is whether the Labour Court was justified in passing the impugned award while exercising jurisdiction under Section 11-A of the ID Act.

10. While exercising discretionary jurisdiction under Section 11A of the ID Act, the Labour Court has limited jurisdiction to substitute one punishment with another, however, this interference with the quantum of punishment is to be exercised only when the punishment is found to be grossly disproportionate. Furthermore, this exercise of jurisdiction is only after arriving at a finding that no reasonable person could inflict such punishment. In V. Ramana Vs. A.P. SRTC², the Supreme Court opined as under:

“11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury case [Associated Provincial Picture Houses Ltd. V. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

11. Later, in Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate³, the

² (2005) 7 SCC 338

³ (2005) 2 SCC 489



Supreme Court reiterated its view in the following manner:

“30. Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.

31. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.

32. In Regional Manager, Rajasthan SRTC v. Sohan Lal [(2004) 8 SCC 218 : 2004 SCC (L&S) 1078], it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary.”

12. The aforesaid decisions were reaffirmed in Hombe Gowda Educational Trust Vs. State of Karnataka⁴. In Mahindra and Mahindra Ltd. Vs. N.B. Narawade⁵, a decision rendered by a Three-Judge Bench of the Supreme Court, the scope and amount of discretion to be exercised by the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct was reiterated. The Court held as under:

“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment

⁴ (2006) 1 SCC 430

⁵ (2005) 3 SCC 134



being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. [(1960) 1 LLJ 518 (SC)] and New Shorrock Mills [(1996) 6 SCC 590 : 1996 SCC (L&S) 1484] this Court held: “punishment of dismissal for using of abusive language cannot be held to be disproportionate.” In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein above.”

13. The terms and conditions of appointment and service were governed by the applicable service regulations, i.e. the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 (hereinafter the “Regulations”). Learned counsel for the appellant/management referred to paras 4(i), 4(ii), and 19(h) of the Standing Orders issued under para 15(1) of the Regulations. The relevant paras of the Standing Orders read as follows:

“4. Absence without permission:—

- (i) *An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the competent officer except in the case of sudden illness. In the case of sudden illness he shall send intimation to the office immediately. If the illness lasts or is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the D.T.S. In no case shall an employee leave station without prior permission.*
- (ii) *Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his service with the Organisation.*



19. General Provisions:- Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as mis-conduct:-

xxxx

xxxx

xxxx

(h) *Habitual negligence of duties and lack of interest in the Authority's work.*"

Clause 15 of the Regulations, insofar as relevant to our purposes, is reproduced hereunder:

"2. Discipline:—The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority:-

xxxx

xxxx

xxxx

(vi) *Removal from the service of the Delhi Road Transport Authority.*

(vii) *Dismissal from the service of the Delhi Road Transport Authority."*

14. In Sardar Singh (*supra*), it was emphasised that the habitual absence of an employee for a very long time shows a lack of interest in the Authority's work. The relevant observations are as under:

"9. When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

10. Great emphasis was laid by learned counsel for the respondent employee on the absence being treated as leave without pay. As was observed by this Court in State of M.P. v. Harihar Gopal [(1969) (3) SLR 274 (SC)] by a three-Judge Bench of this Court, even when an order is



passed for treating absence as leave without pay after passing an order of termination, that is, for the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in the extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the governing Standing Orders unauthorized leave can be treated as misconduct.

11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized.

12. The Tribunal proceeded in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave.”

15. A Division Bench of this Court in Delhi Transport Corporation Vs. Rajender Kumar⁶ also considered the case of a workman who absented himself without leave and, while referring to the decision in Sardar Singh (*supra*), came to a similar conclusion and upheld the order of removal.

16. The respondent/workman’s reliance on the decision of the Supreme Court in Union of India and Others Vs. Ex. Constable Ram Karan⁷ to defend the impugned award is misplaced. The Supreme Court observed that even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposing penalty. The scope of judicial review on the quantum of punishment is available, but with a limited scope. It is only in rare and

⁶ 2016 SCC OnLine Del 5422

⁷ (2022) 1 SCC 373



exceptional cases, where the Court might, in order to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of the punishment awarded by the competent authority, and that too after assigning cogent reasons. A similar reliance is placed on the decision of the Supreme Court in *Brijesh Chandra Dwivedi Vs. Sanya Sahayak and Ors.*⁸, which is also misplaced as the said decision was rendered in the peculiar facts of that case.

17. Coming back to the facts of the present case, the workman had absented himself without permission, for which, from time to time, punishments were awarded. Clause 15 of the Regulations provides that the appropriate punishment for such misconduct is removal and discontinuation from service.

18. In this backdrop of facts, it cannot be said that the exercise of discretion by the Labour Court was proper. The case is covered on all four corners by the decision in *Sardar Singh (supra)*.

19. Accordingly, the present writ petition is allowed. The impugned award, to the extent it granted retiral and consequential benefits to the workman, is set aside. The petitioner's removal from service is upheld.

20. The present petition, along with the pending application, is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

MAY 22, 2026

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⁸ (2022) 4 SCC 189