

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

+

W.P.(C) 15838/2004

%

Date of decision: 1st July, 2010

DELHI TRANSPORT CORPORATION

..... Petitioners

Through: Ms. Saroj Bidawat, Advocate.

Versus

SHRI KRISHAN PAL

..... Respondent

Through: Proxy counsel for Mr. Sukhbir Singh,
Advocate.

AND

W.P.(C) No.264/2010

SHRI KRISHAN PAL

.... Petitioner

Through: Proxy counsel for Mr. Sukhbir Singh,
Advocate.

Versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Ms. Saroj Bidawat, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported
in the Digest? NO

RAJIV SAHAI ENDLAW, J.

1. The workman Krishan Pal was employed with the DTC as a Conductor. He was found to have unauthorizedly remained absent from duty for 22 days from 15th April, 1993 to 6th May, 1993 and was chargesheeted on 3rd June, 1993 for the same. The Inquiry Officer found the charge to have been established and the

Disciplinary Authority of DTC, after issuing show cause notice to the workman on 18th November, 1993 meted out the punishment of removal of the workman from service. Owing to the pendency then of a general dispute between DTC and its employees, an application under Section 33(2)(b) came to be filed.

2. The aforesaid application of the DTC under Section 33(2)(b) was dismissed vide order dated 7th August, 2000 by the Industrial Tribunal on the ground of DTC during the period of absence having marked the workman as absent without pay. DTC preferred W.P.(C) No.2372/2001 challenging the order of dismissal of its application under Section 33(2)(b). The said writ petition was allowed by this Court vide order dated 28th July, 2005 in view of the dicta in *DTC Vs. Sardar Singh* AIR 2004 SC 4161 and the application under Section 33(2)(b) remanded to the Industrial Tribunal for fresh adjudication.

3. It appears that the workman, in or about the year 2001 also raised the industrial dispute under Section 10 of the ID Act with respect to the order of his termination and on which the following reference was made on 19th September, 2001.

“Whether the punishment imposed upon Shri Krishan Pal s/o Sh. Malkhan Singh by the management vide their orders dated 18th November, 1993 is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

The said industrial dispute was decided vide award dated 23rd August, 2003 of the Industrial Tribunal in favour of the workman and against DTC. The Industrial Tribunal directed DTC to reinstate the workman. Qua back wages, the award notes that certain back wages had already been received by the workman under orders of this Court; the remaining back wages were directed to be paid to

the workman within one month, failing which the same were to attract interest at 9% per annum.

4. Aggrieved from the aforesaid award, W.P.(C) No.15838/2004 was filed. Vide *ex parte* order dated 29th September, 2004, while issuing notice of the petition the operation of the award was stayed. The workman applied under Section 17B of the ID Act and which application was allowed vide order dated 4th March, 2008. DTC was directed to pay last drawn / minimum wages, whichever is higher, to the workman from the date of the award i.e. 23rd August, 2003 onwards.

5. The Industrial Tribunal, post remand as aforesaid of the application under Section 33(2)(b), vide order dated 26th July, 2008 allowed the application under Section 33(2)(b) and granted approval to DTC of its action of removal of the workman from employment. Aggrieved therefrom, the workman has preferred W.P.(C) No.264/2010 in this Court.

6. The approval under Section 33(2)(b) is on a *prima facie* view of the matter. The adjudication of the dispute on merits is in a reference under Section 10 of the Act. Thus W.P.(C) No.15838/2004 is treated as the main matter.

7. The Industrial Tribunal has in the award dated 23rd August, 2003 held that the inquiry preceding the order of removal from service was conducted and concluded on one single date on 5th July, 1993 by merely stating that the workman had not produced any co-employee as his defence assistant and that the workman was read over the charge and that the workman had admitted his guilt and pleaded that due to illness he was unable to send intimation to the department and on recovering from illness he moved an application along with medical certificate and

as such a lenient view be taken. The Inquiry Officer held the said statement of the workman to be an admission of guilt. The Industrial Tribunal held the inquiry proceedings so conducted to be vitiated for the reason of -

- (i) the Inquiry Officer having recorded the statement of the workman in a language unknown to the workman; it was observed that admission of guilt has to be recorded in a language known to the person admitting the guilt.
- (ii) the explanation given by the workman for absence could not be treated as admission of guilt and rather amounts to exoneration of guilt.
- (iii) that for absence even if unauthorized, on account of illness, the workman could not be held to be negligent which is a misconduct under the Standing Orders of DTC.
- (iv) the finding of the Inquiry Officer was thus held perverse and without any evidence whatsoever.
- (v) the report on the basis of which inquiry was instituted having also not been placed before the Industrial Tribunal.
- (vi) the Inquiry Officer and the Disciplinary Authority having relied on the past conduct of the workman without giving the workman an opportunity to explain the said record and without putting the said record to the workman.

8. The Industrial Tribunal further found that the workman had filed a leave application dated 7th May, 1993 accompanied with medical certificate and fitness certificate; that the witness of DTC in his cross examination before the Industrial

Tribunal admitted receipt of the said application and further admitted that the same was neither placed before the Inquiry Officer nor formed part of the record of the inquiry; it was further admitted by him that no action of acceptance or rejection of the said leave application was taken. The Industrial Tribunal in the aforesaid facts held the penalty of removal from service to be unjustified and made the award as aforesaid.

9. The counsel for DTC has based her case only on the judgment in *Sardar Singh* (supra). *Sardar Singh* is a judgment only on the proposition that merely because the workman is marked in the records of DTC as absent without pay does not come in the way of DTC chargesheeting the workman for absenteeism. Mere absenteeism is not a misconduct under the Standing Orders of DTC. Under the said Standing Orders an employee is prohibited from absenting from duty without first obtaining permission except in case of sudden illness; in case of sudden illness an employee is required to send intimation to the office immediately and if the illness lasts or is expected to last for more than three days at a time, applications of leave are to be accompanied by a medical certificate. Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days renders an employee liable to be treated as an absconder resulting in a termination of his service. It is only habitual negligence of duties and lack of interest in DTC's work which is made a misconduct which "may" entail punishment of removal from service.

9. The Standing Orders/Regulations of DTC also provided for an employee to be deemed to have resigned if he failed to resume duty on the expiry of the leave period or otherwise. A five judge Bench of the Supreme Court in *DTC Vs. DTC*

Mazdoor Congress 1991 Supp. (1) SCC 600 held Clause 9(b) of the Regulations of DTC to be void for the reason of not giving an opportunity of being heard to the workman before terminating his services. The Supreme Court in *D.K. Yadav Vs. JMA Industries Ltd.* (1993) 3 SCC 259 has held that there can be no automatic discharge from service and even if the Standing Orders of an organization provide for automatic discharge in the event of absenteeism, the principles of natural justice must be read into such Standing Orders and the action of the employer must be fair, just and reasonable.

10. Thus notwithstanding the absenteeism of the workman in the present case, DTC was required to furnish an opportunity to him to explain and which had admittedly been done. However such opportunity is not to be an empty exercise or to be a formality. An opportunity of hearing would be meaningless and its purpose would be frustrated if the authority giving the hearing does not consider the representation of the noticee or does not give any reason for agreeing or disagreeing with the noticee. DTC has not carried out the said determination in the present case. The principle requiring reasons to be given in support of an order is a basic principle of natural justice and it must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. (See *Maruti Udyog Ltd. Vs. Income Tax Appellate Tribunal* MANU/DE/1460/2000 and *Asstt. Commissioner Vs. Shukla & Brothers* MANU/SC/0258/2010).

11. Though the workman was absent in the present case and admitted the unauthorized absence but had furnished explanation for the same. However, DTC did not go into the question of whether the said explanation of the workman was correct or not and if it was correct whether it still entailed the harsh punishment of

removal from service. Neither the Standing Orders of DTC nor the judgment in *Sardar Singh* hold that in all cases of absenteeism, whatsoever may be the explanation, the order of termination or any other punishment shall follow. If the reasons for absenteeism are found to be genuine and sufficient and similarly if the reasons for failure to apply for leave in advance or contemporaneously are found to be genuine and satisfactory, certainly the punishment or harsh punishment of removal from service cannot be meted out.

12. Neither the Inquiry Officer nor the Disciplinary Authority of DTC has in the present case gone into the question of the validity of the reason furnished by the workman i.e. of his illness. It is not the case of DTC that the medical certificate and fitness certificate furnished by the workman were false or that the workman was hale and hearty and was feigning illness. Rather the said inquiry was not conducted at all. The Inquiry Officer as well as DTC had proceeded on the premise that mere absence is a misconduct but which is not so. It is only such absence which amounts to negligence, which is a misconduct under the Standing Orders of DTC.

13. In the aforesaid circumstances, no error can be found in the award and the petition of DTC being W.P.(C) No.15838/2004 is liable to be dismissed.

14. The counsel for DTC has contended that since the workman has not worked for DTC for all these years, he is not entitled to full back wages. As aforesaid, wages under Section 17B have been received by the workman.

15. Though there is some merit in the contention of the counsel for DTC but the fact remains that the situation is of own creation of the DTC. DTC not only

failed to deal with the application submitted by the workman for leave but also persisted in contesting the proceedings. DTC is found to have done so at the cost of public monies. It has been paying 17B wages to the workman for the last nearly ten years without taking any work from him. In the light of various pronouncements as noticed above, DTC ought to have known / have been advised of the certain fate of the proceedings. Unfortunately that has not been done. There is no reason as to why the workman should suffer for such conduct of DTC. DTC has been unable to say that the respondent workman is employed anywhere else. However still since the workman has not worked for DTC, it is deemed expedient to modify the award from that of full / 100% back wages to that of 75% of the back wages from the date of termination till the date of reinstatement. Out of the said amount, the amounts paid under Section 17B under orders in the present writ petition as well as under orders in the earlier writ petition shall be deducted.

16. W.P.(C) No.15838/2004 is accordingly dismissed save to the aforesaid extent. DTC is directed to comply with the award by reinstating the workman and by paying the back wages as aforesaid within eight weeks failing which the same shall incur simple interest @ 7% p.a. Consequently, W.P.(C) No.264/2010 is infructuous and is disposed of. Costs of litigation having already been paid to the workman, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010

pp