IN THE HIGH COURT OF DELHI AT NEW DELHI

22
W.P.(C) 2723/2007 and CM APPL 5080/2007

POONAM GUPTA .....
Petitioner
Through Mr. P.K. Bajaj, Advocate

versus

GOVT. OF NCT OF DELHI and ANR ..... Respondents
Through Ms. Ruchi Sindhwani with Ms. Badana Shukla, Advocate for R-1.
Mr. H.K. Chaturvedi with Mr. B.K. Pandey, Advocate for R- 2 along with Respondent No.2 in person.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

O R D E R
15.01.2010

1. Mr. Chander Bhanji Pandey, Respondent No.2 is present in Court. He has been paid a balance sum of Rs.7,000/- in Court today. He is identified by Mr. Bajaj, learned counsel for the Petitioner and his identification paper is placed on record.

2. The settlement agreement dated 19th November 2009 entered into between the parties and reduced to writing is taken on record and shall form part of the present order. The parties have undertaken to abide by the terms and settlement as set out in the settlement agreement dated 19th November 2009.

3. The petition and the pending application are disposed of in terms of the settlement agreement dated 19th November 2009.

4. Order be given dasti to learned counsel for the parties.

S.MURALIDHAR, J
JANUARY 15, 2010
rk

High Court of Delhi

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Address: Registrar General, Delhi High Court,
Sher Shah Road, New Delhi - 110503

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

\+ **W.P. (C.) No.6048/2008**

% **Date of Decision: 28.01.2010**

R.P.Arora .... Petitioner
Through Mr.H.K.Chaturvedi, Advocate

Versus

Union of India & Ors .... Respondents
Through Ms.Geetanjali Mohan, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

ANIL KUMAR, J.
*

The petitioner has challenged the order dated 9th July, 2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.2088/2006 titled R.P.Arora v. Union of India through General Manager, North Western Railway, Jaipur and Ors dismissing his petition seeking quashing of order dated 29th May, 2006 and declining the prayer of the petitioner for refixing his pay and pensionary benefits with effect from 11th January, 1988 by way of step up at par with his juniors with all consequential benefits as per Railway Boards circular dated 16th October, 1964.

The petitioner claims step up of his pay at par with his juniors on the ground that Western Railway communication dated 14th July, 1954 had contemplated that instructors deputed to Ajmer and Udaipur Training Schools retain a lien in their parent categories and as such he could not be promoted on account of being on deputation whereas his juniors were given ad-hoc promotion.

The respondents had opposed the plea of the petitioner on the ground that petitioner's name was on the panel dated 18th January, 1988 along with other employees including his juniors and he was promoted to pay scale of Rs.700-800/- vide order dated 25th January, 1988. The application was resisted on the ground that it is barred by limitation as his representation had already been replied in the year 1999 to claim setup of his pay at par with his juniors. While replying to petitioner's representations it was categorically stated that his juniors were not promoted to the revised pay scale of Rs.2000-3200/- but were promoted along with the petitioner by order dated 25th January, 1988 on regular basis. It was also asserted that the juniors to the petitioner were promoted on adhoc basis in 1985 to the pay scale of Rs.1600-2660/-, however, on account of adhoc promotion given to the juniors earlier, the same could not be given to the petitioner.

The Tribunal after considering the pleas and contentions have noted that in terms of circular dated 16th October, 1964, if there is an

administrative error on account of which any promotion is lost, then an employee would not suffer on account of seniority as well as pay, however, the petitioner cannot contend that not granting adhoc promotion is on account of any administrative error as the petitioner was on deputation to another organization and could not be granted ad-hoc promotion required for administrative exigencies.

The Tribunal has relied on the judgment of the Supreme Court in the case of Union of India v. R.Swaminathan and Ors, (1997) 7 SCC 690 where considering FR 22(1) and also the O.M dated 4th November, 1993 detailing the instances where the stepping up of pay cannot be done. The Supreme Court had held as under:-

> " The memorandum makes it clear that in such instances of junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay.
>
> The aggrieved employees have contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiation arises in a different Circle. They have submitted that since there is an All India seniority for regular promotions, this All India seniority must prevail even while making local officiating appointments within any Circle. The question is basically of administrative exigency and the difficulty that the administration may face if even short-term vacancies have to be filled on the basis of All India seniority by calling a person who may be stationed in a different Circle in a region remote from the region where the vacancy arises,

> and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the Provision to Fundamental Rule 22."

The petitioner therefore, cannot claim stepping up of his pay at par with his juniors who had been given ad-hoc promotions when the petitioner was on deputation and therefore, he could not be given ad-hoc promotions which were given to some of the juniors of the petitioner.

The petitioner also cannot claim ad-hoc promotion after a considerable gap of time. In fact the petitioner had not made a grievance for not granting the adhoc promotion nor had claimed notional ad-hoc promotion, which could not be granted to him, but had only sought step up of pay in consonance with the pay of his juniors, which was higher than that of the petitioner on account of adhoc promotion given to some of the juniors. The adhoc promotions in any case could not be given to the petitioner because he was working in a different department on deputation and could not have been considered for such ad-hoc promotion.

In the circumstances, there are no grounds to step up the pay of the petitioner considering the pay of his juniors who had been given ad-hoc promotions. There are no grounds to interfere with the decision of the Central Administrative Tribunal, Principal Bench in the facts and circumstances and the writ petition is, therefore, dismissed.

ANIL KUMAR, J.

JANUARY 28, 2010 **MOOL CHAND GARG, J.**

'k'

IN THE HIGH COURT OF DELHI AT NEW DELHI

19.11.2009

Present:- Petitioner with his counsel Mr. H.K. Chaturvedi, Advocate.
Mr. P.V. Kapur, Sr. Advocate with Mr. Inderjit Sharma and Ms. Ikasha Bhalla for respondent No. 1.
W.P.(C.) No. 6716/2003

The petitioner workman, in this writ petition, seeks to assail an industrial award dated 09.03.2001 in I.D. No. 397/1980 granting him no relief for alleged termination of his services by the management of respondent No. 1 w.e.f. 30.09.1978.
Briefly stated the facts of the case relevant for the disposal of this writ petition are that the petitioner was employed as a turner by the management of respondent No. 1 w.e.f. 29.07.1974. He absented himself from duty w.e.f. 18.09.1978 and thereafter raised an industrial dispute alleging that he was illegally terminated by respondent No. 1. The said dispute was referred by the appropriate Government in the Government of NCT of Delhi to the Labour Court for adjudication.
In response to statement of claim filed by the petitioner before the Labour Court for his reinstatement, the management of respondent No. 1 took a plea that it never terminated the services of the petitioner. According to the management of respondent No. 1, the petitioner himself had abandoned the service of respondent No. 1 w.e.f. 18.09.1978 and had not resumed duties despite repeated opportunities given to him. As against this, the case of the petitioner
W.P.(C.) No. 6716/2003 Page 1 of 4
workman was that he had fallen sick on 18.09.1978 and after he recovered from illness and went to report for duty on 22.09.1978, he was not allowed to resume

duties by the management and was rather assaulted on that day. The management of respondent No. 1 had also taken a plea before the Labour Court that after the petitioner had left its employment, the petitioner got self-employed and had started running a chit business. The plea of the management was that since the petitioner had started a chit business after leaving the employment of the management, he was not interested in service of respondent No. 1.
The Labour Court, on the basis of evidence produced by the parties before it, came to the conclusion that the petitioner workman had abandoned the service of respondent No. 1 management and had started a chit business after leaving the services of respondent No. 1. Paras 12, 13 and 14 of the impugned award are relevant and are extracted below:-
?12. According to the management, his services were never terminated and he himself abandoned the job. He has stopped attending his duty. Shri Swaran Singh in his testimony has claimed that they were maintaining attendance register of the employees. The workman himself had absented and abandoned employment as he started his own chit fund business and had become disinterested in his employment. Various letters were written to him asking him to return for duty but he did not comply.

13. Both the parties have made contradictory claims. According to management workman himself had abandoned the job while according to workman he was terminated illegally. MW-1 has claimed that workman had started his own chit fund business and so he became disinterested in his
W.P.(C.) No. 6716/2003 Page 2 of 4
job. In his cross-examination also he claimed that workman was asked to join duty he visited along with the labour inspector but he did not do so and stated that he would consult his union. Workman in his cross-examination admitted that slip Ex. WW-1/M-1 we find that it is a paper regarding chit fund business. Name of the workman Labh Singh Chadha has been printed at the top of it. This guest to show that workman has started Chit Fund Business. Though he had claimed that business was started by his wife, he did not examine her or any other witness to substantiate his pleas. No suggestion was also given to management witness that he was not doing Chit Fund business. This leads to only one inference that the workman was doing chit fund business.

14. No suggestion was put to the management witness by the workman that he was not allowed to join the duty. M.W.Swarn Singh has claimed that they had written letters to the workman asking him to join the duty. Ex.MW1/6 and Ex.MW1/8 were the said letters. They have been sent by registered post envelops of which are Ex.MW1/7 and Ex.MW1/9. Both have been received back with the remarks of postal authorities ?intentionally avoided to take the delivery?. Thus, it is clear that workman had refused to accept the registered letters. It indicates his intention that he was not inclined to work. Hon'ble Supreme Court of India in AIR 1981 SC 1284 has held that when a registered envelope is tendered by the postman to the addresses but he refused to accept it then there is due service effected, upon the addressee by the receiver. The addressee must therefore, be imputed with the knowledge of contents thereof. In the case in hand, the remarks of postal authorities goes to show that the workman has not accepted registered envelopes sent by the management wherein he was asked to resume his duty. He cannot be allowed to take a U-turn in the matter and plead that he was terminated by the management. I am, therefore, of the opinion that services of workman have not been terminated by the management, and there was no need for them to institute enquiry.?

Mr. H.K. Chaturvedi learned counsel appearing on behalf of the petitioner has argued that the chit business was in fact run by the wife of the petitioner

and therefore the Tribunal went wrong in ?concluding ?that ?the ?petitioner ?had ?abandoned ?the ?service of
W.P.(C.) No. 6716/2003 Page 3 of 4

management of respondent No. 1 after he had started his chit business. This argument is devoid of any merit. It may be noted that the court below has taken note of admission of the petitioner workman in his cross-examination regarding slip Ex. WW-1/M1 which is a paper relating to chit fund business in the name of the petitioner. On the basis of evidence that was produced by the parties before the Labour Court, the view taken by the Labour Court cannot be faulted with. This Court in writ jurisdiction under Article 226 of the Constitution is not sitting in appeal over the award of the Tribunal.

In the facts and circumstances of the case, I do not find any perversity or illegality in the impugned award that may call for an interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. This writ petition therefore fails and is hereby dismissed leaving the parties to bear their own costs.
All pending misc. applications are rendered infructuous.
LCR be sent back.

NOVEMBER 19, 2009 S.N.AGGARWAL, J
'a'

W.P.(C.) No. 6716/2003 Page 4 of 4

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

\+ **W.P. (C.) No. 7528/2008**

% **Date of Decision:03.02.2010**

VIJAY LAKSHMI BHALLA .... Petitioner
Through Mr. H.K. Chaturvedi, Ms. Anjali Chaturvedi, Advocates.

Versus

UNION OF INDIA & ANOTHER .... Respondents
Through Mr. R.V. Sinha, Mr. A.S. Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.
*

1. This writ petition has been filed by the petitioner impugning the order dated 02.05.2008 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as 'the Tribunal') dismissing O.A. No.1234/2007.

2. The said Original Application was filed by the petitioner seeking grant of promotion to the grade of Whole Time Lady Officer (WTLO) and also benefit of second financial upgradation under the Assured Career Progression Scheme (ACP Scheme) which was turned down by the respondents vide order dated 08.09.2004 passed by them. It was the

case of the petitioner that while period of her contractual appointment was counted by the respondents towards pension, the said period was not considered for the grant of benefit under the ACP Scheme as well. It has been submitted that had the period of contractual appointment been considered from 1969, the petitioner would have been entitled for the grant of second financial upgradation.

3. The respondents, while opposing the Application contended that as per the version of the petitioner, she joined the NCC in the grade of Sergeant Major Instructor (SMI) on 26.05.1969 on contractual basis and her services have been regularized only w.e.f. 24.01.1981. As such she was not in regular service from 1969 to 1981 and for that reason she was not qualified for the grant of second ACP benefits.

4. As regards her claim for the grade of WTLO, it was contended that the petitioner in 1996 participated in Limited Departmental Competitive Examination (LDCE) but did not qualify in the examination and, therefore, she was not selected for the post of WTLO. The Tribunal has rejected her claim by observing that as held by the Apex Court in *S.B. Bhattacharjee Vs. S.D. Majumdar* ***2008 (1) SCC (L&S) 21***, the right of the petitioner is only of consideration. Once after participating in the LDCE, she was considered but failed to attain the merit to qualify promotion, she would have no right to seek promotion and accordingly she was not entitled to be promoted as WTLO. Insofar as this aspect is

concerned, nothing has been brought to our notice which may assist us in granting relief to the petitioner as claimed by her in this regard.

5. As regards consideration of petitioner for grant of second ACP is concerned, it is an admitted fact that she had been a contract employee for the period from 26.05.1969 to 24.01.1981 and the said period of service cannot be treated as qualifying service, since the ACP is to be granted only on the basis of regular service, the service on contract cannot be considered for that purpose. Admittedly, the petitioner was appointed on regular basis in 1981 but failed to complete 24 years of service before retirement on superannuation and, therefore, she was not entitled to second financial upgradation.

6. In this regard we have also gone through para 4 of the conditions for grant of promotion under the ACP scheme which requires that only regular service can be considered for grant of ACP.

7. At one stage, the petitioner filed an additional affidavit stating therein that she was appointed on regular basis w.e.f. 26.05.1969. However, the said affidavit was not pressed in view of the letter dated 25.04.2000 which shows that the initial appointment of the petitioner was only on contractual basis. The said letter is available at page 272 of the paper book and reads as under:

NCC/GCI/310/UOI
Ms. Vijay Lakshmi Bhalla
5 Delhi Girls Bn NCC
Old Rajdhani College Bldg.
Kirti Nagar, New Delhi-15

To,
The Dy Director General Pers. and Finance,
Director
Ministry of Defence
R.K. Puram, New Delhi-110022
(through proper channel)

Subject: Assured Career Progression Scheme for Central Government Employees

Respected Sir,

I was appointed as Sergeant Major Instructor on 26th May, 1969 on contractual basis. On the date our cadre was made permanent, i.e. 24th Jan, 1981, I was working as senior grade of under officer instructor in the scale of Rs.1450/- p.m. as Coy Commander.

I request that I may be granted the next due higher grade/under scale of commissioned officer and ACP benefits. Kindly consider the same.

Thanking You.

Dated:25 Apr 2000.

Yours Faithfully

sd/-
(V.L. Bhalla)
NCC/GCI/310 UOI

8. This letter clearly shows that the petitioner's initial appointment was on contractual basis. In fact, when she considered that some action can be taken against her for filing a wrong affidavit, the petitioner conceded her mistake and filed an unconditional affidavit of apology dated 14th December, 2009.

9. Learned counsel for the petitioner also wanted to rely upon a judgment delivered by a Division Bench of this Court in the case of *UOI Through the Secretary, Ministry of Defence, New Delhi*

Vs. Vimla Ghosh, W.P.(C)9181/2007 decided on 15.05.2009. In that case, since the respondents failed to show that the applicant was appointed initially on contractual basis which is not the case before us, some relief was granted to her but the facts of that case are different from the case before us.

10. Accordingly, the petitioner is not entitled to take benefit of that judgment. Consequently, we find no occasion to interfere into the order passed by the Tribunal while exercising our jurisdiction under Article 226 of the Constitution of India. Accordingly, the petition is dismissed.

MOOL CHAND GARG, J.

FEBRUARY 03, 2010 **ANIL KUMAR, J.**

'anb'

IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 108/2009

SHRI BALI RAM .....
Petitioner
Through: Mr H.K. Chaturvedi, Advocate

versus

THE COLLECTOR .....
Respondent
Through: Ms Sujata Kashyap and Mr Anil Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R
07.12.2009

The SMD, Model Town as earlier directed is present in person. Contempt was averred of the order dated 25th April, 2008 in WP(C) 2215/2008. The writ petition was disposed of on the statement of the respondent that steps for recovery shall be taken. The respondent in the affidavit filed before this court has listed out the steps which have been taken in pursuance to the order. It thus appears that the order of which contempt was averred has been complied with. The notice earlier issued of contempt is discharged. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

DECEMBER 07, 2009
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22

IN THE HIGH COURT OF DELHI AT NEW DELHI
#4
LPA 649/2009

LEELU RAM
..... Appellant
Through Mr. H.K. Chaturvedi, Adv.

versus

MANAGEMENT OF AJUDHYA TEXTILE MILLS ..... Respondent
Through Mr. Sanjoy Ghose, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R
11.05.2010

The Appellant was terminated by the management of M/s Ajudhya Textile Mills with effect from 1st April, 1989.
The Labour Court was of the view that the Appellant had not been able to show that he had put in 240 days of service in a year. Therefore, the Labour Court came to the conclusion that the Appellant was not able to show that his termination was illegal or unjustified. The Award was made by the Labour Court on 6th November, 1999.
About three years later the Appellant preferred a writ petition which came to be dismissed by a learned Single Judge on 24th September, 2009. The learned Single Judge did not find any perversity or illegality with the
LPA 649/2009
Page 1 of 2
award passed by the Labour Court.
It is submitted by learned counsel for the Appellant that his client ought to be granted some relief in the case. In our opinion, since the Appellant was unable to prove that he had been employed for 240 days, there is no question of providing any relief since there is no violation of the provisions of Section 25F of the Industrial Disputes Act, 1947.
It may also be noted that M/s Ajudhya Textile Mills was subsequently taken over by the National Textile Corporation which itself is under liquidation under orders passed by the Board for Industrial and Financial Reconstruction.
There is no merit in the appeal. The appeal is accordingly dismissed.

ACTING CHIEF JUSTICE

MUKTA GUPTA, J

MAY 11, 2010
dk

LPA 649/2009
Page 2 of 2

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2064/2008

ROSHAN LAL ..... Petitioner
Through: Mr. H.K. Chaturvedi, Adv.

Versus

D.T.C. ..... Respondent
Through: None.
CORAM:
HON?BLE MR. JUSTICE RAJIV SAHAI ENDLAW
O R D E R
05.08.2011

1. The challenge in this petition to the award dated 6th September, 2007 of the Industrial Adjudicator holding the removal from service of the petitioner workman to be legal and justified. It has been held that the

domestic enquiry held by the respondent employer prior to the removal of the petitioner workman from service was in accordance with the principles of natural justice and fair.
2. Though the petition has been pending for the last three years but for admission only.
3. The counsel for the petitioner has contended that the punishment meted out of termination of service is disproportionate. Attention is invited to Section 11(a) of the I.D. Act.
W.P.(C) 2064/2008 Page 1 of 2

4. The charge against the petitioner employed as a Conductor with the respondent employer was of not issuing tickets despite collecting the fare.
5. No error can be found with the award holding that the respondent employer could not be expected to meet out any other punishment to a dishonest employee.
6. There is no merit in the petition; dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J
AUGUST 05, 2011
bs..

W.P.(C) 2064/2008 Page 2 of 2

$ 11

IN THE HIGH COURT OF DELHI AT NEW DELHI
15
LPA 499/2009

VIJAY SINGH .....
Appellant
Through Mr. H.K. Chaturvedi with
Ms. Anjali Chaturvedi, Advocate.

versus

THE MANAGEMENT OF DTC ..... Respondent
Through Mr. Hanu Bhaskar, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S. MURALIDHAR

O R D E R
23.11.2009

1. This appeal is directed against an order dated 3rd August 2009 passed by the learned Single Judge dismissing the Appellant?s Writ Petition (Civil) No. 10615 of 2009.

2. The Appellant was appointed as a Driver with the Delhi Transport Corporation (DTC) since 1977. He was served with the charge sheet dated 15th January 1992 for unauthorised absence from duty for a period of 102 days during the period from 1st January 1991 to 31st December 1991. In the domestic inquiry, he was found guilty of the said charge. The disciplinary authority, by an order dated 28th March 1992, imposed the punishment of removal of service with immediate effect. Aggrieved by the said order, the Appellant raised an industrial dispute. By an order dated 13th May 2008 the Labour Court held that the inquiry by the DTC was valid. Thereafter by an Award dated 1st April 2009, the Labour Court, while upholding the removal of the Appellant, directed the DTC to pay him gratuity and also consider his case for pension uninfluenced by the order of his removal.

3. The Appellant filed the aforementioned Writ Petition (Civil) No.10615/2009 challenging the Award dated 1st April 2009. The learned Single Judge dismissed the writ petition holding that there was no infirmity in the impugned Award which called for interference under Article 226 of the Constitution.

4. We have heard the learned counsel for the parties. With their consent, the appeal is being disposed of finally.

5. We find that the Labour Court in para 18 of the Award accepted the case of the workman that he had adduced a genuine reason for his absence on account of the abnormal behaviour of his minor daughter. The observations of the Labour Court in para 18 read as under:
?18. From the terms of reference, I am only to decide the legality of removal. Considering the spirit of section 11 A of the I. D. Act, this court cannot interfere with the wisdom of the disciplinary authority as regards the imposition of penalty. The record shows that the workman had consistently assigned the reason for his absence due to the abnormal behaviour of his minor daughter. Even in the enquiry he had requested the enquiry authority to appreciate his predicament. For the show cause notice also, the same prayer was made expressing his willingness to work. While passing the order of removal dated 28.04.1992, the disciplinary authority noted that the past record was considered. In view of the past record, no leniency was shown. As per the settled position of law the disciplinary has to state the supporting reasons as held in Roop Singh Negi Vs. Punjab Natonal Bank, 2009 LLR 252. While giving the reasons, the disciplinary authority has never touched the ground urged by the workman for his absence. The past record is for the incidents that once the glass was found broken and that he was on leave without pay once misbehaved with the passengers, refused to switch on the light inside the bus. He was also once punished for the same reason of availing excessive leave.?

6. Having come to the above conclusion, the Labour Court nevertheless felt constrained to uphold the removal of the Appellant and only granted a limited relief. We are unable to appreciate why the Labour Court did not hold the removal of the workman to be a punishment disproportionate with his alleged misconduct.

7. We find that the reference made by the learned Single Judge to the decision of the Supreme Court in Delhi Transport Corporation v. Sardar Singh AIR 2004 SC 4161 to be misplaced. Para 6 of the judgment in Sardar Singh shows that the Supreme Court was dealing with a batch of appeals in which the number of days of

absence in different cases alone was noticed. Those cases were ultimately remanded for a fresh consideration. Every case would have to be decided on its own peculiar facts. There is nothing in Sardar Singh to indicate that any of these cases involved absence on account of the abnormal behavior of the minor daughter of the employee, which is the case here.

8. The learned counsel for the DTC submitted that the Appellant had not made a representation to this effect before the disciplinary authority and, therefore, the order of removal could not be held to be bad for that reason.

9. We find that the order dated 28th March 1992 of the disciplinary authority is a cryptic one. It neither refers to any past misconduct of a similar nature nor the reason given by the Appellant for his absence during the period in question. The order dated 28th March 1992 passed by the disciplinary authority suffers from non-application of mind. In the circumstances the punishment of removal from service awarded to the Appellant is, in our view, unsustainable in law.

10. We accordingly set aside the impugned Award dated 1st April 2009 passed by

the Labour Court as well as the impugned order dated 3rd August 2009 passed by the learned Single Judge. The Appellant will be reinstated in service with 25% back wages.

11. The appeal is accordingly allowed with the above directions with costs of Rs.5,000/- which will be paid by the Respondent to the Appellant within a period of four weeks from today.

CHIEF JUSTICE

S. MURALIDHAR, J.
NOVEMBER 23, 2009
ak
LPA No.499/2009 Page 4 of 4

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 93/2010

AMAR CHAND CHAUHAN ..... Petitioner

Through Mr. H.K. Chaturvedi, Advocate

versus

DD SALES COPRPORATION ..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

17.11.2014

The petition has been listed as the disputes between the parties could not be settled before the Lok Adalat.

Accordingly, list the matter as per its own turn and seniority.

VIBHU BAKHRU, J

NOVEMBER 17, 2014

sd

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IN THE HIGH COURT OF DELHI AT NEW DELHI
37

W.P.(C) 6992/2010

JAI KUMAR JAIN .....
Petitioner
Through: Mr.H.K.Chaturvedi, Advocate

versus

DTC AND ANR .....
Respondents
Through: Ms.Rashmi Priya, Advocate for R-1.
Mr.Rajiv Nanda, Advocate for R-2

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

O R D E R
20.10.2010
CM No. 13856/2010(for exemption)

Allowed, subject to all just exceptions.
WP(C) No.6992/2010
By this writ petition, the petitioner describing himself as a pro bono publico has prayed for issue of a direction to the Delhi Transport Corporation to adopt the Delhi Government Employees Health Scheme and such other ancillary prayers.
Having heard Mr.H.K.Chaturvedi, learned counsel for the petitioner we are of the considered view that no mandamus can be issued in this W.P.(C) 6992/2010 Page 1 of 2

regard. We are only inclined to direct that if a representation is made to the respondent No.1 within a period of eight weeks from today, the respondent No.1 may consider it in accordance with law within a period of three months therefrom.
With the aforesaid direction, the writ petition stands disposed of with no order as to costs.

CHIEF JUSTICE

MANMOHAN, J
OCTOBER 20, 2010
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W.P.(C) 6992/2010 Page 2 of 2

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

\+ LPA 28/2010 & CM 632/2009

STATE BANK OF INDIA ..... Appellant
Through Mr. Rajiv Kapur

versus

S. ELHANCE ..... Respondent
Through Mr. H.K. Chaturvedi and
Ms. Anjali Chaturvedi,
Advocates

Reserved on : 26th July, 2010
% Date of Decision : 13th August, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the 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

J U D G M E N T

MANMOHAN, J

1. Present Letters Patent Appeal has been filed challenging the judgment dated 22nd September, 2009 passed in C.W.P. 4104/1993 whereby the learned Single Judge has not only set aside the finding of the enquiry officer with regard to charges 1, 2, 5, 8(d), 8(e) and 9 but has also set aside the penalty. Learned Single Judge had further directed the appellate authority to reconsider the proportionality of punishment within four months on the charges sustained by him.

2. Mr. Rajiv Kapur, learned counsel for the appellant submitted that it was not permissible for the learned Single Judge to re-appreciate the evidence which had been considered by the enquiry officer, disciplinary authority and appellate authority. He submitted that the learned Single Judge had erred in law by acting as a Court of appeal and interfering with the findings of the enquiry officer, disciplinary authority as well as appellate authority. In support of his submission, Mr. Kapur relied upon ***State of Haryana & Anr. Vs. Rattan Singh (1977) 2 SCC 491; B.C. Chaturvedi Vs. Union of India & Ors. (1995) 6 SCC 749, Bank of India Vs. Degala Suryanarayana (1999) 5 SCC 762; Chairman & Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar (2003) 4 SCC 364; Ganesh Santa Ram Sirur Vs. State Bank of India & Anr. (2005) 1 SCC 13, Damoh Panna Sagar Rural Regional Bank and Ors. Vs. Munna Lal Jain (2005) 1 LLJ 730; V. Ramana Vs. A.P. SRTC, (2005) 7 SCC 338 and Ram Saran Vs. IG of Police CRPF (2006) 2 SCC 541***.

3. Having heard Mr. Kapur at length, we are of the view that the common thread running through all the aforesaid decisions is that the Court should not interfere with the decision of the enquiry officer, disciplinary authority and appellate authority unless they are illegal/irrational or suffer from procedural impropriety or shock the conscience of the court, in the sense that it defies logic or moral standards. The Supreme Court has repeatedly adopted and reiterated the test laid down in ***Associated Provincial Picture Houses Ltd. Vs.***

Wednesbury Corpn., (1947) 2 All ER 680 (CA) wherein it has been stipulated that courts do not examine the correctness of the choice made by the enquiry officer, disciplinary authority and appellate authority but only review the decision making process to see if there is any deficiency in the same.

4. In fact, upon a perusal of the impugned order, we find that the learned Single Judge has applied the aforesaid test stipulated by the Apex Court and has given cogent reasons for setting aside the findings recorded by the enquiry officer with regard to charges 1, 2, 5, 8(d), 8(e) and 9. The relevant portion of the impugned order is reproduced hereinbelow :-

> *"14. To appreciate the aforesaid contentions, finding returned by the Inquiry Officer on the charges against the Petitioner, needs to be looked into for a limited purpose. This Court is conscious of the fact that the adequacy of the evidence is a domain, which is not to be treaded upon, nor the evidence led has to be re-appreciated by this Court. Relevance or quantum of evidence is not required to be done. To judge the correctness of the decision taken by the Disciplinary Authority is also not required to be looked into. The common thread running through all the afore referred decisions cited before this Court is that the Court should not interfere with Administrator's decision, unless it is illogical or it suffers from procedural impropriety or it shocks the conscious of the Court, in the sense that it defies logic or moral standards. In nutshell, the Courts should not substitute its decision with that of the Administrator. The scope of judicial review is limited to see whether there is deficiency in decision making process. The Apex Court in "Indian Railways Construction Co. Ltd. Vs. Ajay Kumar"* ***(2003) 4 SCC 579****, has noticed the consistent trend of judicial opinion regarding scope for judicial interference in matters of administrative decisions……*

*15. In the light of the aforesaid position of law, one can conveniently classify under **three heads,** the grounds on which administrative action is subject to control by judicial review. The first **head** is "illegality', the second 'irrationality' and the third, 'procedural impropriety'. These principles were highlighted by Lord Diplock in "Council of Civil Service Union vs. Minister for the Civil Service" **(1984) 3 All.ER 935 (commonly known as CCSU case)**, which has been quoted with approval by the Apex Court in the above referred case. Thus, I proceed to test the impugned decision on the touchstone of reasonableness.*

16. On the first two charges, the finding returned are that the Petitioner had not taken any permission to leave the Station and had claimed reimbursement of medical bills for treatment at Dehradun (outstation). Failure on the part of the Petitioner to take the permission of Competent Authority before taking treatment, outside the Headquarter, would not amount to 'misconduct', because neither the Inquiry Authority nor the Appellate Authority specified as to from which Authority the permission has to be sought. In any case, it cannot be said that the Petitioner had deliberately not sought the permission. Therefore, the finding returned on these two charges are clearly erroneous and liable to be quashed.

xxxx xxxx xxxx xxxx

24. The fifth charge relates to claiming of reimbursement for treatment of 'adenoids' by the Petitioner and since it was not reimbursable, therefore, this charge was found to be proved against the Petitioner in the inquiry proceedings.

xxxx xxxx xxxx xxxx

26. In view of the above, it becomes clear that 'misconduct' means a conduct arising from ill motive and acts of negligence, errors of judgments or innocent mistakes, do not constitute 'misconduct'. It is nobody's case that the Petitioner had deliberately taken reimbursement of the medical bill pertaining to treatment of 'adenoid' while knowing that it was not admissible. Therefore, the conduct of Petitioner claiming reimbursement for the treatment of 'adenoid' does not fall within the mischief of 'misconduct' and so finding returned on this charge is manifestly erroneous and is liable to be quashed.

27. ……The eighth charge is sub-divided into four parts. Inquiry Officer had found that charge 8(a), 8(b) and 8(c) do not stand proved and the findings returned on charge 8(d) and 8(e) do not appear to be in consonance with these charges and therefore, these two charges needs to be highlighted as under:-

> *"(d) In one of the bills the Stolin has been mentioned as tablet although it is toothpaste.*
>
> *(e) He has taken such a long treatment for Pyorrhea, which is not possible as the medicines (antibiotics) are quite strong and their prolonged usage cannot be normally suggested by any medical practitioner as it will lead to serious side effects."*

28. The finding returned by the Inquiry Officer on the aforesaid two charges, is as under:-

> *"Under the circumstances, and the deposition of Defence Witness No.2, I hold this part of the charge as not proved. It is established that OPA had purchased certain medicines without prescriptions. Even the prescriptions are not specific as these do not mention the No. of days, the medicine is to be used etc."*

29. Aforesaid finding is quite generalized and does not contain the necessary details to support the charge nor the evidence referred to, does so. Clearly, the finding on charge 8(d) and 8(e) disclose utter non-application of mind not only by the Inquiring Authority but also by the Appellate Authority. Thus, the finding on charges 8(d) and 8(e) are liable to be quashed, being manifestly arbitrary.

xxxx xxxx xxxx xxxx

31. Upon reading the ninth charge, it becomes abundantly clear that this charge of Petitioner's wife taking treatment under two different systems of Medicines on the same day, i.e., on 16th August, 1983, being unlikely, is quite presumptive. The finding returned of this charge is based upon surmises and conjectures for the reason it proceeds on the assumption that it is not possible to take treatment from two doctors at a time. Where is the bar to taking treatment under two different disciplines of medicine for different ailments at a time ? There is utter non-application of mind by the Inquiry Authority as well as by Appellate Authority, as neither in

the charge nor in the findings returned, it has been alleged/concluded that for the one ailment, Petitioner's wife had taken treatment in two different disciplines of medicine at the same time. Therefore, the finding returned on this charge, being illogical, is liable to be quashed."

5. Moreover, we are informed that in accordance with the impugned judgment dated 22nd September, 2009, the appellate authority of appellant-Bank has once again decided to maintain the punishment for removal from service even on the charges sustained by the learned Single Judge. Consequently, we find that no ground for interference in the present appeal and accordingly, the same is dismissed but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 13, 2010
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7022/2010 and C.M. Nos.20692/2010, 1590/2011

MOHD SALEEM ..... Petitioner

Through: Mr. S.K. Rai, Adv.

versus

SHYAM NARAYAN AND ORS ..... Respondents

Through: Mr. H.K. Chaturvedi, Adv. for R-1.

Ms. Rupinder Kaur, Adv. for R- 2 to 4.

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

O R D E R

24.01.2012

Today it has been agreed between the petitioner/employer and respondent no.1/workman that the petitioner shall pay to the respondent no.1/workman a sum of `1,17,000/- in full and final satisfaction of the award passed by the Labour Court which was under challenge in this writ petition. It has also been agreed that the said amount, the respondent no.1-workman shall be entitled to get out the amount of `2,71,286/- which the petitioner has already deposited with this Court in compliance of order dated 02.11.2010.

This writ petition accordingly stands disposed of as compromised in the aforesaid terms. Let the Registry release the payment of `1,17,000/- to the respondent no.1-workman and the entire balance amount be returned to the petitioner and let this entire exercise be completed within four weeks from today.

P.K. BHASIN, J

JANUARY 24, 2012

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

+ FAO NO. 98/2002

Judgment reserved on: 13.3.2008
% Judgment delivered on: 4.5.2009

Shri Kunwar Mahinder Singh ..... Appellants
Through: Mr. O.P. Goyal, Advocate

versus

Bhupinder Singh & Ors. ..... Respondents
Through: Mr. D.K. Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? NO

2. To be referred to Reporter or not? NO

3. Whether the judgment should be reported in the Digest? NO

KAILASH GAMBHIR, J.

1. The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 20.11.2001

for enhancement of compensation. The learned Tribunal awarded a total amount of Rs.1,06,345/- with an interest @ 9% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 20.9.98, at about 9:55AM, the appellant was proceeding on his two wheeler scooter from his residence in Moti Bagh to his office i.e High Court of Delhi at Sher Shah Road, New Delhi. When he reached at C-Hexagen Road, opposite Jodhpur Hostel Mess, a bus bearing registration no. DEP-5939 being driven by R1 in a rash and negligent manner came from the side of Pandara Road. The said bus was taking a turn towards Sher shah Road and in that process, the front left corner of the bus struck against the rear side of the two wheeler scooter. The front left door of the bus was flung opened and it also dashed against the two wheeler scooter of the appellant. The appellant alongwith the scooter was dragged by the bus causing extensive injuries to the appellant.

4. A claim petition was filed on 17.3.1989 and an award was passed on 20.11.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Goyal, counsel for the appellant claimant urged that the award passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He assailed the said judgment of Learned Tribunal firstly, on the ground that the tribunal erred in granting Rs.20,000/- towards medical expenses. He contended that an amount of Rs.2.75 Lacs towards the medical treatment and expenses ought to have been awarded by the tribunal. The claimant appellant is not able to produce medical bills to claim the stated amount, but he contended that looking at the facts and circumstance of the case and the fact that the claimant was operated for open reduction and internal fixation of left ulna and bone grafting was also done, the learned Tribunal should have considered awarding that amount. Enhancement is also claimed on the ground that a sum of just Rs.5000/- is awarded towards conveyance instead of the claim of Rs.4,00,000/-. Amount towards the special diet is also sought to be enhanced from Rs.5000/- to Rs.1,00,000/-. It is further stated that Ld. Tribunal ought to have awarded Rs.3,00,000/- as damages for cost of transport and conveyance during the treatment and afterwards. A compensation of Rs.2,00,000/- is also sought on account of future treatment. The counsel further stated that damages on account of

disfigurement of the body needs to be increased to Rs.2,00,000/-. It is also stated by the counsel that the compensation of Rs.30,000/- awarded by the Ld. Tribunal towards pain and suffering is on the lower side. Further the counsel pleaded that the counsel erred in awarding an interest of 9% pa instead of 15% p.a. It is further submitted that Ld. Tribunal has not considered the fall in the value of money between the date of accident and the date of judgment.

6. Mr. D.K. Sharma counsel for the respondent contended that the award passed by the tribunal is just and fair thus, no interference is warranted by this court.

7. I have heard the counsel for the parties and perused the award.

8. In a plethora of cases the Hon'ble Apex Court and various High Courts have held that the emphasis of the courts in personal injury and fatal accidents cases should be on awarding substantial, just and fair damages and not mere token amount. In cases of personal injuries and fatal accidents the general principle is that such sum of compensation should be awarded which puts the injured or the claimants in case of the fatal accidents matter in the same position as he would have been had accident had not taken place. In examining the question of

damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken in to account. In this regard the Supreme Court in **Divisional Controller, KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197,** has classified pecuniary and non-pecuniary damages as under:

> "**16.** This Court in *R.D. Hattangadi* v. *Pest Control (India) (P) Ltd.* 9 laying the principles posited: (SCC p. 556, para 9)
>
> " *9* . Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant:(*i*) medical attendance; (*ii*) loss of earning of profit up to the date of trial; (*iii*) other material loss. So far as non-pecuniary damages are concerned, they may include (*i*) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (*ii*) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (*iii*) damages for the loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (*iv*) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

9. In the instant case the tribunal has awarded Rs.20,000/- for expenses towards medicines; Rs.5000/- for special diet; Rs.5000/- for

conveyance expenses; Rs.10,000/- for transportation for the period of one year for which he was unable to drive the two wheeler scooter; Rs.30,000/- for mental pain and sufferings; Rs.20,000/- towards disfigurement of the body; Rs.10,000/- towards future treatment and Rs.6345/- on account of loss of leave.

10. The appellant suffered fracture of ribs (6 to 8on the right side), fracture of right elbow and fracture of elbow joint. Apart from these, he also suffered deep abrasions on the right side of the chest, right arm and on the right side of the face as is evident from the photograph Ex. PW11/64, PW11/64A, 65 and 69.

11. On perusal of the award, it is manifest that the appellant had placed on record various bills which were proved by the statements of PW 2 Ms. Manju Gupta; PW 3 Rajinder Kr. Gupta & PW9 Subhash Mehta, which comes to a total of Rs. 15,660/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant suffered fracture of ribs (6 to 8on the right side), fracture of right elbow and fracture of elbow joint. Apart from these, he also suffered deep abrasions on the right side of the chest, right arm and on the right side of the face as is evident from the photograph Ex. PW11/64, PW11/64A,

65 and 69 and awarded Rs. 20,000/- even though the appellant could not prove that he had incurred the said amount towards medical expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

12. As regards conveyance expenses, nothing has been brought on record. The appellant suffered fracture of ribs (6 to 8on the right side), fracture of right elbow and fracture of elbow joint. Apart from these, he also suffered deep abrasions on the right side of the chest, right arm and on the right side of the face as is evident from the photograph Ex. PW11/64, PW11/64A, 65 and 69. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 5,000/- for conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

13. As regards special diet expenses, although nothing was brought on record by the appellant to prove the expenses incurred by him towards special diet but still the tribunal took notice of the fact that since the appellant sustained serious injuries and suffered fracture of ribs (6 to 8on the right side), fracture of right elbow and fracture of elbow joint. Apart from these, he also suffered deep abrasions on the

right side of the chest, right arm and on the right side of the face as is evident from the photograph Ex. PW11/64, PW11/64A, 65 and 69, thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs. 5,000/- for special diet expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

14. As regards mental pain & suffering, the tribunal has awarded Rs. 30,000/- to the appellant. The appellant suffered fracture of ribs (6 to 8on the right side), fracture of right elbow and fracture of elbow joint. Apart from these, he also suffered deep abrasions on the right side of the chest, right arm and on the right side of the face as is evident from the photograph Ex. PW11/64, PW11/64A, 65 and 69 and he deposed as PW 11 that he has scars on his body which are incurable and also that pus comes out during summer from these scars and there is itching and pain in them. He also stated that he cannot straighten his right arm completely. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 50,000/-.

15. As regards the compensation towards loss of earnings due to permanent disability, no disability certificate has been brought on record, therefore, no compensation in this regard can be awarded.

16. As regards loss of amenities**,** resulting from the defendant's negligence, which affects the injured person's ability to participate in and derive pleasure from the normal activities of daily life, and the individual's inability to pursue his talents, recreational interests, hobbies or avocations. Considering that the appellant suffered amputation of his toe, I feel that the tribunal erred in not awarding compensation under this head and in the circumstances of the case same is allowed to the extent of Rs. 50,000/-.

17. As regards, future medical expenses the tribunal awarded Rs. 10,000/-. Considering that the appellant suffered fracture of ribs (6 to 8on the right side), fracture of right elbow and fracture of elbow joint. Apart from these, he also suffered deep abrasions on the right side of the chest, right arm and on the right side of the face as is evident from the photograph Ex. PW11/64, PW11/64A, 65 and 69 and he deposed as PW 11 that he has scars on his body which are incurable and also that pus comes out during summer from these scars and there is itching

and pain in them. He also stated that he cannot straighten his right arm completely. I feel that the compensation under this head should be enhanced to Rs. 25,000/-.

18. As regards disfigurement, the tribunal awarded Rs. 20,000/-. In the facts of the present case, considering that it has come on record that a large chunk of skin was scooped out from right arm and chest and considering the condition of the scars, I feel that the same should be enhanced to Rs. 25,000/-.

19. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 15% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires no interference. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon'ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation,

policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 9% pa by the tribunal and the same is not interfered with.

20. In view of the foregoing, Rs.20,000/- is awarded for expenses towards medicines; Rs.5000/- for special diet; Rs.5,000/- for conveyance expenses; Rs.10,000/- for transportation for the period of one year for which he was unable to drive the two wheeler scooter; Rs.50,000/- for mental pain and sufferings; Rs.25,000/- towards disfigurement of the body; Rs. 50,000/- for loss of amenities; Rs.10,000/- towards future treatment and Rs.6345/- on account of loss of leave.

21. In view of the above discussion, the total compensation is enhanced to Rs. 1,81,345/- from Rs. 1,06,345/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same shall be paid to the appellant by the respondent insurance company within 30 days of this order.

22. With the above directions, the present appeal is disposed of.

04th May, 2009 **KAILASH GAMBHIR, J.**

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

\+ **CM No.1276-1277/2010 & W.P.(C) 3981/2000**

% **Date of decision: 4th May, 2010**

SHIV SHANKAR ..... Petitioner
Through: Mr. H.K. Chaturvedi, Advocate

Versus

UNION OF INDIA & ANR. .... Respondents
Through: None.

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 writ petition was dismissed for non prosecution on 17th July, 2009. The petitioner applied for restoration and for condonation of delay in applying for restoration. Notice of the said applications was ordered to be issued to the respondents. On the last date, final opportunity was granted to the petitioner to serve respondents with notice of applications. The process fee filed by the petitioner is again under objections. The respondents remain unserved and none appears on their behalf. Though in terms of the earlier order, the applications are liable to be dismissed for the reason of petitioner having failed to serve the respondents but the writ petition has also been considered on merits.

2. The petitioner had applied for the post of Clerk in the Physically Handicapped category. Though the petitioner was declared successful in the written examination conducted for the said purpose but the disability certificate furnished by the petitioner was not found satisfactory and the petitioner was asked to appear before a Medical Board at Safdarjung Hospital. The Medical Board did not recommend the "physically handicapped" status for the petitioner. The petitioner represented against the same and the certificate issued by the Medical Board of the Safdarjung Hospital was re-examined and was re-confirmed. Aggrieved therefrom the present petition was filed.

3. The petitioner in the petition has made certain allegations against the Doctors of Safdarjung Hospital constituting the Medical Board. This Court before issuing notice of the petition called upon the petitioner to file a further affidavit in that respect and the Doctors constituting the Medical Board were also impleaded as parties to this writ petition. It was also clarified that if the allegations of *mala fide* made by the petitioner against the said Doctors are found to be not true, the petitioner will have to bear the consequences thereof. The counter affidavits have been filed by the respondents thereafter. It has *inter alia* been stated in the counter affidavits that the petitioner is now also beyond the maximum age at which he could have been absorbed in service. Rule was issued in the petition on 15th October, 2003.

4. It has been put to the counsel for the petitioner as to how this Court in the exercise of writ jurisdiction can go into the disputed questions of whether the petitioner comes within the disability status or not particularly when the Medical

Board constituted for the said purpose has voiced against the petitioner on two occasions. The counsel for the petitioner has fairly stated that the said question cannot be gone into in this proceeding. It is not possible for this Court to conduct an enquiry in this regard.

5. No merit is found as such in the petition also. Though this Court had earlier ordered that in the event of the allegations of the petitioner against the Doctors constituting the Medical Board are found incorrect, the petitioner will have to bear the consequence thereof but the counsel for the petitioner on behalf of the petitioner, without prejudice to the rights and contentions of the petitioner to have his disability proved before appropriate forum, tenders an apology for the allegations made against the Doctors constituting the Medical Board. In view of the said apology, it is not deemed expedient to take any further action against the petitioner.

6. The writ petition is thus dismissed. Parties to bear their own costs. The petitioner shall be at liberty to prove his disability before appropriate forum.

RAJIV SAHAI ENDLAW
(JUDGE)

4th May, 2010
gsr

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 350/2010
LPA 363/2010

ISKAIL .....
Appellant
Through Mr. H K Chaturvedi, Advocate

versus

MANAGEMENT OF DOCBEL INDUSTRIES ..... Respondent
Through Mr. Harvinder Singh and Mr. Prateek Kohli, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

O R D E R
10.05.2011

CM 9293/2010 (Delay) in LPA 350/2010
CM 9462/2010 (Delay) in LPA 363/2010

This is an application for condonation of delay in preferring the appeal. Having heard Mr. H K Chaturvedi, learned counsel for the appellant and Mr. Harvinder Singh, learned counsel for the respondent, we find that sufficient ground exists for condonation of delay. Accordingly the delay in preferring the appeal in condoned.
The application stands disposed of.

LPA 350/2010
LPA 363/2010

The Tribunal on a reference came to hold that the order of termination was fallacious as there was non-compliance of Section 25F of Industrial Disputes Act in a proper manner. It granted compensation of Rs.50,000/- taking note of the fact that painting section of the establishment was closed. On a writ being filed by the management as well as by the employee the writ court confirmed the finding of the Tribunal that there was non-compliance of Section 25F of the Act in an appropriate manner as the entire amount was not paid. However, he decreased the amount of compensation to Rs.20,000/-.
In course of hearing of the present appeal on a query being made, Mr. Harvinder Singh, learned counsel for the respondent fairly stated the management has no objection to pay Rs.75,000/- in full and final settlement.
In our considered opinion, the compensation is the appropriate thing to be granted in a case of this nature as both the Tribunal as well as writ court

confirmed the finding that Section 25F of the Act had not been properly complied with. Though, the learned counsel for the petitioner submitted that he was

entitled to reinstatement with full back wages, we are unable to accept the same. The proper course is to grant compensation. Let a sum of Rs.75,000/- (Rupees Seventy Five Thousand Only) be paid to the appellant by way of bank draft within four weeks, hence. Both appeals are disposed of accordingly, without any order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.
MAY 10, 2011
vld

$ 23 and 24

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 24/2000

SHISH RAM ..... Petitioner

Represented by: Mr.H.K.Chaturvedi, Advocate

versus

UOI and ORS ..... Respondents

Represented by: Mr.Saqib, Advocate along with

Mr. Bhupinder Sharma, Law Officer, BSF.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

O R D E R

07.08.2012

1. Learned counsel for the respondents does not dispute that after SSFC trial was over and penalty of dismissal from service was inflicted upon the petitioner, as per requirement of law, the record of SSFC trial was not supplied to the petitioner.

2. This has affected the right of the petitioner to file a statutory appeal.

3. The petitioner took this point in the statutory appeal filed but unfortunately the Appellate Authority did not direct corrective action to be taken by directing the department to supply the record of the trial to the petitioner so that the petitioner could file a proper appeal.

4. Further, the petitioner has been handicapped to file the instant writ petition without the record.

5. It is unfortunate that such a simple point was overlooked by the counsel concerned who has drafted a most ill-conceived writ petition.

6. We accordingly dispose of the writ petition directing respondents to supply to the petitioner the complete record of the SSFC trial held against the petitioner. The record would be supplied to the petitioner by Regd. A.D. Post. On receipt of the record, the petitioner would be permitted to file an appeal before the Appellate Authority. We grant petitioner twelve weeks time to file the appeal after he receives the record.

7. Needless to state the Appellate Authority would decide the appeal as per law.

8. No costs.

PRADEEP NANDRAJOG, J.

MANMOHAN SINGH, J.

AUGUST 07, 2012/ka

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$ 28 to 31

IN THE HIGH COURT OF DELHI AT NEW DELHI

#5.

W.P.(C) 5350/2010

UOI AND ORS ..... Petitioners
Through: Dr.Ashwani Bhardwaj, Adv.

versus

SUNITA SHARMA ..... Respondent
Through: Mr.H.K.Chaturvedi, Adv. with
Ms.Anjali Chaturvedi, Adv.
CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

O R D E R
27.09.2010

1. Our reasons may be traced to our order dated 09.08.2010 which reads as under:
?WP(C) 5350/2010 and CM No.10542/2010

1. It is urged by learned counsel for the petitioner that the Central Administrative Tribunal is acting as a Super Boss.

2. We note that the respondent was issued a charge-sheet listing 3 Articles of Charge and the serious ones being of disobeying the orders to appear before a Medical Board and refusing to accept the official communications and showing insubordination and disobedience. It be noted that the respondent could not work in as many as 10 different seats, evidenced by the fact that the immediate boss had to surrender her on account of inability to perform the duties assigned and not being able to work in co-ordination with the other employees. After the inquiry was over, an order of compulsory retirement was inflicted upon the respondent who challenged the same by and under OA No.983/2006 which was disposed of requiring the petitioner to consider the
W.P.(C) 5350/2010 page 1
of 4
proportionality of the penalty. The order of the Tribunal is dated 29.11.2006. In other words it was found that a penalty was justified. The only question was what.

3. At the remanded stage the Disciplinary Authority passed the penalty vide order dated 13.3.2007 maintaining the penalty which was challenged vide OA No.1276/2007 in which the Tribunal passed an order on 13.5.2008 requiring the respondent to be subjected to psychiatric/psychological test. A Board was constituted on 10.6.2008 which gave an opinion that the respondent suffered from no mental disorder.

4. The impugned order dated 26.4.2010 directs the petitioners to give posting to the respondent in a Section other than the ones where she had worked. The order of compulsory retirement has been stayed till final orders. The Tribunal has

directed that the working of the respondent be observed for 90 days and reported to the Tribunal.

5. Prima facie, the Tribunal cannot take over the functions of the employer.

6. Issue notice to the respondent to show-cause as to why the impugned order dated 26.4.2010 be not set aside and the Tribunal be not directed to decide the claim of the respondent strictly in accordance with law. It be noted that the Tribunal has found no fault with the inquiry and the misdemeanour proved. The matter was re-opened limited to the proportionality of the penalty when OA No.983/2006 was disposed of on 29.12.2006

7. The notice is made returnable for 27.9.2010.

8. Till the present order is vacated or modified operation of the impugned order shall remain stayed.
DASTI.?

W.P.(C) 5350/2010 page 2
of 4
2. A perusal of the Original Application filed by the respondent shows that the prayers made by her are as under:
?In view of the facts mentioned in para 6 above the applicant prays for the following reliefs:-

i) To set aside the order dated ???.. directing the respondents to reinstate the applicant in the job with consequential benefits and promotions along with arrears with interest @ 18 % per annum, thus in effect setting aside order dated 13.03.2007.

ii) To set aside the orders dated 13.06.05 and passed by the Disciplinary and Appellate/ Reviewing Authorities in imposing Major penalty of ?Compulsory Retirement? to the applicant.

iii) Refer the matter to complaints committee constituted by the Management as per the guidelines/ norms laid down by the Hon?ble Supreme Court in the matter of Vishaka and Ors. Vs. State of Rajasthan and Ors.

iv) Direct the applicant to appear before the Medical Board for providing her mentally fit to resume her duties in the interest of justice.

v) Direct the management to reinstate the applicant in employment with backwages including consequential benefits.

vi) Award suitable damages/ compensation to the applicant for causing mental agony/ suffering by the Management.?

3. The order sought to be got quashed as per prayer (i) in respect whereof there is a blank after the word ?dated? is the order dated 03.09.2010 levying penalty of compulsory retirement upon the respondent. Needless to state, it is said

order which is under challenge before the Tribunal and the duty of the Tribunal is to adjudicate upon the validity of the order in question and not to

W.P.(C) 5350/2010 page 3 of 4

function as a super-regulatory body and determine how the petitioner should run its affairs. The duty of the Tribunal is not to solve or resolve a problem but is to adjudicate upon the legality of the order which is impugned before it. If the Tribunal feels that the matter should be referred to conciliation, the Tribunal may do so. But surely, the Tribunal cannot take over the administrative functioning of the petitioner.

4. Learned counsel for the parties do not dispute as afore-noted.

5. Accordingly, we dispose of the writ petition quashing the impugned order passed by the Tribunal. We issue directions to the Tribunal to decide O.A.No.770/2009 strictly within the parameters of law.

6. No costs.

7. Dasti.

C.M.10542/2010

Disposed of as infructuous.

PRADEEP NANDRAJOG,J

MOOL CHAND GARG, J
SEPTEMBER 27, 2010
?anb?

W.P.(C) 5350/2010 page 4 of 4

IN THE HIGH COURT OF DELHI AT NEW DELHI
40
LPA 656/2010

CHAKRA BAHADUR CHAND ..... Appellant
Through Mr.H.K. Chaturvedi, Advocate

versus

MANAGEMENT OF NATIONAL HORTICULTURE BOARD ..... Respondent
Through none

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

O R D E R
10.09.2010

CM No.16306/2010 (exemption)
Allowed, subject to all just exceptions.
CM No.16307/2010 and LPA No.656/2010
This is an application for condonation of delay of 177 days.
We have heard Mr.H.K. Chaturvedi, learned counsel for the appellant, on the question of condonation of delay.
Before issuing notice, we have thought it apt to dwell upon the merits of the case.
In this intra-court appeal the defensibility of the order dated 8th March, 2010 passed by the learned Single Judge in WP(C) No.7080/2008 whereby the learned Single Judge has given the stamp of approval to the award dated 26th February, 2008 passed by the Central Government Industrial Tribunal (for short ?the tribunal?) is called in question.
The appellant was appointed as a receptionist under the National Horticulture Board on the basis of a letter of appointment issued on January 01, 2003. Be it noted, prior to that he was working in an agency, namely, M/s Anirudh Security Agency, Faridabad. The Horticulture Board was running a canteen and took over the canteen on 1st Janaury,2003 and the same was closed on

19th April, 2004 After the canteen was closed, the appellant lost his job and approached the Central Government for the purpose of referring the matter to the tribunal as an industrial dispute. The Central Government vide order dated 14th December, 2005 referred the following issue to the tribunal for adjudication:- ?Whether the action of the management of National Horticulture Board in terminating the services of Shri Chakkar Bahadur Chand s/o Shri Dan Bahadur Chand with effect from 19.4.2004 is legal and justified? If not, to what relief

the workman is entitled??

The tribunal came to hold that the workman had not worked for 240 days and, therefore, there was no fallacy in his termination.

Being grieved by the aforesaid order, the workman visited this Court under Article 226 of the Constitution of India and the learned Single Judge, after taking note of the fact that the writ petitioner had not completed 240 days of service and canteen had been closed with effect from 19th April, 2004, did not interfere with the order passed by the tribunal.

Questioning the correctness of the order passed by the learned Single Judge, it is submitted by Mr. H.K. Chaturvedi, learned counsel for the appellant that the order of appointment would clearly show that the appellant was a contingent paid employee and there is no distinction between a contingent paid employee or an adhoc employee or a temporary employee as far as industrial law is concerned. To bolster the said stand he has commended us to the Division Bench?s decision of this Court in Delhi Cantonment Board v. Central Govt. Industrial Tribunal and Ors., 2006 (88) DRJ 75(DB). In paragraph Nos. 5 to 7 of the said decision, the Division bench has held thus:-

?5. In service law there is an important difference between a temporary employee and a permanent employee. A permanent employee has a right to the post whereas a temporary employee does not, vide State of U.P. v. Kaushal Kishore Shukla (1991)1SCC 691. However, there is no such distinction in industrial law. It may be noted that the Industrial Disputes Act makes no distinction between a permanent employee and a temporary employee (whether a probationer, casual, daily wage or adhoc employee).

6. The definition of 'workman' in Section 2(s) of the Industrial Disputes Act states that a workman means :-

?any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45) of 1950), or the Army employee of a person, or

(ii)who is employed in the police service or as an officer or other employee of a person, or

(iii)who is employed mainly in a managerial or administrative capacity, or

(iv)who being employed in a supervisory capacity, draws wages exceedings one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.?

7. A perusal of the above definition shows that there is no distinction in industrial law between a permanent employee and a temporary employee. As long as the person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman under the Industrial Disputes Act, and will get the benefits of that Act.?

In our considered opinion, there can be no cavil over the said

proposition of law as the person concerned in a contingent category would meet the criterion of ?workman? as defined under the Industrial Disputes Act. It is worth noting that the learned counsel has placed reliance on the same as the learned Single Judge has observed that the writ petitioner was engaged on contingent basis.

The real crux of the matter is whether an employee has worked for 240 days. The submission of Mr. Chaturvedi, learned counsel for the appellant is that though he has brought adequate material on record that he had worked for 240 days yet the same has not been properly appreciated by the Industrial Court. On a perusal of the pleadings, it is urged by Mr. Chaturvedi that when the initial onus has been satisfied by the workman, the same shifts to the management and becomes obligatory on the part of the management to prove to the contrary. Learned counsel has drawn inspiration from the decision in Bank of Baroda v. Ghemarbhai Harjibhai Rabari, JT 2005(3) SC 312. In the said case, a three-Judge Bench of the Apex Court has held thus:-

?8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a Management, primarily lies on the workman who claims to be a workman. The degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the bank, that he did work as a driver of the car belonging to the bank during the relevant period which come to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the executive concerned and not that of the bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the Register maintained by the bank. In this factual background, the question of workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the bank.?

Learned counsel has also invited our attention to the decision in R.M. Yallatti v. The Asst. Executive Engineer, JT 2005 (9) SC 340. In the said case in paragraph 12 it has been held thus:-

?12. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act, However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of

appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the

matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.?

On a perusal of the aforesaid decisions it is quite clear that the initial burden has to be discharged by the workman by adducing oral and documentary evidence. In the case at hand, the workman had only stated that he had worked for 240 days. The same has been denied and disputed by the management. Nothing has been brought on record by the workman to show that he had really worked for 240 days. Thus, we are inclined to think that initial onus placed on the workman has not been discharged. Hence, the decision rendered in R.M. Yellatti (supra) and Ghemarbhai Harjibhai Rabara (supra) are not applicable to the case at hand.
In view of our aforesaid analysis, we do not perceive any merit in the appeal and hence, there is no justification to issue notice on the application for condonation of delay.
In the result, the application for condonation of delay stands rejected and as a fall out, the appeal also stands dismissed in limine.

CHIEF JUSTICE

MANMOHAN, J
SEPTEMBER 10, 2010
nm/vk

LPA 656/2010
Page 1 of 8

IN THE HIGH COURT OF DELHI AT NEW DELHI

18
W.P.(C) 2043/2010 and CM APPL No. 4108/2010

MAHANAGAR TELEPHONE NIGAM LTD ..... Petitioner
Through Mr. Hardeep Dahiya, Advocate

versus

SURAJ PAL AND ANR ..... Respondents
Through Mr. H.K. Chaturvedi with Ms. Anjali Chaturvedi, Advocate for R-1.

CORAM: JUSTICE S.MURALIDHAR

O R D E R
01.02.2011

1. The two questions asked by the Respondent to the Petitioner read as under:
?(i) Whether call detail records pertaining to the applicant own prepaid mobile phone No. 9868597921 were handed over to any agency, crime branch or any other institution between July 2006 to December 2006?

(ii) if handed over then to which agency and on what date??

WP (Civil) 2043/2010
page no 1/3
2. A reading of the impugned order of the Central Information Commission (?CIC?) abundantly makes it clear that both the questions stand answered. The first question is answered in the affirmative. As far as the second question is concerned, there can be no manner of doubt that the Petitioner has handed over the call details to the Delhi Police Crime Branch. Nevertheless, the CIC in the impugned order has embarked on a discussion on whether the MTNL was justified in giving the call details to the Crime Branch. Such discussion was beyond the scope of the proceedings before the CIC.

3. Consequently, the observations made by the CIC in paras 14 and 15 of the impugned order are treated as obiter as they are beyond the scope of the proceedings before the CIC. The directions to the MTNL in para 16 of the impugned order to provide the information sought, do not call for interference in view of the fact that the information already stands disclosed as is evident from the impugned order of the CIC. No further communication of the answers to the two queries to the Respondent by the Petitioner is called for.

WP (Civil) 2043/2010
page no 2/3

4. This Court finds no error in the impugned order of the CIC in so far as it declined to review its order.

5. The petition and the pending application are disposed of. The interim order stands vacated.

S. MURALIDHAR, J
FEBRUARY 01, 2011
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WP (Civil) 2043/2010
page no 3/3
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IN THE HIGH COURT OF DELHI AT NEW DELHI

#5.

W.P.(C) 5350/2010

UOI AND ORS ..... Petitioners
Through: Dr.Ashwani Bhardwaj, Adv.

versus

SUNITA SHARMA ..... Respondent
Through: Mr.H.K.Chaturvedi, Adv. with
Ms.Anjali Chaturvedi, Adv.
CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

O R D E R
27.09.2010

1. Our reasons may be traced to our order dated 09.08.2010 which reads as under:
?WP(C) 5350/2010 and CM No.10542/2010

1. It is urged by learned counsel for the petitioner that the Central Administrative Tribunal is acting as a Super Boss.

2. We note that the respondent was issued a charge-sheet listing 3 Articles of Charge and the serious ones being of disobeying the orders to appear before a Medical Board and refusing to accept the official communications and showing insubordination and disobedience. It be noted that the respondent could not work in as many as 10 different seats, evidenced by the fact that the immediate boss had to surrender her on account of inability to perform the duties assigned and not being able to work in co-ordination with the other employees. After the inquiry was over, an order of compulsory retirement was inflicted upon the respondent who challenged the same by and under OA No.983/2006 which was disposed of requiring the petitioner to consider the
W.P.(C) 5350/2010 page 1
of 4
proportionality of the penalty. The order of the Tribunal is dated 29.11.2006. In other words it was found that a penalty was justified. The only question was what.

3. At the remanded stage the Disciplinary Authority passed the penalty vide order dated 13.3.2007 maintaining the penalty which was challenged vide OA No.1276/2007 in which the Tribunal passed an order on 13.5.2008 requiring the respondent to be subjected to psychiatric/psychological test. A Board was constituted on 10.6.2008 which gave an opinion that the respondent suffered from no mental disorder.

4. The impugned order dated 26.4.2010 directs the petitioners to give posting to the respondent in a Section other than the ones where she had worked. The order of compulsory retirement has been stayed till final orders. The Tribunal has

directed that the working of the respondent be observed for 90 days and reported to the Tribunal.

5. Prima facie, the Tribunal cannot take over the functions of the employer.

6. Issue notice to the respondent to show-cause as to why the impugned order dated 26.4.2010 be not set aside and the Tribunal be not directed to decide the claim of the respondent strictly in accordance with law. It be noted that the Tribunal has found no fault with the inquiry and the misdemeanour proved. The matter was re-opened limited to the proportionality of the penalty when OA No.983/2006 was disposed of on 29.12.2006

7. The notice is made returnable for 27.9.2010.

8. Till the present order is vacated or modified operation of the impugned order shall remain stayed.
DASTI.?

W.P.(C) 5350/2010 page 2
of 4
2. A perusal of the Original Application filed by the respondent shows that the prayers made by her are as under:
?In view of the facts mentioned in para 6 above the applicant prays for the following reliefs:-

i) To set aside the order dated ???.. directing the respondents to reinstate the applicant in the job with consequential benefits and promotions along with arrears with interest @ 18 % per annum, thus in effect setting aside order dated 13.03.2007.

ii) To set aside the orders dated 13.06.05 and passed by the Disciplinary and Appellate/ Reviewing Authorities in imposing Major penalty of ?Compulsory Retirement? to the applicant.

iii) Refer the matter to complaints committee constituted by the Management as per the guidelines/ norms laid down by the Hon?ble Supreme Court in the matter of Vishaka and Ors. Vs. State of Rajasthan and Ors.

iv) Direct the applicant to appear before the Medical Board for providing her mentally fit to resume her duties in the interest of justice.

v) Direct the management to reinstate the applicant in employment with backwages including consequential benefits.

vi) Award suitable damages/ compensation to the applicant for causing mental agony/ suffering by the Management.?

3. The order sought to be got quashed as per prayer (i) in respect whereof there is a blank after the word ?dated? is the order dated 03.09.2010 levying penalty of compulsory retirement upon the respondent. Needless to state, it is said

order which is under challenge before the Tribunal and the duty of the Tribunal is to adjudicate upon the validity of the order in question and not to

W.P.(C) 5350/2010 page 3 of 4

function as a super-regulatory body and determine how the petitioner should run its affairs. The duty of the Tribunal is not to solve or resolve a problem but is to adjudicate upon the legality of the order which is impugned before it. If the Tribunal feels that the matter should be referred to conciliation, the Tribunal may do so. But surely, the Tribunal cannot take over the administrative functioning of the petitioner.

4. Learned counsel for the parties do not dispute as afore-noted.

5. Accordingly, we dispose of the writ petition quashing the impugned order passed by the Tribunal. We issue directions to the Tribunal to decide O.A.No.770/2009 strictly within the parameters of law.

6. No costs.

7. Dasti.

C.M.10542/2010

Disposed of as infructuous.

PRADEEP NANDRAJOG,J

MOOL CHAND GARG, J
SEPTEMBER 27, 2010
?anb?

W.P.(C) 5350/2010 page 4 of 4

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 14121/2009

RAM GOPAL .....
Petitioner
Through: Mr. H.K. Chaturvedi and Ms. Anjali Chaturvedi, Advocates.

versus

MCD AND ORS ..... Respondents
Through: Mr. Ajay Arora, Advocate for MCD.
Mr. Sanjeev Sabharwal, Advocate for GNCTD with Mr. Mohan Kumar, Aggarwal, Deputy Secretary (Urban Development).

CORAM:
HON?BLE THE ACTING CHIEF JUSTICE
HON?BLE MS. JUSTICE MUKTA GUPTA

O R D E R
19.05.2010

Learned counsel for the parties are agreed that this case is fully covered by the judgment of this Court in Sudama Singh and others vs. Government of Delhi and Another, W.P. (C) No. 8904/2009 decided on 11th February, 2010. Accordingly, the directions given in paragraph 62 of the aforesaid decision are made applicable to the facts of this case as well.
Learned counsel for the Respondent however, says on instructions W.P.(C) 14121/2009 Page 1 of 2 from Mr. Mohan Kumar Aggarwal, Deputy Secretary, (Urban Development) that there is a proposal to move an application for modification of the order dated 11th February, 2010 in Sudama Singh.
As and when a decision is taken to move an application and as and when the application is listed, there is no doubt that the matter will be considered on its own merits. The Respondents are at liberty to move an application for modification in this case also when the application for modification, as proposed to be filed in Sudama Singh is allowed.
With these observations and directions, the writ petition is disposed of.

ACTING CHIEF JUSTICE

MUKTA GUPTA, J
MAY 19, 2010
mm/vn

W.P.(C) 14121/2009 Page 2 of 2

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6491/2010

NALIN DASS

..... Petitioner

Through : Mr. H.K.Chaturvedi, Adv.

versus

MCD and ANR

..... Respondents

Through : Mr. Parvinder Chauhan, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

07.05.2014

CM 6677/2013(for clarification of order dt. 24.09.2010)

This application has been moved by the petitioner in this matter after the writ petition was disposed off on 24.09.2010, directing the Board to conduct the necessary survey, and in the event of the petitioner being found eligible, the required relocation site would be allotted to the petitioner. It is now contended that despite the judgment having been rendered nearly two and a half years ago, the petitioner is yet to see the fruits of the litigation which concluded in his favour.

Counsel for the respondent states, on instructions, that all the documents filed by the petitioner in support of his claim are under the process of verification; and that said decision shall definitely be implemented within another three months from today. This statement of counsel for the respondent is accepted by the Court and the respondent shall remain bound by the same.

It is made clear that the Court has not issued any notice of

contempt which it would normally have issued, because of the aforesaid statement of the counsel for the respondent. Consequences of non-compliance of the aforesaid statement, which is now accepted by the Court, have also been made clear by this Court, to the respondents.

Under the circumstances, counsel for the petitioner/applicant does not press this application any further.

Consequently, the application stands disposed off in the above terms.

A copy of this order is also communicated to the Chief Executive Officer (CEO) of the Delhi Urban Shelter Improvement Board (DUSIB) for necessary compliance and to ensure that the petitioner is not obliged to approach this Court again.

Copy of this order be sent dasti to the learned counsel for the parties under the signatures of Court Master.

SUDERSHAN KUMAR MISRA, J

MAY 07, 2014

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W.P.(C) 6491/2010 page 2 of 2

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IN THE HIGH COURT OF DELHI AT NEW DELHI
51.

LPA 665/2010

S ELHANCE .....
Appellant
Through: Mr. H.K. Chaturvedi, Adv.

versus

STATE BANK OF INDIA .....
Respondent
Through: None

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

O R D E R
16.09.2010

Mr. H.K. Chaturvedi, learned counsel for the appellant, seeks leave of this Court to withdraw the appeal.
It is permitted to be withdrawn.

CHIEF JUSTICE

MANMOHAN, J
SEPTEMBER 16, 2010
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IN THE HIGH COURT OF DELHI AT NEW DELHI

24
W. P. (C) 6528/2010

SARDAR GURMUKH SINGH ..... Petitioner
Through: Mr. H.K. Chaturvedi, Advocate

versus

GOVT OF NCT OF DELHI and ANR ..... Respondents
Through: Ms. Ruchi Sindhwani with Ms. Bandana Shukla, Advocates

CORAM: JUSTICE S. MURALIDHAR

O R D E R
19.05.2011

1. In the counter affidavit of the GNCTD it is admitted that the Petitioner, a 1984 riot victim, has been paid enhanced compensation. It is however stated that the GNCTD does not have a policy of allotment of flats to the riot victims as ?it is the subject matter of Slum and JJ Department.?

2. Learned counsel for the Petitioner states that in light of the above stand of the GNCTD, the Petitioner will approach the Slum and JJ Department, MCD or Delhi Urban Shelter Improvement Board as the case may be and seek appropriate remedies as may be available to him in accordance with law.

3. The petition is disposed of. Order be given dasti to learned counsel for the parties.

S. MURALIDHAR, J
MAY 19, 2011
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 8342/2010

S ELHANCE ..... Petitioner

Through: Mr. H.K. Chaturvedi and Ms. Anjali Chaturvedi, Advs.

versus

STATE BANK OF INDIA ..... Respondent

Through: Mr. Rajiv Kapur and Ms. Vatsala Rai, Advs.

CORAM:

HON?BLE MR. JUSTICE SURESH KAIT

O R D E R

14.09.2012

Arguments heard.

Reserved for judgment.

SURESH KAIT, J

SEPTEMBER 14, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

17.10.2011

Present: Ms. Prerna Mehta, proxy counsel for the petitioner.

Mr.H.K. Chaturvedi and Mr. Jai Bansal, Advocates for the respondent.

TR.P.(C) No. 54/2010

List along with connected case being CM (M) No. 1069/2010

on Renotify on 20.12.2011.

INDERMEET KAUR, J

OCTOBER 17, 2011

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 723/2010

RAM GOPAL ..... Petitioner

Through : None.

versus

MOHAN KUMAR AGGARWAL and ANR ..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

O R D E R

10.04.2013

1. None is present on behalf of the petitioner. The Special Leave Petition filed in the Supreme Court of India in the case of Sudama Singh

is still pending. In view of the fact that the SLP is pending in the Supreme Court of India, present contempt petition stands dismissed at this stage with liberty to the petitioner to file a fresh petition, if so advised, after the disposal of the said SLP before the Supreme Court of India.

G.S.SISTANI, J

APRIL 10, 2013

msr

$ 36.

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 246/2012

SUNITA SHARMA ..... Petitioner

Through : Mr H.K.Chaturvedi with petitioner in person.

versus

UOI AND ORS ..... Respondents

Through : Mr Jatan Singh for Union of India.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

24.01.2012

The learned counsel for the petitioner has taken instructions and so has the learned counsel for the respondents. It is agreed by them that the petitioner shall apply for voluntary retirement with immediate effect and she will not claim any reinstatement or backwages in future apart from the benefits already given and the benefits connected with voluntary retirement. The period from the date of suspension till the date of voluntary retirement will be computed for the benefits under voluntary retirement. This writ petition is disposed of in these terms. In view of these directions, the impugned order is set aside.

Dasti.

BADAR DURREZ AHMED, J

V.K. JAIN, J

JANUARY 24, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7022/2010 and C.M. Nos.20692/2010, 1590/2011

MOHD SALEEM ..... Petitioner

Through: Mr. S.K. Rai, Adv.

versus

SHYAM NARAYAN AND ORS ..... Respondents

Through: Mr. H.K. Chaturvedi, Adv. for R-1.

Ms. Rupinder Kaur, Adv. for R- 2 to 4.

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

O R D E R

24.01.2012

Today it has been agreed between the petitioner/employer and respondent no.1/workman that the petitioner shall pay to the respondent no.1/workman a sum of `1,17,000/- in full and final satisfaction of the award passed by the Labour Court which was under challenge in this writ petition. It has also been agreed that the said amount, the respondent no.1-workman shall be entitled to get out the amount of `2,71,286/- which the petitioner has already deposited with this Court in compliance of order dated 02.11.2010.

This writ petition accordingly stands disposed of as compromised in the aforesaid terms. Let the Registry release the payment of `1,17,000/- to the respondent no.1-workman and the entire balance amount be returned to the petitioner and let this entire exercise be completed within four weeks from today.

P.K. BHASIN, J

JANUARY 24, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 917/2011 and CM No.1924/2011 (for stay)

SHANKAR PRASAD ..... Petitioner
Through: Mr. H.K. Chaturvedi, Adv.

Versus
DDA AND ORS ..... Respondent
Through: Mr. Arjun Pant, Adv. for DDA.
Mr. O.P. Saxena, Adv. for DUSIB.
AND

W.P.(C) 1839/2011 and CM No.3911/2011 (for stay)

MORBATI AND ORS ..... Petitioners
Through: Mr. H.K. Chaturvedi, Adv.

Versus
DDA AND ORS ..... Respondents
Through: Mr. Arjun Pant and Mr. V.K. Tandon, Advs. for DDA.
Mr. O.P. Saxena, Adv. for DUSIB.

AND

W.P.(C) 2943/2011 and CM No.6240/2011 (for stay)

MUNNA SINGH AND ORS ..... Petitioners
Through: Mr. H.K. Chaturvedi, Adv.

Versus
DDA AND ORS ..... Respondents
Through: Mr. Arjun Pant, Adv. for DDA.
Mr. O.P. Saxena, Adv. for DUSIB.
Ms. Sonia Arora, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R
26.08.2011

No time left.
List on 1st December, 2011.

RAJIV SAHAI ENDLAW, J
AUGUST 26, 2011
?gsr?
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CONT.CAS(C) 899/2013

RAM GOPAL ..... Petitioner

Through Mr.H.K.Chaturvedi, Advocate.

versus

MOHAN KUMAR AGGARWAL & ANR ..... Respondents

Through Mr.Parvinder Chauhan, Standing Counsel for DUSIB with Mr.Nitin Jain, Advocate.
Mr.Ajjay Aroraa with Mr.Kapil Dutta, Advocates for MCD.
Mr.Shatrajit Banerji, Advocate for GNCTD.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R

% 09.05.2017

Learned counsel for respondent No.3-DUSIB has filed a status report dated 28th February, 2017. Along with the said report, it has enclosed a speaking order dated 11th November, 2016, whereby the petitioner's claim for alternative accommodation has been rejected.

Learned counsel for the petitioner wishes to challenge the order dated 11th November, 2016.

Consequently, the present contempt petition is closed and the notices issued are discharged. The petitioner is given liberty to challenge the order dated 11th November, 2016 in accordance with law.

MANMOHAN, J

MAY 09, 2017/KA

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2758/2013 and C.M. APPL. No. 2587/2015

BRAHM SINGH ..... Petitioner

Through: Mr.H.K. Chaturvedi, Adv.

versus

MANAGEMENT, M/S THE HINDUSTAN TIMES LTD. and ANR.

..... Respondents

Through: Mr.Nakul Sachdeva, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

O R D E R

13.02.2015

This is a petition under Articles 226/227 of the Constitution of India for modification of award dated 23.01.2012 in ID No.207/10/2005 passed by learned Presiding Officer, Industrial Tribunal, Karkardooma Courts, Delhi.

In the said award, the learned Presiding Officer observed that the workmen/claimants (except 43 workmen/claimants, who have settled their disputes under Section 18(1) of the Industrial Disputes Act) are entitled to the relief of treating them in continuity of service under the terms and conditions of service as before their alleged termination w.e.f. 03.10.2004. It was also observed that they will not be entitled to any notice pay or compensation under Section 25 FF of Industrial Disputes Act and the said notice pay/compensation, if any, received by them, will have to be refunded by them. It was directed that the management of M/s. Hindustan Times Ltd. will reinstate 272 workmen, treat them in continuity of service under the terms and conditions of service as before their alleged termination i.e. 03.10.2004.

Learned counsel for the parties submit that the parties have amicably settled the matter and a joint application under Order XXIII Rule 3 read with Section 151 CPC has been filed. It is stated that the Memorandum of Settlement dated 22.01.2015 was executed and the respondent No.1/management agreed to pay an ex-gratia sum of Rs.2 lakhs to the petitioner/Braham Singh towards full and final settlement of all his claims/disputes/demands. Settlement deed has been annexed as Annexure A to the application. It is also stated that the petitioner has already received the settled amount of Rs.2 lakhs vide cheque No.015034 dated 22.01.2015 drawn on Kotak Mahindra Bank vide receipt which is attached at Page 316 of the paper book.

Learned counsel for the petitioner submits that in terms of the settlement, the petitioner does not want to pursue the present petition and seeks permission to withdraw the same.

In view of the submission made by learned counsel for the parties, the application under Order XXIII Rule 3 CPC is allowed.

In terms of the memorandum of settlement dated 22.01.2015 (Annexure-A) and the joint application under Order XXIII Rule 3 CPC, the petition stands disposed of.

The next date of hearing i.e. 09.03.2015 stands cancelled.

V.P.VAISH, J

FEBRUARY 13, 2015

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

Date of decision: 23rd September, 2011

\+ **W.P.(C) 7021/2011**

% **SITARE & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 917/2011**

% **SHANKAR PRASAD** **….. Petitioner**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.

AND

\+ **W.P.(C) 1839/2011**

% **MORBATI & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 2943/2011**

% **MUNNA SINGH & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary

2. To be referred to the reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.7021/2011 has come up for consideration for the first time today. The six petitioners claim to have earlier been residents, since prior to the year 1994, of Jhuggi Jhopri Cluster (JJC) in Jasola Village where demolition was carried out on 09.06.2009. They claim to be entitled to re-location in accordance with the Policy of the respondent No.2 Govt. of NCT of Delhi (GNCD). This petition has been filed seeking mandamus therefor.

2. The land underneath the said JJC of which the petitioners claim to have been earlier resident of is stated to belong to respondent No.1 DDA. The Delhi Urban Shelter Improvement Board (DUSIB) (wrongly mentioned as Delhi Urban Centre Improvement Board in the memo of parties) which is vested with the power to carry out the survey and determine the eligibility for re-location in accordance with the Policy aforesaid has been impleaded as respondent No.3.

3. The counsel for the respondent No.3 DUSIB appearing on advance notice has stated that though DUSIB carries out the survey and determines the eligibility on receiving reference from the agency owning the land underneath the JJC but the respondent No.1 DDA has a separate Policy for rehabilitation / re-location and the respondent No.1 DDA itself carries out the survey / determination of eligibility also.

4. The counsel for the respondent No.1 DDA also appearing on advance notice however denies that the respondent No.1 DDA has any separate Policy or separate mechanism for carrying out the survey / determining the eligibility and contends that it is also covered by the policies in this regard of the respondent No.2 GNCTD. He also refers to several other petitions where this Court has directed the DUSIB to carry out survey / determine eligibility qua Jhuggi Jhopri Dwellers (JJD) on respondent No.1 DDA's land also.

5. Undoubtedly, in the past in other matters no such plea has been taken of respondent No.3 DUSIB being not required to or empowered to carry out

the survey / determine eligibility for re-location of squatters on DDA land and this Court has issued several orders for such survey / determination.

6. Need is not felt to issue formal notice of the petition or to call for affidavits / replies inasmuch as no mandamus as sought of re-habilitation / re-location of the petitioners can be issued unless the entitlement of the petitioners is determined by respondent No.3 DUSIB and which has not been done till now. The only direction to be thus made in this petition, since the petitioners have already been dispossessed, is of the eligibility if any of the petitioners to be determined.

7. The counsel for the petitioners at this stage states that he has on behalf of certain other erstwhile residents of the same JJC, also filed W.P.(C) Nos.917/2011, 1839/2011 & 2943/2011 of which notices have been issued and which are listed next on 01.12.2011. On request of the counsels, the files of the said W.P.(C) Nos.917/2011, 1839/2011 & 2943/2011 also have been requisitioned from the Registry and the next date of 01.12.2011 therein is cancelled and the same are also taken up for hearing.

8. A counter affidavit of the department of Urban Development, GNCTD is found to be filed in W.P.(C) Nos.917/2011 & 1839/2011. It is stated therein that the respondent No.3 DUSIB has been nominated as the nodal agency for implementation of the Scheme for re-location / re-habilitation of JJC from the lands belonging to MCD and Delhi Government and its departments / agencies and that in case of Central Government / agencies like Railways, DDA, L&DO, Delhi Cantonment Board, NDMC they are free to carryout the re-location / re-habilitation by themselves as per the Policy of the Delhi Government or may entrust the job to respondent No.3 DUSIB.

9. I am of the opinion that once the Policy of re-location / re-habilitation is of the respondent No.2 GNCTD, no distinction can be made between JJDs over land belonging to MCD and the JJDs over land belonging to respondent No.1 DDA. Since this Court has in the past issued directions to respondent No.3 DUSIB for determination of eligibility of JJDs on land of respondent No.1 DDA also, no reason is found for not issuing similar order in these four petitions also.

10. The petitions are disposed of with the following directions:

(i) The agency owning the land underneath the JJC at Jasola, demolition action whereat was carried out on 09.06.2009, whether DDA or otherwise, is deemed to have made reference to the respondent No.3 DUSIB for determining the eligibility of the petitioners in all the four petitioners for re-location / re-habilitation in accordance with the Policy of the respondent No.2 GNCTD;

(ii) The respondent No.3 DUSIB to accordingly so determine the eligibility of the petitioners;

(iii) The petitioners to appear before the respondent No.3 DUSIB along with all their documents in this regard, in the first instance on 20.10.2011 and thereafter on such further dates as may be necessary;

(iv) The respondent No.3 DUSIB to make endeavour to complete

the enquiry / determination within one year thereof;

(v) The department of Food & Civil Supplies and other concerned departments from whom respondent No.3 DUSIB may need to verify to determine the eligibility of the petitioners, are directed to supply all information sought to respondent No.3 DUSIB and to render other assistance if any sought;

(vi) If the petitioners or any of them are so found eligible, they be re-located / re-habilitated in accordance with the Policy. However, the petitioners or such of them who are not found eligible, if not found eligible, shall have remedies in law.

The petitions are disposed of. No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

SEPTEMBER 23, 2011
'gsr'

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2948/2011

AWADH SINGH and ORS. ..... Petitioners

Through: Mr. H.K. Chaturvedi and Ms. Anjali Chaturvedi, Advocates.

versus

SHEELA OVERSEAS PVT.LTD. ..... Respondent

Through: Mr. Gulshan Chawla and Mr. Brajesh Kumar Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

23.04.2013

The petitioner workmen have preferred the present writ petition to assail the relief granted by the Labour Court in the impugned award dated 23.11.2010 passed in I.D. No.673/06/05, whereby the Labour Court has held that the termination of the petitioner workmen?s services was illegal and not in compliance with Section 25-F of the Industrial Disputes Act, 1947

and has proceeded to award compensation to each one of them (four in number) in lieu of back wages and reinstatement. The petitioners are aggrieved by the quantification of the compensation granted to each of the petitioners. Otherwise, the award is not assailed by the petitioners.

The respondent has opposed the writ petition by submitting that the

award is sketchy, insofar as the treatment of the cases of each of the workmen is concerned. The case of the respondent was that only respondents No.1 and 2, i.e., Sh. Awadh Singh and Sh. Rajveer Singh were the employees of the respondent, whereas the other two, namely Sh.Dharambeer Singh (since deceased) and Smt. Asha Devi were not the employees of the respondent. Other pleas were also taken by the respondents. The respondent submits that in the impugned award, the findings that Sh. Dharambeer Singh (since deceased) and Smt. Asha Devi were employees of the respondent, are not premised on cogent evidence.

Learned counsel for the respondent further submits that the respondent did not assail the impugned award, considering the amount of compensation awarded, as the respondent found it more cost effective to pay the compensation than to file a writ petition to assail the award. However, if the compensation is to be revised upwards, the respondents are entitled to assail the award and to point out loopholes therein, while defending the present petition.

A perusal of the impugned award shows that the same does not discuss the complete evidence and the defence of the respondent. The award leaves much to be desired. It is, therefore, agreed between the parties that the impugned award be quashed and set aside and the matter be remanded back to the concerned Labour Court for re-adjudication on all issues.

Accordingly, the impugned award is quashed and set aide, and the matter is remanded back to the concerned Labour Court. The Labour Court shall proceed to hear the submission of the parties on the basis of evidence on record and pass a fresh award after considering all the pleas of the parties. Since the matter has been pending for quite some time, the Labour Court is directed to dispose of the reference by passing a fresh reasoned award within the next six months. The parties shall appear before the concerned Labour Court on 20.05.2013.

The Lower Court Record be sent back forthwith along with a copy of this order.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

APRIL 23, 2013

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

Date of decision: 23rd September, 2011

\+ **W.P.(C) 7021/2011**

% **SITARE & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 917/2011**

% **SHANKAR PRASAD** **….. Petitioner**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.

AND

\+ **W.P.(C) 1839/2011**

% **MORBATI & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 2943/2011**

% **MUNNA SINGH & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary

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3. Whether the judgment should be reported in the Digest? Not necessary

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5. Undoubtedly, in the past in other matters no such plea has been taken of respondent No.3 DUSIB being not required to or empowered to carry out

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(ii) The respondent No.3 DUSIB to accordingly so determine the eligibility of the petitioners;

(iii) The petitioners to appear before the respondent No.3 DUSIB along with all their documents in this regard, in the first instance on 20.10.2011 and thereafter on such further dates as may be necessary;

(iv) The respondent No.3 DUSIB to make endeavour to complete

the enquiry / determination within one year thereof;

(v) The department of Food & Civil Supplies and other concerned departments from whom respondent No.3 DUSIB may need to verify to determine the eligibility of the petitioners, are directed to supply all information sought to respondent No.3 DUSIB and to render other assistance if any sought;

(vi) If the petitioners or any of them are so found eligible, they be re-located / re-habilitated in accordance with the Policy. However, the petitioners or such of them who are not found eligible, if not found eligible, shall have remedies in law.

The petitions are disposed of. No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

SEPTEMBER 23, 2011
'gsr'

IN THE HIGH COURT OF DELHI AT NEW DELHI
47
W.P. (C) 2818/2011

ASHWANI KUMAR SEHGAL ..... Petitioner
Through Ms. Sonia Mathur, Advocate

versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent
Through Ms. Mansi Gupta, Advocate

CORAM: JUSTICE S. MURALIDHAR

O R D E R
02.05.2011

1. Notice. Ms. Mansi Gupta, learned counsel accepts notice for the Respondent.

2. With the consent of learned counsel for the parties, the writ petition is finally heard.

3. The Petitioner is seeking a direction to quash the impugned order dated 20th September 2010 passed by the Assistant Commissioner, Central Zone, Municipal Corporation of Delhi (?MCD?).

4. The Petitioner had earlier filed W.P. (C) No. 3716 of 2010 for a direction to the MCD to allot the Petitioner a Public Call Office (?PCO?) booth under the handicapped category. The said petition was disposed of by an order dated 5th July 2010 passed in the presence of learned counsel for the MCD. The order noted the fact that the Petitioner had not retained a copy of the application made by him in 2005. It noted the contention of learned counsel for the MCD that the Petitioner was required to apply under the National Vending Policy, 2007 (?NVP 2007?). The order further recorded the contention of learned counsel for the Petitioner that save for the time element, it made no difference whether the Petitioner applies afresh or his earlier application of 2005 is considered. After noting the above contention in para 5 the Court came to the following conclusion:

?5. In the aforesaid circumstances, it is not relevant as to whether the Petitioner had applied in the year 2005 or not inasmuch as the case of the Petitioner in any case has to be dealt with as per the policy of the year 2007. The apprehension of the Petitioner of delay can be allayed by directing the Respondent to deal with the application of the Petitioner in a time-bound manner.?

5. Consequently, it was directed that ?if the Petitioner applies afresh to the Respondent, the Respondent shall take a decision with respect to the application of the Petitioner?.

6. It is stated that a fresh application was made by the Petitioner for allotment of a PCO booth under handicapped category on 26th July 2010. However, this was again rejected by the impugned order dated 20th September 2010. The Petitioner preferred a contempt petition, Cont. Cas (C) No. 806 of 2010 which was disposed of by an order 23rd February 2011 granting the Petitioner the liberty to challenge the order dated 23rd February 2011. Thereafter, the present petition was filed.

7. By the impugned order dated 20th September 2010 the MCD rejected the Petitioner?s fresh application, inter alia, on the following grounds:
?4. And whereas, for consideration of your application under handicapped quota, you should have applied in the CLandEC under handicapped category before implementation of National Vending Policy 2007, i.e. 16th August 2007 which has not been done by you.

5. And whereas, if you had applied in the Zonal Office before inviting the application under National Vending Policy 2007, under handicapped category, you should have got priority number which has not been got by you. Hence, you were required to apply afresh under National Vending Policy 2007 but you did not.

Keeping in view the above mentioned facts, it is clear that your candidature is not covered under either of eligibilities mentioned above and MCD has no other category under which your application may be considered. Therefore, your application cannot be treated at par with those who have applied under the National Vending Policy 2007 during the stipulated period. Hence no allotment can be made under any of the provisions of National Vending Policy 2007.?

8. This Court has heard the submission of learned counsel for the parties.

9. The grounds on which the Petitioner?s fresh application has been rejected are unsustainable in law in light of the Court?s previous order dated 5th July 2010, portions of which have been extracted hereinabove. The MCD was fully aware that the Petitioner?s original application was made in 2005 itself. The Petitioner?s file has been misplaced by the MCD. Although the MCD had contended that the Petitioner was required to apply before the implementation of the NVP 2007 and again afresh after announcement of the NVP 2007, this Court directed the MCD that his fresh application be considered under the NVP 2007 under the handicapped category. This was after noting the contention of the Petitioner and holding that ?it is not relevant as to whether the Petitioner had applied in the year 2005 or not since in any case his case had to be dealt with as per the policy of the year 2007.? Thus, the impugned order overlooks the previous order of this Court. Also, with the MCD having misplaced the file of the Petitioner it was unfair on its part to require the Petitioner to provide it with the priority number. This reason was already known to MCD when this Court passed the earlier order dated 5th July 2007. It could not have been again used to reject the Petitioner?s fresh application.

10. Learned counsel for the Petitioner referred to certain notings on file of the MCD in relation to the case of one Mr. Ramesh Chander, accessed by the

Petitioner under the Right to Information Act, 2005. Apparently in that case the MCD had agreed that under the NVP 2007 there was a relaxation granted to a physically handicapped person who had earlier applied and was not required to apply afresh under NVP 2007. In any event, after this Court?s earlier order dated 5th July 2010 there appears to be no justification in rejecting the Petitioner?s claim on the ground that he did not apply afresh under NVP 2007.

11. This Court is of the view that the reasons in the impugned order dated 20th September 2010 of the MCD for rejection of the Petitioner?s fresh application are untenable in law. Consequently it is directed that MCD shall treat the Petitioner?s case as falling under the handicapped category and take a decision for allotment of a PCO booth in terms of the NVP 2007 within two weeks from today. The decision will be communicated to the Petitioner within one week thereafter. If the Petitioner is aggrieved by such decision, it will be open to the Petitioner to challenge it in accordance with law.

12. The petition and the pending application are disposed of. Order be given dasti to learned counsel for the parties.

S. MURALIDHAR, J
MAY 2, 2011
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W.P. (C) 2818/2011 Page 1 of 6

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 246/2012

SUNITA SHARMA ..... Petitioner

Through : Mr H.K.Chaturvedi with petitioner in person.

versus

UOI AND ORS ..... Respondents

Through : Mr Jatan Singh for Union of India.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

24.01.2012

The learned counsel for the petitioner has taken instructions and so has the learned counsel for the respondents. It is agreed by them that the petitioner shall apply for voluntary retirement with immediate effect and she will not claim any reinstatement or backwages in future apart from the benefits already given and the benefits connected with voluntary retirement. The period from the date of suspension till the date of voluntary retirement will be computed for the benefits under voluntary retirement. This writ petition is disposed of in these terms. In view of these directions, the impugned order is set aside.

Dasti.

BADAR DURREZ AHMED, J

V.K. JAIN, J

JANUARY 24, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5826/2011

SUNDER SINGH

..... Petitioner

Through: Mr. H.K.Chaturvedi, Advocate

versus

BIRLA TRANS ASIA CARPETS LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

03.04.2013

Despite service, none appears for the respondent. In this view, I have to proceed with the petition in the absence of the respondent.

The petitioner has assailed the Award dated 03.04.2007 passed by the Labour Court, Fast Track, XXI, Karkardooma Courts, Delhi, in I.D. No. 61/06/98 whereby the said Court has decided the reference made to it by the appropriate Government with regard to the termination of the petitioner. The petitioner had been employed as a Driver with M/s Trans Asia Carpets Ltd., the predecessor-in-interest of M/s Birla Trans Asia Carpets Ltd. ? the respondent, since 27.06.1987. It appears that on 09.04.1997, the petitioner was involved in an accident while driving the car to Banaras. Thereafter, he was charge-sheeted on 29.05.1997 and he was suspended from service with effect from 01.06.1997. His services were terminated with effect from 16.9.1997. The petitioner then raised the industrial dispute as aforesaid.

Learned Industrial Adjudicator held that the Management failed to hold a proper inquiry. The Management also did not seek to establish the charge against the petitioner before the Labour Court. Consequently, the termination of the petitioner?s service was held to be illegal. However, the Labour Court, did not consider it appropriate to direct the petitioner?s reinstatement in view of the bitter relationship between the parties and instead awarded compensation of Rs. 75,000/- in lieu of reinstatement, back wages and other consequential benefits.

Learned counsel for the petitioner submits that the present petition has been preferred upon the petitioner approaching the legal aid and that is stated to be the reason for the delay in filing the present petition. As noticed above, the impugned Award is dated 03.04.2007 and the present petition has been preferred only in the year 2011.

Mr. Chaturvedi submits that the petitioner is not seeking to assail the Award insofar as it directs payment of compensation instead of directing reinstatement of the petitioner. This is also for the reason that the petitioner attained the age of superannuation in the year 2005 i.e. during the pendency of the reference before the Labour Court. He, however, submits that the compensation awarded in inadequate. He submits that the amount of gratuity that the petitioner would have been entitled to, if computed on the basis of the last drawn wages would have been in the range of Rs. 50,000/- on the date of his superannuation in the year 2005. Had the gratuity been computed on the basis of minimum wages, on the date of his superannuation, the same will be in the range of Rs. 75,000/-. He submits that the petitioner had about 8 years of service left before the date of his superannuation and consequently damages as computed do not adequately compensate the petitioner.

The last drawn wages by the petitioner was Rs. 3,750/- per month.

This is the wage that he was drawing in the year 1997 when his services were illegally terminated. The petitioner had 8 years of service at the time of his termination.

Considering all the aforesaid aspects and after taking into consideration the petitioner?s submission that his gratuity for 18 years of service itself would be in the range of Rs. 50,000/- to Rs. 75,000/-, I consider it appropriate to enhance the compensation awarded to the petitioner from Rs. 75,000/- to Rs. 2 lacs. In my view, the aforesaid amount would adequately compensate the petitioner and at the same time is reasonable considering that the petitioner had about 8 years of service left and he would have been entitled to gratuity in the range of Rs. 50,000/- to Rs. 75,000/- on the date of his superannuation. In case the respondent does not make the payment within four weeks of the certified copy of this order being served upon them, the petitioner shall also be entitled to interest @ 9% per annum on the aforesaid amount of Rs. 2 lacs from the date of this order.

The petition stands disposed of in the above terms.

VIPIN SANGHI, J

APRIL 03, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 8608/2011

RAM NIWAS ..... Petitioner

Through: Mr. H.K. Chaturvedi, Adv.

Versus

UOI AND ORS ..... Respondents

Through: Mr. Himanshu Bajaj, Adv. for R-1.

Ms. Zubeda Begum and Ms. Sana Ansari, Advocates for R-2 to 4.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

09.12.2011

CM No.19449/2011 (for exemption)

Allowed, subject to just exceptions.

W.P.(C) No.8608/2011

1. A departmental inquiry was held against the petitioner on the ground of unauthorized absence. It was found that the petitioner was unauthorisedly absent on the following dates.

1.

29.10.90 to 31.10.90

DD No.15 dt.21.11.90

FRRO Line

For 3 days

2.

1.11.90 to 21.12.90

DD No.11 dt.6.12.90

DD No.41 dt.21.12.90

For 52 days

3.

4.1.91 to 6.1.91

DD No.7 dt.6.1.91

DD No.17 dt.6.1.91

For 3 days

4.

11.2.91 to 7.4.91

DD No.12 dt.20.3.91

DD No.22 dt.8.4.91

For 56 days

5.

19.5.91 to 31.5.91

DD No.11 dt.19.5.91

DD No.37 dt.31.5.91

For 12 days

W.P.(C) 8608/2011
Page 1 of 2

2. The petitioner did not participate in the inquiry which was held ex parte and the charges were proved and in consequence thereof dismissal of services was effected.

3. The petitioner was working as Constable in Delhi Police and his remaining unauthorisedly absent for long spells on a number of occasions, would be treated as serious misconduct and therefore, we do not agree with the contention of the learned counsel for the petitioner that the punishment is shockingly disproportionate. The petition is bereft of any merit; the same is dismissed.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

DECEMBER 09, 2011

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W.P.(C) 8608/2011
Page 2 of 2

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

Date of decision: 3rd December, 2015

\+ W.P.(C) 3912/2011

DTC ..... Petitioner

Through: Mr Sunil Kumar Ojha, Advocate

Versus

RAJENDER KUMAR ..... Respondent

Through: Mr H.K. Chaturvedi, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this writ petition under Article 226 r/w Article 227 of the Constitution of India, the petitioner seeks quashing/setting aside of the impugned award dated 9th December, 2009 in ID No. 251/08/92 passed by the Presiding Officer, Labour Court, KKD Courts, Delhi.

2. The respondent (hereinafter referred to as 'the workman') was working as a sweeper/cleaner with the petitioner/Delhi Transport Corporation (hereinafter referred to as 'Corporation') since April, 1983. His services were terminated vide letter dated 6th July, 1990. As such, an industrial dispute was raised by him which was referred by the Govt. of NCT of Delhi to Labour Court vide reference No. F.24(938)/92-Lab./12378-83 dated 30th April, 1992 with following terms of reference:-

> *"Whether the removal of Sh. Rajender Kumar from service by the management is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this respect?"*

3. The workman filed a statement of claim alleging *inter alia* that he was working as a sweeper cleaner. He was given a charge sheet dated 29th November, 1988 on the ground that he was availing leave without wages. The workman replied the charges and explained that he submitted leave applications due to his own sickness and that of his son and wife during November, 1987 to October, 1988. Inquiry was held and the findings were in favour of the workman but management rejected the findings of the inquiry officer. Without giving any reasons, *de novo* enquiry was ordered. Thus, the second inquiry is illegal which held the workman guilty of the charges. He was removed from service by letter dated 6th July, 1990.

4. Management contested the claim by stating that workman was not showing any interest in work. He availed 118 days leave without pay. He submitted medical certificate for 41 days only. It was admitted that second inquiry was conducted since first inquiry was not satisfactory. The inquiry officer had afforded full opportunities to the workman. Workman accepted the charges without any pressure. The order of removal is justified.

5. On the basis of above reference, the Labour Court-I in ID 183/92, passed an award dated 25th May, 1999 holding the termination to be illegal and that the workman was entitled for reinstatement with full back wages.

6. The award was challenged by the management by filing WP No.4030/2001. Vide order dated 10.11.2004, this Court set aside the award and remanded the matter back to the Labour Court to proceed in accordance with law.

7. The workman filed WP No. 7620/2000 for implementation of the award in ID No.183/92 and for initiating penal action against the management. This Court vide order dated 3rd February, 2005, directed that the workman be

reinstated in terms of the award.

8. CMP No.6143/05 was filed by the Corporation in aforesaid writ petition bearing WP No.7620/2000 and the High Court vide order dated 3rd February, 2005 passed the following order:-

> "*Be that as it may, once the writ petition filed by the DTC against the award dated 25.05.1999, was remanded back for fresh adjudication, therefore, the order dated 03.02.2005, could not have been passed giving directions for the implementation of the same very award."*

9. Parties were directed to appear before the Labour Court on 25.05.2009 in terms of the order in WP No.4030/2001.

10. Pursuant to the directions given by the Court, the parties led their evidence and vide impugned award dated 9th December, 2009, the management was directed to reinstate the workman with continuity of service in the same post by paying the workman a lump sum amount of Rs.50,000/- towards back wages.

11. Challenging this award, present writ petition has been filed.

12. Learned counsel for the petitioner submits that the workman remained absent from his duty without intimation/prior approval for 118 days during the period November, 1987 to October, 1988 which reflected his complete indifference and carelessness towards duty and his action amounted to misconduct within the meaning of paras 4 and 19 (h) & (m) of Standing Orders governing the conduct of the DTC employees. The reply submitted by the workman was not found to be satisfactory. As such, the disciplinary inquiry was conducted against him. The first inquiry report was submitted whereby the workman was let off, as such, *de novo* inquiry was conducted wherein the workman admitted having taken leave without pay due to his illness and illness of his children. He was found guilty in the second inquiry. Pursuant thereto after affording opportunity to the

workman of showing cause as to why he should not be removed from service of the Corporation, vide letter dated 6th July, 1990 he was removed from service. Counsel submits that mere making leave application does not tantamount to sanction of leave. Moreover, it was admitted by the workman that for a period of 37 days he did not submit any application for grant of leave. Reference was also made to his past conduct which was not found to be unblemished. As such there was no justification for directing the reinstatement of the workman along with lumpsum compensation amount towards back wages. Reliance was placed on ***DTC vs. Sardar Singh***, (2004) 7 SCC 574 and a judgment passed by this Court in WP No.3798/2011, ***Delhi Transport Corporation vs. Nain Singh*** on 20th October, 2015.

13. Rebutting the submission, learned counsel for the respondent submits that the first award was passed on 25th May, 1999 whereby the workman was ordered to be reinstated with full back wages. The workman applied for implementation of the award by filing writ petition No.7620/2000. This Court took into consideration the findings recorded by the Labour Court to the first inquiry conducted against the workman where it was recorded as under:-

> *"Besides in the findings of the 1st Enquiry Officer, Shri A.S. Bains, proved as Ex.MW1/8 by the claimant he has also taken the same view when he observed as under:-*
>
> > *"So the charges levelled against the D.E. that he availed leave without pay for 118 days, is not proved and established as the leave have been regularized and has been duly sanctioned. Clause 19(h) is not applicable to the D.E."*
>
> *It is a case of conduct of enquiry against an employee without misconduct. The enquiry as such is vitiated and so is the fate of the findings of the 2nd Enquiry Officer who found the claimant guilty of the charges on which basis the management removed the claimant from service."*

Relying upon these findings, it was observed that the leave without pay for 118 days was sanctioned and regularized by the management. If the leave was

sanctioned and regularized in accordance with rules by the competent authority then it would not have the element of misconduct and, therefore, the case of ***Sardar Singh***(supra) was distinguished. Counsel further submits that in the first inquiry, the workman was exonerated of the charges levelled against him, there was no occasion to have *de novo* fresh inquiry. Moreover, as per the charge sheet itself, there is no allegation of the workman remaining absent from duty. Referring to the scope of interference by this Court while exercising writ jurisdiction, it is submitted that there is no warrant for interference with the findings of the Labour Court and, as such, the petition deserves to be dismissed.

14. In response, counsel for the petitioner submits that the workman cannot get any benefit from the observations made in the Writ Petition No.7620/2000 filed by the workman for implementation of the earlier award since this order was set aside pursuant to the review application filed by the petitioner/Corporation.

15. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record. It is not in dispute that after the charge sheet dated 29th November, 1988 was served upon the workman for availing leave without wages during the period November, 1987 to October, 1988, a domestic inquiry was conducted against him and the findings were given in favour of the workman. None of the parties have placed on record the findings of the first inquiry. However, as stated above, in writ petition No.7620/2000, the findings of the first inquiry officer which were referred by the Labour Court while passing the award dated 25th May, 1999 were reproduced which reflected that the leave for the period 118 days was regularized and was duly sanctioned. That being so, clause 19(h) of the standing order was not applicable. No reason has been assigned by the petitioner/Corporation as to why this inquiry report was not accepted and what was the reason for conducting a *de novo* inquiry which gave a finding against the workman. That is not the end of the

matter. After the matter was remanded back by this Court to the Labour Court setting aside the earlier award dated 25th May, 1999, both the parties led their evidence. The charge against the workman was that of availing 118 days leave without pay and thereby showing lack of interest in the working of the Corporation. However, the evidence reflected that the workman had submitted medical certificates for 41 days. Except for 37 days for which no leave application was moved, for the balance period, leave was taken for different reasons. In view of this evidence coming on record, the Labour Court opined that the order of penalty of removal from service passed by the management is not justified for the following reasons:-

> *a) The explanation given by the workman that he was suffering and was made to take leave is proved by the very documents of leave application and copies of medical certificates produced by the management.*
>
> *b) The period of leave for which leave applications were submitted is covering the period of accusation in the charge sheet.*
>
> *c) The workman cannot be said to have availed intentional leave so as to exhibit lack of interest for the entire period of 118 days as contained in the charges, since the workman had submitted leave applications for a part period.*
>
> *d) The evidence reveals that the management could only establish that the workman had not submitted the leave applications for 37 days. In the present case, this is not precise charge to impute lack of interest on the part of the workman in the duties of the corporation.*
>
> *e) The charge as it is framed is not proved to the hilt except for a period of 37 days.*
>
> *f) The documents and the explanation given by the workman to the charge sheet and that of the contention of the workman in the rebuttal evidence are seemingly probable that he was suffering from ailment which cannot be held as showing lack of interest.*
>
> *h) The rebuttal evidence of the workman that he had never lost interest in the working of the corporation is to be reckoned in view of the above which shows that the charges as framed by the management are not proved completely before this Court. Hence, for the aforesaid reasons, I find that the order of*

removal is not justified and the workman is entitled for reinstatement.

16. No fault can be found with these findings of the Labour Court. As per the report of first inquiry officer, the leave was regularized and was duly sanctioned, that being so, it cannot be said that clause 19(h) is applicable. Under the circumstances, ***Sardar Singh's*** case is distinguishable. The petitioner does not get any help from ***Nain Singh's*** case where on the peculiar facts and circumstances of the case, the termination was held to be legal. Moreover, keeping in view the fact that the charge against the workman remain confined to not submitting leave application for 37 days coupled with the past conduct showing obtaining excessive leave during the year 1986 for which he suffered minor penalty, instead of awarding back wages, the workman was granted only a lump sum compensation of Rs.50,000/- towards back wages. The aforesaid finding cannot be said to be perverse which warrants interference by this Court.

17. Moreover, this Court in exercise of writ jurisdiction would interfere with the orders of the Tribunals/Authorities under its jurisdiction only on finding the order to be in excess of jurisdiction vested in such Tribunal or Authority or in failure to exercise jurisdiction. The writ jurisdiction is not intended to be the same as an appellate jurisdiction. (See ***Veerappa Pillai v. Raman and Raman Ltd.,*** AIR 1952 SC 192; ***Syed Yakoob v. K.S. Radhakrishnan,*** AIR 1964 SC 477 and ***Sadhu Ram v. Delhi Transport Corporation***, AIR 1984 SC 1467). Ordinarily, an order of the Tribunal/Authority if within its power and if based on reasons would not be interfered merely because this Court may have formed a different opinion.

18. The Hon'ble Supreme Court in ***Ashok Kumar v. Sita Ram,*** (2001) 4 SCC 478 held as under:-

> *"The question that remains to be considered is whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution was justified in setting aside the*

order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter, there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the statutory authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction, the High Court is not expected to interfere with the final order passed by the statutory authority unless the order suffers from manifest error and if it is allowed to stand, it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

19. In the case of Iswarlal ***Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd. and Anr.,*** (2004) 6 SCC 434, it was held as under:

"15. We find the judgment and award of the labour court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power Under Article 227 of the Constitution of India to annul the findings of the labour court in its award as it is well settled law that the High Court cannot exercise its power Under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the Appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice."

20. In the instant case, it cannot be said that the impugned award suffers from any perversity or suffers from any manifest error. That being so, there is no warrant for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution. That being so, the petition is dismissed, however, with no order as to costs.

(SUNITA GUPTA)
JUDGE

DECEMBER 03, 2015/*rs*

IN THE HIGH COURT OF DELHI AT NEW DELHI

#25

W. P. (C) 6993/2011

SUNDER LAL ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

MANAGEMENT OF NDPL ..... Respondent

Through: Mr. Sujit K. Singh, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R

23.09.2011

1. The workman has challenged an Award dated 28th April 2010 passed by the Labour Court in ID No. 273 of 1999 declining the worker?s claim against the dismissal of his services by the Respondent management.

2. Mr. Chaturvedi, learned counsel for the Petitioner has relied on the judgment of the Supreme Court in Cooper Engineering Ltd. v. P. P. Mundhe AIR 1975 SC 1900 and submitted that the Labour Court ought to have framed an issued regarding the disciplinary enquiry: whether it was validly conducted and whether it was in violation of the principles of natural justice. He submitted that without framing and answering the said issue, the Labour Court has passed the final award dismissing the Petitioner?s claim.

3. This Court finds that the Labour Court had initially framed issues on 18th January 2002 and no issue was framed on the question of the fairness of the enquiry. Learned counsel for the management has rightly pointed out that the workman, neither in the statement of claim nor in the affidavit of evidence, raised any issue regarding the fairness of the enquiry. The workman also did not challenge the order dated 18th January 2002. In the circumstances, the workman cannot now be heard to urge that the Labour Court ought to have framed such an issue and decide it before dealing with the dispute on merits.

4. As regards the Award on merits, the Labour Court examined the evidence and came to the conclusion that the workman had absented himself from duty for a long period without any intimation to the management. Consequently, there was no question of illegal termination of his services as alleged by him.

5. Learned counsel for the Petitioner has not been able to persuade this Court to hold that the Labour Court has committed any illegality either in its analysis of the evidence or the conclusions reached by it.

6. There is no merit in this writ petition, and it is dismissed as such.

S. MURALIDHAR, J

SEPTEMBER 23, 2011

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W. P. (C) No. 6993/2011 Page 1 of 2

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 214/2013 and CM No. 5780/2013

RAMESH CHANDER MALHOTRA ..... Appellant

Through: Mr H.K. Chaturvedi, Ms Anjali Chaturvedi and Mohd. Aqil Saifi, Advocates

versus

MOTHER DAIRY ..... Respondent

Through: Mr Abhay Singh, Ms Veena Singh and

Ms Yasmin Zafar, Advocates

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

22.07.2013

We have heard the learned counsel for the parties. However, without going into the merits of the matter it has been agreed by the appellant, who is also present, that if he receives a sum of ` 25,000/- from the respondent then the matter would be treated as fully and finally settled. The learned counsel for the respondent has accepted this and, therefore, we close this appeal by directing that the respondent shall pay a sum of ` 25,000/- to the appellant within four weeks. This is by way of full and final settlement and once this payment is made, the appellant would have no further grievance with the respondent.

The appeal stands disposed off accordingly.

BADAR DURREZ AHMED, ACJ

VIBHU BAKHRU, J

JULY 22, 2013 / SU

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

\+ **W.P.(C) No.7383/2011**

% **13th August, 2013**

SHRI RAJENDRA WANCHOO ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate with Mr. Mohd. Aqil Saifi, Advocate.

versus

THE STATE TRADING CORPORATION OF INDIA LTD. AND ORS. ..... Respondents

Through: Mr. Ayushya Kumar, Advocate for respondent No.1.
Ms. Ritika Jhurani, Advocate for respondent Nos.2 and 3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner-Sh. Rajendra Wanchoo seeks implementation of the order dated 3.5.2011 passed by the Deputy Chief Commissioner for Persons with Disabilities. By the order dated 3.5.2011, the Deputy Chief Commissioner has directed that the post of Chief

General Manager (Personnel & Administration) (for short 'CGM (P&A)') be deemed to be identified for persons with disabilities. Petitioner is an orthopedically handicapped person having about 50% locomotor disability. Petitioner claims that since the post of CGM (P&A) has been identified for the persons with disabilities such as the petitioner, thus the petitioner be given appointment to the said post.

2. With respect to the post in question advertisement was issued by the respondent No.1/State Trading Corporation of India Ltd on 7.12.2010, 8.12.2010 and 9.12.2010 in different newspapers being 'Economic Times', 'Times of India' and 'Navbharat Times' respectively. Interviews were held on 18.5.2011 and the selected candidate Sh. S.K. Sharma assumed charge w.e.f. 21.6.2011. Sh. S.K. Sharma was initially working with a PSU from where he got himself relieved for being appointed to the post of CGM (P&A) with the respondent No.1.

3. The only issue in this case is whether Deputy Chief Commissioner acting under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act') can pass orders to treat a particular post as an identified post for appointment of a person with disabilities. The

relevant provisions of the Act are Sections 58, 59, 61, 62 and 63. These provisions read as under:-

"**58.Functions of the Chief Commissioner.**- The Chief Commissioner shall-
(a) coordinate the work of the Commissioners:
(b) monitor the utilisation of funds disbursed by the Central Government:
(c) take steps to safeguard the rights and facilities made available to persons with disabilities;
(d) submit reports to the Central Government on the implementation of the Act at such intervals as that Government may prescribe.

59.Chief commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.- Without prejudice to the provisions of sections 58 the Chief Commissioner may of his own motion on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-
(a) deprivation of rights of persons with disabilities ;
(b) non-implementation of laws rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate governments and the local authorities for the welfare and protection of rights or persons with disabilities,
and take up the matter with the appropriate authorities.

61.Powers of the Commissioner.- The Commissioner within the State shall-
(a) coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;
(b) monitor the utilisation of funds disbursed by the State Government;
(c) take steps to safeguard the rights and facilities made available to persons with disabilities;
(d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62.Commissioner to look into complaints with respect to matters

relating to deprivation of rights of persons with disabilities.- Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-
(a) deprivation of rights of persons with disabilities;
(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities,
and take up the matter with the appropriate authorities.

63.Authorities and officers to have certain powers of civil court.- (1) The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters namely:-
(a) summoning and enforcing the attendance of witnesses;
(b) requiring the discovery and production of any document;
(c) requisitioning any public record or copy thereof from any court of office;
(d) receiving evidence on affidavits; and
(e) issuing commissions for the examination of witnesses or documents.
(2) Every proceeding before the Chief Commissioner and Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

4. The issue is that whether powers of Chief Commissioner or Commissioner under Sections 59 and 62 read with Section 63 are such to empower the Chief Commissioner or the Commissioner to issue the mandates/injunctions.

5. This issue is no longer *res integra* and the Supreme Court in the recent judgment in the case of ***State Bank of Patiala and Ors. Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*** has held that the powers which a Chief Commissioner has are limited, and there is no power to pass injunction orders. Supreme Court in the judgment in the case of ***State Bank of Patiala (supra)*** relied upon an earlier judgment in the case of ***All India Indian Overseas Bank SC and ST Employees' Welfare Assn. Vs. Union of India (1996) 6 SCC 606*** and in which judgment it was held that Commissions which are constituted under the specific Acts do not have all the powers of a civil court unless the powers are so given under the Act. The relevant paras of the judgment in the case of ***State Bank of Patiala (supra)*** are paras 12 to 19 and the same read as under:-

> "12. Under the Rules, an officer of the Bank, shall retire on completion of 30 years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the Exit Policy Scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability.
>
> 13. Prima facie neither Section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on

completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17.11.2006; and that when an employee was retired in accordance with the regulations, no interim order can be issued to continue him in service beyond the age of retirement.

14. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

15. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:

> "58. (a) coordinate the work of the Commissioners;
>
> (b) monitor the utilisation of funds disbursed by the Central Government;
>
> (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
>
> (d) submit: reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe."

16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62.

17. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters:

> "63.(a) summoning and enforcing the attendance for witnesses;
>
> (b) requiring the discovery and production of any document;
>
> (c) requisitioning any public record or copy thereof from any court or officer;
>
> (d) receiving evidence on affidavits; and
>
> (e) issuing commissions for the examination of witnesses or documents."

Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.

18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Association v. Union of India 1996 (6) SCC 606 this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows:

> "It can be seen from a plain reading of Clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in Sub-clause (a) and an inquiry into a complaint referred to in Sub-clause (b) of Clause (5) of Article338 of the Constitution
>
> * * * *

> 10. .... All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary **or permanent**, do no inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution."
>
> 19. The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction."

6. Therefore, in view of the categorical ratio of the Supreme Court in the case of ***State Bank of Patiala (supra)*** I am of the opinion that there is no power in the Chief Commissioner acting under the Act to direct that a particular post (in this case CGM (P&A)) be treated as an identified post. At best the Chief Commissioner could have taken up the matter with the appropriate authority.

7. I may also note that the post in question has already been filled up way back on 21.6.2011. The successful candidate Sh. S.K. Sharma who joined the respondent No.1 after leaving his job with an earlier PSU has not been made a respondent in this writ petition. Surely, if the writ petition was allowed, Sh. S.K. Sharma's rights would have been affected but in spite of Sh. S.K. Sharma being a necessary party, he has not been impleaded in this writ petition. The writ petition is liable to fail on this ground also.

8. Another reason for declining the reliefs in the facts of the

present case is that the powers to be exercised under Article 226 of the Constitution of India are discretionary. Powers would not be exercised if by the time a person files a petition, the selection process is complete and the selected candidate assumes charge of this office. This writ petition was filed on 26.9.2011 when the selection process stood completed much earlier i.e when Sh. S.K. Sharma joined as CGM (P&A) with the respondent No.1 on 21.6.2011. I cannot disturb the rights which are created by appointment, more so of person who has left his earlier employment to join the respondent No.1.

9. Finally, it needs to be brought on record that respondent No.1 has passed an office order dated 24.6.2011 as per which the post of CGM (P&A) cannot be treated as an identified post for various reasons including that the job of General Manager (P&A) is not same as the job of CGM (P&A) and on which basis the Chief Commissioner had directed that there should be identification of the post of CGM (P&A) for appointment of persons with disabilities as per its identity with GM (P&A). The relevant portion of this order dated 24.6.2011 reads as under:-

> "(3) In STC, the post of GM (P&A0 does not exist at present. The function of Personnel/HR and Administration which are distinct in nature, are performed by the respective Joint GMs. The position of CGM (P&A) did not exist previously in the Corporation. The

functions of Personnel and Administration were clubbed at the CGM-level keeping in view the administrative requirements of both the divisions. In STC, the position of CGM (P&A) is that of a "Group Head" who would lead both the Personnel and Administration Divisions of the Corporation. Therefore, the post of CGM (P&A) cannot be considered comparable to the post of GM (P&A). However, in the future, as and when the post of Joint GM (Personnel) or joint GM (Administration) is filled by Direct Recruitment, the same would be considered as an identified post.

(4) In the Corporation, in group 'A', out of four reserve points, two persons (one person having low vision and the other having hearing disability) have been recruited in the scale of Assistant Managers. The backlog of two vacancies will be filled through Campus recruitment or through open advertisement as per requirement and decision of the Corporation.

In view of the above, the extant norms of Government of India are being expressly followed regarding reservations and concessions for Persons with Disability in Government service."

10. Therefore, looking at the issue from any manner as to lack of powers/jurisdiction in the Chief Commissioner to pass mandates/injunctions, the fact that the post of CGM (P&A) by its very nature cannot be an identified post for a person with disabilities, the fact that the appropriate Government has not deemed it fit to make the post of CGM (P&A) as an identified post, the fact that the post of GM (P&A) and the post of CGM(P&A) have separate responsibilities whereby they cannot be taken as one, hence I am of the opinion that the petitioner cannot succeed in seeking implementation of the order of the Chief Commissioner acting under the

Act.

11. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 13, 2013
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7275/2011

R.B.SINGH ..... Petitioner

Through: Mr.H.K.Chaturvedi, Advocate

versus

NORTHERN RAILWAY AND ORS ..... Respondents

Through: Mr. Amit Dubey, Advocate for respondent No. 1.

Mr.Rajiv Nanda, Additional Standing Counsel, GNCTD with Mr.Abhijeet and Mr.Aslam Khan, Advocates for respondent No. 2.

Mr.Sanjay Poddar, Senior Advocate with Ms.Minal Sehgal, Advocate and Mr.Harish Vats, Deputy Director for respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

02.02.2012

Learned senior counsel for the respondents, on instructions from Mr.Harish Vats, Deputy Director of respondent No. 3, states that upon the petitioner or similarly situated persons filling up the requisite application and depositing the requisite costs of `69,000/- to `70,000/-, they would be relocated at Bawana, Delhi simultaneous to their dispossession from the subject land and the allotment of the relocated flats would be of 25 sq.meters (approximately) per family/per eligible unit.

Learned senior counsel for the respondents volunteers to provide applications within a week to learned counsel for the petitioner to

expedite the process of relocation.

Learned counsel for the petitioner on instructions from the petitioner states that upon filling of the requisite application, the required payment would be made to the respondent within thirty days from the date of supply of demand letter.

Let both sides place on record an undertaking in the aforesaid terms within two weeks.

In the light of aforesaid, this petition stands disposed of while making it clear that if there is any default on the part of the petitioner or other similarly situated persons then the respondents would be at liberty to get them evicted from the subject land straightaway.

SUNIL GAUR, J

FEBRUARY 02, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 1438/2011

BAL KISHAN ANURAGI ..... Petitioner

Through : Mr H.K. Chaturvedi, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS ..... Respondents

Through : Mr Shailendra Bhardwaj, Adv. with

Ms A.S. Bhardwaj, Adv.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

O R D E R

30.03.2012

This writ petition is disposed of with the direction that in case the petitioner and his wife wish to visit their daughter Geetanjali in the ?ashram? they are welcome to visit their daughter and the institution shall not create any impediment in this regard. However, it will be open to Geetanjali as to whether she wishes to meet with and speak with the parents or not.

The writ petition stands disposed of.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

MARCH 30, 2012

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High Court of Delhi

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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	CM(M) 1241/2011 [DISPOSED OFF] Order(s) Judgement(s)	VIJAY KUMAR & ANR Vs. KANTA RANI Advocate : HK CHATURVEDI	Court No. : 26 DISPOSED OFF on 21/10/2011

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Search Result For Type :LPA No :993 year :2011" are : 1

S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	LPA 993/2011 [DISPOSED OFF] Order(s) Judgement(s)	RAKESH KUMAR Vs. MANAGEMENT OF BHAGINI NIVEDITA COLLEGE Advocate : HK CHATURVEDI	Court No. : 1 DISPOSED OFF on 30/11/2011

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 8488/2011

RAM KUMAR ..... Petitioner

Through : Mr. H.K. Chaturvedi, Adv.

versus

DTC ..... Respondent

Through :Mrs. Avnish Ahlawat and Ms. Tania Ahlawat, Advs. for respondent nos. 1 to 4

Ms. H. Hnun Puii, Adv. for respondent no. 5

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

O R D E R

10.09.2013

A.K. PATHAK, J.

SEPTEMBER 10, 2013

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

% Date of Decision: 14.05.2012

\+ **W.P.(C) No.1532/1999**

Devender Kumar ... Petitioner

Versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ankur Chhibar, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

1. The petitioner has sought quashing of order dated 27th February, 1998 passed by the SSFC dismissing the petitioner from service on the basis of alleged plea of pleading Guilty and to direct the respondents to reduce the punishment from dismissal to any other punishment as per the provision of the BSF Act.

2. Brief facts to comprehend the disputes are that the petitioner had joined the Border Security Force as a Constable in August, 1990. Subsequently, he was made to work as a constable driver at 151st Bn SHQ Siliguri. Thereafter, in January, 1998, the petitioner was temporarily attached to the 151 Bn, BSF, Rani Nagar.

3. As contended by the petitioner, on 28th January, 1998 a Sentry in the Camp had reported to the Head Constable K.B. Patel, that noise was coming from the nearby village. HC K.B. Patel, therefore, sent the petitioner along with other two Constables to visit the nearby village and find out the cause of the noise. On reaching the village, however, the petitioner contends that he was surrounded and attacked by some unknown persons. Subsequently, he managed to escape, when another party of officers was sent by the Commander, HC K.B. Patel to release him from the villagers.

4. However, on returning back from the village the Unit Commandant initiated disciplinary proceedings against the petitioner on the allegation that the petitioner had disobeyed the general orders, as he had quarreled with the villagers. Thereafter, as per the petitioner, he was detained in the Guardroom and at the same time, he was also placed under suspension by the Unit Commandant by order dated 2nd February, 1998. The petitioner was also ordered not to leave the premises without prior approval.

5. On 25th February, 1998 a charge sheet was issued charging the petitioner under Section 22-E of the BSF Act for neglecting to obey a general order and under Section 40 of the BSF Act for conduct that is

prejudicial to the good order and discipline of the force. The charge sheet dated 25th February, 1998 is reproduced as under:

APENDIX VI
(Rule 53 (2))
CHARGE SHEET

The accused No.90199019 Constable (Driver) Devinder Kumar Sector HQrs BSF Siliguri (attached with 151 Bn BSF) is charged with :-

1. BSF ACT 1968 SECTION 22 (e) BSF ACT 1968 SECTION 22 (e) NEGLECTING TO OBEY A GENERAL ORDER/

In that he,
at BOP Bhatpara under 151 Bn BSF on 28-01-98 at about 2000 hrs visited the house of Khusrruddin of village-Hadiya Para placed out of bound to all ranks vide BN Order No.Ops/Order/151/96/5868-73 dated 30-07-96.

1. BSF ACT 1968 SECTION 40 BSF ACT 1968 SECTION 40 AND ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE

In that he,
While posted at BOP Bhatpara on 28-01-98 at about 2000 hrs went to village Hadiya para entered into the house of Hasina Khatoon with bad intention whereas he was gheraoed by the villagers and detained until rescued by BOP personnel.

Raninagar (...B) (D S RAWAT)
COMMANDANT
Dated, the 25th Feb' 98 151 Battalion BSF

6. Thereafter, on 27th February, 1998 the petitioner was tried before the Summary Security Force Court. According to the petitioner, the enquiry was conducted in a hurried manner and was done without the Unit Commandant applying his mind to the facts and circumstances of the case and on the same day the order of dismissal was passed against the petitioner.

7. Aggrieved by the order of dismissal, dated 27th February, 1998, the petitioner made various representations to the higher authorities, by letters dated 1st March, 1998, 2nd March, 1998 and 16th March, 1998. However, by letter dated 15th July, 1998 the statutory representation of the petitioner was rejected as being devoid of any merit.

8. Thereafter, the petitioner approached this Court invoking its writ jurisdiction for seeking the quashing of the termination order dated 27th February, 1998, and also seeking quashing of the excessive power delegated to the Unit Commandant under Sections 70, 74 and 114 of the BSF Act, 1968, *inter alia,* on the ground that excessive power has been given to the Unit Commandant, as he is the sole authority to initiate a proceedings, to try the offence and to punish a person under his charge without any requirement of confirmation of his decision by any higher authority.

9. The petitioner further pointed out that in case of a sentence passed by the Director General Security Force, the confirmation by the Central Government u/s 108 of the BSF Act is required, and that in case of a sentence passed by the Petty Security Force Court too, the confirmation by the Central Government u/s 90 of the BSF Act is required. However no such safeguards have been provided under the Act in the case of the Summary Security Force Court. According to the petitioner, since the Unit Commandant can authorize any sentence upon a person except for the death sentence and imprisonment exceeding one year, the fact that his decision does not need any confirmation by any other higher authority has led to excessive delegation and could occasion, as in his case, the gross abuse of such powers.

10. The petitioner has also contended that his pleading `guilty, could not be acted upon during the SSFC proceedings, as he had not signed the same and it had been recorded as if he had. It is further urged that even if it is accepted that he had indeed pleaded guilty then the mandatory requirement of Rules 142 and 143 had to be complied with, which wasn't at the time and nothing was explained to him. Considering the facts and circumstances the Commandant should have converted the alleged plea of guilty to not pleading guilty.

11. It is also contended that there is no evidence on the record to support of his conviction, and that the perusal of the statements of the witnesses during ROE reveal that the very statement of the alleged victim has not been recorded. Thus, the petitioner contended that the entire proceedings were a sham, and that the principles of natural justice had been grossly violated, since he didn't get the opportunity to defend himself properly.

12. The petitioner has further contended that the trial was conducted without application of mind on the part of the Unit Commandant and that it was all wrapped up within an hour, after which it was decided to dismiss the petitioner without assigning any reasons. The petitioner also contended that the punishment awarded by the authorities is disproportionate to the alleged offence and reliance in this regard is placed on Ranjit Thakur v. UOI, AIR 1987 SCC 2386 wherein it was held by the Supreme Court that the quantum of punishment is within the jurisdiction and discretion of the Court Martial and that the sentence has to suit the offence.

13. The pleas and contentions of the petitioner have been refuted by the respondents in the counter affidavit dated 25th August, 2000 by contending that on 28th January, 1998 at about 2000 hours the

petitioner went out of the BOP without taking any permission or informing anyone at the BOP and visited the house of a divorcee women, namely Hasina Khatoon and Sakina Khatoon, residents of village Hadiapura with bad intent. There, however, the petitioner was caught by the brother of the two women and a scuffle had taken place. Consequently, an alarm had been raised by the villagers, and the matter was reported to the BOP Commander, HC K.B. Patel. Meanwhile, according to the respondents, the petitioner somehow had managed to escape the village and return to the camp without anyone noticing the same.

14. On receiving the information regarding the alarm being raised in the village, HC K.B. Patel had detailed a party comprising of the petitioner, Constable Satpal and W/C Ganesh Chand, to go to the village and find out the cause of the commotion.

15. As soon as the party reached the village, the villagers recognized the petitioner and gathered around him. Constable Satpal and Ganesh Chand somehow managed to escape, however, they left the petitioner behind, and they immediately reached the BOP and informed HC K.B. Patel about the incident. Again a party comprising of Ct. Bancha Ram, Satpal and Ganesh Chand reached the village and asked the villagers to release the petitioner. On threatening the villagers, they finally managed

to rescue the petitioner and on returning to the BOP, the entire incident was reported to the Commander and an enquiry was initiated into the matter.

16. The respondents have further contended that an offence report was submitted on 4th February, 1998 and an ROE was ordered for the offences committed under Sections 22(e) and 40 of the BSF Act. It is also urged that sufficient time was taken in conducting the enquiry, and that after the preparation of the ROE the Commandant had applied his mind to the facts that were brought out in the ROE and thereafter, the Summary Court Proceedings were convened and substantial evidence was found on the record to inculpate the guilt of the petitioner.

17. It is also submitted that the petitioner was given the opportunity to cross-examine the witnesses during the ROE as per the requirements of Rule 48(3), however, the petitioner had refused to do so. It is further contended that even during the SSFC proceedings the petitioner was again cautioned and given an opportunity to make a statement or produce any evidence in his defense, however, this opportunity too was also declined by the petitioner.

18. According to the respondents, all the provisions of the BSF Act and the Rules had been duly observed, while dismissing the petitioner

from the service and thus, this Court should not interfere with the sentence of dismissal under its writ jurisdiction, as the scope of interference under Article 226 is limited. Therefore, it is contended that this Court should not assume the role of the Appellate Authority.

19. The pleas raised on behalf of the respondents have been denied by the petitioner in his rejoinder dated 12th October, 2000 by contending that the Unit Commandant had not conducted a proper enquiry, and that the petitioner had not pleaded "guilty" during the course of the proceedings, which had been recorded otherwise in the cyclostyled papers contained in the record. According to the petitioner, this plea is also evident from the fact that the plea of "guilty" does not bear any signatures of the petitioner. In any case, as per the petitioner, even if the plea of guilty is to be believed then also the order of dismissal deserves to be quashed since the necessary safeguards prescribed under Rule 143 and 142 were not complied with. Thus, the petitioner has contended that he was gravely prejudiced and that the principles of natural justice had been violated and consequently, the entire SSFC proceedings are vitiated.

20. Regarding the statements of the witnesses recorded during the ROE, the petitioner has contended that none of the statements inculpate the guilt of the petitioner and, in fact, the alleged victims or

the person aggrieved in the said matter have not even been examined by the respondents. Thus the petitioner contends that there is no evidence on the record to substantiate the finding of guilt as against the petitioner. The petitioner urges that the ROE was prepared unilaterally by the Unit Commandant, maliciously and in a haphazard manner to single out the petitioner. The petitioner also contends that he was not given the opportunity to have his version recorded at the time of the ROE and thus he was denied the proper opportunity to defend himself.

21. Learned counsel for the petitioner relied on the plea that the petitioner had not pleaded guilty as the `plea of the guilty' is not signed by the petitioner. Reliance was placed by learned counsel for the petitioner on 171 (2010) DLT 261, Vimal Kumar Singh (Ex.L/NK) v. Union of India & Ors.; 172 (2010) DLT 200, Balwinder Singh v. Union of India & Ors.; 134 (2006) DLT 353, Banwari Lal Yadav v. Union of India & Anr.; W.P.(C) No.14098/2009, Ex. Constable Vijender Singh v. Union of India & Ors., decided on 1st October, 2010; 152 (2008) DLT 611, Subedarhash Chander (Ex. Naik) v. Union of India & Ors.; LPA 254/2001, The Chief of Army Staff & Ors. v. Ex. K. Sigmma Trilochan Behera; 1989 (3) SLR 405, Uma Shankar Pathak v. Union of India & Ors. and 2008 (104) DRJ 749 (DB) Mahender Singh (Ex. Constable) v. Union of India & Ors., in support of the pleas and contentions raised on

behalf of the petitioner that the alleged `plea of guilty' by the petitioner cannot be accepted and the whole SSFC proceedings are vitiated.

22. Learned counsel for the respondents has relied on 110 (2004) DLT 268 Chokha Ram v. Union of India & Anr.; Ex. Constable Ram Pal v. Union of India & Ors., W.P.(C) 3436/1996 decided on 27th July, 2011 and W.P.(C) No.4997/1998, Kalu Ram v. Union of India & Ors., decided on 3rd August, 2011 to contend that the ` plea of guilty' was not required to be signed and the SSFC proceedings cannot be vitiated on account of not signing the 'plea of guilty' by the petitioner, nor it can be inferred that the petitioner had not pleaded guilty.

23. This Court has heard the learned counsel for the parties in detail and has also perused the writ petition, the counter affidavit and the rejoinder along with all the documents appended to them and the judgments relied on and referred to by the learned counsel for the parties. The respondents had also produced the original record of the SSFC which has also been perused by this Court.

24. It is evident from the record that the plea of guilty was recorded on a cyclostyled/typed sheet. A scanned copy of original record of plea of guilty and the alleged compliance of Rule 142 & 143 as recorded in the SSFC is as under:

C

PROCEEDINGS ON A PLEA OF GUILTY

The accused No.90199019 Const(Dvr) Devender Kumar of Sector Hqrs BSF Siliguri (presently attached with 151 Bn BSF) is found 'Guilty' of the Charge(s)

The record of evidence is read, (translated), explained marked 'K' signed by the Court and attached to the proceedings.

Q-1 : Do you wish to make any statement in reference to the charge or in mitigation of punishment ?

Ans-1 : The accused says that I have committed the mistake and request for pardon.

Q-2 : Do you wish to call any witness as to character ?

Ans-2 : The accused does not wish to call any witness.

(18)

8

The charge sheet is read, (translated), explained to the accused, marked 'B-2', signed by the Court and attached to the proceedings.

Q-1 : How say you No. 901990 [illegible] Const (W/C) Name. Devinder Kumar are you 'Guilty' or 'not guilty' of the charge(s) ?

Ans-1 : 'Guilty'

"The accused having pleaded 'Guilty' to charge.
Before recording the plea of 'Guilty' offered by the accused, the Court explains to the accused the meaning of charge to which he has pleaded 'Guilty' and ascertains that the accused understands the nature of the charge to which he has pleaded 'Guilty'. The court also inform the accused the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge and the effect of his plea of 'Guilty' accepts and records the same. The provisions of Rule 142 (2) are complied with".

25 Few relevant facts which emerge from the original record of SSFC are that the `plea of guilty' is recorded at page number 30 of the SSFC record. It is a typed page and underneath, the plea of 'guilty' the alleged compliance of Rule 142 is recorded. The plea of 'guilty' is not signed by the petitioner or by the Commandant. After the petitioner allegedly pleaded guilty, it is recorded that the Court read and explained the meaning of the charge, the effect of the petitioner pleading guilty and the difference in the procedure which will be followed since the

petitioner had pleaded guilty to the charge. The Court, therefore, had satisfied itself that the petitioner had understood the charges (`both the charges' is written in hand and is not typed) and the plea of guilty, particularly in relation to the difference in procedure that will be followed and thus it is stipulated that the provision of BSF rule 142 (2) have been complied with. This certificate about compliance of requirement of Section 142 and 143 is not signed by the Commandant. The SSFC proceedings too are only initialed on the left hand margin on all pages. Before the `plea of guilty' obtained from the petitioner, it is written that the charges were translated and explained to the petitioner. Though it is recorded that the Court had satisfied itself that the charges are understood by the petitioner, however, it does not specify that the plea of guilty and the alleged compliance of Rule 142 and 143 as recorded in English, was also translated and explained to the petitioner. If it is not so recorded, the only inference that can be drawn is that it was not done.

26. It is also imperative to note that while the plea of guilty is recorded on page 30, the proceedings on the plea of guilty is recorded on page 28 and the verdict of the court is recorded at page no. 21 and 20. The pagination of the SSFC proceedings are required to be in ascending order (as ROE in the original file shows that the page numbering starts from the last page and it is in ascending order) and thus the earlier steps of the proceedings, should have been on the

earlier pages. In the normal course of a trial the 'proceedings on the plea of guilty' should have succeeded the page containing the plea of guilty and it should have finally concluded with the verdict of the Court. However, from the record it appears that the proceedings of Court's verdict are on pages 31, 21 and 20 and in between the proceedings of plea of guilty about compliance of Rule 142 and 143 have been inserted. Thus, it leads to the only inference that the cyclostyled/typed pages were filled up subsequently and therefore, there is reasonable doubt about the genuineness of the SSFC proceedings. It reasonably appears to have been manipulated by the Commandant. No rational explanation has been given as to how the proceedings of the earlier date, will come on the subsequent page when the record is maintained in the ascending order.

27. According to the record of the SSFC proceedings, it was allegedly put to the petitioner, whether he wishes to make any statement in reference to the charge or in mitigation of the punishment. This question was put in English. It is not recorded that it was explained to the accused in the language which he understood, i.e. Hindi. The answer of the accused has also been written in English. Even this alleged statement of the petitioner is not signed by him.

28. Similarly another question had been put to him in English, whether he wishes to call any witnesses as to the Character. The

answer has been recorded as 'the accused does not want to call any witnesses'. This too has not been signed by the petitioner or even by the Commandant who conducted the SSFC proceedings. All the SSFC proceedings are initialed by someone in the left hand margin.

29. Thus, the proceedings, the scanned images of which are reproduced hereinabove, creates reasonable doubt about the version of the respondents that the petitioner had pleaded guilty and that the plea of guilty was recorded in compliance with the requirements of Rules 142 and 143 of the BSF Rules. Rather the perusal of the proceedings substantiate the version of the petitioner that a proper enquiry was not conducted, and that he has been punished without any SSFC proceedings. It is apparent that in these facts and circumstances he had not pleaded guilty and thus, the entire SSFC proceedings are vitiated.

30. The Courts have laid down time and again the requirement of signing the plea of guilty by the accused in the SSFC proceedings of BSF and other Forces including the Army. The rules of BSF regarding recording the `plea of guilty' are *pari materia* with the rules of Army in this regard. In Uma Shankar Pathak (supra), a Division Bench of the Allahabad High Court while dealing with Rule 115 (2) of Army Rules, 1954 regarding the `plea of guilty' which is *pari materia* with the BSF

Rule 142 had held that the bald certificate given by the Commanding Officer stating that the provision of Army Rule 115(2) are complied with, is not sufficient and enough. It was held that what is expected of the Court, where the accused pleads guilty to any charge is that the record of proceedings itself must explicitly state that the Court had fully explained to the accused the nature and the meaning of the charge and made him aware of the difference of procedure. The Division Bench of Allahabad High Court had further held that the rule further contemplates that the accused person should be fully forewarned about the implication of the charge and the effect of pleading guilty. The procedure prescribed for trial of cases where the accused pleads "guilty" is radically different from that prescribed for trial of cases where the accused pleads "not guilty". According to the Court, the procedure in cases where the plea is of "not guilty" is far more elaborate than in cases where the accused pleads "guilty". The Court had held that in view of the Rule 115 (2) of the Army Rules, **the question and answer put to the accused are to be reproduced by the Court in their entirety and should be recorded verbatim.** This was not done in the case of Uma Shankar Pathak, instead the Summary Court Martial had merely satisfied itself with the certificate that stated that the "provision of Army Rule 115 (2) was complied with". In the facts and circumstances, the High Court had set aside the order and sentence passed by the Summary Court Martial and quashed the same and the charged officer was reinstated with all monetary and service benefits

and he was also awarded the cost of the petition. The High Court had held as under:

> '10. The provision embodies a wholesome provision which is clearly designed to ensure that an accused person should be fully forewarned about the implications of the charge and the effect of pleading guilty. The procedure prescribed for the trial of cases where the accused pleads guilty is radically different from that prescribed for trial of cases where the accused pleads 'not guilty'. The procedure in cases where the plea is of 'not guilty' is far more elaborate than in cases where the accused pleads 'guilty'. This is apparent from a comparison of the procedure laid down for these two classes of cases. It is in order to save a simple, unsuspecting and ignorant accused person from the effect of pleading guilty to the charge without being fully conscious of the nature thereof and the implications and general effect of that plea, that the framers of the rule have insisted that the Court must ascertain that the accused fully understands the nature of the charge and the implications of pleadings guilty to the same.
>
> 13. It is thus apparent that the questions and answers have to be reproduced by the Court in their entirety, which, in the context of Army Rule 115(2), **means all the questions and answers must be reproduced verbatim**. In the present case however, the Court has not done this. Instead the Court merely content itself with the certificate that the provisions of Army Rule 115(2) are here complied with'."

31. Learned counsel for the respondents has relied on Kalu Ram (supra), the decision of the Division Bench in WP(C) 4997/1998, decided on 3rd August, 2011. In the said case, the allegation against the member of the force was that he committed an offence punishable under Section 40 of the BSF Act. He was tried by the SSFC and was awarded the sentence of dismissal from service. The member of the

force, a Constable with BSF was attached with 84 Bn deployed at BOP Malda Khan and he was detailed to perform Naka duty at Naka No.3. During the course of the duty, the said constable went to Village Dhaul and consumed liquor and while returning he fought with another constable and he allegedly fired a shot in the air from a self loaded Rifle issued to him. Record of evidence was prepared in which 8 witnesses were examined. After considering the record of the evidence, the Commandant had ordered convening of the Summary Security Force Court (SSFC) to try the said constable. During the trial, Kalu Ram, the constable allegedly pleaded guilty to the charges framed against him and after complying with Rule 142 of BSF Rules, 1969, the SSFC recorded that the `plea of guilty' was admitted by the said constable and by order dated 7th October, 1997 he was convicted. The said constable was dismissed from service by the SSFC taking into consideration that he had been convicted earlier five times for various offences and that his general character was found to be unsatisfactory. The petitioner, Kalu Ram, assailed the findings of the SSFC on the ground that he had not pleaded guilty but the `plea of guilty' was allegedly taken from him. It was asserted that the `plea of guilty' was vitiated as the documents incorporating/containing the `plea of guilty' did not bear his signatures and, therefore, ultimately the findings of the SSFC stood vitiated. A Division Bench of this Court referred to Vimal Kumar Singh (Ex.L/NK) Vs. Union of India & Ors.; Subhash Chander (Ex. Naik) Vs. Union of India & Ors. and Chokha Ram Vs. Union of India & Anr. and had held

that in view of the legal position in these cases, it could not be universally laid down that the `plea of guilty' taken from the charged officer will stand vitiated in every case where the document containing the plea of guilty of charged officer does not bear his signatures. In para 21 & 22 of the Kalu Ram (supra), the Division Bench of this Court had held as under:-

> "21. In the decisions reported as Lance Naik Vimal Kumar Singh v. Union of India MANU/DE/1512/2010 and Subhash Chander v. Union of India MANU/DE/1266/2008 the plea of guilt taken by the petitioners therein was held to be vitiated as the document containing the plea of guilt of the petitioners did not bear the signatures of the petitioners. On the other hand in the decisions reported as Chokha Ram v. Union of India 110 (2004) DLT 268 and Diwan Bhai v. Union of India MANU/DE/1823/2001 it was held that plea of guilt taken by the petitioner therein cannot be held to be vitiated on the ground that the containing the plea of guilt of the petitioners does not bear the signatures of the petitioners when there is no specific legal requirement to obtain signatures of a charged officer on the plea of guilt taken by him.
>
> 22. In view of the above legal position, it cannot be universally laid down that the plea of guilt taken by a charged officer would stand vitiated in every case where the document containing the plea of guilt of the charged officer does not bear the signatures of the charged officer. What would be the effect of non-bearing of signatures of the charged officer in document containing the plea of guilt by him on the veracity of the plea of guilt taken by him depends on facts and circumstances of each case."

32. Learned counsel for the respondents had also relied on Ex. Constable Ram Pal (supra), in support of the plea on behalf of the

respondents that even if the punishment awarded by the SSFC is set aside on the ground that the `plea of guilty' was not signed by the petitioner, then in that case the respondents should be permitted to try the petitioner afresh.

33. Perusal of the said decision of Ex. Constable Ram Pal (supra) in WP(C) 3436/1996 decided on 27th July, 2011, however, reveals that the same Division Bench which had held in the case of Kalu Ram (supra) that it cannot be universally laid down that `plea of guilty' taken from a charged officer will not stand vitiated in every case where the documents containing the `plea of guilt' of the charged officer does not bear the signatures of the charged officer, had held in the case of the Ex. Constable Ram Pal (supra) that if a charged officer pleads guilty to the charges, the least that is required to be done is to obtain the signatures of the accused under the `plea of guilty', as in such circumstances this is the only evidence on the basis of which a charged officer is convicted. Relying on Subhash Chander (Ex. Naik) v. Union of India & Ors., 152 (2008) DLT 611, the same Division Bench had held that not signing the `plea of guilty' by the charged officer was a fundamental error and consequently the conviction of the charged officer by the SSFC was set aside. The said Division Bench of this Court in Ex. Constable Ram Pal (supra) had held in para 18, 19 and 20 as under:-

> "18. The original record produced before us shows that it has been recorded that when the indictment was read at the trial the petitioner pleaded guilty. But we find that the petitioner has not signed the plea of guilt. **Now, if a person pleads guilty to a charge, the least what is required to be done is to obtain the signatures of the accused under the plea of guilt, for the reason this was to be the only evidence, if there is a dispute, whether or not the accused pleaded guilty.**
>
> 19. In a similar situation noting that the plea of guilt was sans the signatures of the accused, in the judgment reported as 2008(152)DLT611, Subhash Chander Vs. Union of India & Ors., the conviction and punishment based upon the plea of guilt was negated. It was held that it would be permissible to try the accused at a re-convened Summary Security Force Court.
>
> 20. Since we have found a fundamental error, we do not deal with the issues whether at all the petitioner was given adequate time to defend himself at the trial or whether or not he was given an opportunity to engage a defence assistant, for the reason all these were to be irrelevant once we hold that the petitioner needs to be re-tried."

34. Thus the same Co-ordinate Bench which had decided the Kalu Ram (supra), on which reliance has been placed emphatically by the respondents had not considered its earlier judgment in the matter of Ex. Constable Ram Pal (supra) wherein it was held that if a person pleads guilty to a charge, the least that is required to be done is to obtain the signatures of the accused under the `plea of guilty'. Even in Kalu Ram (supra) the reasoning that the `plea of guilty' need not be signed was not held conclusively, since the said writ petition was dismissed in default. The reasoning in the Kalu Ram (supra) given by the Division Bench, thus, will not be conclusive and binding, as the

same Division Bench did not consider its earlier findings and reasoning in the case of Ex. Constable Ram Pal (supra), nor was any reason given to differ with the diametrically opposite reasoning and inferences given in Ex. Constable Ram Pal (supra). The findings of the Division Bench in the case of Kalu Ram (supra) will also be not conclusive for the reason that the case of Kalu Ram (supra) was not conclusively decided by the said Bench and the observations were made on the premise that the writ petition may be got restored by Kalu Ram, as the writ petition was decided not on merits, but was dismissed in default of appearance of Kalu Ram and his counsel and in the eventuality of petition being restored, the Division Bench may recollect as to what was held by it. In para 25 of the said decision of Kalu Ram (supra) the Division Bench had held as under:-

> "25. Be that as it may, since none appears for the petitioner at the hearing today, we dismiss the writ petition in default, but have troubled ourselves to record as above since we had spent time reading the file in chamber and do not wish our labour to be lost should the writ petition be restored at the asking of the petitioner."

35. Therefore, reliance cannot be placed by the respondents on Kalu Ram (supra) to contend that even if the `plea of guilty' is not signed by accused before the SSFC, the punishment awarded by the SSFC shall not be vitiated.

36. In the facts of this case, thus, it cannot be inferred that the petitioner had pleaded guilty. It is also evident from the ROE that at the time the petitioner had gone to enquire about the noise in the village, the petitioner was accompanied by Constables Satpal, PW-4 and Ganesh Chand, PW-3 and that thereafter, when he was released from the villagers, Constables Satpal, PW-4 Ganesh Chand, PW-3 and Bancha Ram, PW-1 were present with him. However, perusal of their statements reveals that they could not properly understand what the villagers were speaking in Bengali and Constable Bancha Ram, PW-1 also deposed that HC K.B. Patel did not record the incident in the GD Register. It is also evident from the record that even though it was alleged that the petitioner had entered the house of one Hasina Khatoon, with bad intention, however, the said person has not been examined. In these circumstances, it was also incumbent upon the Commandant to have recorded as to how he had complied with the requirement of the BSF Rules 142 and 143 than merely stating that the ramification of pleading guilty by the petitioner was explained to him. In the entirety of these facts and circumstances as detailed hereinbefore it is apparent that the petitioner was punished with dismissal without any evidence on the record and that the proceedings of the SSFC were prepared and the SSFC was conducted in gross violation of the provisions of the BSF Act and Rules.

37. Though in Chokha Ram (supra) another Division Bench had held that the `plea of guilty' will not be vitiated for not bearing the signatures of the accused, however, the other Division Benches of this Court in the cases of Ex. Constable Ram Pal (supra); Ex. K. Sigmma Trilochan Behera and Vimal Kumar Singh (supra) relied on Laxman (Ex. Ract.) v. Union of India & Ors., 103 (2003) DLT 604 and Uma Shankar Pathak v. Union of India & Ors., 1989 (3) SLR 405; Balwinder Singh v. Union of India & Ors., 172 (2010) DLT 200; Subhash Chander (Ex. Naik) v. Union of India & Ors., 152 (2008) DLT 611 and in Mahender Singh (Ex. Constable) v. Union of India & Ors., 2008 (104) DRJ 749 (DB) have consistently held that the `plea of guilty' recorded on printed or typed form and not signed by the accused cannot be accepted and shall vitiate the proceedings of the SSFC and any punishment awarded pursuant to such `plea of guilty' by the SSFC will also be not sustainable. In Mahender Singh (supra) another Division Bench of this Court rather held that it is desirable for DG BSF to frame guidelines on parity with Army issuing specific instructions in respect of the manner of recording the ` plea of guilty'. The Division Bench had held in para 12 of said judgment:

> " We may also note that it is desirable that the Director General, BSF, on parity of the guidelines of the Army should issue instructions in respect of the manner of recording the ` plea of guilty' because of serious consequences which arise in such cases as also the

> environment in which the personnel are tried. The object is to ensure that both in letter and spirit the mandate of the Rule is complied with and the accused person is fully conscious of the consequences of pleading guilty.

The learned counsel for the petitioner contended that pursuant to the above direction in the above noted case, guidelines also have been issued by the respondents and implemented which fact has not been denied by the learned counsel for the respondents.

38. Thus, reliance cannot be placed on the decision of the Division Bench in case of Chokha Ram (supra) as the said Bench had not considered the decision of Uma Shankar Pathak (supra) and because the other Co-ordinate Benches too have not followed the alleged ratio of Chokha Ram in their subsequent decisions. Another distinguishable feature of Chokha Ram (supra) is that the delinquent, Chokha Ram had not only pleaded guilty before the SSFC but during the course of recording of evidence i.e. during the ROE, he had also made a statement admitting his guilt. It was held that the plea of guilty in the ROE could be used as an evidence against him in the SSFC trial and that weighed upon the Division Bench while holding that even if before the SSFC the plea of guilty was not signed by the delinquent member of the force, the same can be accepted as there was evidence in support of the same, i.e. the statement of the delinquent before the ROE admitting

his guilt. In the circumstances, in Chokha Ram (supra) the Court did not lay down an absolute preposition that the `plea of guilty' before the SSFC under Rule 142 of the BSF Rules need not to be signed before it can be relied on. Rather the said opinion was formed in the backdrop of the peculiar facts and circumstances of Chokha Ram (supra).

39. It is no more *res integra* that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the factual situation and circumstances in two cases. The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr. (AIR 2004 SC 778) had held that a decision cannot be relied on without considering the factual situation. In the said judgment the Supreme Court had observed:-

> "Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's

> theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In P.S.Rao Vs State, JT 2002 (3) SC 1, the Supreme Court had held as under:

> ". There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In Rafiq Vs State, (1980) 4 SCC 262 it was observed as under:

> "The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases."

40. What emerges from above is that in the above noted matters the Division Benches of this Court have consistently held that if the `plea of guilty' is not signed by the delinquent, then it cannot be accepted and acted upon and the proceedings of the SSFC based on such `plea of

guilty' shall be vitiated and the punishment awarded pursuant thereto, is also liable to be set aside.

41. Consequently, for the foregoing reasons and in the facts and circumstances of the above case, it cannot be accepted that the petitioner had accepted his guilt before the SSFC, as the `plea of guilty' was not signed by the petitioner, and there have been other violations of Rules 142 and 143 of BSF Rules, 1969 so as to vitiate the punishment of dismissal from service awarded by the respondents, pursuant to the plea that the petitioner had pleaded `Guilty' of the charges framed against him. Resultantly, the order of the SSFC dated 27th February, 1998 is set aside and the petitioner is entitled for reinstatement forthwith with all the back wages and consequential benefits including promotion and the period from the date of his dismissal up till the date of his reinstatement is to be counted for all purposes in favor of the petitioner.

42. The next contention on behalf of the respondents is that even if the petitioner's punishment by the SSFC dated 27th February, 1998 is set aside on the ground that the `plea of the guilty' by the petitioner could not be accepted as it was not signed by him and there was no other evidence showing that the petitioner had pleaded guilty, the

respondents will be entitled to try the petitioner afresh on the charges framed against him.

43. In support of this contention by the respondents for a fresh trial, reliance has been placed by the respondents on Ex. Constable Ram Pal (supra). The learned counsel for the respondents Ms. Barkha Babbar has contended that in Ex. Constable Ram Pal (supra), a Division Bench had permitted the respondents to try the delinquent afresh and therefore, this Court should permit the respondents to try the petitioner afresh.

44. Perusal of the decision of Ex. Constable Ram Pal (supra) reveals that no reasons have been given by the Division Bench to permit the respondents to try the delinquent afresh except holding without giving any reason that the respondents shall be entitled to try the delinquent afresh in para 21 of the said judgment. In para 21 and 22 of Ex. Constable Ram Pal (supra) the said Division Bench had held as under:-

> "21. Accordingly, we disposed of the writ petition quashing the order dismissing the petitioner from service as also the petitioner's conviction at the Summary Security Force Court. We permit the department to try the petitioner afresh. We leave it open to the competent authority to determine as to in what manner the period post levy of penalty of dismissal from service till petitioner reinstatement pending trial would be reckoned.
>
> 22. The petitioner would be reinstated forthwith."

45. The learned counsel for the petitioner has refuted this contention of the respondents and has contended that the trial of the petitioner by the SSFC has not been set aside on account of the inherent lack of jurisdiction but because the trial was unsatisfactory. He asserted that keeping in view the embargo under Section 75 of the BSF Act and Article 20 of the Constitution of India, fresh trial of the petitioner shall not be permissible. Reliance has also been placed by the learned counsel for the petitioner on Banwari Lal Yadav v. Union of India, 134 (2006) DLT 353.

46. This cannot be disputed by the respondents that the SSFC which tried the petitioner and punished him with dismissal from service on 27th February, 1998 was competent to try the petitioner and the Security Force Court did not lack the jurisdiction to try him. However, in the facts and circumstances, what emerges is that the proceedings of the SSFC were not satisfactory as there was no evidence except the reliance of the Court on the alleged `plea of guilty' by the petitioner which has not been accepted and has already been set aside by this Court. In the circumstances, the trial of the petitioner will not be *non est* being null and void from its very inception as the SSFC had the jurisdiction to try the petition. However, in the circumstances, since the petitioner had withstood trial which has been vitiated on account of trial being unsatisfactory, the petitioner cannot be tried again.

Therefore, the respondents cannot be permitted to try the petitioner again.

47. Section 75 of BSF Act categorically prohibits a second trial. Section 75 of the BSF Act is as under:-

> "75. Prohibition of second trial: (1) When any person subject to this Act has been acquitted or convicted of any offence by a Security Force Court or by a criminal court or has been dealt with under Section 53 or under Section 55 he shall not be liable to be tried again for the same offence by a Security Force Court or dealt with under the said sections.
>
> (2) When any person, subject to this Act, has been acquitted or convicted of an offence by a Security Force Court or has been dealt with under Section 53 or Section 55, he shall not be liable to be tried again by a criminal court for the same offence or on the same facts."

48. In Banwari Lal Yadav (supra), a Division Bench of this Court relied and considered the ratios of the cases in Civil Rule No.3236 (Writ Petition)/73, Sukhen Kumar @ Chandra Baisya Vs. Commandant; Basdeo Agarwalla v. King Emperor, AIR 1945 FC 16; Yusefalli Mulla Noorbhoy Vs. R., AIR 1949 PC 264; Baijnath Prasad Tripathi v. The State of Bhopal, 1957 SCR 650; Mohd. Safi v. State of West Bengal, (1965) 3 SCC 467; CBI v. C. Nagrajan Swamy, (2005) 8 SCC 370 and State of Goa v. Babu Thomas, (2005) 8 SCC 130 and had held that there is distinction between the cases where the Court has no

jurisdiction to try the offence and where the trial *ipso facto* is unsatisfactory. It was held that where the Court has no jurisdiction, a delinquent can be tried again. However, if the trial is vitiated on account of it being unsatisfactory, the delinquent or the accused cannot be tried again. In para 13 of the said judgment the Court had held as under:-

> "13. In our considered view, there is a clear distinction, albeit a fine one, between cases where a court has no jurisdiction to try the offence, as for example, if the court is not competent to try the offence for want of sanction for prosecuting the accused or if the composition of the court is not proper as required for that type of court or if the court is illegally constituted of unqualified officers, and cases where the trial ipso facto is unsatisfactory as for example if during the course of the trial, inadmissible evidence is admitted or admissible evidence is shut out or proper procedure is not followed and the trial is consequently marred by grave irregularities which operate to the prejudice of the accused. In the former category of cases the trial would be no nest, being null and void from its very inception. In other words, there would be no trial in the eyes of law. In the latter category of cases, however, in our view, it would be deemed that the accused has withstood the trial and as such he cannot be tried again."

The Court had held that *de novo* trial cannot be initiated in cases where the trial was initiated before a competent Court vested with jurisdiction to conduct the trial, however, where subsequently the trial was vitiated on account of procedural or other grave irregularity committed in the conduct of the trial, the delinquent could not be tried again.

49. In Banwari Lal Yadav (supra) relied on by the petitioner, the accused had allegedly pleaded guilty to the charges in his statement for mitigation of sentence where he had stated that his mental condition was not proper. It was held that keeping in view the said statement of the accused, the Court would have been well advised to alter the plea of 'guilty' of the petitioner to 'not guilty' and the Court having not done so, the proceedings were vitiated under Rule 143 (4) of the BSF Rules. This was also upheld in this case by the Appellate Authority.

50. Considering the object and intent of Section 75 of BSF Act which clearly prohibits the second trial of the accused, it was held that the second trial was not permitted. The Court in para 21, 22, 23 and 24 of the said judgment had held as under:-

> "21. Keeping in view the aforesaid position of law, we are of the considered view that the question as to whether a fresh trial or de-novo trial can be initiated against the accused would depend upon the reason for the setting aside of the earlier trial. There are clearly two kinds of cases (1) where the earlier trial was void ab initio in the eyes of law having been initiated by a court inherently lacking in jurisdiction to conduct the trial to which reference has been made hereinabove and (2) where the trial was initiated before a competent court vested with jurisdiction to conduct the trial, but Subsequently the trial was vitiated on account of procedural or other grave irregularity committed in the conduct of the trial. The present case is clearly a case of the second type where the conviction is quashed not for want of inherent jurisdiction in the court, but because the trial was unsatisfactorily conducted. The petitioner who

had earlier pleaded guilty to the charge, in his statement for mitigation of sentence stated that his mental condition was not proper and, therefore, the offence committed by him had been intentionally committed. Keeping in view the said statement of the petitioner and the provisions of Rule 143(4) read with Rule 161(1) of the BSF Rules, the court would have been well advised to alter the plea of Guilty of the petitioner to Not Guilty. The court not having done so, the proceedings were hit by the provisions of Rule 143(4) of the BSF Rules and the Appellate Authority, being the Dy. Inspector General, rightly concluded that the injustice had been done to the petitioner by reason of the grave irregularity in the proceedings. The petitioner accordingly was allowed to join back his duties and the sentence of his dismissal from service was set aside. So far, the order of Dy. Inspector General possibly cannot be faulted. What, however, followed was the second trial of the petitioner and this, to our mind, keeping in view the embargo imposed by Section 75 of the BSF Act and Article 20 of the Constitution of India was clearly impermissible.

22. The object and intent of Section 75 which has been incorporated in the BSF Act is clearly to prohibit a second trial of the accused, whether by the Security Force Court or by a criminal court, in all cases where the accused has been convicted or acquitted of an offence by a Security Force Court or by a criminal court or has been dealt with under Section 53 or Section 55. Section 75 consequently imposes a bar on second trial where the first trial was by a court of competent jurisdiction, though not where the first trial was void ab initio.

23. We are fortified in coming to above conclusion from Section 161 of the BSF Act which provides as under:

> 161. Action by the Deputy Inspector General- (1) Where the Deputy Inspector General to whom the proceedings of a Summary Security Force Court have been forwarded under Rule 160, is satisfied that injustice has been done to the accused by reason of

> any grave irregularity in the proceedings or otherwise, he may, (a) set aside the proceedings of the court; or (b) reduce the sentence or commute the punishment awarded to one lower in the scale of punishment given in Section 48 and return it to the unit of the accused for promulgation.
>
> 24. A bare glance at the provisions of the aforesaid section shows that what is envisaged is the setting aside of proceedings by the Deputy Inspector General where grave irregularity has been committed by a Summary Security Force Court, thereby causing injustice to the accused. The provisions of the said section do not envisage the setting aside of the proceedings in a case where the court had no jurisdiction in the first place to deal with the matter, as for example where the court was illegally constituted or incompetent to deal with the matter on account of want of sanction by the competent authority or otherwise. The trial initiated by such a court against the accused would be no nest in the eyes of law, and quite obviously cannot stand in the way of initiation of de-novo trial."

Therefore, in the facts and circumstances and for the foregoing reasons, the petitioner cannot be tried *de-novo* after his sentence based on his alleged plea of `Guilty' has been set aside.

51. The learned counsel for the respondents has also contended that since the SSFC proceedings have been held to be vitiated and he is not to be tried again but he should not be granted full back wages. Reliance in this regard has been placed on K.K. Synthetics Ltd. v. K. P. Agrawal & Anr. (2007)2 SCC 433. However perusal of the case reveals that the

facts of the same are clearly distinguishable from the facts of the present matter. In the said case the difference between "misconduct reinstatement" and illegal termination was clarified. It was held that misconduct reinstatement refers to reinstatement in cases of proved and affirmed misconduct where the punishment of dismissal is substituted by some lesser punishment. Therefore it was held that in case of "misconduct reinstatement" the Court cannot hold the employer responsible and thus back wages cannot follow as a necessary consequence of such reinstatement. However, as held hereinbefore, the respondents have failed in proving either of the two charges imputed against the petitioner and thus, the present matter does not fall within the purview of "misconduct reinstatement". Therefore, denying the petitioner full back wages on reinstatement for no fault of his or in light of unproved charges would be not permissible.

52. In the totality of the facts and circumstances and for the foregoing reasons, the writ petition is allowed and the trial by the SSFC based on the alleged plea of `Guilty' and consequent sentence awarded by the SSFC to the petitioner by order dated 27.2.1998 is set aside. The order of dismissal dated 27.2.1998 passed against the petitioner is quashed and consequently, the petitioner shall be entitled for reinstatement forthwith. The petitioner be therefore, reinstated forthwith. The petitioner shall be entitled for full back wages from the date of his

dismissal till his reinstatement and all other consequential benefits including promotions in the mean time. In the circumstances, petitioner is also awarded a costs of Rs.10,000/- against the respondents. Costs awarded by this Court be paid within four weeks. With these directions and observations, the writ petition is allowed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

MAY 14, 2012
vk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 8476/2011**

Decided on: 19.04.2012

IN THE MATTER OF
SUSHILA ..... Petitioner
Through: Mr. H.K. Chaturvedi, Advocate

versus

DDA AND ORS. ..... Respondents
Through: Ms. Shobhana Takiar, Advocate for R-1/DDA.
Ms. Sonia Arora, Advocate for R-2/GNCTD.
Mr. Akhil Purwar, Advocate for Mr. Parvinder Chauhan, Advocate for R-3/DUSIB.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (***ORAL***)

1. The petitioner has prayed for directions to the respondents to allot an alternative permanent plot/flat to her alongwith suitable compensation on the ground that she was residing in a *Jhuggi* situated at Sawan Park, New Delhi, for a long time and the same was demolished on 25.09.2000, without rehabilitating her.

2. It is stated by the learned counsel for the petitioner that in the year 1991, the petitioner alongwith 91 others had filed a writ petition

in this Court, registered as W.P.(C) 4052/1991 praying *inter alia* for directions to the respondents not to evict them from the land situated in Khasra No.646 to 650 situated in Sawan Park. Pertinently, the petitioner herein was arrayed as petitioner No.35 in the aforesaid proceedings. Vide order dated 07.03.2001, the aforesaid writ petition was disposed of with directions to the respondents to consider the case of the petitioners therein in the light of the new policy formulated by the Government of India for relocation of Jhuggi dwellers. It was further observed that DDA would examine the case of each of the aforesaid petitioners and give reason for the decision that would be taken thereon. It was lastly directed that the interim order operating in favour of the petitioners therein would continue till the matter would be decided by the DDA in the light of the new policy. A copy of the order dated 07.03.2001 is enclosed as Annexure P-3 to the writ petition.

3. It is the case of the petitioner that inspite of the interim orders operating in favour of the aforesaid petitioners, in violation thereof, the respondents demolished the slum clusters. Aggrieved by the aforesaid action of demolishing the *Jhuggies* of the petitioner and others without granting them alternative allotments, a contempt petition was filed in this Court, registered as CCP No.499/2004, which was dismissed on 09.11.2005. However, in the order dated 9.11.2005, the Court had observed that petitioner No.1 therein (the petitioner herein) would be

entitled to an alternative accommodation. It is the grievance of the petitioner that despite the aforesaid directions, she has not been allotted an alternative accommodation by the respondent No.1/DDA till date.

4. Notice was issued on the present petition vide order dated 02.12.2011. Counter affidavits have been filed by respondent No.1/DDA and respondent No.3/DUSIB. Respondent No.1/DDA has stated in its counter affidavit that vide order dated 23.02.2011 passed in **W.P.(C) 2632/2010** entitled Ram Chander & Ors. vs. Union of India & Ors., the petitioners therein, who were similarly situated as the petitioner herein, had approached the Court for being rehabilitated and relocated upon being uprooted from Najafgarh Road pursuant to the execution of the work of remodeling and covering of drain in the area. After considering the respective stands of the respondents therein, the Division Bench had directed that the petitioners therein should approach the respondent/MCD with a representation and copies of relevant documents, which would then be examined by the department in terms of the modified policy guidelines issued by the Govt. of NCT of Delhi, for relocation of uprooted *Jhuggi* dwellers, and if found eligible as per the policy guidelines, the respondents would take appropriate action as per law.

5. As regards respondent No.3/DUSIB, it has averred in its counter affidavit that the name of the petitioner had existed in the joint survey list prepared at the time of removal/relocation of the Jhuggi

cluster in Sawan Park in the year 2000. It is further averred that as per the joint survey list, the petitioner had furnished a ration card bearing the date, 19.06.1997 and therefore, she was found eligible as per the then existing policy for rehabilitation of J.J dwellers, but as she had failed to produce the original documents, her case could not be processed further.

6. In view of the aforesaid stand taken by respondent No.1/DDA and respondent No.3/DUSIB, it is deemed appropriate to dispose of the present petition with directions to the petitioner to appear before the Deputy Director (Rehabilitation), DUSIB on 02.05.2012 at 3 PM alongwith all the relevant documents she has in her possession for the purpose of verification of her case for rehabilitation under the existing policy. The said documents shall be examined by the aforesaid officer and if satisfied by the documents produced, the case of the petitioner shall be processed for rehabilitation, by allotment of an alternative plot/flat to her as permissible, within a period of eight weeks from the date of granting a hearing to the petitioner. However, if the respondent No.3/DUSIB is dis-satisfied with the documents that are produced by the petitioner, she shall be informed as to the deficiency in the documents, whereafter, the same shall be produced by her, for the respondent No.3/DUSIB to re-examine her case and take a decision thereon under written intimation to her within a period of four weeks from the date of production of the said documents by her. Respondent No.3/DUSIB shall endeavour to adhere to

the timeline indicated above. In case the petitioner is still aggrieved by the inaction/adverse decision, if any, taken by the respondent No.3/DUSIB, she shall be entitled to seek her remedies as per law.

The petition is disposed of.

DASTI to the petitioner and respondent No.3/DUSIB.

(HIMA KOHLI)
JUDGE

APRIL 19, 2012
rkb

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1852/2011

DELHI TRANSPORT CORPORATION ..... Petitioner

Through: Ms. Bhakti Pasrija, Advocate

versus

SH. DILBAGH SINGH ..... Respondent

Through: Mr. Arun Bharadwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

03.05.2013

C.M. No.18266/2011

This is an application filed by the respondent under section 17B of the Industrial Disputes Act, 1947 to claim wages during pendency of the writ petition on the ground that by the impugned award, the respondent has been directed to be reinstated in service and that order has been interdicted by this Court at the instance of the petitioner. It is also his case that he has not been in gainful employment despite his endeavour to find out an appropriate job. The petitioner has not been able to counter the said claim of the respondent by disclosing that respondent was gainfully employed with adequate wages. Consequently, the application is allowed. The respondent is held entitled to wages at the rate at which the last drawn by him from the date of the award till date. The said wages be paid to the respondent within six weeks.

W.P.(C) 1852/2011

1. The petitioner has preferred the present writ petition to assail the Award dated 08.04.2010 passed by the Labour Court- KKD, Delhi, in I.D. No. 296/08/96, whereby the industrial dispute with regard to the

termination of the respondent?s services has been determined in favour of the respondent with the direction that the respondent be reinstated at the lowest stage of pay scale with continuity of service.

2. The background facts are that the respondent was appointed as a Driver in 1982 by the petitioner-management. He was issued a charge sheet on 20.08.1987 on charge of remaining absent from duty from 01.01.1987 ? 31.07.1987, as leave without pay amounting to 161 days. Since the respondent denied the charges, the petitioner held a departmental enquiry in which the respondent participated. On the basis of the enquiry report, the Disciplinary Authority issued show cause notice dated 10.02.1988, and thereafter the respondent was terminated vide order dated 5.04.1988. The respondent raised the aforesaid industrial dispute with regard to his termination from service. It was the respondent?s case before the Labour Court that he was constrained to avail leave on grounds of illness. He claimed that he sent applications seeking leave to the Depot Officials and such leave was granted without pay. The petitioner?s stand before the Labour Court was that no intimation of the respondent?s sickness was received by the petitioner management and the respondent was a habitual absentee. The Labour Court decided the issue with regard to the validity and fairness of the departmental inquiry against the petitioner vide order dated 4.06.2009 by holding that the enquiry was conducted in a haste and if the enquiry had not been concluded on the same day, the workman could have taken steps to produce medical certificates which he alleged to have submitted in the control room. The order also observed that no presiding officer was appointed and the master attendance register had not been produced before the enquiry officer to sustain the charge against the workman. The impugned order held ?

?Though it was argued by the AR for management that the enquiry cannot be held bad since the principles of natural justice have been complied with, this argument sustains only as fore view. The latent defects noted above especially there being no documentary evidence before the enquiry officer which was not produced by the management witness Narain Singh and having not discussed the master register in the findings, I am convinced to hold that the enquiry is vitiated for the latent irregularities noted by me above???

3. The impugned award dated 08.04.2010 distinguished the Supreme Court?s judgment in DTC v. Sardar Singh, AIR 2004 SC 4161, by observing that there could not be any sweeping generalization and tell tale features could be noticed and pressed into service to arrive at conclusions in the departmental proceedings. Hence, it was held that special features of the case had to be looked into to find out whether the order of penalty of removal of service passed by the management was justified or not. The impugned award held that the workman was constrained to go on leave due

to his illness as well as the illness of his wife and, hence, it could not be said that he was intentionally absent from duties. The Labour Court ordered his reinstatement by holding as follows:

?18. Coming to the third query, I find from the final statement of the workman recorded during the enquiry he had stated that he was constrained to go on leave since his wife was ill. There was none to take care of her except him and that he was also on the prolonged illness and that he has submitted medical certificates to the control room. Considering the

explanation that is found in the final statement which is at Ex WW1/M4, the consistent stand of the workman that he has not lost the interest in the working of the corporation seems probable. Hence, I find that the special features of the case would fall in favour of the workman to question the proportionality of the punishment. I find that the same is on the higher side in view of the tell tale features of the above case. Hence the workman is entitled to be reinstated but at the lowest stage of pay.?

4. Learned counsel for the petitioner submits that the award of the Labour Court is perverse in as much, as, it ignores the evidence on record. It is submitted that the Labour Court failed to appreciate that the respondent had not submitted any leave applications which was proved by the petitioner?s production of the master attendance register which was exhibit MW2/1. It is submitted that in the said register, certain portions were noted as NA which stood for ?no application?. She submits that the factum of the enquiry being concluded within a day is not a ground for holding that the enquiry was perverse, as the respondent was given full opportunity to participate in the enquiry proceedings. The respondent had not sought time to either lead any further evidence of his own, or to lead the evidence of any other witness. There was no reason to continue the enquiry any further. It is submitted that the respondent was unauthorisedly absent from duties for 161 days. She relies on the judgment in Sardar Singh (supra) to advance the argument that the mere making of a leave application does not suffice, as the leave has to be sanctioned in order for the workman to avail of it.

5. Learned counsel for petitioner submits that the burden of proof is on the respondent to prove that he was not unathorisedly absent and he has been unable to prove that he applied for leave in the requisite manner. She further submits that out of 161 days of unauthorized leave, the respondent produced a medical certificate only for 6 days of leave. It is also submitted that a photocopy of the certificate issued from MCD Leprosy home produced by the workman was not proved on record and the Labour Court took note of the same. It is also submitted that the respondent had been penalized twice before on account of availing excess leave and infact the respondent was a habitual absentee.

6. On the other hand, learned counsel for respondent draws the attention of the court to the charge sheet dated 2.08.1987 issued to the respondent. It is submitted that the charge leveled at the petitioner is that he availed leave without pay for 161 days, and not that he was

unauthorisedly absent. He submits that the very fact that the charge states that the respondent had availed ?leave without pay? in itself means that such leave was sanctioned, though as ?leave without pay?. He further submits that the respondent cannot be held guilty of unauthorized absence as he was not charged with the same. Learned counsel relies on a judgment in Bhagwan Lal Arya v. Commissioner of Police, Delhi and another, AIR 2004 SC 2131, to submit that absence on account of medical grounds cannot amount to grave misconduct. It is further submitted that the attendance register marked ?leave without pay? as the comment regarding the respondent?s absence, and that the same would have been marked ?absent?, had the respondent been on unauthorized leave without sanction.

7. Learned counsel for respondent also relies on an order of the Supreme Court in Sukhbir Singh v State of Haryana and Ors, SLP No. 25710/1995

wherein the appellant was terminated on the charge of remaining absent without leave. The stand of the appellant was that he had been hospitalized and he produced a medical certificate granted by the consultant physician of Safdarjung Hospital, New Delhi. The Court held that the only proper course would be to direct the appellant to file a representation before the competent authority enclosing all medical certificates, and if the competent authority is satisfied if could pass orders as it deemed fit.

8. Learned counsel for petitioner in her rejoinder argument states that the charge sheet explicitly states that the respondent?s conduct tantamounts to violation in terms of Para 19(h) of the Standing Orders governing the conduct of DTC, and the aforesaid Para relates to habitual negligence of duties and lack of interest in the authority?s work.

9. Having heard learned counsel for the parties, and perused the impugned order dated 04.06.2009 and the impugned Award dated 08.04.2010, as well as the record, I am of the view that the impugned order and Award cannot be sustained. Firstly, I may deal with the order dated 04.06.2009 whereby the preliminary issue with regard to legality and validity of the domestic enquiry has been determined. The Labour Court finds fault with the conduct of the enquiry on a single day. However, what has been not appreciated is that the respondent workman was specifically asked whether he desired to appoint a defence assistant, to which he responded in the negative. The enquiry proceeded thereafter without his seeking any adjournment in the matter. The evidence of the management witness was recorded. The respondent was given the opportunity to cross examine the management witness, but the respondent declined to cross examine him. Even at that stage he did not seek any adjournment. The respondent was also granted opportunity to lead his evidence. Even at that stage he did not seek any adjournment on the ground that he wishes to lead any evidence. Consequently, his final statement was recorded by the enquiry officer. Pertinently, in his final statement he had only stated that his wife was quite unwell. She was examined by some private doctors and he also resorted to Ayurvedic treatment. He stated that in his house there is no other elder responsible male member, and he was himself not well

for a long time on account of his suffering from typhoid. He also stated that he had shown his wife also to the doctors of the DTC. He also stated that he had submitted medical certificates issued by the government hospitals in the control room of the DTC. He stated that he had to take leave due to his compulsions. He stated that on this occasion, he should be pardoned and that he had nothing more to say.

10. From a perusal of the entire enquiry proceedings, it is clear that every possible opportunity was given to the respondent and it could not be said that the enquiry proceedings were conducted in haste or in breach of the respondent?s rights or in a manner prejudicial to him. The finding that had the proceedings been adjourned, the respondent would have been able to produce other evidence regarding his leave applications on medical ground has no merit because the respondent never sought that the alleged leave applications be produced by the petitioner or that the same be summoned from the control room or any other place. It was not for the enquiry officer or the petitioner to cause the production of the so-called record/documents from the control room or from any other record. The petitioner had produced through its witness the record that it desired to rely upon to prove the charge. Therefore, this ground stated in the impugned order to vitiate the enquiry is patently laconic and rejected.

11. The second ground stated is that the defence of the respondent was that he was ill with typhoid and that his wife was also not well. The mere ipsi dixit of the respondent was not sufficient in this regard. It was for him to specifically lead evidence to show as to for which period he was ill and with what ailment. It was for him to show since when his wife was suffering. Moreover, it was for him to establish that he had made leave application in compliance with the rules for obtaining medical leave for himself and his wife.

12. The third ground is also equally meritless. There was nothing to be considered by the enquiry officer when it was the mere ipsi dixit of the respondent that he had been treated by the DTC doctors and other government hospitals and that he had given certificates to the control room of the DTC, without there being any proof of the same. Grounds -D and E on which the enquiry is vitiated has already been covered while dealing with the first ground. The same is again meritless. So far as Ground-F is concerned that no presenting officer was appointed, the same has no force for the simple reason that it is not necessary that a presenting officer should be appointed. I have considered this aspect in W.P.(C.) No. 717/2001 in DTC vs. Hanumant Kumar decided on 17.01.2013 and rejected a similar argument.

13. The last ground stated in the impugned order on the preliminary issue also has no merit. The same is that the enquiry officer had not collected the Master Attendance Register (MAR) and the witness Narayan Singh had not produced the same before the enquiry officer to sustain the charge. The witness Sh. Narayan Singh had referred to the MAR and on that basis, he had stated that the respondent had taken leave without pay of 161 days, out of which 6 leaves were taken by furnishing medical proof

of illness between January 1987 to July 1987. This statement of the witness was never challenged by the delinquent. He did not cross examine the witness to enquire on what basis the said statement had been made. The respondent accepted the said statement which was made on the basis of the MAR. Therefore, there was no basis to conclude that the MAR was not produced by the management witness. Even if it were to be accepted that the said register was not so produced, the statement of management witness went unchallenged and unrebutted. In fact, the respondent never questioned the said statement even when he gave his own final closing statement. He sought to explain his absence as aforesaid and sought pardon.

14. The manner in which the Labour Court has passed the order dated 04.06.2009 betrays a very casual approach on the part of the Labour Court and the same has been passed not on the basis of the evidence on record and on legal grounds. Accordingly, this order cannot be sustained and is set aside.

15. What is of relevance to be examined in respect of a domestic enquiry is whether the principles of natural justice have been complied with and, even if there is some infirmity in compliance of the said principles ? whether the delinquent has suffered any prejudice. The time frame within which the enquiry is conducted, even if it is short is no reason to assume that it is not in compliance with the principles of natural justice, or that it has caused prejudice to the delinquent. It is for the delinquent to show as to how the expeditious conclusion of the enquiry has prejudiced him. The respondent did not establish the

prejudice allegedly suffered by him. Even otherwise, I find that the charges against the respondent stand established as it was for the respondent to prove that he had applied for medical leave in the requisite manner and he has failed to do so. The observation of the Labour Court that the absence of the workman was not intentional does not in any way advance the case of the workman, because his conduct still amounts to misconduct under Para 4 of the standing orders of DTC.

16. Though, the respondent claimed to be on medical leave, he did not comply with the requirements of clause 4 of the standing orders which provides that an employee shall not absent himself from duties without having first obtained permission from the authority or the competent officer except in the case of sudden illness. In the cases 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, application for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the medical officer of the DTS. The relevant clause came up for consideration in this Court in WP(C) 13909/2009 in Rajpal v. The Presiding Officer Labour Court?IX Delhi and Another decided on 09.01.13 and WP(C) 3338/2010 in Management of Delhi Transport Corporation v. Workman Amar Singh decided on 15.03.13.

17. Clearly, the respondent did not comply with the requirements of the

aforesaid standing order. The Labour Court observes that the photocopy of the medical certificate produced by the respondent, did not stand proved. In fact, in the proceedings before the Labour Court -on the issue of fairness of the enquiry, the Labour Court observed that in the cross examination of the workman, it was elicited that no medical certificate had been produced by the workman. There is also no evidence on record from which it appears that the workman had applied for leave. The only exception in Para 4 of the standing orders is a case of sudden illness, in which event too, the employee must apply for leave if the illness is expected to last for more than 3 days. Pertinently, this is not a case of sudden illness as the respondent claims he was on prolonged illness.

18. The charge sheet further states ?Your past record will be taken into consideration at the time of passing final orders in the case?. The respondent had been penalized twice before for availing excessive leave and, therefore, looking to his past record it appears that the respondent was a habitual absentee. The Labour Court having taken note of the fact that the past record of the respondent was not in his favour, was not justified in ordering reinstatement.

19. The contention of learned counsel for respondent that the charge sheet issued to the respondent did not level the charge of unauthorised absence has no merit. The charge sheet categorically states that the conduct of the respondent falls within Para 19(h) of the standing orders that state ?Habitual negligence of duties and lack of interest in the Authority?s work?. Furthermore, the charge sheet also states that the respondent?s conduct falls within Para 4 (ii) of the standing orders. Para 4 (ii) of the standing orders states ? ?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?. The breach of the said provisions of the standing orders having been alleged against the respondent, it demonstrates that

he had been charged with unauthorised absence. Therefore, this argument of the respondent-that no charge of unauthorised absence was levelled against the respondent, appears to be wholly misplaced.

20. I also find no merit in the submission of the respondent that the charge sheet having stated that the respondent was guilty of availing ?leave without pay? for 161days implies that the leave had been sanctioned because leave cannot be ?availed of?-unless sanctioned. The respondent is putting the cart before the horse by advancing the aforesaid submission. It is not that the leave becomes authorized and ceases to be unauthorized because it is sanctioned as ?leave without pay?. Because it is unauthorized, it is treated as without pay. Obviously, if the workman absents unauthorisedly and in breach of the relevant service rules, the management would be entitled to treat the same as ?leave without pay?. However, merely because the same is treated as ?leave without pay?, the same does not stand regularized and does not absolve the delinquent workman from disciplinary action for going on unauthorized leave. It is evident that the word ?availing? has been used

in the context of its general connotation and not with the intention to connote that leave had been duly sanctioned. Furthermore, the charge sheet stated that the respondent?s past conduct would be taken into account and he had, in fact, been penalised twice on previous occasions for availing excessive leave.

21. The next submission of the respondent that the comment ?leave without pay? as against ?absent? in the attendance column implies that the respondent had been sanctioned leave is also misplaced. As already noted hereinabove, unauthorised absence is treated as leave without pay by an employer on the principle of no work, no pay. In fact, even on occasions where an employer deducts pay for unauthorised leave, the employer is not precluded from treating such unauthorised leave as misconduct only on the grounds that an employee?s pay has been deducted. This view finds support in DTC v Sardar Singh (supra) as relied on by me in DTC v. Randhir Singh and Ors., W.P. (C) No. 5990/1998 decided on 06.02.2013, where I have held as follows ?

?7.Having heard learned counsel for the parties, I am of the view that the impugned award cannot be sustained and in the facts and circumstances of the case, there is no case made out for remand thereof to the Labour Court for determination of any other issue. The impugned award, admittedly, cannot be sustained in the light of the decision of the Supreme Court in Sardar Singh (supra). The Supreme Court has ruled that merely because the employer/DTC may have sanctioned the leave subsequently as ?leave without pay?, that would not tantamount to the misconduct under Rule 19(h) of the Standing Orders being washed away. The misconduct takes place when the workman goes on leave without prior permission/sanction unless, of course, it is a case of absence on account of medical illness. Even in those cases, the requirements of Rule 19(h) are required to be followed?.

22. The reliance on the judgment in Bhagwan Lal Arya (supra) by the respondent in the present case is misplaced. The aforesaid was a case where absence on medical grounds was supported by proper medical certificates and, in view of that, the Supreme Court held that the absence of the appellant on medical grounds as well as sanction of leave

could not be termed as grave misconduct. In the present case, the respondent has been unable to prove that he had applied for leave and that such leave was sanctioned.

23. Reliance of learned counsel for respondent on Sukhbir Singh (supra) is also of no avail. A Division Bench of this Court in Ex. Constable Jai Singh @ Jai Pal Singh S/o Shri Chatte Singh v. Union of India (UOI) through its Secretary, Ministry of Home Affairs, Commissioner of Police, Sr. Addl. Commissioner of Police, Armed Police and Training and Dy. Commissioner of Police, 10th Bn. DAP, MANU/DE/3118/2009, held as follows ?

?15.Learned Counsel for the Petitioner relied upon a short order delivered by the Supreme Court in Sukhbir Singh v. State of Haryana and Ors. arising out of SLP (Civil) No. 25710/1995decided sometime in 1996 (date is illegible). It is not clear from the short order whether the hospitalization documents of the petitioner therein were produced before the Enquiry Officer or the circumstances in which they were brought to the notice of the Supreme Court. But in any event, the petitioner therein had produced documents to show his hospitalization and it is under those circumstances that the matter was remitted back to the disciplinary authority for taking appropriate action?.

24. It is not clear from the order in Sukhbir Singh (supra) what the duration of absence, or past record of the appellant was. In the present case, the Labour Court itself observes that the medical certificate produced by the respondent workman does not stand proved. In any event, the respondent was given sufficient opportunity to produce the leave applications duly accompanied with medical certificates and the same have not been produced before this Court either

25. In Sardar Singh (supra), the court observed that ?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 Order 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.酎

26. It appears that the Labour Court while passing the impugned order and the impugned award has acted merely out of sympathy than on any legal basis. In Amar Singh (supra), on this aspect, this Court had observed as follows:

?Misplaced sympathy does more harm to the cause of the workmen generally, than the good that it may apparently do to the delinquent workman who is before the industrial tribunal. What is the message being sent to the larger body of workmen by the industrial tribunal when it adopts such an approach? It is that one can get away with indiscipline, inefficiency, disloyalty and disobedience to one?s employer and one?s employment. Such misconduct pulls down the employer organization and puts undue strain on the others serving the organization. Why should the other large body of

workers, who sincerely slog it out to serve the employer, suffer ? by having to take on the burden of the good-for-nothing bad apples and black sheep within the organisation? By showing misplaced sympathy, the industrial tribunal indirectly breeds inefficiency within the organisation. It brings a bad name to the organization, and hardly ever reforms the delinquent workman ? who is emboldened further after tasting

success, despite his misconduct. Courts and Tribunals do possess the power to exhibit compassion and sympathy but if the same is shown in undeserving cases, the results can be disastrous. It is high time, we became more efficient as a nation. We can ill afford indiscipline or inefficiency, particularly in Industry and Commerce, if we have to successfully compete in a liberalized world with other nations. Our teaming population ? which has till now been very patient, accommodating and forgiving is becoming more and more demanding ? and rightly so. It is for us to fulfill the legitimate aspiration of our people. To achieve the same, our workforce must adopt a more responsible attitude, and we must do our bit to discourage and punish indiscipline and inefficiency?.

27. For all the aforesaid reasons, the impugned order and the impugned award cannot be sustained and is accordingly quashed. The writ petition stands allowed leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

May 3, 2013

W.P.(C) 1852/2011 Page 1 of 16

$ R-16

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 8830/2011

UNION OF INDIA ..... Petitioner

Through : Mr Abhishek Yadav, Adv. with Mr. V.S.R Krishna, Adv.

versus

ASHOK KUMAR ..... Respondent

Through : Mr H. K. Chaturvedi, Adv.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V. K. JAIN

O R D E R

19.03.2012

This writ petition is directed against the orders dated 21.02.2011 and 27.09.2011 in OA No.3761/2011 and RA No.100/2011, respectively passed by the Central Administrative Tribunal, Principal Bench, New Delhi.

We have heard the learned counsel for the parties.

It has now been agreed by the learned counsel for the respondent, on instructions from the respondent, who is also present in the Court, that his date of retirement may be taken as 31.10.2010 without going into the issue of date of birth.

In view of this, the writ petition stands disposed with the direction that the petitioner?s date of retirement would be taken as 31.10.2010 and his retiral benefits would be computed with reference to that date.

We are assured by the learned counsel for the petitioner that the retiral benefits shall be paid to the respondent within one month. The learned counsel for the respondent has assured this Court that the respondent shall sign the requisite papers including the pension proforma within a week.

The directions given by us supercede the orders passed by the Tribunal.

The writ petition stands disposed of accordingly.

BADAR DURREZ AHMED, J

V. K. JAIN, J

MARCH 19, 2012

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

\+ W.P.(C) 1533/2012

% **5th August, 2012**

JAI SINGH RAWAT ..... Petitioner

Through: Mr. H.K.Chaturvedi and Mohd. Aqil, Advocates.

versus

HOD/PROVOST DEPARTMENT OF SOCIAL WORK (H) AND ANR ..... Respondents

Through: Mr. Mohinder J. S.Rupal, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner by means of this writ petition claims release of pension amount from March, 1999 to August, 1999.

2. Respondent nos.1 and 2 have filed their counter-affidavit alongwith the calculations as Annexure R-4 which shows that petitioner was paid an excess amount of pension of Rs. 15,632/-, and which was thereafter recovered way bank in the year 1999, and to which, petitioner never raised an objection for about four years.

3. In the rejoinder-affidavit which is filed on behalf of the petitioner calculations are not disputed because petitioner has not filed his own calculations, and therefore, it is clear that the petitioner received an excess amount of Rs.15,632/-.

4. No one can be allowed to retain excess amount which is received and the recent judgment in this regard is the judgment in the case of ***Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. 2012(8) SCC 417.*** Para 14 of the said judgment is relevant and which emphasized the aspect of money being tax payer's money, and the same reads as under:-

> "14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment." (emphasis added)

5. The writ petition is also in my opinion barred by delay and laches because an act of 1999 cannot be challenged after four years by filing of a

representation, and the writ petition itself is filed in the year 2012.

6. In view of the above, there is no merit in the writ petition, which is therefore dismissed, leaving parties to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 05, 2013
ib

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2463/2012

MOBIN AHMED AND ORS ..... Petitioners

Through: Mr. Binod Kumar Singh, Advocate for

Mr. H.K. Chaturvedi, Advocate

versus

DDA AND ORS ..... Respondents

Through: Mr. Rajiv Bansal, Advocate with

Mr. Rahul Bhandari, Advocate for R-1/DDA.

Mr. Parvinder Chauhan, Adv. for R-3/DUSIB.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

27.04.2012

1. This petition has been filed by three petitioners praying inter alia for directions to respondent No.1/DDA, respondent No.2/Govt. of NCT of Delhi and respondent No.3/DUSIB to allot alternative plots/flats to them for rehabilitation on the ground that their Jhuggi clusters in Jasola village were demolished by the respondents on 09.06.2009.

2. Counsel for the petitioners states that after the demolition action was undertaken by the respondent No.1/DDA, the petitioners were

entitled to allotment of alternative plots/flats as per the scheme of the respondents, upon establishing the fact that they were residents

W.P.(C) 2463/2012 Page 1 of 6

of the Jhuggi clusters in question. It is further stated that similarly placed persons as the petitioners herein have approached this Court from time to time seeking identical relief as sought by the petitioners in the present case.

One of the decisions relied upon by the counsel for the petitioners is dated 23.09.2011. It was delivered in a batch of matters, lead matter being W.P.(C) 7021/2011 entitled Sitare and Ors. vs. DDA and Ors. A copy of the aforesaid decision is enclosed as Annexure P-2 to the present

petition. The aforesaid batch of writ petitions were decided at the stage of admission itself after taking into consideration the stand of both parties, namely, DDA and DUSIB. In the aforesaid case, counsel for respondent No.3/DUSIB had stated that though the DUSIB carries out the survey and determines the eligibility of applicants on receiving a reference from the land owning agency, but the respondent No.1/DDA has a separate policy for rehabilitation/relocation and DDA itself carries out the survey for determining the eligibility of the applicants. Counsel for respondent No.1/DDA had denied that respondent No.1/DDA had any separate policy for carrying out the survey to determine the eligibility of the applicant and instead, it was stated that the rehabilitation of the

W.P.(C) 2463/2012 Page 2 of 6

occupants of such Jhuggi, who are dislocated from the clusters in question, is covered by the policies put in place by the respondent No.2/Govt. of NCT of Delhi. As regards, Govt. of NCT of Delhi, it was noticed in the aforesaid decision that the DUSIB had been nominated as the nodal agency for implementation of the schemes for relocation/rehabilitation of J.J. clusters from the land belonging to MCD, Delhi Government and its agencies and in the case of Central Government, agencies like, Railways, DDA, LandDO, Delhi Cantonment Board, NDMC etc. are free to carry out relocation/rehabilitation by themselves as per the policy of the Govt. of NCT of Delhi.

3. After taking into consideration the stand of all the three Departments, the Court had opined that once the policy for relocation/rehabilitation had been formulated by the Govt. of NCT of Delhi, no distinction could be made between Jhuggi clusters over land belonging to MCD and those which belonged to DDA. As a result, all the aforesaid petitions were disposed of with the following directions:-

?10. The petitions are disposed of with the following directions:

(i) The agency owning the land underneath the JJC at Jasola, demolition action whereat was carried out on 09.06.2009, whether DDA or otherwise, is

W.P.(C) 2463/2012 Page 3 of 6

deemed to have made reference to the respondent No.3 DUSIB for determining the eligibility of the petitioners in all the four petitioners for re-location/re-habilitation in accordance with the Policy of the respondent No.2 GNCTD;

(ii) The respondent No.3 DUSIB to accordingly so determine the eligibility of the petitioners;

(iii) The petitioners to appear before the respondent No.3 DUSIB along with all their documents in this regard, in the first instance on 20.10.2011 and thereafter on such further dates as may be necessary;

(iv) The respondent No.3 DUSIB to make endeavour to complete the enquiry/determination within one year thereof;

(v) The department of Food and Civil Supplies and other concerned departments from whom respondent No.3 DUSIB may need to verify to

determine the eligibility of the petitioners, are directed to supply all information sought to respondent No.3 DUSIB and to render other assistance if any sought;

(vi) If the petitioners or any of them are so found eligible, they be re-located/re-habilitated in accordance with the Policy. However, the petitioners or such of them who are not found eligible, if not found eligible, shall have remedies in law.

The petitions are disposed of. No order as to costs.?

4. In view of the fact that the petitioners herein also claim that they were residing in the Jhuggi clusters in Jasola village, where demolition was undertaken by the DDA on 09.06.2009, it is deemed

W.P.(C) 2463/2012 Page 4 of 6

appropriate to dispose of the present petition with similar directions as passed in the aforesaid writ petition. Accordingly, the present petition is disposed of with the following directions:-

(i) The agency owning the land underneath the JJC at Jasola, where demolition action was undertaken on 09.06.2009, whether DDA or otherwise, is deemed to have made reference to the respondent No.3/DUSIB for determining the eligibility of the petitioners for re-location/re-habilitation in accordance with the Policy of the respondent No.2/GNCTD.

(ii) The respondent No.3/DUSIB shall determine the eligibility of the petitioners.

(iii) The petitioners shall appear before the respondent No.3/DUSIB alongwith all their documents in this regard, in the first instance on 21.05.2012, and thereafter on such further dates as may be necessary.

(iv) The respondent No.3/DUSIB shall make an endeavour to complete the enquiry/determination within a period of six months therefrom.

(v) The Department of Food and Civil Supplies and other concerned Departments from whom respondent No.3/DUSIB may need to

W.P.(C) 2463/2012 Page 5 of 6

seek verification to determine the eligibility of the petitioners, are directed to supply all the requisite information sought by the respondent No.3/DUSIB and to render other assistance if any sought.

(vi) If the petitioners or any of them are so found eligible, they shall be re-located/re-habilitated in accordance with the Policy. However, the petitioners or such of them who are not found to be eligible, shall have their remedies in accordance with law.

The petition is disposed of. No order as to costs.

HIMA KOHLI, J
APRIL 27, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6520/2012

MAHENDER PAL AND ORS. ..... Petitioners

Through: Mr. H.K. Chaturvedi and

Ms. Anjali Chaturvedi, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

AND ORS. ..... Respondents

Through: Ms. Nidhi Singh, Advocate for

Ms. Sangeeta Chandra, Advocate for respondent No.1/DDA

Ms. Bandana Shukla, Advocate for Ms. Ruchi Sindhwani, Advocate for respondents No.2/GNCTD

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

12.10.2012

Eighteen petitioners in this petition claims to be jhuggi dwellers in Dr. Ambedkar Colony, Village- Satberi, New Delhi since the year 1994 and grievance of petitioners is that without survey or demarcation, demolition has taken place in this area on 13th September, 2011, resulting in dislocation of petitioners. Petitioners seek alternate shelter and suitable compensation.

Counsel for first respondent states that in this regard, petitioners have not made any Representation to respondent-DDA.

Learned counsel for petitioners states that this petition itself be treated as Representation.

In view of stand taken as aforesaid, this petition is disposed of in limine with direction to respondent-DDA to consider this petition as Representation for allotment of alternate shelter/ accommodation in the light of applicable policy guidelines of 3rd February, 2004 and applicable Circulars and Policy in the light of order of 19th December, 2012 passed by a Coordinate Bench of this Court in W.P.(C) No. 8801/2011, ?Ram Sunder Shukla and Ors. Vs. DDA and Ors.?, and take a prompt decision upon this writ petition (while treating it to be a Representation) i.e. preferably within a period of twelve weeks and its fate be communicated to petitioners within two weeks thereafter.

Needless to say, in case grievance of petitioners is not addressed, then they are at liberty to avail of remedy in accordance with the law.

With aforesaid observations, this petition is disposed of.

Dasti.

(SUNIL GAUR)

JUDGE

OCTOBER 12, 2012

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$ 1 and 2

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2778/2012

LAXMI NARAIN KHARE ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

THE MANAGEMENT OF ECO TOURS ..... Respondent

Through: Mr. Satender Verma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

02.05.2013

1. The present writ petition has been preferred by the petitioner workman to assail the award dated 16.01.2012 passed by the Labour Court XI, Karkardooma Courts, Delhi in I.D. No.1050/2004, whereby the reference made by the Appropriate Government in respect of the petitioner?s termination from service has been answered in favour of the petitioner and against the respondent management. The petitioner is still aggrieved

by the impugned award on account of the fact that even though his termination has been found to be illegal, he has been awarded compensation of a paltry amount of Rs.7,500/- apart from Rs.2000/- as litigation expenses in lieu of reinstatement, back wages, etc.

2. The admitted position is that the petitioner joined the service of the respondent management as a Driver in the year 1987. His last drawn wages were Rs.1,800/- per month. His services were terminated on 25.04.1991, which has been found to be illegal. The petitioner had, therefore, rendered about four years of service. The unit of the respondent management, it is claimed, was shut down in the year 2000. The Labour Court while granting the aforesaid compensation has given its reasoning

as follows:

?35. At the time of retrenchment of the workman, he was entitled to get almost a sum of Rs.2500/- as notice pay and compensation amount. But he was not given this amount at that time i.e. in the month of April, 1991. Approximately by this time the said amount would have been cumulated upto Rs.7,500/-. Therefore, it is directed that a sum of Rs.7,500/- be given to the workman as compensation. A further sum of Rs.2,000/- be also given to him as litigation expenses.?

3. The submission of learned counsel for the petitioner is that the aforesaid reasoning is absolutely flawed. Since the termination has been found to be illegal, it has the effect of being null and void, i.e., as if no termination has taken place and the petitioner has continued in service for all intents and purposes. The Labour Court could not have paid the compensation which the respondent was obliged to pay at the time of termination of services by following the procedure prescribed in Section 25-F of the Industrial Disputes Act, 1947. The petitioner was entitled to back wages, apart from reinstatement in service. Learned counsel submits that the salary of the petitioner would have undergone increase from time to time, keeping in view the market trends and inflation, even if one were to assume that the services would have continued till the year 2000 when the unit of the respondent management was closed down.

4. On the other hand, learned counsel for the respondent while opposing the petition submits that the Industrial Adjudicator having exercised its discretion to award compensation in lieu of reinstatement, this Court has no jurisdiction to interfere with the same in exercise of writ jurisdiction, even qua the amount of compensation granted by the Labour Court. In support of this submission, he places reliance on a decision of a Division Bench of this Court in M/s Lords Homeopathic Laborites Pvt. Ltd. Vs. Ms. Lissy Unnikunju and Others, L.P.A. No.1647/2005 decided on 10.02.2006. He particularly placed reliance on paragraphs 15 to 20 of this decision, which reads as follows:

?15. In a large number of cases, this Court has granted compensation instead of reinstatement vide Model School for Mentally Deficient Child v. Mukh Ram Prasad Maurya and Ors. 109 (2004) DLT 292; Suraj Pal Singh and Ors. v. P. O. Labour Court and Anr. 2002 v. AD (Delhi) 706; Harsha Tractors Ltd. v. Secretary (Labour) and Ors. 2001 III AD (Delhi) 746; Shri Pal Singh v. National Thermal Power Corporation Ltd. 2002 III AD

(Delhi) 1059; Sain Steel Products v. Naipal Singh and Ors. 2001 LLR 566; R. Mugum and Ors. v. The P. O. Labour Court and anr. 2000 VI AD (Delhi) and State Bank of India v. J. R. Surma 2002 VII AD (Delhi) 325.

16. Whether compensation should be awarded or reinstatement is in the Tribunal?s discretion vide United Commerce Bank Ltd v. Secretary, U.P. Bank Employees Union and ors., AIR 1953 SC 437. Various factors have to

be seen as to whether reinstatement or compensation should be granted vide The Management of Bharat Kala Kendra v. R. K. Baveja, 1980 (40) FLR 244 (Delhi).

17. In Hindustan Steel Ltd. v. A. K. Roy, AIR 1970 SC 1401, the Supreme Court observed (vide paragraph 14):-

?The Tribunal, however, has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional.?

18. This view was followed by a Division Bench of this Court in Jagat Singh v. Estate Officer 2002 V AD (Delhi) 713. The same view was taken in Rolston John v. CGIT 1995 Supp. (4) SCC 548; DTC v. Presiding Officer 2000 LLR 136; Nehru Yuva Kendra v. UOI, 2000 IV AD (Delhi) 709; A. K. Chakraborty v. Saraswatipur Tea Co. Ltd. (1982) 2 SCC 328, etc.

19. In Employers, Management of Central P and D Inst. Ltd. v. UOI, AIR 2005 SC 633, the Supreme Court observed that it is not always mandatory to order reinstatement after holding the termination illegal, and instead compensation can be granted. The same view was taken by a Division Bench of Delhi High Court in Pramod Kumar v. Presiding Officer, 123 (2005) DLT 509.

20. In the present case, the Labour Court on the facts of the case has exercised its discretion and directed the grant of compensation instead of reinstatement.?

5. Having heard learned counsel for the parties, I am of the view that there is no merit in the submission of learned counsel for the respondent that this Court has no jurisdiction to interfere with the exercise of discretion by the Industrial Adjudicator, either in respect of the aspect of grant of compensation in lieu of reinstatement, or on the aspect of the amount of compensation that the Industrial Adjudicator grants in a particular case. The decision relied upon by the respondent does not say that even when discretion has been wrongly exercised ? on wrong assumptions and principles, or arbitrarily, or capriciously without application of mind, even then this Court would not interfere with the exercise of discretion by the Industrial Adjudicator. The decision in question, in any event, was one, wherein the exercise of discretion to grant compensation in lieu of reinstatement was assailed, and the Division Bench, in the facts of that case, was of the view that the exercise of discretion should not have been interfered with.

6. In the present case, the petitioner is not questioning the exercise of the discretion to grant compensation in lieu of reinstatement. What is being questioned is the computation of the compensation, i.e., the basis of which said compensation amount has been fixed. A perusal of paragraph 35 of the impugned award shows that the approach of the Labour Court in computing the compensation is completely flawed and borders on

perversity. The employer cannot offer to pay compensation amount before the Court, once

a finding has been arrived at about the termination being illegal which would have been payable at the time when termination took place, and to put the matter to rest. The rights of the workman, who has been thrown out of service and who has had to fight a long drawn legal battle before getting a verdict in his favour about his termination being illegal ? cannot be compromised in the manner in which the Labour Court has done in the present case. What the Labour Court has done is complete travesty of justice. I have, therefore, no hesitation in setting aside the quantification of the compensation arrived at by the Labour Court.

7. Considering the fact that the petitioner had served the respondent for nearly four years before his termination as a Driver; the fact that his last drawn wage was Rs.1,800/- per month; the fact that the respondent claimed that its unit was shut down in the year 2000; the fact that the wages of Driver ? a skilled workman increased from time to time with inflation; as also the fact that a Driver would not have remained unemployed all through, I am of the view that the fair and adequate compensation in lieu of reinstatement, in this particular case, would be Rs.1,50,000/-. The impugned award is modified to the aforesaid extent. In case the compensation is not paid within four weeks, the petitioner shall also be entitled to interest thereon @ 9% per annum from date hereof, till payment.

8. The petition stands disposed of with Costs quantified at Rs.10,000/-. The Costs be paid to the Delhi High Court Legal Services Committee.

VIPIN SANGHI, J.

MAY 02, 2013

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

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Date of Decision: 03.12.2013

\+ WP(C) No.4994 of 2012

SARDAR GURMUKH SINGH

..... Petitioner

Through: Mr. H.K. Chaturvedi, Ms. Anjali Chaturvedi, Advs.

versus

GOVT.OF NCT OF DELHI AND ANR

..... Respondent

Through: Mr. Nishant Pratap for Mr Parvinder Chauhan, Adv. for R-2
Ms. Ruchi Sindhwani with Ms. Bandana Shukla, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioner before this Court claims to be a victim of 1984 riots which took place in Delhi. According to the petitioner, his house bearing number 211, K-1/17 was set on fire and his shop was destroyed by the rioters. DD No.9A dated 1.11.1984 is alleged to have been lodged in this regard at Police Station Mangolpuri. On 3.6.1990, the petitioner was paid Rs.4,000/- as monetary relief. On 17.10.2006, the petitioner was again paid a sum of Rs.36,000/- as monetary relief for damage of property and goods etc. It appears that the petitioner also applied for allotment of a flat under a scheme for allotment of flats to the victims of 1984 riots. Vide letter dated 6.1.2009, issued from the office of Deputy Commissioner (NW), Kanjhawala – Delhi-110081 the petitioner was informed that his case was considered by the

Competent Authority i.e. Divisional Commissioner, Delhi and rejected as he had not been granted any *ex-gratia* relief of 1984 riots for death/damage Property/ Injury. Being aggrieved from the said communication, the petitioner filed W.P(C) No.6528/2010 which came to be decided by this Court on 19.5.2011. A perusal of the said order would show that in the counter affidavit filed by the Government of NCT of Delhi, it was admitted that the petitioner was a 1984 riot victim who had been paid enhanced compensation. As regards allotment of flat, it was submitted that the Government of NCT of Delhi does not have any policy for allotment of flats to 1984 riots victims, which was the subject matter of Slum & JJ Department. A copy of the counter affidavit filed in the said writ petition is available at pages 40-41 of the paper book. In the aforesaid counter affidavit, it was admitted in para 3 that the petitioner was paid enhanced compensation amounting to Rs.36,000/- regarding damage to his property besides earlier compensation of Rs.4,000/- paid to him.

2. Pursuant to the order passed by this Court on 19.5.2011, the respondent no.2 – Delhi Urban Shelter Improvement Board, vide letter dated 19.9.2011 requested the SDM – Kanjhawala to send eligibility-cum-offer letter so that they could initiate further action in the matter. It was stated in the said letter that as per the prevailing practice, the Board was allotting flats on the basis of eligibility letter issued from his department. Thus, the stand taken by the Delhi Urban Shelter Improvement Board was that they were allotting flats to the victims of 1984 riots and the eligibility for such allotment was to be determined by the concerned SDM. The aforesaid letter dated 19.9.2011 was followed by a reminder dated 26.12.2011.

3. Vide letter dated 17.1.2012, the Govt. of NCT of Delhi – Office of the Deputy Commissioner (Revenue), District – West, Kanjhawala, referring to the order dated 19.5.2011 passed by this Court in W.P(C) No.6528/2010, informed the Delhi Urban Shelter Improvement Board as under:

2. The said property does not belong to Revenue Department but belongs to DUSIB and as such the responsibility of allotments, upkeepment and safety of these flats is subject matter of DUSIB.

3. The copy of Joint survey of 2000 by Tehsildar (Model Town) and officials from erstwhile Slum & JJ Dept. of MCD is enclosed.

4. DUSIB may take appropriate decision in this matter.

Vide letter dated 10.7.2012, the Delhi Urban Shelter Improvement Board informed the petitioner that his case had been examined and the name of the petitioner is not found in eligible 1984 riot victims list and, therefore, his request for allotment of flat under 1984 riots victims cannot be considered.

4. In its counter affidavit, filed in the present writ petition, the Delhi Urban Shelter Improvement Board has *inter alia* stated that after large scale violence that followed the assassination of the then Hon'ble Prime Minister, the government came up with various rehabilitation/ compensation policies for the benefit of the riot victims and one of such policies provided for allotment of alternative accommodation to the riot victims. It is further stated in the counter affidavit that in terms of the said policy, the eligibility for allotment of alternative accommodation was determined by the concerned SDM and after determination of the eligibility, an eligibility-cum-offer letter in favour of such eligible person, is issued by the SDM to the Delhi Urban Shelter Improvement Board and on the basis of such eligibility-cum-offer letter, the allotment used to be made previously by the Slum & JJ Department erstwhile Municipal Corporation of Delhi which has since been succeeded by the said Board. It is also stated in the counter affidavit that role of the Board starts only after issuance of eligibility-cum-offer letter by the concerned SDM and in the absence of such letter, the Board does not come into picture. The Board in its counter affidavit has also referred to the letters dated 19.9.2011

and 26.12.2011, but has claimed that there was no response from the concerned SDM to the aforesaid letters.

5. It would thus be seen from the facts stated hereinabove that there is a Scheme for allotment of alternative flats to the victims of 1984 riots. This is also an admitted position that Delhi Urban Shelter Improvement Board, which has succeeded the Slum & JJ Department of MCD is now entrusted with the responsibility of making such allotment. This is not the case of the Board that there is no policy for allotment of alternative flats to the victims of 1984 riots or that the responsibility for such allotment has been entrusted to some other agency. The plea taken by the Board is that the eligibility for such allotment is to be determined by the concerned SDM and thereafter the matter is to be processed by the Board.

6. The learned counsel appearing for the Government of NCT of Delhi states that as far as Government of NCT of Delhi is concerned, they have already stated in the counter affidavit filed in the earlier writ petition that the petitioner is a victim of 1984 riots and that is why it was paid initial compensation as well as the enhanced compensation. The eligibility of the petitioner for allotment of alternative flat, therefore, stands admitted by the Govt. of NCT of Delhi. In view of the aforesaid stand taken by the Government of NCT of Delhi, it is no more open to the Board to pass the buck to the said government.

7. The writ petition is, therefore, disposed of with direction to the respondent no.2 – Delhi Urban Shelter Improvement Board to process the case of the petitioner for allotment of alternative flat, as per the applicable policy, on the basis that the petitioner is a victim of 1984 riots, who was paid compensation by the Government. An appropriate decision, in this regard, as per the policy of allotment of alternative flat to the victims of 1984 riots, shall be taken by the Delhi Urban Shelter Improvement Board within eight (8)

weeks from today and be conveyed to the petitioner within one week thereafter.

There shall be no orders as to costs.

DECEMBER 03, 2013/*rd* V.K. JAIN, J.

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

Judgment delivered on: 4th December, 2014

\+ **W.P.(C) No. 2182/2011**

PASUPATI SPINNING AND WEAVING MILLS LTD..... Petitioner

Represented by: Mr. Navin Chawla, Mr. Aditya V. Singh and Mr. Anurag Narula, Advocates.

Versus

REGIONAL PROVIDENT FUND COMMISSIONER AND ANR ..... Respondents

Represented by: Ms.Aparna Bhat, Advocate for Respondent No.1.
Mr.H.K.Chaturvedi, Advocate for the Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present petition is directed against the original order dated 28.03.2005 passed by the Assistant Provident Fund Commissioner and the appellate order dated 28.01.2011, whereby an amount of Rs.56,086/- has been determined on account of provident fund dues for the period from September, 1999 to April, 2003, in respect of respondent No.2.

2. Vide the aforesaid original order, the petitioner was directed that the amount shall be paid in respective accounts within a period of 15 days from the date of receipt of the order.

3. Also granted liberty to the respondent No.1 to initiate a fresh inquiry under Section 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (for short 'the Act'). In case of concealment of any fact by the petitioner/Establishment for the period under inquiry, the petitioner will be liable to pay liability as determined by the Department. It was further directed that the Establishment is liable to pay an amount of interest at the rate of 12% *per annum*, as provided under Section 7Q of the Act from the date of due till the date of payment. The assessment under Section 7A of the Act shall be without prejudice to any demand raised under Section 14B of the Act.

4. Mr. Navin Chawla, learned counsel appearing on behalf of the petitioner/Establishment submits that the respondent No.2 was the Visiting Consultant/Advisor of the petitioner/Establishment for a period from September, 1999 to April, 2003, on the mutually agreed terms and conditions that the respondent No.2 was to be paid a consolidated sum of Rs.8,000/- per month for the consultation/ assistance/advice on issues relating to taxation/finance/accounts of the petitioner/Establishment. However, he was not entitled to any other benefits, much less any conveyance allowance/provident fund/bonus/gratuity/children education etc.

5. Mr.Chawla further submits that during the aforesaid period, the respondent No.2 never raised any dispute in respect of relationship between him and the petitioner Establishment. He was allowed to take up work for other clients besides doing independent practice.

6. Mr.Chawla submits that the learned Tribunal has wrongly considered

the respondent No.2 as the 'employee' of the petitioner/Establishment, whereas the respondent No.2 was engaged just as a Visiting Consultant/Accountant by the petitioner/Establishment and he was not the employee of the petitioner at any point of time.

7. Also submits that the learned Tribunal committed an error apparent on the record by holding that the receipts show different amounts were paid on different dates, however, it is correct on the face of the record as the receipts itself shows that a uniform amount of Rs.8,000/- was being paid to the respondent No.2 and that too only as 'rent' .

8. On a specific query put by this Court that at one place, the petitioner/Establishment has mentioned that the respondent No.2 was a Consultant or Retainer and at other place, it is mentioned that an amount of Rs.8,000/- was being paid to him as rent. Learned counsel explained that sum of Rs.8,000/- was paid to respondent no. 2 as Retainer or Consultant by the petitioner/Establishment, however, for his own tax benefit, he used to take receipt of rent in lieu of Rs.8,000/-.

9. In support of his case, learned counsel for the petitioner has relied upon a case of ***The Regional Director, E.S.I. Corporation Vs. P.K. Mohammed (Pvt.) Ltd., 1985 (2) KLJ 515***, wherein held as under:-

> *"2. The short facts relevant for consideration of the above question are as follows:*
>
> *.....Ultimately, it came to the question whether Krishna Menon and Sadasivan Pillai whose services are engaged as consultants on contract basis by the Respondent could be treated as its employees and their names should find a place in the register. It was contended by the Respondent that Krishna*

Menon retired from the service of the Respondent in the year 1976 and he was aged 73 at the time of inspection. He was engaged as consultant on contract basis from 1st September 1980 onwards. He was being paid only consultancy charges. It is not obligatory on his part to come to the establishment. After the year 1979 about 13 inspections were conducted by different officers and on no occasion they had found it necessary to register the names of those who were rendering consultancy service. The E.S.I. Court accepted the above contention and found that excluding two consultants there were no sufficient number of employees so as to cover the establishment by the Act.

3. .....

4. The word 'employee' is defined as follows under Section 2(9) of the Employees State Insurance Act, 1948:

2(9) 'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and

1. who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere, or

2. who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment, or

3. whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of

service; (and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment for any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment, but does not include)

(a) any member of (the Indian) naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) a month:

Provided that an employee whose wages excluding remuneration for overtime work exceed (such wages as may be prescribed by the Central Government) a month at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

Admittedly the two consultants are not working in the premises of the Respondent. Their work is carried on at their own place. They are engaged as consultants in the matter of carrying on the business of the Respondent just like retaining tax consultants. Such engagement cannot create an employer-employee relationship. The Respondent may be one among the several clients of the consultants. They cannot be treated as employees of all their clients to whom they give advice on business matters.

5. In Tata Oil Mills Co. Ltd., Ernakulam v. The Employees State Insurance Corporation, Trichur 1978 L.A.B. I.C. 585, a question arose as to whether persons who are employed principally for the work of a particular factory would come within the definition of the term 'employee' under Section 2(9), even when they do some Ors.' work also. This Court held that if

the relationship is mostly and basically with a particular factory and not with any other factory, he will be an employee of the particular factory for the purpose of the Act. This is a question of fact which has to be ascertained by a general appreciation of the various circumstances connected with the employment. If the employees are not so specially connected with any one factory, but are only employed in connection with the distribution or sale of the products of various factories with none of which they are principally connected, they cannot be treated as employees of any one factory under the Act.

6. In this case the finding of the fact is that services of Krishna Menon and Sadasivan Pillai are sought for as consultants on contract basis. There is no finding that their employment is solely or mainly under the Respondent establishment. In the light of the above finding of fact, no other view is possible than the one taken by the E.S.I. Court that they would not come within the definition of 'employee' under the Act. We are therefore of the view that the consultancy service rendered by two persons to the Respondent would not make them employees of the establishment thus bringing it under the purview of the E.S.I. Act. The appeal therefore stands dismissed."

10. Also relied upon the case of ***Food Corporation of India Vs. Provident Fund Commissioner & Ors. (1990) 1 SCC 68***, wherein the Apex Court held as under:-

"7. The question, in our opinion, is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act.

8. It is of importance to remember that the Commissioner while conducting an inquiry under Section 7A has the same powers as are vested in a Court under the CPC for trying a

suit. The section reads as follows:

Section 7(A) Determination of Moneys due from Employer - (1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme) as the case may be and for this purpose may conduct such inquiry as he may deem necessary.

(2) The Officer conducting the inquiry under Sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the CPC, 1908, for trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses.
and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code.

9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of

the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person."

11. The respondent No.2 has filed reply to the instant petition, wherein in reply to Para 4 of the petition, it is stated that he was appointed by the Management in the month of September, 1999 as an Accountant and his last drawn salary was Rs.13,000/- per month (basic salary of Rs.5,000/- + Rs.8,000/- p.m. as HRA + ex gratia Rs.2,500/- *per annum* + leave etc.). Further stated, services of the respondent No.2 were illegally terminated on 30.09.2003 without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947.

12. It is an admitted case that the respondent No.2 has raised an industrial dispute against the aforesaid termination order, which is pending adjudication.

13. Vide the original order dated 28.03.2005, the learned Authority specifically stated that none of the parties could produce urgent proof of basic salary and allowances. In the absence of proof of documentary evidence, the learned Authority while passing the original order, took a sum of Rs.5,000/- as basic salary for the purpose of assumption of Provident Fund dues, as submitted by the Member during inquiry proceedings under Section 7A of the Act.

14. Perusal of the receipts at page No.23 dated 31.10.1999 and at page No.27 dated 31.12.1999 reveals that the respondent No.2 had received a sum of Rs.8,000/- each in cash against rent for the months of October and

December, 1999, respectively. Some more receipts corroborating the same are also on record. Moreover, these receipts do not establish that the respondent No.2 was employee of the petitioner/Establishment.

15. Since both the parties did not produce any material or led any evidence before the Authority, therefore, there is no material on record to ascertain the fact that the consultancy service rendered by the respondent No.2 to the petitioner/Establishment would make him employee of the petitioner/Establishment or not.

16. Under Section 7A of the Act, the Central Provident Fund Commissioner or Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may determine the amount due from an employer under any provision of this Act as the case may be and for this purpose may conduct such enquiry as he may deem necessary. The said Authority for the purpose of such enquiry has the same powers as are vested in a Court under CPC, 1908 for trying a Suit in respect of enforcing the attendance of any person or examining him on oath; requiring the discovery and production of documents and receiving evidence on affidavit. The Commissioner / authority should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. This is the legal duty of the Commissioner, which the said authority failed to do so in the present case.

17. In view of the above discussion, the original order dated 28.03.2005 and the appellate order dated 28.01.2011 are hereby set aside and the case is remitted to the Authority to hold a fresh inquiry in the matter.

18. It is clarified that if the parties do not produce the record pertaining to the alleged employment, the said Authority may take steps in accordance with law and pass order accordingly.

19. Pursuant to award passed by the Authority, the petitioner/Establishment has deposited a cheque of Rs.56,086/- with the Regional Provident Fund Commissioner. The said Authority is directed to invest this amount in the form of FDR and the same shall be released with interest to be accrued, subject to the outcome of the inquiry, as directed above.

20. Accordingly, the parties are directed to appear before the Regional Provident Fund Commissioner, Regional Office: 28 Community Centre, Wazirpur Industrial Area, Delhi-52, on 12.01.2015 for directions.

21. The present petition stands allowed with above observations.

22. The Registry of this Court is directed to send a copy of this order to the Authority mentioned above.

SURESH KAIT
(JUDGE)

DECEMBER 04, 2014
Sb/jg

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

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Date of Decision: 03.12.2013

\+ WP(C) No.4994 of 2012

SARDAR GURMUKH SINGH

..... Petitioner

Through: Mr. H.K. Chaturvedi, Ms. Anjali Chaturvedi, Advs.

versus

GOVT.OF NCT OF DELHI AND ANR

..... Respondent

Through: Mr. Nishant Pratap for Mr Parvinder Chauhan, Adv. for R-2
Ms. Ruchi Sindhwani with Ms. Bandana Shukla, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioner before this Court claims to be a victim of 1984 riots which took place in Delhi. According to the petitioner, his house bearing number 211, K-1/17 was set on fire and his shop was destroyed by the rioters. DD No.9A dated 1.11.1984 is alleged to have been lodged in this regard at Police Station Mangolpuri. On 3.6.1990, the petitioner was paid Rs.4,000/- as monetary relief. On 17.10.2006, the petitioner was again paid a sum of Rs.36,000/- as monetary relief for damage of property and goods etc. It appears that the petitioner also applied for allotment of a flat under a scheme for allotment of flats to the victims of 1984 riots. Vide letter dated 6.1.2009, issued from the office of Deputy Commissioner (NW), Kanjhawala – Delhi-110081 the petitioner was informed that his case was considered by the

Competent Authority i.e. Divisional Commissioner, Delhi and rejected as he had not been granted any *ex-gratia* relief of 1984 riots for death/damage Property/ Injury. Being aggrieved from the said communication, the petitioner filed W.P(C) No.6528/2010 which came to be decided by this Court on 19.5.2011. A perusal of the said order would show that in the counter affidavit filed by the Government of NCT of Delhi, it was admitted that the petitioner was a 1984 riot victim who had been paid enhanced compensation. As regards allotment of flat, it was submitted that the Government of NCT of Delhi does not have any policy for allotment of flats to 1984 riots victims, which was the subject matter of Slum & JJ Department. A copy of the counter affidavit filed in the said writ petition is available at pages 40-41 of the paper book. In the aforesaid counter affidavit, it was admitted in para 3 that the petitioner was paid enhanced compensation amounting to Rs.36,000/- regarding damage to his property besides earlier compensation of Rs.4,000/- paid to him.

2. Pursuant to the order passed by this Court on 19.5.2011, the respondent no.2 – Delhi Urban Shelter Improvement Board, vide letter dated 19.9.2011 requested the SDM – Kanjhawala to send eligibility-cum-offer letter so that they could initiate further action in the matter. It was stated in the said letter that as per the prevailing practice, the Board was allotting flats on the basis of eligibility letter issued from his department. Thus, the stand taken by the Delhi Urban Shelter Improvement Board was that they were allotting flats to the victims of 1984 riots and the eligibility for such allotment was to be determined by the concerned SDM. The aforesaid letter dated 19.9.2011 was followed by a reminder dated 26.12.2011.

3. Vide letter dated 17.1.2012, the Govt. of NCT of Delhi – Office of the Deputy Commissioner (Revenue), District – West, Kanjhawala, referring to the order dated 19.5.2011 passed by this Court in W.P(C) No.6528/2010, informed the Delhi Urban Shelter Improvement Board as under:

2. The said property does not belong to Revenue Department but belongs to DUSIB and as such the responsibility of allotments, upkeepment and safety of these flats is subject matter of DUSIB.

3. The copy of Joint survey of 2000 by Tehsildar (Model Town) and officials from erstwhile Slum & JJ Dept. of MCD is enclosed.

4. DUSIB may take appropriate decision in this matter.

Vide letter dated 10.7.2012, the Delhi Urban Shelter Improvement Board informed the petitioner that his case had been examined and the name of the petitioner is not found in eligible 1984 riot victims list and, therefore, his request for allotment of flat under 1984 riots victims cannot be considered.

4. In its counter affidavit, filed in the present writ petition, the Delhi Urban Shelter Improvement Board has *inter alia* stated that after large scale violence that followed the assassination of the then Hon'ble Prime Minister, the government came up with various rehabilitation/ compensation policies for the benefit of the riot victims and one of such policies provided for allotment of alternative accommodation to the riot victims. It is further stated in the counter affidavit that in terms of the said policy, the eligibility for allotment of alternative accommodation was determined by the concerned SDM and after determination of the eligibility, an eligibility-cum-offer letter in favour of such eligible person, is issued by the SDM to the Delhi Urban Shelter Improvement Board and on the basis of such eligibility-cum-offer letter, the allotment used to be made previously by the Slum & JJ Department erstwhile Municipal Corporation of Delhi which has since been succeeded by the said Board. It is also stated in the counter affidavit that role of the Board starts only after issuance of eligibility-cum-offer letter by the concerned SDM and in the absence of such letter, the Board does not come into picture. The Board in its counter affidavit has also referred to the letters dated 19.9.2011

and 26.12.2011, but has claimed that there was no response from the concerned SDM to the aforesaid letters.

5. It would thus be seen from the facts stated hereinabove that there is a Scheme for allotment of alternative flats to the victims of 1984 riots. This is also an admitted position that Delhi Urban Shelter Improvement Board, which has succeeded the Slum & JJ Department of MCD is now entrusted with the responsibility of making such allotment. This is not the case of the Board that there is no policy for allotment of alternative flats to the victims of 1984 riots or that the responsibility for such allotment has been entrusted to some other agency. The plea taken by the Board is that the eligibility for such allotment is to be determined by the concerned SDM and thereafter the matter is to be processed by the Board.

6. The learned counsel appearing for the Government of NCT of Delhi states that as far as Government of NCT of Delhi is concerned, they have already stated in the counter affidavit filed in the earlier writ petition that the petitioner is a victim of 1984 riots and that is why it was paid initial compensation as well as the enhanced compensation. The eligibility of the petitioner for allotment of alternative flat, therefore, stands admitted by the Govt. of NCT of Delhi. In view of the aforesaid stand taken by the Government of NCT of Delhi, it is no more open to the Board to pass the buck to the said government.

7. The writ petition is, therefore, disposed of with direction to the respondent no.2 – Delhi Urban Shelter Improvement Board to process the case of the petitioner for allotment of alternative flat, as per the applicable policy, on the basis that the petitioner is a victim of 1984 riots, who was paid compensation by the Government. An appropriate decision, in this regard, as per the policy of allotment of alternative flat to the victims of 1984 riots, shall be taken by the Delhi Urban Shelter Improvement Board within eight (8)

weeks from today and be conveyed to the petitioner within one week thereafter.

There shall be no orders as to costs.

DECEMBER 03, 2013/*rd* V.K. JAIN, J.

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2737/2005

BALWANT SINGH RAWAT ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate.

versus

THE P.O. M/S GULSAN HOME ..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

12.10.2012

CM APPL No. 19857/2011

By this application the Petitioner seeks execution of the order dated 25th July, 2011 passed by this Court.

The application is not maintainable before this Court.

Application is dismissed as not maintainable. Petitioner will be at liberty to take remedies as available in law.

MUKTA GUPTA, J.

OCTOBER 12, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 521/2012

SUSHILA ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate

versus

HARISH VATS ..... Respondent

Through: Mr. Parvinder Chauhan, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

17.08.2012

Issue notice. Mr. Chauhan accepts notice on behalf of the respondent. The learned counsel submits that he does not wish to file a reply in view of the order that I propose to pass.

The petitioner alleges contempt of the order dated 19.04.2012 passed in WP (C) 8476/2011. The petitioner had approached this court in the writ petition on the ground that she was a jhuggi dweller at Sawan Park, New Delhi for a long period of time when, her hutment was demolished on 25.09.2000 without making any provision for her rehabilitation. In these circumstances, the petitioner had made prayers for allotment of an alternative plot / flat alongwith the suitable compensation. The court in its judgment noticed the fact that the joint survey was conducted when it was found that the petitioner was living in the area. The petitioner had infact furnished a copy of the ration card bearing the date 19.06.1997.

In view of the fact that the petitioner was not able to produce original

CONT.CAS(C) 521/2012 Page 1 of 3

documents, her case for rehabilitation was not processed further. In this background, the court disposed of the writ petition with the following directions as contained in paragraph 6 of the said judgment :-

??.6. In view of the aforesaid stand taken by respondent No.1/DDA and respondent No.3/DUSIB, it is deemed appropriate to dispose of the present petition with directions to the petitioner to appear before the Deputy Director (Rehabilitation), DUSIB on 02.05.2012 at 3 PM alongwith all the relevant documents she has in her possession for the purpose of verification of her case for rehabilitation under the existing policy. The said documents shall be examined by the aforesaid officer and if satisfied by the documents produced, the case of the petitioner shall be processed for rehabilitation, by allotment of an alternative plot/flat to

her as permissible, within a period of eight weeks from the date of granting a hearing to the petitioner. However, if the respondent No.3/DUSIB is dis-satisfied with the documents that are produced by the petitioner, she shall be informed as to the deficiency in the documents, whereafter, the same shall be produced by her, for the respondent No.3/DUSIB to re-examine her case and take a decision thereon under written intimation to her within a period of four weeks from the date of production of the said documents by her. Respondent No.3/DUSIB shall endeavour to adhere to the timeline indicated above. In case the petitioner is still aggrieved by the inaction/adverse decision, if any, taken by the respondent No.3/DUSIB, she shall be entitled to seek her remedies as per law.

The petition is disposed of?.?

The petitioner thereafter wrote to the respondent i.e., Delhi Urban Shelter Improvement Board for allotment of a plot / flat vide letter dated 08.05.2012. Alongwith the said communication, she also submitted the following papers :-

(i). copy of court orders;

(ii). copy of ration card;

(iii). copy of election card; and

(iv). copy of Delhi Administration card.

CONT.CAS(C) 521/2012 Page 2 of 3

It is the case of the petitioner that since the last appearance before the respondent pursuant to the order of the court on 02.05.2012, there has been no response by the respondent despite having furnished the necessary documents vide communication dated 08.05.2012.

It is also submitted that the respondents have not sent any communication to the petitioner informing her of any deficiency in the documents filed. In these circumstances, it is submitted that the respondent is in contempt of the judgment of this court dated 19.04.2012.

Mr. Chauhan, who appears for the respondent says that they shall treat the contempt petition as a representation and comply with the directions of this court dated 19.04.2012. In case there are any deficiencies, the same shall be communicated to the petitioner within one week from today. If such a communication is received by the petitioner, she will attempt to cure the deficiencies pointed out by the respondent. Upon the petitioner doing so, the respondent shall adjudicate upon the

claim of the petitioner and pass a speaking order one way or the other. In the event, petitioner is still aggrieved, she would be at liberty approach this court by way of an appropriate petition.

With the aforesaid direction, the contempt petition is disposed of.

RAJIV SHAKDHER, J

AUGUST 17, 2012

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CONT.CAS(C) 521/2012 Page 3 of 3

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7415/2012

MANISH KUMAR GUPTA ..... Petitioner

Through: Mr.H.K. Chaturvedi, Ms.Anjali Chaturvedi

and Mr.M.A. Saif, Advocates

versus

THE DIRECTOR , DEPTT OF TRAINING AND

TECHNICAL EDUCATION AND ORS ..... Respondent

Through: Ms.Rupinder Kaur, Adv. for Rs=2 and 3

Ms.Surbhi Mehta and Mr.Ashwin Kumar,

Advocate for respondent non.4

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

O R D E R

07.05.2013

In the year 2007 petitioner applied for the course of Dental Lab Technician under the ITC Scheme and was granted admission with respondent no.2 i.e. Baba Saheb Ambedkar Industrial Training Centre, who is stated to be affiliated with the respondent no.1. Petitioner completed the two year course of Dental Lab Technician on 9.12.2009 and also received a professional trade certificate from respondent no.1.

Counsel for the petitioner submits that an advertisement was published by the Employees State Insurance Corporation Directorate (Medical) Delhi, inviting applications for filling up the posts of ESI Scheme. Petitioner learnt in the year 2012 that he was not eligible for the aforesaid posts because the institute from which he received a two year course certificate is not recognized by the Dental Council of India.

In these circumstances, petitioner seeks a direction to respondent no.3 to recognize the Dental Lab Technician Course of respondent no.2.

After some hearing in the matter, counsel for the petitioner wishes to withdraw the present petition, to enable him to make a representation to respondent no.2 for recognition of Dental Lab Technician Course. Counsel also wishes to make a separate representation to respondents no.1, 3 and 4, to look into the affairs of respondent no.2, as to why they are conducting Dental Lab Technician Course, knowing fully well that the same is not recognized by the respondent no.4.

The present petition stands disposed of, in above terms.

G.S.SISTANI, J

MAY 07, 2013

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W.P.(C) 7415/2012 2/2

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

Date of decision: 23rd September, 2011

\+ **W.P.(C) 7021/2011**

% **SITARE & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 917/2011**

% **SHANKAR PRASAD** **….. Petitioner**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.

AND

\+ **W.P.(C) 1839/2011**

% **MORBATI & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 2943/2011**

% **MUNNA SINGH & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary

2. To be referred to the reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.7021/2011 has come up for consideration for the first time today. The six petitioners claim to have earlier been residents, since prior to the year 1994, of Jhuggi Jhopri Cluster (JJC) in Jasola Village where demolition was carried out on 09.06.2009. They claim to be entitled to re-location in accordance with the Policy of the respondent No.2 Govt. of NCT of Delhi (GNCD). This petition has been filed seeking mandamus therefor.

2. The land underneath the said JJC of which the petitioners claim to have been earlier resident of is stated to belong to respondent No.1 DDA. The Delhi Urban Shelter Improvement Board (DUSIB) (wrongly mentioned as Delhi Urban Centre Improvement Board in the memo of parties) which is vested with the power to carry out the survey and determine the eligibility for re-location in accordance with the Policy aforesaid has been impleaded as respondent No.3.

3. The counsel for the respondent No.3 DUSIB appearing on advance notice has stated that though DUSIB carries out the survey and determines the eligibility on receiving reference from the agency owning the land underneath the JJC but the respondent No.1 DDA has a separate Policy for rehabilitation / re-location and the respondent No.1 DDA itself carries out the survey / determination of eligibility also.

4. The counsel for the respondent No.1 DDA also appearing on advance notice however denies that the respondent No.1 DDA has any separate Policy or separate mechanism for carrying out the survey / determining the eligibility and contends that it is also covered by the policies in this regard of the respondent No.2 GNCTD. He also refers to several other petitions where this Court has directed the DUSIB to carry out survey / determine eligibility qua Jhuggi Jhopri Dwellers (JJD) on respondent No.1 DDA's land also.

5. Undoubtedly, in the past in other matters no such plea has been taken of respondent No.3 DUSIB being not required to or empowered to carry out

the survey / determine eligibility for re-location of squatters on DDA land and this Court has issued several orders for such survey / determination.

6. Need is not felt to issue formal notice of the petition or to call for affidavits / replies inasmuch as no mandamus as sought of re-habilitation / re-location of the petitioners can be issued unless the entitlement of the petitioners is determined by respondent No.3 DUSIB and which has not been done till now. The only direction to be thus made in this petition, since the petitioners have already been dispossessed, is of the eligibility if any of the petitioners to be determined.

7. The counsel for the petitioners at this stage states that he has on behalf of certain other erstwhile residents of the same JJC, also filed W.P.(C) Nos.917/2011, 1839/2011 & 2943/2011 of which notices have been issued and which are listed next on 01.12.2011. On request of the counsels, the files of the said W.P.(C) Nos.917/2011, 1839/2011 & 2943/2011 also have been requisitioned from the Registry and the next date of 01.12.2011 therein is cancelled and the same are also taken up for hearing.

8. A counter affidavit of the department of Urban Development, GNCTD is found to be filed in W.P.(C) Nos.917/2011 & 1839/2011. It is stated therein that the respondent No.3 DUSIB has been nominated as the nodal agency for implementation of the Scheme for re-location / re-habilitation of JJC from the lands belonging to MCD and Delhi Government and its departments / agencies and that in case of Central Government / agencies like Railways, DDA, L&DO, Delhi Cantonment Board, NDMC they are free to carryout the re-location / re-habilitation by themselves as per the Policy of the Delhi Government or may entrust the job to respondent No.3 DUSIB.

9. I am of the opinion that once the Policy of re-location / re-habilitation is of the respondent No.2 GNCTD, no distinction can be made between JJDs over land belonging to MCD and the JJDs over land belonging to respondent No.1 DDA. Since this Court has in the past issued directions to respondent No.3 DUSIB for determination of eligibility of JJDs on land of respondent No.1 DDA also, no reason is found for not issuing similar order in these four petitions also.

10. The petitions are disposed of with the following directions:

(i) The agency owning the land underneath the JJC at Jasola, demolition action whereat was carried out on 09.06.2009, whether DDA or otherwise, is deemed to have made reference to the respondent No.3 DUSIB for determining the eligibility of the petitioners in all the four petitioners for re-location / re-habilitation in accordance with the Policy of the respondent No.2 GNCTD;

(ii) The respondent No.3 DUSIB to accordingly so determine the eligibility of the petitioners;

(iii) The petitioners to appear before the respondent No.3 DUSIB along with all their documents in this regard, in the first instance on 20.10.2011 and thereafter on such further dates as may be necessary;

(iv) The respondent No.3 DUSIB to make endeavour to complete

the enquiry / determination within one year thereof;

(v) The department of Food & Civil Supplies and other concerned departments from whom respondent No.3 DUSIB may need to verify to determine the eligibility of the petitioners, are directed to supply all information sought to respondent No.3 DUSIB and to render other assistance if any sought;

(vi) If the petitioners or any of them are so found eligible, they be re-located / re-habilitated in accordance with the Policy. However, the petitioners or such of them who are not found eligible, if not found eligible, shall have remedies in law.

The petitions are disposed of. No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

SEPTEMBER 23, 2011
'gsr'

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

\+ W.P.(C) 4092/2013 & CM No.41630/2018

BHUPENDER CHAUDHARY

..... Petitioner

Through: Mr. Shravan Chandrashekhar, Advocate

versus

MANAGEMENT OF PSL ENGINEERING (P)LTD & ANR

..... Respondent

Through

CORAM: SH. ATUL KUMAR SHARMA, REGISTRAR

O R D E R

% 18.12.2019

Notice sent to the respondents has been received back unserved with the remarks "premises found locked"

On the petitioner taking steps within a week, issue fresh notice to the respondents by ordinary process as well as by speed post, returnable on 25.02.2020.

REGISTRAR

DECEMBER 18, 2019

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 277/2013

SUNITA SHARMA ..... Petitioner

Through Mr. H. K. Chaturvedi with Ms. Anjali Chaturvedi, Advocates.

versus

K MURALI ..... Respondent

Through Mr. Gaurav Sharma, Advocate for

Mr. Sumeet Pushkarna, Advocate.

Mr. D. K. Mitra, Section Officer.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

18.11.2013

This contempt petition is predicated on the alleged non compliance of the order of a Division Bench of this Court dated 24th January, 2012 in Writ Petition(C) No.246/2012, which was disposed off in the following terms:

?The learned Counsel for the petitioner has taken instructions and so as the Learned Counsel for the respondent. It is agreed by them that the petitioner shall apply for voluntary retirement with immediate effect and she will not claim any reinstatement or backwages in future apart from the benefits already given and the benefits connected with voluntary retirement. The period from the date of suspension till the date of

voluntary retirement will be computed for the benefits under voluntary retirement. This writ petition is disposed of in these terms. In view of these directions, the impugned order is set-aside.

Dasti.?

Issue notice to the respondent to show cause as to why proceedings in contempt be not issued against him.

Mr. Gaurav Sharma, Advocate, accepts notice and states, on instructions, that the matter was taken to the Supreme Court of India vide S.L.P. No.17007-17008/2013, which came to be dismissed on 4th October, 2013. He further submits that, consequent upon the dismissal of the aforesaid S.L.P., the respondent has since implemented the aforesaid order dated 24th January, 2012, and that an affidavit to that effect has also been filed on 16th November, 2013, with an advance copy to counsel for the petitioner. Let the same be taken on record if otherwise in order.

Counsel for the petitioner, on instructions from the petitioner who is present in Court, submits that certain monitory benefits, which were to flow as a consequence of the aforesaid decision, have not been received by the petitioner, and the so called compliance order dated 10th October, 2013 remains deficient to that extent; he, therefore, prays for leave to seek appropriate relief in this regard from the Central Administrative Tribunal, and does not seek to press this petition any further. He is permitted to do so.

The petition stands disposed off in the above terms.

SUDERSHAN KUMAR MISRA, J

NOVEMBER 18, 2013

dr

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

\+ **W.P.(C) No.2338/2002**

% **8th August, 2013**

MRS. S.V. SHARMA ..... Petitioner
Through: Mr. H. K. Chaturvedi, Advocate.

versus

DIRECTOR OF EDUCATION AND ORS. ..... Respondents
Through: Mr. Vaibhav Misra, Advocate for respondent No.1.
Mr. Saket Sikri, Advocate for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner-Mrs. S.V. Sharma impugning the order of the Delhi School Tribunal (DST) dated 28.8.2001. By the impugned order, the DST dismissed the appeal of the present petitioner and upheld the enquiry report and the order of the Disciplinary Authority imposing the penalty of removal from services upon the petitioner.

2. Before me two main grounds are urged for impugning the orders of the Disciplinary Authority and the DST. The first ground is that one Mrs. M. Varshney was a member of the Disciplinary Committee, who imposed the punishment upon the petitioner and who also appeared as a witness in the proceedings, thereby the order of the Disciplinary Authority is liable to be set aside on the ground of bias. Reliance is placed upon certain paragraphs of the judgment of the Supreme Court in the case of ***Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and Ors. AIR 1993 SC 2155: 1993 (4) SCC 10.*** The second ground which is urged before me is that principles of natural justice are violated because petitioner was not given documents in the enquiry proceedings, and which action of the Enquiry Officer causes a vital flaw in the report of the Enquiry Officer.

3. At the outset, and before I go to the discussion of the issues in the case, I may state that law with respect to challenge to orders which are passed by the Departmental Authorities is now well settled. Orders passed by the Departmental Authorities can be challenged only under any of the following four heads:-

(i) The orders which are passed are in violation of principles of natural

justice.

(ii) Orders are in violation of law or rules of the employer-organization,

(iii) Orders are perverse,

(iv) There is violation of doctrine of proportionality.

This Court while hearing a challenge raised under Article 226 of the Constitution of India does not sit as an Appellate Court over findings arrived at by the Enquiry Officer. This Court does not re-apprise the findings of facts and conclusions arrived at by the Enquiry Officer/Disciplinary Authority unless the findings are perverse. If two views are plausible and possible, Courts will not interfere much less in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

4. Let me take up firstly the second ground which is urged of violation of principles of natural justice on account of the fact that various documents were not supplied to the petitioner. I put a specific query to the counsel for the petitioner to show to me either in the grounds in the present writ petition or in the grounds of appeal before the DST as to what are the documents which were not supplied to the petitioner, and how each of those documents which were not given, have prejudiced the petitioner. These queries were put by me because the Supreme Court in the judgment in the

case of ***State Bank of Patiala and Ors. Vs. S.K. Sharma (1996) 3 SCC 364*** has held that once the case is not a case of no hearing, and violation is alleged only of a facet of principles of natural justice such as non-supply of documents, then, the delinquent employee will have to show that how he is prejudiced by non-supply of documents. Since in the present case there are no pleadings whatsoever as to the prejudice which is allegedly caused to the petitioner for non-supply of the documents, I do not find that the petitioner can challenge the findings of the Enquiry Officer or the orders passed by the Disciplinary Authority on the ground that on account of violation of principles of natural justice the report of the Enquiry Officer and the consequent order of the Disciplinary Authority, should be set aside.

5. Actually, the main ground urged on behalf of the petitioner is of bias of the Disciplinary Committee and consequent violation of principles of natural justice because one of the Members of the Disciplinary Committee Mrs. M. Varshney appeared as a witness in the departmental proceedings to prove as many as five charges against the petitioner. It is argued that since admittedly Mrs. M. Varshney was Member of the Disciplinary Committee, the order which is passed by the Disciplinary Authority is bound to be set aside for this very reason. It may be noted that there were five Members of

the Disciplinary Committee of the respondent No.4-school. Petitioner places reliance upon the judgment of the Supreme Court in the case of ***Rattan Lal Sharma (supra).*** The relevant paras of the judgment are paras 10, 11 and 12 and the same read as under:-

> "10. Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameter of natural justice. In Russel v. Duke of Norfolk 1949 (1) All ER 109 Tucker, L.J. observed:
>
> > "…There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."
>
> It has been observed by this Court in Union of India v. P.K. Roy : (1970)ILLJ633SC that:
>
> > "The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."
>
> Similar view was also expressed in A.K. Kraipak's_ case (ibid). this Court observed:
>
> > "…What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

Prof. Wade in his Administrative Law has succinctly summarised the principle of natural justice to the following effect:

> "It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; not as to their scope and extent. Everything depends on the subject matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

One of the cardinal principles of natural justice is: *'Nemo debet esse judex in propria causa'* (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in Secretary to Government Transport Department v. Manuswamy 1980 (Suppl) SCC 651 that a pre-disposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in State of U.P. v. Mohd. Nooh : AIR 1958 Supreme Court 86. In the said case, a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the enquiry then left the enquiry, gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal. this Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

11. In the instant case, Charge No. 12 states that a particular sum on account of amalgamated fund for the month of." December was given to the appellant by Shri Mam Ram who was teacher incharge of the amalgamated fund. In the enquiry committee comprising of the three members, the said Shri Maru Ram was taken as one of the members and the himself deposed to establish the said Charge No. 12 and

thereafter again joined the enquiry committee and submitted a report holding the appellant guilty of some of the charges including the said Charge No. 12. Shri Maru Ram was interested in establishing the said charge. From the charge itself, it is apparent that he had a pre-depositor to decide against the appellant. It is really unfortunate that although the appellant raised an objection before the enquiry committee by clearly indicating that the said Shri Maru Ram was inimical towards him and he should not be a member in the enquiry committee, such objection was rejected on a very flimsy ground, namely, that since the said Sri Maru Ram was one of the members of the Managing Committee and was the representative of the teachers in the Managing Committee it was necessary to include him in the enquiry committee. It is quite apparent that the enquiry committee could have been constituted with other members of the Managing Committee and the rules of the enquiry are not such that Shri Maru Ram being teacher's representative was required to be included in the said enquiry committee so that the doctrine of necessity may be attracted. If a person has a pecuniary interest, such interest, even if very small, disqualifies such person. For appreciating a case of personal bias or bias to the subject matter the test is whether there was real likelihood of a bias even though such bias has not in fact taken place. De Smith in his Judicial Review of Administrative Action, (1980) at page 262 has observed that a real likelihood of bias means at least substantial possibility of bias. In R. v. Sunderland Justices 1924 (1) KB 357 373 it has been held that the Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In v. Sussex Justices (1924 (1) KB 256 (259) it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In Halsbury Laws of England, (4th Edn.) Vol.2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in Manak Lal v. Dr. Prem Chand [1957]1SCR575 . This Court has laid down that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated

against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

12. In the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the enquiry committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter proceeded with the enquiry proceeding as a member of the enquiry committee to upheld the correctness of his deposition as a Judge. The learned Single Judge considering the aforesaid facts came to the finding that the participation of Shri Maru Ram as a member of the enquiry committee has vitiated the enquiry proceeding because of flagrant violation of the principles of natural justice. Unfortunately, the Division Bench set aside such judgment of the learned Single Judge and dismissed the Writ Petition improperly, to say the least, on a technical ground that plea of bias of Shri Maru Ram and his acting as a Judge of his own case by being a member of the enquiry committee was not specifically taken before the Deputy Commissioner and also before the appellate authority, namely, the Commissioner by the appellant and as such the said plea should not be allowed to be raised in writ proceedings, more so, when the case of prejudice on account of bias could be waived by the person suffering such prejudice. Generally, a point not raised before the tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must as indicated by this Court in A.M. Allison v. State of Assam (1957)ILLJ472SC particularly when the plea sought to be raised for the first time in a Writ proceeding requires investigation of facts. But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi-judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only. desirable that a

litigant should not be shut out from raising such plea which goes to the root of the list involved. The aforesaid view has been taken by this Court in a number of decisions and a reference may be made to the decisions in A.S. Arunachalam Filial v. Southern Roadways Ltd. and Anr. [1960]3SCR764 , The Cantonment Board, Ambala v. Pyarelal 1966CriLJ93 . In our view, the learned Single Judge has very rightly held that the Deputy Commissioner was under an obligation to consider the correctness and propriety of the decision of the Managing Committee based on the report of the enquiry committee which since made available to him, showed on the face of it that Shri Maru Ram was included and retained in the inquiry committee despite objection of the appellant and the said Shri Maru Ram became a witness against the appellant to prove one of the charges. It is really unfortunate to prove that the Division Bench set aside the decision of the learned Single Bench by taking recourse to technicalities that the plea of bias on account of inclusion of Shri Maru Ram in the enquiry committee and his giving evidence on behalf of the department had not been specifically taken by the appellant before the Deputy Commissioner and the Commissioner. The Division Bench has also proceeded on the footing that as even apart from Charge No. 12, the Deputy Commissioner has also considered the other charges on consideration of which along with Charge No. 12, the proposed order of dismissal was made, no prejudice has been caused to the appellant. Such view, to say the least, cannot be accepted in the facts and circumstances of the case. The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee had percolated throughout the enquiry proceeding thereby vitiating the principles of natural justice and the findings made by the enquiry committee was the product of a biased and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on the decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner. The observation of S.R. Das, C.J. in Mohd Nooh's case (ibid) may be referred to in this connection:

> "….Where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent an loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be

> obliterated or cured on appeal or revision. If an inferior court or tribunal or first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex-facie was a nullity for reasons aforementioned."

6. By placing reliance upon the aforesaid three paras of the judgment (and which also places reliance upon the earlier judgment of the Supreme Court in the case of ***State of U.P. v. Mohd. Nooh AIR 1958 Supreme Court 86***) it is argued that when an Enquiry Officer deposes as a witness in proceedings, then, on account of bias the report of the Enquiry Officer is liable to be set aside. It is also argued that with reference to observations made in para 12 of the judgment in the case of ***Rattan Lal Sharma (supra)*** if the report of the Enquiry Officer is bad on account of aforesaid bias then, bias cannot be said to be not existing merely because the Enquiry Officer deposed only with respect to one charge and not as regards the other charges.

7. In order to appreciate the arguments and decide the issue, it will be necessary for me, at this stage, to reproduce the statement of imputation

of misconduct/misbehavior in support of the Article of Charges against the petitioner. I am conscious that the imputation of facts are indeed long and they run into about ten and half pages, however, to understand the entire statement of imputation, it is necessary to reproduce the entire statement of imputation and the same reads as under:-

> "Statement of imputation of misconduct/misbehaviour in support of the Article of Charges framed against Mrs. S.V. Sharma, T.G.T (Sc.) (Bio-Chemistry) under suspension
>
> Though in the past the work and conduct of Mrs. S.V. Sharma, T.G.T.(Sc.) (Bio-Chemistry) under suspension has been crossed all limits of misconduct, indiscipline and untoward behaviour/attitude with the result that the whole atmosphere in the school has got vitiated. The Managing Committee was, therefore, constrained to initiate disciplinary proceedings against her and as a consequence thereof she was placed under suspension w.e.f. 22-2-89 and is now hereby chargesheeted as follows:-
>
> Rule 123(a) DSER (i)
>
> 1. Knowingly or wilfully neglecting her duties
>
> a) Though present in the school she refused to perform the invigilation duty in home-examination from 14-12-88 to 23-12-88.
>
> b) Mrs. S.V. Sharma stopped taking remedial classes assigned to her and her colleagues from Jan, 89 although other teachers were carrying out their assignments. The time of her departure can be verified from the attendance register.
>
> c) Mrs. S.V. Sharma rendered her teachers diary unsustainable by inserting objectionable remarks. Retaining this diary the principal vide her memo No.586 dated 14-12-88 pointing out her discrepancies instructed her to start a new teacher's diary. Mrs. S.V. Sharma refused to receive it and hence did not submit her teacher's diary thereafter. Last year also she had stopped submitting teachers diary w.e.f. 24.8.87.
>
> d) Mrs. S.V. Sharma ignored daily normal teaching and finally tried to cover up the syllabus and hastened her speed of teaching which was beyond the comprehension of the students of class as reported by the

students themselves and their parents.

(e) Mrs. S.V. Sharma did not get the fee & funds A/c for the month of Oct. 1988 checked by the checker. Entries in the fee and funds column of class attendance register for October 1986 were not got compared and checked with the receipt books in time but the task was done on 2-12-88 i.e very late.

Besides, there are many lapse in the maintenances of the class attendance register. Some of them are as under:-

(i) Absent students were marked present and vice-versa.

(ii) Serial numbers of the students were changed.

(Attendance register will be shown when required)

By the aforesaid acts, Mrs. S.V. Sharma has violated the provisions of Code of Conduct for the teachers as prescribed in Rule 123(a) (i) of Delhi School Education Act 1973 and the rules made there under.

(2) Rule 123(a) (iv) DSER

Malpractices

a) Mrs. S.V. Sharma on 17-12-88 about 9 a.m. tried to induce Shri Roshan Lal, Peon with a tip to bring to her the peon-book with some ulterior motive but Sh. Roshan Lal, true to himself, declined it and brought these facts to the notice of the Principal as per his representation dated 17-12-88 instant.

b) Tampering of school record:-

Mrs. S.V. Sharma on 1-12-86 removed two pages (one written and one blank) from the Science faculty minutes Register. On one of the pages minutes of the Sc. Faculty meeting held on 30-11-88 were recorded and duly signed by all the faculty members with Principal's remarks endorsed on it.

c)(ii) The medical certificate of students who fell sick during examination days were to remain with examination incharge with due knowledge of class teacher so that the checking of students reporting sick in the future examination could be easy. Contrary to this Mrs. S.V. Sharma the then class teacher of IX A, on 3-10-88 on the plea of making another look into the medical certificate together with the leave application of Km. Parvita Sharma IX A took it from examination incharge Mrs. M. Varshney and did not return it at all to her in spite of her (Mrs. M. Varshney) repeated requests.

By the aforesaid acts, Mrs. S.V. Sharma has violated the provisions of code of conduct for the teachers as prescribed in Rule 123(a)(iv) of

Delhi School Education Act, 1973 and the rule made there under.

Rule 123(b) (xviii)DSER

(3) Misbehaviour, cruelty and discrimination towards students teachers and parents/guardians

a) Mrs. S.V. Sharma has been extremely prejudicial towards Km. Parvita Sharma IX A because reasonably or unreasonably, she slapped the said student on 22-9-88 causing an injury to her ear. Consequently Mrs. S.V. Sharma turned out Km. Parvita Sharma from her class on 3-10-88 without any fault on her part and subsequently stopped marking her attendance in the class attendance register w.e.f. 7-10-88. Over and above Mrs. S.V. Sharma refused to accept fee/funds from the said student for the month of October and November 1988.

B-1 Mrs. S.V. Sharma slapped Km. Jyoti Khanna of X B on 4-1-89 and unjustifiably turned her out from her Science Practical Examination (Chem. Bio) because the said student had submitted her practical file but it was unchecked. Further on Mrs. S.V. Sharma did not allow Km. Jyoti Khanna to enter her class till the date of her suspension i.e upto 21-2-89.

B-II For reasons best known to her Mrs. S.V. Sharma gave remark 'Cheated' in award list of the Science Practical Exam, against Jyoti Khanna's Roll No. In spite of Principal's instructions on 7-1-89 that such a remark was undesirable and the students should be examined and awarded her due score she did not comply with this too.

C. On 4/1/89 Mrs. S.V. Sharma sent to the Principal of her own accord only 7(seven) Practical Files (Bio-Chem.) Class X students including that of Km. Jyoti Khanna. Out of those, the files of Jyoti Khanna, Ritu and Suman were unchecked. Thus Mrs. S.V. Sharma victimized Km. Jyoti absolutely unreasonably by not allowing her to take the practical Exam. Though she allowed the other two alleged defaulters to take the said test and they were declared passed even though their practical files were also unchecked.

D. On complaint of Km. Jyoti Khanna Principal asked Mrs. S.V. Sharma to submit the Exercise Book/Practical files of all the students of X B who appeared for practical examination vide Memo No.593 dated 4-1-89 incited all the students of Class X B including Km. Ritu and Suman to state before the Principal that their exercise note books and the practical files were in the custody of Mrs. S.V. Sharma and they were helpless to produce them before her but in the presence of

Mrs. M. Varshney, Mrs. U. Mehta, Km. Alka, Km. Manisha, Ritu, Suman, Meena after having said so submitted their assignments before the Principal and stated that Mrs. S.V. Sharma had asked them to say so. They had to deny although the Exercise-note-books/Practical files were with them. Thus she insisted the students to give wrong statements before the Principal and to tell lies. 5 Students who submitted their note-books to the Principal were taken to task by her. Out of Vengeance Mrs. S.V. Sharma kept these 5 students (Manisha, Meena, Ritu, Suman and Alka) standing at the back of the class (w.e.f. 5-1-89) showering upon them various threats in loose language and even turning them out of their class, making them sit in the class. Further to this many a times she took all the students of the class to another room (Sc.Lab) leaving these five students in the same room and thus discriminated them from others and deprived them of their regular studies.

E. On 17-11-87 Mrs. S.V. Sharma well aware that Km. Deepti Mehrotra VII A was sick with rheumatic fever, gave her corporal punishment though unwarranted and insulted her father.

F. Mrs. S.V. Sharma has been keeping strained relations with her colleagues. On 21-12-88 Mrs. S.V. Sharma at about 11-45 A.M. lashed upon her colleagues. Thereupon teachers collectively gave in writing what had transpired between them and Mrs. S.V. Sharma, requesting the Manager to take necessary action in the matter. Moreover, thereafter she left the school without marking the time of her departure and without signing the teachers' attendance register, stating that she had been officially asked by the Education Officer to see her, when there was no official intimation regarding the same with the office. Moreover, when the Education Officer was contacted personally/officially by the Principal to comply with her office letter No.1728/XI dated 15-12-88, the Education Officer said that she had never officially called Mrs. S.V. Sharma to her office. Mrs. S.V.Sharma left in a huff without getting the desired permission.

G. Mrs. S.V. Sharma had been rude and misbehaving with the parents/students and threatening them. Rather she went to the extent of filing a complaint against Mr. Mittal and Mr. Khanna and Mr. Sharma, parents of Manisha, Jyoti and Parvita Sharma respectively with the police, Town Hall. The Police official came to the school on in inquiry on 23-3-89.

By the aforesaid acts, Mrs. S.V. Sharma has violated the Provisions of Code of Conduct for the teachers as prescribed in Rule 123(b)(xviii) of the D.S.E.R, 1973.

4. Sustained neglect in Correction of Class-Work/H.W. done by the Students. (Rule 123(a) (v) DSER

a) Mrs. S.V. Sharma checked exercise books/Practical files of her students neither regularly nor properly instead she had been checking them haphazardly giving odd dates of checking and putting tick marks without covering right or wrong to point out the mistakes to enable the students to realise their mistakes for their improvement.

b) The Practicals done/recorded on 4-10-88 were dated checked on 6-10-88. How could any practical be conducted by the students in her absence on 4/10/88 and checked on 6/10/88 when she was on leave on those days.

C) The Practicals conducted/recorded on 11/10/88 by the students have been dated checked by Mrs. S.V. Sharma on 13/10/88 when the school was closed for Autumn Break w.e.f. 11/10/88 to 20/10/88.

D) The assignments/Home Work and Class work actually done by the students does not tally with what has been shown in the Teacher's diary. The Record in the teacher's diary is quite at variance with the work done.

By the aforesaid acts, Mrs. S.V.Sharma has violated the provisions of code of conduct for the teachers as prescribed in rule 123(a) (v) DSER 1973

Rule 123(c) (ii) DSER

Rule 123(c) (ii) DSER

(5) Violation of school Rules and disrespect to duly Constituted Authority:-

(A) On 4/1/89 Mrs. S.V. Sharma had submitted practical files of 7 students only out of her own. On Principal's demand to submit practical files/Exercise-books of all the examinees of that day Mrs. S.V. Sharma instead of meeting the demand returned the Memo with remark "You can not demand the Copies of.....". by the students have been dated checked by Mrs. S.V. Sharma.

(B) (i) On 23/12/88 she reached school at 8-15 A.M. but did not mark her attendance and demanded that she be treated as on leave. When asked to apply for leave and go or mark her attendance by the Principal

vide letter dated 23/12/88 she said that she had already submitted her leave application to Mrs. U. Mehta which she had not. She wrote some objectionable remark on the same letter threatening that she would bring to the notice of D.E. and the E.O.

(B) II. On 24/12/88 she came around 8-00 A.M. in the school again, but she did not mark her attendance and refused to receive Memo No.528 dated 24/12/88 issued to her before 10-30 A.M. She told the peon to send the Memo to the Deptt. She marked her application for half day leave for 24/12/88 covering also full day leave for 23/12/88. Moreover, she took teacher's attendance register out of the Principal's room in spite of Principal's verbal direction to sign it in the office only. She also put derogatory remarks therein.

(C) On 4/1/89 Mrs. S.V. Sharma besides defying the orders of the Principal to submit the practical files/Note books of class X examinees of that day in the Practical Examination she endorsed in the order rude remarks that the Principal was no authority to call for note-books of the students of the subject taught by her. She also remarked that she had reported the whole affairs to the E.O. and she was bound only to the order of the Department.

(D) Then Principal and the Vice-Principal of the school doth taught English to the VII A. On 5/1/89 Mrs. S.V. Sharma asked the students of this class to show their English note-books. She took those note-books about 22 in number and kept the same in her custody. Thereafter she did not return the note-books till date in spite of the Principal's Memo No.598 dated 16/1/89 with the exception of five note books submitted on 21/1/89.

E. Mrs. S.V. Sharma had been disrespectfully refusing Memos/official letters and orders sent to her duly despatched in the peon-book through the peon/and order-book, not to speak of complying with the verbal instructions. Two specimen in this regard are enclosed.

(F) On 24/12/88 Mrs. S.V.Sharma picked up quarrel in the Library room with Mrs. M. Varshney, Mrs. U. Mehta and Mrs. K. Sharma. The Principal who incidently happened to be there tried to pacify them but Mrs. S.V.Sharma roared ...

(G) On 9/1/89 Shri Roshan Lal went to Mrs. S.V.Sharma to deliver memo No. 595 dated 9/1/89 entered in the Peon-book, Mrs. S.V.Sharma took the Memo from the peon but instead of signing its

acknowledgment in the peon-book she forcibly held up the peon-book. Even on written orders from the Principal and the Manager she did not return the peon-book. At last the flying Squad was summoned and the peon-book was recovered from her by the police and the same was returned to the principal.

That on account of aforesaid serious acts of misconduct and breach of Code of Conduct as levelled against her, the Managing Committee of the School resolved to suspend her from service in its meeting held on 21/2/89 on the basis of resolution passed in it and order of suspension was prepared and sought to be served and given to her on the same day when she was present in the school. The Head Clerk was deputed to handover the said order but she of her own accord appeared before the Managing Committee which was in session with the letter in her hand, read it and threw away the order and refused to receive as well as acknowledge the same and left the school without signing and writing the time of departure in the teacher's attendance register, before time insulting the Managing Committee in session. She was sent the said letter alongwith the covering letter under registered AD/UPC. post dated 21/2/1989.

That in her suspension letter dated 21/2/89 she was also directed to hand over the charge including that of all the keys of Science Almirahas, Science equipments stock etc. Book/Note-books of the students and Library to Mr. Anjum Singh, Lab. Asstt. But she did not comply with the order contained in her order of suspension dated 21/2/89. Subsequently another Memo NO. 617 dated 23/3/89 was sent to her under Regd. AD.Cover/UPC. urging her to hand over the complete charge under her custody, pointing out to her in particular that the Science Practical files (Bio-Chemistry) of class X students were urgently required for the assessment of Annual Examination, 1989 as awards were to be given to the students and submitted to the C.B.S.E., New Delhi. She did not send any reply to it.

Matter was referred to the E.O.vide letter dated 1/4/89, who vide his letter No. 434/XI dated 7/4/89, nominated Miss. K. Mathur, Principal Govt. G.S.S.S. NIchelson Road, Delhi and Ms. Pushpa Lata, Principal, Gadodia G.S.S.S.Kucha Natwar as Govt. representatives permitting us to open the almirahas of Science-equipments in their presence.

The said representatives suggested on 8/4/89 that before opening

the locks of the almirahas one more chance may be given to Mrs. S.V.Sharma and as a result of that one more letter No. 621 dated 8/4/89 (Regd. A.D) together with telegram dated 8/4/89 and UPC. 8/4/89 were sent to Mrs. S.V.Sharma requesting her to do the needful failing which the locks of almirahas would be opened in the presence of Govt. –representatives and others on 11/4/89 at 9-30 A.M., in pursuant of the order of the Department in this connection she came on the fixed date with two men reported to be office bearers of Casta stating that they were her witnesses. She said that one of the almirah (Steel) contained ₹2,500/- her personal money and some personal documents but no Science-equipments. When asked to open the locks of almirahas she expressed her inability saying that she had no keys with her. The Govt. representative Miss K. Mathur suggested to Mrs. S.V. Sharma in writing to come on next day i.e. on 12/4/89 at 10-00 A.M. and do the needful in the presence of other Govt. nominee (as one Govt. nominee, Dr. Pushap Lata could not come on that day as she had to attend some seminar under the direction of the D.D.E.(Central)) but she refused to receive it. After wasting hours together, she agreed and gave in writing that she would come to hand over the charge on 12/4/89.

She presented herself next-day before the Govt.-representatives but she said that she would hand over the charge in the presence of some Science Expert and did not open the almirahas to hand over the charge at all. Even after their repeated pursuation particularly to return the Science-practical files Bio-Chemistry of Class X. She held up the said files of 38 students and did not return till the end.

Ultimately some alternative had to be sought out to protect the career of the students who are going to appear in the Board Examination.

On 11/4/89 in the presence of the Govt.-representative, Miss. K. Mathur, who had come in connection with the opening of the locks of the Sc. Stock almirahas she uttered most disrespectful words.

On 12/4/1989 she threatened Govt.-representatives that she would report about them to the Director of Education.

Her behaviour with Govt.-representatives was very rude, ill mannered, disorderly and challenging.

By the aforesaid acts, Mrs. S.V. Sharma has violated the provisions of code of conduct for the teachers as prescribed in Rule 123(c)(ii) of Delhi School Education Rules 1973 made there under."

8. A reference to the aforesaid statement of imputation of misconduct or misbehaviour shows that with respect to Charge I there are five sub-charges. With respect to Article II, there are three sub charges. With respect to Charge No.III, there are seven sub-charges. With respect to Charge No. IV, there are four sub-charges and with respect to Charge No.V, there are seven sub-charges. There are in effect therefore a total of 26 charges. A reading of the charges with the sub-charges show that the charges are not ordinary or routine charges, but are very grave charges. The charges include refusing to perform the duties assigned, refusing to take classes, leaving the school without permission, not maintaining the teachers diary properly, seeking to bribe a peon for obtaining a peon book, tampering with the school record, misbehaving with the school students, wrongly refusing to hand over the records of the students to the school, making a police complaint against parents of students, punishing those students who do not listen to the petitioner, giving of corporal punishments, quarrelling with other teachers and employees of the school, claiming checking on those dates when in fact the school was closed, defying orders of the Principal etc etc.

9. All the aforesaid charges have essentially been proved against

the petitioner except that one charge was only partially proved. The report of the Enquiry Officer dated 29.3.1990 is a detailed report running into 45 pages. The Disciplinary Authority which could have simply adopted the report of the Enquiry Officer, but instead the Disciplinary Authority has passed a detailed order running into 23 pages. In the light of the aforesaid facts this Court would have to examine if the ratio of the judgment of the Supreme Court in the case of ***Rattan Lal Sharma (supra)*** applies, and which is relied upon on behalf of the petitioner.

10. It is true that the Supreme Court in the case of ***Rattan Lal Sharma (supra)*** refers with approval to the ratio in the earlier judgment in the case of ***Mohd. Nooh(supra)*** to hold that an Enquiry Officer cannot appear as a witness in a case and then give his report, and the Supreme Court further states that it cannot be argued that merely because Enquiry Officer gave a report on various other charges and not only with respect to charge in which he appeared as a witness, yet, bias will not exist or will not stand proved, because, the issue is not of the actual bias but a reasonable likelihood of bias.

In my opinion, however the judgment which is relied upon by the petitioner is distinguishable for the reason that Supreme Court in the

case of ***Rattan Lal Sharma (supra)*** in para 10 itself specifically observes that there are no universal rules of application to every kind of enquiry and qua different kinds of domestic Tribunals the requirement of following of the principles of natural justice must depend on circumstances of each case, nature of the enquiry etc. In the case of ***Mohd. Nooh(supra)*** which was relied upon in the case of ***Rattan Lal Sharma (supra)*** the Enquiry Officer stepped into the witness box in very peculiar circumstances where one witness against the employee turned hostile and official holding the enquiry at that stage left the enquiry to give evidence against the employee and thereafter resumed the enquiry to pass order of dismissal. In these circumstances the Supreme Court held that there existed interest and bias of the Enquiry Officer and once a person has interest in the proceedings, he cannot become a Judge in his own cause. The observations of the Supreme Court in the case of ***Mohd. Nooh(supra)*** which have been relied upon with approval in the case of ***Rattan Lal Sharma (supra)*** have to be read in the context of the facts of that case, and the same do not apply in the present case because I have already reproduced above the imputation of misconduct which shows as many as 26 charges against the petitioner. All the charges are serious and grave charges. Out of the 26 charges, Mrs. M. Varshney has

deposed with respect to the five of the charges and therefore there are 21 other independent charges which stand proved against the petitioner even in the absence of testimony of Mrs. M. Varshney being considered. Doctrine of severability will hence come into play. It may be noted that the Supreme Court while observing in the case of ***Rattan Lal Sharma (supra)*** that bias of one of the Members of the Enquiry Committee percolates the enquiry proceedings and hence resulting in violation of principles of natural justice, however, the Supreme Court was careful to state that the aspect of one charge percolating all charges when an Enquiry Officer also appears as a witness was in the facts and circumstances of the case before the Supreme Court in the case of ***Rattan Lal Sharma (supra)*** and so stated in para 12 of the judgment which has specifically used the expression 'in the facts and circumstances of the case'. Therefore, issue of an Enquiry Officer appearing as a witness has to be carefully examined with respect to the alleged bias in the facts and circumstances of each individual case.

11. In the present case, 21 other wholly independent charges were made against the petitioner and all of which charges were independently proved by detailed evidence in the enquiry proceedings. There are as many as 119 pages in the enquiry proceedings including depositions of the

witnesses and their cross-examinations. Documents have also been filed and proved by the school management in the departmental proceedings. Therefore, in my opinion, in the present case it cannot be said that the bias of Mrs. M. Varshney percolated to all aspects of enquiry and with respect to 21 other charges which were independently proved and had no connection to the testimony of Mrs. M. Varshney qua five of the charges. Therefore, in the facts and circumstances of the present case, I am of the opinion that petitioner has failed to establish that the Enquiry Officer's report and the order of the Disciplinary Authority should be set aside on the ground of bias.

12. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 08, 2013
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7243/2012

SHANKAR DAS FALWARIA ..... Petitioner

Represented by: Mr. H.K. Chaturvedi, Adv.

versus

LAND AND DEVELOPMENT OFFICER ..... Respondent

Represented by: Mr. Ruchir Mishra, Mr. Sanjiv Kr. Tiwari and Mr. Mukesh K. Tiwari, Advs.

CORAM:

HON?BLE MR. JUSTICE SURESH KAIT

O R D E R

16.07.2014

1. Vide the present petition, petitioner is seeking direction to consider the conversion application of the petitioner submitted on 26.03.2012, bearing no. 106837.

2. Pursuant to order dated 04.03.2014, inspection report has not been filed.

3. Ld. Counsel appearing on behalf of the respondent has filed the same today in the court. Same is taken on record.

4. At this stage, Ld. Counsel appearing on behalf of the petitioner seeks permission to withdraw the instant petition with liberty file afresh as and when the petitioner gets the complete possession of the whole property, if so advised.

5. Liberty granted as prayed.

6. Dismissed as withdrawn.

SURESH KAIT, J

JULY 16, 2014/jg

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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 26.08.2014

\+ **W.P.(C) 12649/2009**

SANTOSH RANI AND ORS ..... Petitioners

versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:
For the Petitioners : Ms Rachna Aggarwal.
For the Respondents : Ms Navratan Chaudhary, Ms T. Pongener and Ms Seema Dolo.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioners claim to be residents of State of Punjab who had migrated to Delhi on account of terrorism in that State. The petitioners have filed the present writ petition, *inter alia*, praying for a direction to the respondents to allot appropriate accommodation to the petitioners in accordance with the policy framed for the Punjab Migrant families.

2. By an order dated 23.10.2013, this Court recorded that out of 24 petitioners, 18 petitioners had already been allotted flats by DDA. The names of four petitioners did not find mention in the list of Punjab Migrants and two petitioners including petitioner no.1 was not granted the accommodation as it was alleged that they were not residing in the

designated camp at Mori Gate. The Court also noted that the present petition is pursued only by petitioner no.1. In the circumstances, the scope of the present petition is limited to the relief claimed by petitioner no.1.

3. The controversy to be addressed in the present petition is whether petitioner no.1 (hereinafter referred to as the 'petitioner') is eligible for allotment of a flat under the "Housing Scheme for Rehabilitation of Punjab Migrants" framed by respondent no.5 (DDA). In terms of the said policy, 3661 built up/under construction flats, being one room sets, were offered for allotment to persons who had migrated from Punjab in the wake of militancy and were staying at the designated refugee camps. The eligibility condition as specified in the scheme reads as under:-

> "Eligibility
>
> (i) The applicant must be a person of one family who had migrated from Punjab and is staying in the designated 07 refugee camps. This should be certified by the Dy. Commissioner of the concerned District in which the camp of the applicant is situated."

4. The DDA filed a counter affidavit stating that the said eligibility condition was not satisfied in the case of the petitioner as the necessary certificate certifying the petitioner no.1 to be a resident of the concerned camp was not provided by respondent no.2 (Govt. of NCT) in favour of the petitioner.

5. The counter affidavit affirmed on behalf of the Govt. of NCT indicates that as per the records, 139 Punjab migrants were provided tented accommodation in Youth Club, Mori Gate Camp, which was one of the designated camps for the purposes of allotment of flats by DDA. It was

stated that cases of only 115 Punjab migrants (out of 139 Punjab migrants resident at Mori Gate Camp) were recommended for allotment of flats.

6. It was stated that the case of the petitioner was not recommended because of a report submitted by an Inspection Committee. The statement annexed to the counter affidavit indicates that the petitioner, a resident of Tent No.2, Youth Hostel, Mori Gate and listed at serial no.95 of the Punjab Migrant's List, was not allotted a flat. The remark made against the name of the petitioner reads as under:-

> "Suit No.227/1998, titled as "Santosh Rani v. Union of India" is pending in the Hon'ble Court of Sh. Prashant Sharma, Senior Judge, Tis Hazari Courts, on the same ground."

7. The learned counsel for the petitioner submitted that the petitioner had filed a suit for claiming subsistence allowance which was disbursed for a limited period but had been, subsequently, withheld by Govt. of NCT. As some issues were decided against the petitioner by the Trial Court in that suit, the petitioner filed an appeal (RCA No.8/10) before the Additional District Judge, Delhi titled as '***Santosh Rani v. Union of India***'. By its order dated 17.07.2012, the Appellate Court allowed the said appeal and the question whether the petitioner is a Punjab Migrant was settled in favour of the petitioner. It was stated that an appeal (being RSA No.32/2013) filed under Section 100 of CPC against the said decision was also dismissed by this Court by an order dated 05.03.2014.

8. The learned counsel for the petitioner contended that annexure to the counter affidavit filed on behalf of Govt. of NCT indicated that pendency

of the suit filed by the petitioner was the only reason because of which the case of the petitioner was not recommended. It was submitted that since the petitioner had prevailed in the said litigation, it was no longer open for Govt. of NCT to contend that the petitioner was not an eligible Punjab Migrant.

9. The learned counsel for the respondent contended that the petitioner was not allotted a flat under the Housing Scheme as it was found that she was, unauthorisedly, residing in Tent No.2 at the Mori Gate Camp. It was contended that since the petitioner was an unauthorised occupant of the said tent which was allotted to one Poonam, the petitioner could not be allotted any accommodation under the scheme in question.

10. I have heard the learned counsel for the parties at length.

11. This Court had, by an order dated 23.10.2013, directed the Sub-Divisional Magistrate, Civil Lines to verify the claim of the petitioner in terms of the scheme framed by the Government for allotment of flats to Punjab Migrants by the DDA. In terms of the said order, SDM (North) filed a report in this Court on 21.12.2013. It was reported that complaints were received that the petitioner was, unauthorisedly, occupying Tent No. 2 at Mori Gate, refugee camp and on scrutiny it was found that the said tent was allotted to one Smt. Poonam. It was also reported that the issue whether the petitioner was a genuine Punjab migrant was pending consideration by this court in Appeal No.32/2013 titled as *'Govt. of NCT of Delhi v. Santosh Rani & Anr'*. It was further informed that the petitioner had managed to obtain a temporary Ad hoc monthly relief of ₹1000/- per month on the basis of her

being a Punjab migrant; the said relief was stopped from 17.12.1990 to 16.11.1995 after receiving a report dated 29.11.1990 from the Department of Relief & Settlement, Punjab Govt. which stated that the petitioner was not affected by terrorism. The SDM further reported that *"On further inquiry a letter dated 14.3.1995 was received from Deputy Commissioner, Jallandhar, stating that the petitioner No.l stayed in Gandhi Vanita Ashram, Jallandhar, from 22.10.1884 to 15.7.1988 and that she shifted to Delhi due to fear of terrorists. That on the basis of the said letter the AMR was restored from 17.11.95."*

12. It is apparent from the aforementioned report that the petitioner was residing at Mori Gate Camp. It is also apparent that the petitioner was a Punjab Migrant and it is on this basis that the petitioner was provided a monthly relief of ₹1,000/-. The above mentioned report also indicates that the adhoc monthly relief was discontinued and, thereafter, resumed after it was verified that the petitioner was a victim of terrorism in Punjab.

13. The judgment in ***Santosh Rani v. Union of India***: **RCA No.8/10, decided on 17.07.2012** settled the issue whether the petitioner no.1 is a Punjab migrant. The said judgment recounts that the petitioner was residing at Jallandhar and her son had been kidnapped by terrorists. She had migrated to Delhi and being a migrant from Punjab, was given a monthly subsistence allowance of ₹1,000/-. The claim of the petitioner was contested by Govt. of NCT of Delhi by stating that the petitioner had arrived at Delhi from Sirsa, Haryana and had resided at different places with her relatives and finally shifted to the Mori Gate Camp and occupied the accommodation allotted to Ms Poonam. The petitioner had led evidence

in support of her claim and had produced documents which indicated that she was a resident of Punjab and had migrated on account of militancy in that State. The decision of the Trial Court that the petitioner was not entitled to arrears of maintenance was set aside. The Appellate Court had further noted that the petitioner had been accepted as a Punjab Migrant and the contrary stand of the Govt. of NCT of Delhi was not accepted. It is noted that the second appeal (RSA No.32/2013) preferred by Govt. of NCT of Delhi against the aforementioned decision, under section 100 of CPC, has been dismissed by this Court.

14. In so far as the issue of the petitioner being a Punjab migrant is concerned, the decision of the Additional District Judge in ***Santosh Rani v. Union of India*** *(supra)* puts the same at rest. The second limb of the eligibility condition i.e. that the Punjab migrant should be resident in one of the designated refugee camps, is also not in dispute. It is an admitted position that the petitioner was residing in Tent No.2 at the Mori Gate Camp. Although, there is some controversy whether her occupation of Tent No.2 at the said camp was authorized or not, the same is not germane as it is established that the petitioner no.1 was a Punjab migrant residing in a designated refugee camp. And, in my view, the eligibility of the petitioner no.1 for an allotment of flat under the "Housing Scheme for Rehabilitation of Punjab Migrants" is, thus, established.

15. Accordingly, the respondents are directed to extend the benefit of the housing scheme for Punjab migrants to the petitioner no.1 and allot a flat to her in terms thereof .

16. The writ petition is, accordingly, allowed with no order as to costs.

VIBHU BAKHRU, J

AUGUST 26, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09th March, 2015

% **Date of Decision: 06th May, 2015**

\+ W.P.(C) 3171/2012

DURGA PRECISION UDYOG ..... Petitioner
Through: Mr. Pranay Trivedi, Adv.

versus

SIYA RAM TIWARI ..... Respondent
Through: Mr. Brijballabh Tiwari, Adv.

\+ W.P.(C) 3224/2013

SIYA RAM TIWARI ..... Petitioner
Through: Mr. Brijballabh Tiwari, Adv.

versus

DURGA PRECISION UDYOG ..... Respondent
Through: Mr. Pranay Trivedi, Adv.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. These two petitions arise out of the award dated 25.02.2012 passed by the learned Presiding Officer, Labour Court No. IX, Karkardooma Courts, New Delhi in ID No. 34/08 (Unique Case ID No. 02402CO143652008) wherein the Presiding Officer held that the services of the workman were terminated illegally and unlawfully by

the management and further held that the workman is entitled to full back wages for 5 months w.e.f. 01.08.2005 to 31.12.2005 at the rate of Rs.2,500/- (Rupees Two thousand five hundred) per month or minimum wages of a skilled labour whichever is higher on that date and is also entitled for compensation @ 40% of his back wages @ Rs.2500/- or minimum wages of a skilled labour, whichever is higher w.e.f. 26.03.08 up till 25.02.12. The management was further directed to pay the aforementioned amount within a period of two months from the date of the award, failing which the amount was to carry simple interest @ 8 % p.a.

2. Since both these petitions are between the same parties and lay challenge to the award dated 25.02.2012, they are being disposed of by this common judgment. For the sake of brevity, the facts are being extracted from W.P.(C) No.3171/2012.

3. The facts of the case as culled out from the petition are that the respondent/ workman was appointed as an Assistant Operator with the petitioner at a monthly salary of Rs.3,050/- (Rupees Three thousand fifty). The respondent worked with the petitioner from August 2004 till October 2005, for which he was paid salary regularly against his signatures on the revenue stamp. On 10.11.2005, the respondent left the services of the petitioner and executed a receipt of full and final settlement.

4. Thereafter, the respondent/ workman raised an Industrial Dispute against his alleged termination. In the statement of claim filed by the respondent, it was contended that he was appointed as a Dye

Casting Operator with M/s. Durga Procession Industry (petitioner herein) on 01.01.2001 at a monthly salary of Rs.2,500/- (Rupees Two thousand five hundred). On 01.01.2004, the management of the petitioner issued an Employees State Insurance card (for short 'ESI Card') to the workman which was given to him on 15.02.2005. On 01.11.2005, an aluminum nail pierced in the foot of the respondent while running the Dye Casting machine, which led to the respondent being admitted to a private hospital for treatment. The respondent made repetitive requests to the petitioner's management to fill his accident form. However the management did not do the same and further blocked the ESI Card of the respondent as a result of which his medical treatment was not conducted properly. The petitioner neither paid the respondent's hospital bill nor did they pay outstanding wages earned by the workman from 01.10.2005 to 31.12.2005. On respondent's request for payment of the said amount, the petitioner terminated the services of the respondent on 31.12.2005 without making any payment towards his hospital bill and outstanding earned wages. On 01.01.2006, the respondent referred his request to the Industrial Workers Union, who sent a demand notice dated 02.01.2006 to the management and demanded the payment of the entire amount in favour of the respondent. However, the petitioner did not respond to the said demand notice as a result of which on 17.01.2006, the officer of the Industrial Workers Union filed a complaint before the learned Additional Labour Commissioner, Ashok Vihar, Delhi. The said complaint too did not yield any result. The respondent thereafter filed a complaint before the learned Labour Settlement Officer, Labour

Office, Ashok Vihar, Delhi and sent various notices from time to time to the petitioner but neither did the management appear before the Labour Office, nor did they file any reply to the said notice.

5. The petitioner filed its reply to the claim petition and denied all the allegations made by the respondent in his claim petition and stated that the workman himself left the services of the petitioner on 10.11.2005 while executing the receipt of full and final settlement.

6. On 11.08.2009 issues were framed by the learned trial court in the aforementioned Industrial Dispute. On 13.12.2011, petitioner filed two applications to refer some documents to the CFSL for comparison along with the list of witnesses, which were dismissed by the Presiding Officer vide order dated 16.12.2011 who then proceeded to pass the impugned award dated 25.02.2012.

7. Learned counsel for the petitioner submitted that learned trial court failed to appreciate the fact that if respondent is claiming that none of the documents bear his signatures then the respondent should not have opposed the petitioner's application to refer the documents to CFSL. The labour court should have allowed the petitioner's application to refer the documents to CFSL. It was wrongly observed by the trial court that the respondent was not paid the salary for the month of February, March, October and November 2005. It was neither the case of the respondent that his salary for four months was due, nor it was his case that the salary for the month of February and March 2005 was not paid to him. Rather it was only contended by the respondent that he had not received his alleged legally due salary w.e.f.

01.10.2005 to 31.12.2005. The reason that some of the salary receipts were not signed by the respondent is that sometimes respondent and other workers used to take their salaries in advance or in case of urgency from the house of the petitioner. Under such circumstances the salary receipts could not be signed due to non availability of such receipts. It was also contended that the respondent failed to produce any document or even otherwise failed to prove his alleged termination on 31.12.2005.

8. *Per contra*, learned counsel for respondent contended that the issues framed by the labour court were adjudicated on the basis of material on record. The High Court while exercising its extraordinary writ jurisdiction cannot sit in an appeal over the decision of the trial court and cannot re-appreciate the entire evidence. It was further contended by the learned counsel for the respondent that the petitioner had filed forged receipt dated 10.11.2005 before the labour court which was in a printed form and the petitioner also forged the signatures of the workman on such receipts. The same was concocted with ulterior motive to defeat the claim of the workman.

9. I have heard the learned counsel for the parties and have also perused the material on record.

10. Industrial disputes tend to reduce economic profits and inflict damages on both employer and employee. It poses problems for rationalizing labour and capital and also creates problem in the production and financial profit of the industry that ultimately affects the economy of the country. Therefore, maintaining industrial peace

and harmony is important for a worker as it is for an employer as it postulates the existence of understanding, co-operation and a sense of partnership between the employers and employees. Keeping several such factors in mind the Industrial Disputes Act, 1947 (for short "ID Act") was enacted with the object of making provisions for the investigation and settlement of industrial disputes, promoting measures for securing and preserving amity and good relations between employer and employees, preventing illegal strikes and lock-outs, providing relief to workmen during lay-off or after retrenchment, wrongful dismissal or victimization along with providing conciliation, arbitration and adjudication facilities. The object of the said enactment is to facilitate the workmen/ labourers to present their case. Its provisions are directed to secure industrial peace and harmony by providing a machinery and procedure for investigation and settlement of industrial disputes by negotiation. The workmen are given a beneficial status under its provisions which are essentially pro-workmen. However, having said that the Tribunal or the Labour Court is still bound by judicial principles of fair hearing and impartiality while forming its decision. The Tribunal/Labour Court must not always grant relief to the workman simply because the provisions of the Act are made in favour of the workman.

11. It is a settled principle of law that the burden of proof of the existence of a particular fact lies on the person who makes a positive assertion about its existence. Undoubtedly, it is always easier to prove a positive fact than to prove a negative fact. In the present case, it is primarily contended by the learned counsel for the petitioner that the

respondent was employed as an assistant operator with the petitioner with effect from 01.08.2004 whereas it is contended on behalf of the respondent that he was working with the management from 01.01.2001. However, from a perusal of the material on record, the contention of the petitioner finds favour with this court. MW1, Sh. Gaurav Bhutani has in his evidence by way of affidavit (Ex.MW1/A) stated that after getting the degree/certificate from Tool Room and Training Centre he, with an intention of doing business of aluminium casting, placed an order for the machines which are required for the purpose of aluminium casting (Ex.MW1/4 to Ex.MW1/6). He applied for PAN card and the same was issued vide No. AHLPB6008M (Ex.MW1/7 and Ex.MW1/8). He further stated that the subject property bearing Plot No. 58 SSI, GT Karnal Road, New Delhi-110033 on which the business of the petitioner company is going on till date was obtained on rent from M/s. Rajdhani Industries in the year June, 2004 through license agreement (exhibited as Ex. MW1/9). Prior to the petitioner company became tenant in Plot No. 58 SSI, GT Karnal Road, New Delhi-110033, M/s. SS Exports was the tenant of M/s. Rajdhani Industries. M/s. SS Exports vacated the subject property in the month of March, 2004. The lease agreement with M/s. SS Exports is exhibited as Ex. MW1/15. M/s. Rajdhani Industries had issued a No Objection letter in favour of the petitioner in obtaining sales tax registration or any other license required (exhibited as EX.MW1/10). He had also applied for MTNL connection vide acknowledgement slip dated 12.06.2004 (Ex. MW1/11 and Ex. MW1/12), sales tax registration was applied by him in the month of June 2004 and for the

said purpose he had submitted his statement with the Sales Tax Department on 17.06.2004 and the Sales Tax Department had further issued the certificate of registration (Ex.MW1/13 and Ex. MW1/14). The petitioner company had applied for a pollution certificate and the same was issued by Delhi Pollution Control Committee on 29.06.2004 (Ex. MW1/27). The same was reiterated by the said witness in his cross-examination on 19.12.2011.

12. From a perusal of all these documents it is clear that question of the establishment working prior to year 2004 does not arise. Even on the appointment letter (Ex.MW1/29) issued to workman by the petitioner, the date of his appointment is mentioned as 01.08.2004. The workman had not produced any evidence to show that he was employed with the management from year 2001, rather, the establishment itself came into existence, the machinery was brought and it started operating from year 2004. In fact in reply to a question put to the respondent in his cross examination dated 05.12.2011 regarding the date of his appointment, he had himself denied the suggestion that he had joined the company w.e.f. 01.01.2001.

13. So far as the contention of the petitioner that the respondent had abandoned his services on his own on 10.11.2005 and that he was not terminated on 31.12.2005 is concerned it is observed that the workman had himself in his cross examination dated 05.12.2011 stated that date of his termination from services was not 31.12.2005. On the same day, when the workman was asked to show his original ESI card, he refused to do so. The court thereafter allowed the representative of the

management to ask questions from him on the basis of the photocopy of the ESI card. However, when the said representative insisted on the production of the original document the workman produced the same. Thereafter, in reply to the question that all the particulars on the ESI Card were typed except one date of 31.12.2005 which was hand written, the respondent workman stated that the pasting on the original ESI Card was done when he had gone to take medicine and there the date was extended upon it. A perusal of the said ESI Card (Ex. WW1/1) shows that all the details except the date 31.12.2005 was typed on the said document and the said date was affixed by means of a slip over the ESI Card. MW1 in his cross-examination dated 19.12.2011 had denied the suggestion that the workman received injury while working and also denied that they had informed the ESI department to discontinue ESI facilities to the workman. He volunteered that the workman left his services with effect from 10.11.2005 and they had accordingly informed ESI department. He further stated that they did not write any letter to the workman to come and join his duties after 10.11.2005 because he had himself left the service on his own free will and that is why they did not think it essential to write any letter to him asking him to join his duties again. He also admitted the fact that in his affidavit Ex. MW1/A he had stated that they had requested the workman several times to surrender his ESI Card as they had to deposit the same in the ESI department. A perusal of the record also shows that despite MW1 making submissions about the full and final settlement record Ex.MW1/35, on that day, in his cross-examination no question was raised on behalf of the respondent

regarding its nature as a full and final settlement document. The workman had also not placed any objection to the contention of MW1 that the respondent had left their services from 10.11.2005. Even in the return of contributions (Ex.MW1/34) towards the Employees State Insurance Funds made by the petitioner, it has been specifically mentioned against the entry pertaining to the workman that he left his service w.e.f. 10.11.2005. The workman has not raised any objection regarding the said entry as well.

14. The trial court had come to the conclusion that the management had terminated the services of the workman on the basis of the observation that the signature on the said document of full and final settlement does not match with the signature of the workman on his affidavit. This observation of the trial court is not correct in my opinion because the workman had himself denied that he was terminated on 31.12.2005 and a perusal of his ESI Card Ex. WW1/1 shows that the said date was affixed with a slip on the said ESI Card. Except denying his signature on the said agreement, the workman has produced no other evidence in support of his contention. Neither has he produced any witnesses nor has he shown any documentary proof to the effect that he made any representation against his alleged termination. Under such circumstances relying solely on the submission of the respondent and holding that his services were terminated by the management and denying the submission of the management that the respondent himself left the services does not appeal to the sense of this Court.

15. Another fact that makes it difficult for this court to rely solely on the testimony of the respondent and evidences produced by him and to grant relief as prayed by him is that the said workman, by his conduct, has not emerged as a reliable witness. In fact the trial court has also reached a conclusion that the workman has not approached it with clean hands. The respondent in his evidence by way of an affidavit (Ex.WW1/A) stated that he was working on Dye casting machine and the said machine was defective and that he had informed the management about the defective machine, but the management did not pay any heed. On 01.11.2005, when he was working on the said defective machine, he received injury in his leg due to hitting of aluminium rod. He took treatment in a private hospital and he requested the management to fill his accident form but the management did not fill up his form. In his cross examination on 05.12.2011 he denied the suggestion that he received injury in his leg on 01.11.2005. He also denied that he had pain in his legs earlier and affirmed that he got his treatment on 20.09.2005 from ESI Hospital and that he took his treatment due to the said injury in his leg. He volunteered that he suffered injury due to aluminium nail that entered in his leg/foot. When he was confronted with the OPD ticket dated 03.11.2005 on which it was mentioned that he was suffering from cough for two weeks prior to it, he answered that he used to suffer from fever as well as cold due to injury received by aluminium nail. On a perusal of OPD ticket (Mark D colly.) it is observed that in the ticket dated 03.11.2005 there is no mention of the workman being injured with an aluminium nail. If the workman was suffering from a

nail injury then he should have explained the same to the doctor and the doctor would have recorded the same on the said ticket. Otherwise also as already observed, the respondent has been consistently changing his stand before the trial court both about his appointment and termination from the petitioner organization. Even with regard to Ex. MW1/35, the document of full and final settlement by the management, the respondent has not confronted MW1 about the nature of the said document.

16. In the instant case the trial court has observed that the respondent was not paid the salary for the months of February, March, October and November, 2005. However, on perusal of the claim petition filed by the respondent he had claimed outstanding earned wages for the period from 01.10.2005 to 31.12.2005 only including other legal benefits. To prove his claim, respondent has relied upon the Wages Register (Ex. WW1/M1 to WW1/M4). The trial court has reached a conclusion that the workman was not paid salary for the months of February, March, October and November, 2005. It is beyond the understanding of this court that had the respondent not received the wages for the months of February and March why would he not make any representation to the management regarding the same, when he was paid salary for the months before and after the months of February and March. Otherwise also, even in his claim petition, the respondent has not claimed the salary for the said period. Therefore, this court does not consider it fit to grant the salary even for the months of February and March, 2005. So far as the unpaid wages from 01.10.2005 to 31.12.2005 is concerned it is observed that the

respondent had not signed the salary receipts for the months of October, 2005 and November, 2005. Further, as this court has already observed that the stand of the management that the workman had left his services from 10.11.2005 appeals to this court, the question of payment of salary to the respondent after the said period, i.e., from 11.11.2005 till 31.12.2005 does not arise.

17. Undoubtedly, the High Court while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot sit as an appellate authority upon the findings recorded by the disciplinary authority or the Labour Court on questions of fact. However, if findings are based on no evidence, and are perverse on the face of it, the Court cannot remain oblivious. It is a settled law that the power of judicial review of the High Court under Article 226 of the Constitution is limited. The High Court would step in, only if an award is based on no evidence or suffers from any manifest error of law. If the award of the Industrial Adjudicator is based on substantial evidence, the High Court would refrain from interfering on technical grounds. An award can only be set aside if it is based on no evidence or is contrary to any substantive law. It can also be set aside when it violates the principles of natural justice.

18. In the light of the aforesaid discussion, W.P.(C) No.3171/2012 is partly allowed and the impugned award dated 25.02.2012 passed by Presiding Officer, Labour Court No. IX, Karkardooma Courts, New Delhi is modified to the extent that the petitioner is directed to pay wages for the period from 01.10.2005 to 10.11.2005 @ Rs.3,050/-

(Rupees Three thousand and fifty) which is the last paid wages or minimum wages whichever is higher.

19. The writ petition bearing W.P.(C) No.3171/2012 stands disposed of in the above terms.

20. W.P.(C) No.3224/2013 deserves to be dismissed and is hereby dismissed.

21. The trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

MAY 06th, 2015
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 47/2013

MUNNA PRASAD

..... Appellant

Through Mr H.K. Chaturvedi, Adv.

versus

MANAGEMENT OF SAWHNEY RUBBER INDUSTRIES

..... Respondent

Through Mr Saurabh Chadda, Adv. for ESIC

\+ LPA 186/2013

SAWHNEY RUBBER INDUSTRY

..... Appellant

Through Mr H.K. Chaturvedi, Adv.

versus

MUNNA LAL

..... Respondent

Through Mr Saurabh Chadda, Adv. for ESIC

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

O R D E R

% 16.09.2016

Learned counsel appearing for ESIC submits that the affidavit was filed on 15.09.2016. Copy of the said affidavit has been furnished to counsel for the petitioners.

Learned counsel for the appellants submits that he will obtain instructions whether the appellant wants to take recourse to appropriate remedy in accordance with law for challenging the regulations.

It is also submitted by learned counsel for the appellants that an amount of Rs.2 lacs and the interest accrued of Rs.60,000/- has not been released.

The Registry will examine this aspect and if payment has not been made, the payment should be immediately made.

The appeals stand already disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

SEPTEMBER 16, 2016/*rd*

High Court of Delhi

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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 2758/2013 [DISPOSED OFF] Order(s) Judgement(s)	BRAHM SINGH Vs. MANAGEMENT, M/S THE HINDUSTAN TIMES LTD. & ANR. Advocate : HK CHATURVEDI	DISPOSED OFF on 09/07/2018

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

\+ **W.P.(C) 2905/2013**

SHISH RAM ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate with Mr. Sagar Chaturvedi, Advocate.

versus

UOI AND ORS ..... Respondents

Through: Mr. Anuj Aggarwal, ASC with Ms. Sakshi Kalia, Advocate for R-BSF.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

O R D E R

% 12.11.2018

CM APPL. 46643/2018

1. With the consent of parties, the application is allowed, and the writ petition is taken up for early hearing.

W.P.(C) 2905/2013

2. The challenge in the present writ petition is to the order dated 10th October 1998 passed by the Commandant, 129 Battalion, Border Security Force, dismissing the Petitioner from service.

3. There were two charges for which the Petitioner was subjected to a trial by Summary Security Forces Court ('SSFC'). The charges pertained to two acts of insubordination committed on the same day against one Sub-

Inspector (SI) S. N. Singh. It is stated that at around 12:30 pm on 23rd September 1998, he used objectionable language when he was refused liquor which he had asked for on behalf of one cook, Ajit Sheel. The second charge is on the same day around at 1:30 pm, he again used objectionable language challenging SI S. N. Singh to use his power against the Petitioner.

4. According to the Respondents, the Petitioner pleaded guilty to the first charge but claimed trial for the second charge. He was, at his request, permitted to engage one Mr. A. S. Malik as his Defence Assistant to assist him in the trial. It is the case of the Respondents that he was given the full opportunity to defend himself. By the end of the proceedings, he was awarded the punishment as noted hereinbefore. His appeal against the said order was initially dismissed, leading to him challenging that order before this Court.

5. Although, initially, this Court set aside the dismissal order, the Respondents took that order in appeal to the Supreme Court which then restored W.P.(C) 24/2000 filed by the Petitioner to the High Court for a fresh consideration. By an order dated 7th August 2012, a Division Bench of this Court disposed of the writ petition by directing the Respondents to supply to the Petitioner the complete record of the trial conducted before the SSFC and that on receipt of such record, the Petitioner would be permitted to file an appeal before the Appellate Authority.

6. Pursuant thereto, the Appellate Authority passed a fresh order dated 11th January 2013, rejecting the Petitioner's submissions and confirming his dismissal from service. It is this order of the Appellate Authority that has

been challenged by the Petitioner in the present writ petition.

7. The Petitioner questioned, in the first instance, the stand of the Respondents that he pleaded guilty to the first charge. It is pointed out by him that there was no signature of the Petitioner on the proceedings where it was noted that he had pleaded guilty to the first charge.

8. The case of the Respondents as per its counter affidavit is that Petitioner did in fact plead guilty to the first charge. It is further pointed out by the Respondents that at the relevant point of time in 1998, Rule 142 (2) of the Border Security Force Rules 1969 ('BSF Rules') had not been inserted. Therefore, there was no legal requirement for obtaining such signature.

9. The Court indeed finds that there was no legal requirement at the relevant time of the person pleading guilty having to sign the proceedings. This requirement was inserted only on 25th November 2011. This being a disputed question of fact which cannot be examined in the present petition, the Court proposes to proceed on the basis that the Petitioner had in fact plead guilty to the first charge framed against him. Further, the Appellate Authority noted in the impugned order that even according to the Petitioner, he had been "directed to plead guilty of first charge and accordingly he wrote application dated 10th October 1998 when he was under custody for trial". Consequently, the Court does not accept this plea of the Petitioner.

10. It is then pleaded that the person who was engaged by the Petitioner as his Defence Assistant was not permitted to cross-examine the prosecution witnesses. In reply, it is pointed out by the Respondents that he was indeed

given a full opportunity to defend himself. This again is a disputed question of fact and, therefore, it is not possible for this Court to determine whether in fact, when the inquiry took place in 1998, the Petitioner's Defence Assistant was provided such opportunity.

11. It is next submitted that the Petitioner was not informed that he had the right to engage a legal practitioner in terms of Rule 63 of the BSF Rules. A reference is made in particular to Rule 63(1) read with 63(5) of the BSF Rules. While Rule 63(1) states that an accused shall be an afforded a proper opportunity to prepare his defence and be allowed proper communication with his defending officer or counsel and with his witnesses. Rule 63(5) pertains to a request having been made by the accused for examination of a witness that he may wish to call in his defence and the Commandant having to accede to such request. There is no specific rule that mandates that the accused must be informed that he has right to a legal practitioner to defend him. Consequently, the Court is unable to find any illegality on this basis.

12. Finally, learned counsel for the Petitioner contends that the punishment of dismissal from service is disproportionate, considering the actual acts of insubordination for which the Petitioner was held guilty. Learned counsel for the Respondents, on the other hand, refers to the fact that the Petitioner had been punished summarily on seven previous occasions and it was the cumulative effect of his past record as well as him pleading guilty in the present instance to the first charge and being found to be guilty of both charges that has warranted the punishment.

13. Having considered the above submissions, this Court is of the view that

the punishment of dismissal from service for the aforementioned two acts of insubordination does appear to be wholly disproportionate. The Court finds merit in the contention of the learned counsel for the Petitioner that on the aspect of punishment, the Respondent authorities should once again consider the case of the Petitioner in accordance with law.

14. Consequently, the impugned order of the Appellate Authority confirming the dismissal of the Petitioner form service is hereby set aside and to the above limited extent of the appropriate penalty, the matter is remanded to the Appellate Authority for reconsideration. The Appellate Authority will, preferably after hearing the Petitioner, pass a fresh order on the issue of punishment uninfluenced by the earlier orders and communicate to the Petitioner the fresh decision not less than eight weeks from today. If the Petitioner is aggrieved by the said decision, it will be open to him to seek appropriate remedies in accordance with law.

15. The petition is disposed of accordingly.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 12, 2018
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09th March, 2015

% **Date of Decision: 06th May, 2015**

\+ W.P.(C) 3171/2012

DURGA PRECISION UDYOG ..... Petitioner
Through: Mr. Pranay Trivedi, Adv.

versus

SIYA RAM TIWARI ..... Respondent
Through: Mr. Brijballabh Tiwari, Adv.

\+ W.P.(C) 3224/2013

SIYA RAM TIWARI ..... Petitioner
Through: Mr. Brijballabh Tiwari, Adv.

versus

DURGA PRECISION UDYOG ..... Respondent
Through: Mr. Pranay Trivedi, Adv.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. These two petitions arise out of the award dated 25.02.2012 passed by the learned Presiding Officer, Labour Court No. IX, Karkardooma Courts, New Delhi in ID No. 34/08 (Unique Case ID No. 02402CO143652008) wherein the Presiding Officer held that the services of the workman were terminated illegally and unlawfully by

the management and further held that the workman is entitled to full back wages for 5 months w.e.f. 01.08.2005 to 31.12.2005 at the rate of Rs.2,500/- (Rupees Two thousand five hundred) per month or minimum wages of a skilled labour whichever is higher on that date and is also entitled for compensation @ 40% of his back wages @ Rs.2500/- or minimum wages of a skilled labour, whichever is higher w.e.f. 26.03.08 up till 25.02.12. The management was further directed to pay the aforementioned amount within a period of two months from the date of the award, failing which the amount was to carry simple interest @ 8 % p.a.

2. Since both these petitions are between the same parties and lay challenge to the award dated 25.02.2012, they are being disposed of by this common judgment. For the sake of brevity, the facts are being extracted from W.P.(C) No.3171/2012.

3. The facts of the case as culled out from the petition are that the respondent/ workman was appointed as an Assistant Operator with the petitioner at a monthly salary of Rs.3,050/- (Rupees Three thousand fifty). The respondent worked with the petitioner from August 2004 till October 2005, for which he was paid salary regularly against his signatures on the revenue stamp. On 10.11.2005, the respondent left the services of the petitioner and executed a receipt of full and final settlement.

4. Thereafter, the respondent/ workman raised an Industrial Dispute against his alleged termination. In the statement of claim filed by the respondent, it was contended that he was appointed as a Dye

Casting Operator with M/s. Durga Procession Industry (petitioner herein) on 01.01.2001 at a monthly salary of Rs.2,500/- (Rupees Two thousand five hundred). On 01.01.2004, the management of the petitioner issued an Employees State Insurance card (for short 'ESI Card') to the workman which was given to him on 15.02.2005. On 01.11.2005, an aluminum nail pierced in the foot of the respondent while running the Dye Casting machine, which led to the respondent being admitted to a private hospital for treatment. The respondent made repetitive requests to the petitioner's management to fill his accident form. However the management did not do the same and further blocked the ESI Card of the respondent as a result of which his medical treatment was not conducted properly. The petitioner neither paid the respondent's hospital bill nor did they pay outstanding wages earned by the workman from 01.10.2005 to 31.12.2005. On respondent's request for payment of the said amount, the petitioner terminated the services of the respondent on 31.12.2005 without making any payment towards his hospital bill and outstanding earned wages. On 01.01.2006, the respondent referred his request to the Industrial Workers Union, who sent a demand notice dated 02.01.2006 to the management and demanded the payment of the entire amount in favour of the respondent. However, the petitioner did not respond to the said demand notice as a result of which on 17.01.2006, the officer of the Industrial Workers Union filed a complaint before the learned Additional Labour Commissioner, Ashok Vihar, Delhi. The said complaint too did not yield any result. The respondent thereafter filed a complaint before the learned Labour Settlement Officer, Labour

Office, Ashok Vihar, Delhi and sent various notices from time to time to the petitioner but neither did the management appear before the Labour Office, nor did they file any reply to the said notice.

5. The petitioner filed its reply to the claim petition and denied all the allegations made by the respondent in his claim petition and stated that the workman himself left the services of the petitioner on 10.11.2005 while executing the receipt of full and final settlement.

6. On 11.08.2009 issues were framed by the learned trial court in the aforementioned Industrial Dispute. On 13.12.2011, petitioner filed two applications to refer some documents to the CFSL for comparison along with the list of witnesses, which were dismissed by the Presiding Officer vide order dated 16.12.2011 who then proceeded to pass the impugned award dated 25.02.2012.

7. Learned counsel for the petitioner submitted that learned trial court failed to appreciate the fact that if respondent is claiming that none of the documents bear his signatures then the respondent should not have opposed the petitioner's application to refer the documents to CFSL. The labour court should have allowed the petitioner's application to refer the documents to CFSL. It was wrongly observed by the trial court that the respondent was not paid the salary for the month of February, March, October and November 2005. It was neither the case of the respondent that his salary for four months was due, nor it was his case that the salary for the month of February and March 2005 was not paid to him. Rather it was only contended by the respondent that he had not received his alleged legally due salary w.e.f.

01.10.2005 to 31.12.2005. The reason that some of the salary receipts were not signed by the respondent is that sometimes respondent and other workers used to take their salaries in advance or in case of urgency from the house of the petitioner. Under such circumstances the salary receipts could not be signed due to non availability of such receipts. It was also contended that the respondent failed to produce any document or even otherwise failed to prove his alleged termination on 31.12.2005.

8. *Per contra*, learned counsel for respondent contended that the issues framed by the labour court were adjudicated on the basis of material on record. The High Court while exercising its extraordinary writ jurisdiction cannot sit in an appeal over the decision of the trial court and cannot re-appreciate the entire evidence. It was further contended by the learned counsel for the respondent that the petitioner had filed forged receipt dated 10.11.2005 before the labour court which was in a printed form and the petitioner also forged the signatures of the workman on such receipts. The same was concocted with ulterior motive to defeat the claim of the workman.

9. I have heard the learned counsel for the parties and have also perused the material on record.

10. Industrial disputes tend to reduce economic profits and inflict damages on both employer and employee. It poses problems for rationalizing labour and capital and also creates problem in the production and financial profit of the industry that ultimately affects the economy of the country. Therefore, maintaining industrial peace

and harmony is important for a worker as it is for an employer as it postulates the existence of understanding, co-operation and a sense of partnership between the employers and employees. Keeping several such factors in mind the Industrial Disputes Act, 1947 (for short "ID Act") was enacted with the object of making provisions for the investigation and settlement of industrial disputes, promoting measures for securing and preserving amity and good relations between employer and employees, preventing illegal strikes and lock-outs, providing relief to workmen during lay-off or after retrenchment, wrongful dismissal or victimization along with providing conciliation, arbitration and adjudication facilities. The object of the said enactment is to facilitate the workmen/ labourers to present their case. Its provisions are directed to secure industrial peace and harmony by providing a machinery and procedure for investigation and settlement of industrial disputes by negotiation. The workmen are given a beneficial status under its provisions which are essentially pro-workmen. However, having said that the Tribunal or the Labour Court is still bound by judicial principles of fair hearing and impartiality while forming its decision. The Tribunal/Labour Court must not always grant relief to the workman simply because the provisions of the Act are made in favour of the workman.

11. It is a settled principle of law that the burden of proof of the existence of a particular fact lies on the person who makes a positive assertion about its existence. Undoubtedly, it is always easier to prove a positive fact than to prove a negative fact. In the present case, it is primarily contended by the learned counsel for the petitioner that the

respondent was employed as an assistant operator with the petitioner with effect from 01.08.2004 whereas it is contended on behalf of the respondent that he was working with the management from 01.01.2001. However, from a perusal of the material on record, the contention of the petitioner finds favour with this court. MW1, Sh. Gaurav Bhutani has in his evidence by way of affidavit (Ex.MW1/A) stated that after getting the degree/certificate from Tool Room and Training Centre he, with an intention of doing business of aluminium casting, placed an order for the machines which are required for the purpose of aluminium casting (Ex.MW1/4 to Ex.MW1/6). He applied for PAN card and the same was issued vide No. AHLPB6008M (Ex.MW1/7 and Ex.MW1/8). He further stated that the subject property bearing Plot No. 58 SSI, GT Karnal Road, New Delhi-110033 on which the business of the petitioner company is going on till date was obtained on rent from M/s. Rajdhani Industries in the year June, 2004 through license agreement (exhibited as Ex. MW1/9). Prior to the petitioner company became tenant in Plot No. 58 SSI, GT Karnal Road, New Delhi-110033, M/s. SS Exports was the tenant of M/s. Rajdhani Industries. M/s. SS Exports vacated the subject property in the month of March, 2004. The lease agreement with M/s. SS Exports is exhibited as Ex. MW1/15. M/s. Rajdhani Industries had issued a No Objection letter in favour of the petitioner in obtaining sales tax registration or any other license required (exhibited as EX.MW1/10). He had also applied for MTNL connection vide acknowledgement slip dated 12.06.2004 (Ex. MW1/11 and Ex. MW1/12), sales tax registration was applied by him in the month of June 2004 and for the

said purpose he had submitted his statement with the Sales Tax Department on 17.06.2004 and the Sales Tax Department had further issued the certificate of registration (Ex.MW1/13 and Ex. MW1/14). The petitioner company had applied for a pollution certificate and the same was issued by Delhi Pollution Control Committee on 29.06.2004 (Ex. MW1/27). The same was reiterated by the said witness in his cross-examination on 19.12.2011.

12. From a perusal of all these documents it is clear that question of the establishment working prior to year 2004 does not arise. Even on the appointment letter (Ex.MW1/29) issued to workman by the petitioner, the date of his appointment is mentioned as 01.08.2004. The workman had not produced any evidence to show that he was employed with the management from year 2001, rather, the establishment itself came into existence, the machinery was brought and it started operating from year 2004. In fact in reply to a question put to the respondent in his cross examination dated 05.12.2011 regarding the date of his appointment, he had himself denied the suggestion that he had joined the company w.e.f. 01.01.2001.

13. So far as the contention of the petitioner that the respondent had abandoned his services on his own on 10.11.2005 and that he was not terminated on 31.12.2005 is concerned it is observed that the workman had himself in his cross examination dated 05.12.2011 stated that date of his termination from services was not 31.12.2005. On the same day, when the workman was asked to show his original ESI card, he refused to do so. The court thereafter allowed the representative of the

management to ask questions from him on the basis of the photocopy of the ESI card. However, when the said representative insisted on the production of the original document the workman produced the same. Thereafter, in reply to the question that all the particulars on the ESI Card were typed except one date of 31.12.2005 which was hand written, the respondent workman stated that the pasting on the original ESI Card was done when he had gone to take medicine and there the date was extended upon it. A perusal of the said ESI Card (Ex. WW1/1) shows that all the details except the date 31.12.2005 was typed on the said document and the said date was affixed by means of a slip over the ESI Card. MW1 in his cross-examination dated 19.12.2011 had denied the suggestion that the workman received injury while working and also denied that they had informed the ESI department to discontinue ESI facilities to the workman. He volunteered that the workman left his services with effect from 10.11.2005 and they had accordingly informed ESI department. He further stated that they did not write any letter to the workman to come and join his duties after 10.11.2005 because he had himself left the service on his own free will and that is why they did not think it essential to write any letter to him asking him to join his duties again. He also admitted the fact that in his affidavit Ex. MW1/A he had stated that they had requested the workman several times to surrender his ESI Card as they had to deposit the same in the ESI department. A perusal of the record also shows that despite MW1 making submissions about the full and final settlement record Ex.MW1/35, on that day, in his cross-examination no question was raised on behalf of the respondent

regarding its nature as a full and final settlement document. The workman had also not placed any objection to the contention of MW1 that the respondent had left their services from 10.11.2005. Even in the return of contributions (Ex.MW1/34) towards the Employees State Insurance Funds made by the petitioner, it has been specifically mentioned against the entry pertaining to the workman that he left his service w.e.f. 10.11.2005. The workman has not raised any objection regarding the said entry as well.

14. The trial court had come to the conclusion that the management had terminated the services of the workman on the basis of the observation that the signature on the said document of full and final settlement does not match with the signature of the workman on his affidavit. This observation of the trial court is not correct in my opinion because the workman had himself denied that he was terminated on 31.12.2005 and a perusal of his ESI Card Ex. WW1/1 shows that the said date was affixed with a slip on the said ESI Card. Except denying his signature on the said agreement, the workman has produced no other evidence in support of his contention. Neither has he produced any witnesses nor has he shown any documentary proof to the effect that he made any representation against his alleged termination. Under such circumstances relying solely on the submission of the respondent and holding that his services were terminated by the management and denying the submission of the management that the respondent himself left the services does not appeal to the sense of this Court.

15. Another fact that makes it difficult for this court to rely solely on the testimony of the respondent and evidences produced by him and to grant relief as prayed by him is that the said workman, by his conduct, has not emerged as a reliable witness. In fact the trial court has also reached a conclusion that the workman has not approached it with clean hands. The respondent in his evidence by way of an affidavit (Ex.WW1/A) stated that he was working on Dye casting machine and the said machine was defective and that he had informed the management about the defective machine, but the management did not pay any heed. On 01.11.2005, when he was working on the said defective machine, he received injury in his leg due to hitting of aluminium rod. He took treatment in a private hospital and he requested the management to fill his accident form but the management did not fill up his form. In his cross examination on 05.12.2011 he denied the suggestion that he received injury in his leg on 01.11.2005. He also denied that he had pain in his legs earlier and affirmed that he got his treatment on 20.09.2005 from ESI Hospital and that he took his treatment due to the said injury in his leg. He volunteered that he suffered injury due to aluminium nail that entered in his leg/foot. When he was confronted with the OPD ticket dated 03.11.2005 on which it was mentioned that he was suffering from cough for two weeks prior to it, he answered that he used to suffer from fever as well as cold due to injury received by aluminium nail. On a perusal of OPD ticket (Mark D colly.) it is observed that in the ticket dated 03.11.2005 there is no mention of the workman being injured with an aluminium nail. If the workman was suffering from a

nail injury then he should have explained the same to the doctor and the doctor would have recorded the same on the said ticket. Otherwise also as already observed, the respondent has been consistently changing his stand before the trial court both about his appointment and termination from the petitioner organization. Even with regard to Ex. MW1/35, the document of full and final settlement by the management, the respondent has not confronted MW1 about the nature of the said document.

16. In the instant case the trial court has observed that the respondent was not paid the salary for the months of February, March, October and November, 2005. However, on perusal of the claim petition filed by the respondent he had claimed outstanding earned wages for the period from 01.10.2005 to 31.12.2005 only including other legal benefits. To prove his claim, respondent has relied upon the Wages Register (Ex. WW1/M1 to WW1/M4). The trial court has reached a conclusion that the workman was not paid salary for the months of February, March, October and November, 2005. It is beyond the understanding of this court that had the respondent not received the wages for the months of February and March why would he not make any representation to the management regarding the same, when he was paid salary for the months before and after the months of February and March. Otherwise also, even in his claim petition, the respondent has not claimed the salary for the said period. Therefore, this court does not consider it fit to grant the salary even for the months of February and March, 2005. So far as the unpaid wages from 01.10.2005 to 31.12.2005 is concerned it is observed that the

respondent had not signed the salary receipts for the months of October, 2005 and November, 2005. Further, as this court has already observed that the stand of the management that the workman had left his services from 10.11.2005 appeals to this court, the question of payment of salary to the respondent after the said period, i.e., from 11.11.2005 till 31.12.2005 does not arise.

17. Undoubtedly, the High Court while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot sit as an appellate authority upon the findings recorded by the disciplinary authority or the Labour Court on questions of fact. However, if findings are based on no evidence, and are perverse on the face of it, the Court cannot remain oblivious. It is a settled law that the power of judicial review of the High Court under Article 226 of the Constitution is limited. The High Court would step in, only if an award is based on no evidence or suffers from any manifest error of law. If the award of the Industrial Adjudicator is based on substantial evidence, the High Court would refrain from interfering on technical grounds. An award can only be set aside if it is based on no evidence or is contrary to any substantive law. It can also be set aside when it violates the principles of natural justice.

18. In the light of the aforesaid discussion, W.P.(C) No.3171/2012 is partly allowed and the impugned award dated 25.02.2012 passed by Presiding Officer, Labour Court No. IX, Karkardooma Courts, New Delhi is modified to the extent that the petitioner is directed to pay wages for the period from 01.10.2005 to 10.11.2005 @ Rs.3,050/-

(Rupees Three thousand and fifty) which is the last paid wages or minimum wages whichever is higher.

19. The writ petition bearing W.P.(C) No.3171/2012 stands disposed of in the above terms.

20. W.P.(C) No.3224/2013 deserves to be dismissed and is hereby dismissed.

21. The trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

MAY 06th, 2015
hs

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2169/2013

NALIN DASS ..... Petitioner

Through: Mr.H.K. Chaturvedi and Mohd. Aqil Saifi,

Advocates

versus

MUNICIPAL CORPORATION OF DELHI AND ORS..... Respondent

Through: Ms.Vertika Sharma, Advocate for R=1.MCD

Mr.Parvinder Chauhan, Advocate for R=3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

O R D E R

05.04.2013

After some hearing in the matter, counsel for the petitioner wishes to withdraw the present writ petition, with leave of the Court to file a fresh comprehensive petition. The writ petition is accordingly dismissed as withdrawn, with liberty as prayed for.

G.S.SISTANI, J

APRIL 05, 2013

ssn

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

Date of decision: 23rd September, 2011

\+ **W.P.(C) 7021/2011**

% **SITARE & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 917/2011**

% **SHANKAR PRASAD** **….. Petitioner**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.

AND

\+ **W.P.(C) 1839/2011**

% **MORBATI & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

AND

\+ **W.P.(C) 2943/2011**

% **MUNNA SINGH & ORS.** **….. Petitioners**

Through: Mr. H.K. Chaturvedi, Adv.

Versus

DDA & ORS. **..... Respondents**

Through: Mr. Rajiv Bansal & Mr. Rahul Bhandari, Adv. for R-1/DDA.
Ms. Sana Ansari, Adv. for GNCTD.
Mr. O.P. Saxena & Mr. Vaibhav Sethi, Advs. for R-3/DUSIB.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary

2. To be referred to the reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.7021/2011 has come up for consideration for the first time today. The six petitioners claim to have earlier been residents, since prior to the year 1994, of Jhuggi Jhopri Cluster (JJC) in Jasola Village where demolition was carried out on 09.06.2009. They claim to be entitled to re-location in accordance with the Policy of the respondent No.2 Govt. of NCT of Delhi (GNCD). This petition has been filed seeking mandamus therefor.

2. The land underneath the said JJC of which the petitioners claim to have been earlier resident of is stated to belong to respondent No.1 DDA. The Delhi Urban Shelter Improvement Board (DUSIB) (wrongly mentioned as Delhi Urban Centre Improvement Board in the memo of parties) which is vested with the power to carry out the survey and determine the eligibility for re-location in accordance with the Policy aforesaid has been impleaded as respondent No.3.

3. The counsel for the respondent No.3 DUSIB appearing on advance notice has stated that though DUSIB carries out the survey and determines the eligibility on receiving reference from the agency owning the land underneath the JJC but the respondent No.1 DDA has a separate Policy for rehabilitation / re-location and the respondent No.1 DDA itself carries out the survey / determination of eligibility also.

4. The counsel for the respondent No.1 DDA also appearing on advance notice however denies that the respondent No.1 DDA has any separate Policy or separate mechanism for carrying out the survey / determining the eligibility and contends that it is also covered by the policies in this regard of the respondent No.2 GNCTD. He also refers to several other petitions where this Court has directed the DUSIB to carry out survey / determine eligibility qua Jhuggi Jhopri Dwellers (JJD) on respondent No.1 DDA's land also.

5. Undoubtedly, in the past in other matters no such plea has been taken of respondent No.3 DUSIB being not required to or empowered to carry out

the survey / determine eligibility for re-location of squatters on DDA land and this Court has issued several orders for such survey / determination.

6. Need is not felt to issue formal notice of the petition or to call for affidavits / replies inasmuch as no mandamus as sought of re-habilitation / re-location of the petitioners can be issued unless the entitlement of the petitioners is determined by respondent No.3 DUSIB and which has not been done till now. The only direction to be thus made in this petition, since the petitioners have already been dispossessed, is of the eligibility if any of the petitioners to be determined.

7. The counsel for the petitioners at this stage states that he has on behalf of certain other erstwhile residents of the same JJC, also filed W.P.(C) Nos.917/2011, 1839/2011 & 2943/2011 of which notices have been issued and which are listed next on 01.12.2011. On request of the counsels, the files of the said W.P.(C) Nos.917/2011, 1839/2011 & 2943/2011 also have been requisitioned from the Registry and the next date of 01.12.2011 therein is cancelled and the same are also taken up for hearing.

8. A counter affidavit of the department of Urban Development, GNCTD is found to be filed in W.P.(C) Nos.917/2011 & 1839/2011. It is stated therein that the respondent No.3 DUSIB has been nominated as the nodal agency for implementation of the Scheme for re-location / re-habilitation of JJC from the lands belonging to MCD and Delhi Government and its departments / agencies and that in case of Central Government / agencies like Railways, DDA, L&DO, Delhi Cantonment Board, NDMC they are free to carryout the re-location / re-habilitation by themselves as per the Policy of the Delhi Government or may entrust the job to respondent No.3 DUSIB.

9. I am of the opinion that once the Policy of re-location / re-habilitation is of the respondent No.2 GNCTD, no distinction can be made between JJDs over land belonging to MCD and the JJDs over land belonging to respondent No.1 DDA. Since this Court has in the past issued directions to respondent No.3 DUSIB for determination of eligibility of JJDs on land of respondent No.1 DDA also, no reason is found for not issuing similar order in these four petitions also.

10. The petitions are disposed of with the following directions:

(i) The agency owning the land underneath the JJC at Jasola, demolition action whereat was carried out on 09.06.2009, whether DDA or otherwise, is deemed to have made reference to the respondent No.3 DUSIB for determining the eligibility of the petitioners in all the four petitioners for re-location / re-habilitation in accordance with the Policy of the respondent No.2 GNCTD;

(ii) The respondent No.3 DUSIB to accordingly so determine the eligibility of the petitioners;

(iii) The petitioners to appear before the respondent No.3 DUSIB along with all their documents in this regard, in the first instance on 20.10.2011 and thereafter on such further dates as may be necessary;

(iv) The respondent No.3 DUSIB to make endeavour to complete

the enquiry / determination within one year thereof;

(v) The department of Food & Civil Supplies and other concerned departments from whom respondent No.3 DUSIB may need to verify to determine the eligibility of the petitioners, are directed to supply all information sought to respondent No.3 DUSIB and to render other assistance if any sought;

(vi) If the petitioners or any of them are so found eligible, they be re-located / re-habilitated in accordance with the Policy. However, the petitioners or such of them who are not found eligible, if not found eligible, shall have remedies in law.

The petitions are disposed of. No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

SEPTEMBER 23, 2011
'gsr'

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 4th September, 2017

Date of decision : 7th May, 2019

\+ **W.P.(C) 2600/2003 & CM APPL. 12011/2017**

SUNIL KUMAR ..... Petitioner

Through: Mr. Atul T.N., Advocate

versus

PRESIDING OFFICER LABOUR COURT AND ANOTHER . ..... Respondent

Through: Ms. Ginny J. Routray, Ms. Bhawna Pal, Advocates for R2. None for R1.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner / workman Sh. Sunil Kumar vide the present Civil Writ Petition bearing No. W.P.(C) 2600/2003 has assailed the impugned award dated 08.06.2000 of the learned Labour Court No. IX, Tis Hazari Courts, Delhi in I.D. No. 208/85 whereby the Reference received vide notification no. F.24(596)/85-Lab. 12543 dated 26.07.1985 to the effect : -

> ***"Whether the services of Sh. Sunil Kumar have been terminated illegally and / or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this respect."***

which though answered in favour of the petitioner / workman to the extent that it was held that the termination of the services of the petitioner / workman was illegal for non-compliance of Section 25F r.w. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, but did not grant reinstatement of the petitioner / workman and also declined the

grant of back wages, however, awarded compensation equivalent to four years service @ last drawn wages i.e. to the extent of Rs.15,000/- towards reinstatement.

2. Notice having ben issued to the respondent no. 2, arguments have been addressed on behalf of either side and written submissions of the petitioner / workman and the respondent no. 2 are on record, the respondent no. 1 arrayed on record being the learned Presiding Officer, Labour Court IX, Tis Hazari Court, Delhi.

3. A bare perusal of the impugned award which has not been challenged by institution of any cross objection by the respondent no.2 brings forth to the effect that the petitioner / workman who was in regular employment of the respondent no. 2 i.e. M/s. Indian Institute of Foreign Trade at B-21, Institutional Area, South of IIT, New Delhi w.e.f. 08.09.1981 as a Junior Clerk on daily wages, had been so employed after he qualified a typewriting test conducted by the Management on 05.09.1981 and the petitioner / workman continuously worked with the respondent no. 2 from 08.09.1981 till 21.09.1983 when his services were terminated on 21.09.1983. The representations made on 13.10.1983 and 08.11.1983 by the petitioner / workman to the respondent no. 2 but the petitioner / workman was not reinstated and the petitioner / workman thus sent a demand letter dated 23.12.1983.

4. On the pleadings of the parties, issues framed by the learned Labour Court No. IX, Tis Hazari Courts, Delhi, were to the effect : -

> ***"i). Whether the management is an 'industry' and the workman is a 'workman' under T.D. Act? Onus on***

parties.

ii). Whether the reference is bad as pleaded in Preliminary objections (f) ? O.P.M.

iii). Whether the proper demand notice was served on the management ? If not, to what effect ? O.P.W.

iv). As per terms of reference ? O.P.W."

5. The contentions of the respondent no. 2 to the effect that the respondent no. 2 was not an *'industry'* and that the petitioner was not a *'workman'* under the Industrial Disputes Act, 1947, was decided against the management and in favour of the petitioner / workman with it having been held that the respondent no. 2 was conducting research for the benefit of industries in general and its report were published and sold and thus the respondent no. 2 was held to be falling within the category of an *'industry'* in terms of Section 2(j) of the Industrial Disputes Act, 1947 with it having been held also that the petitioner thus fell within the domain of Section 2(s) of the said enactment as a *'workman'*.

6. Issue no. 2 related to the objection raised by the respondent no. 2 to the effect that the appropriate government had not supplied its no objection before sending the reference, which was rightly held to be inappropriately raised in as much as the appropriate government had no jurisdiction to adjudicate rival contentions and necessarily had to send the reference that was made to the Labour Court.

7. Issue no. 3 was also decided against the respondent no. 2 and in favour of the petitioner observing to the effect that the petitioner had

duly served the notice Ex.WW1/27 vide UPC and through registered AD post as per Ex.WW1/28 & Ex.WW1/29 on the respondent no. 2.

8. Apparently, there is no infirmity in relation to these observations aforementioned qua issue nos. 1, 2 & 3 as were framed on 14.05.1987.

9. As regards issue no. 4, it was observed by the learned Labour Court No. IX, Tis Hazari Courts, Delhi to the effect : -

> ***"17. The crux of the case lies in determination of this issue, A/R of the management strongly relied upon appointment letters copies of which are Ex.WW1/1 to Ex.WW1/26 to make out that each appointment was for a specific period mentioned therein. I have given my due thought to the matter. Firstly, the break given on each occasion is that of two to 3 days only. The same are artificial breaks. It was held in 1984 LIC 974 and 1985(7) SLJ 306 that repeated appointments and terminations before completion of 240 days to deprive workman of benefit, is unfair labour practice. Recently, in 1999 (10) Apex Decisions 31 it was held that when there are artificial breaks it is a continuous service.***
>
> ***18. The another way of looking at the matter is that daily wages can be included under Section 2(oo)(bb) which was inserted on the statute book by way of amendment that come into force with effect from 1.8.84. Earlier the law was that even termination of a daily wager amounted to retrenchment. For this reference with advantage can be made to decision Hon'ble Supreme Court in Robert D.Souza's case reported as (1982) 44 FLR 250 and (1996) 11 SCC 396.***
>
> ***19. Undisputedly the workman completed 240 days in a calendar year and so compliance of Section 25F was must. But the management did not do that and so its action cannot be sustained as per 2000 LLR 323 SC.***

> ***20. What follows from the above is that termination of the workman was illegal. Anyhow period of 17 years has passed and now it will not be conducive to order his reinstatement. Only a lump sum compensation can be granted as per latest DB decision of our own Hon'ble High Court reported as 2000 LLR 136. The workman rendered service for 2 years and length of service is one of the relevant factors as per 1998 (80) FLR 923.***
>
> ***21. Keeping in view the facts and circumstances of the case grant of compensation equivalent to 4 years service @ last drawn wages would come out to approximately Rs.15.000/- towards reinstatement would meet the ends of justice.***
>
> ***22. As regard back wages it may be observed that workman has not made even an iota of allegation in the statement of claim that he was unemployed since termination or that he made any effort to find alternative job. Same is the fate of affidavit Ex.WW1/A. It was held in 1996 LLR 433 Allahabad that where there is assertion that workman remained unemployed, no back wages can be granted. In this background reliance by workman on 1996 LLR 556 and 1996 LLR 839 to the effect that awarding back wages without increment is not justified, is unfounded."***

10. As regards the observations made by the learned Labour Court No. IX, Tis Hazari Courts, Delhi holding that the services of the petitioner / workman had been illegally terminated without compliance of the Section 25F r.w. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, apparently there is no infirmity in the said findings in as much the petitioner / workman having worked for more than 240 days in a calendar year from the date of having joined the

services of the respondent no. 2 on 08.09.1981 till his services were terminated on 21.09.1983, with deliberate artificial breaks having been given by the respondent no. 2 in making appointment of the petitioner / workman and terminating him before completion of 240 days to deprive him of the benefit of the Industrial Disputes Act, 1947, which was an unfair labour practice, it has rightly been held by the learned Labour Court that the services of the petitioner / workman had been illegally terminated.

11. The prayer made by the petitioner is thus confined to the extent that the back wages, attendant benefits, increments etc. have not been granted to the petitioner / workman apart from reinstatement with and continuity of service and promotional benefits having not been granted, be so granted.

12. It has been observed by the learned Labour Court No. IX, Tis Hazari Courts, Delhi that as on the date of illegal termination of the services of the petitioner / workman on 21.09.1983 when the award was made on 08.06.2000, a period of 17 years had passed and it was not possible to order reinstatement of the petitioner / workman. Apparently for maintenance of cordiality in industrial relations in view of the lapse of number of years now from the date 21.09.1983 as also the number of years that had lapsed till the date of the pronouncement of the inappropriate award on 08.06.2000, the non-grant of reinstatement to the petitioner / workman by the learned Labour Court No. IX, Tis Hazari Courts, Delhi cannot be faulted with taking into account that the services rendered by the petitioner / workman was for a period of a letter more than two years.

13. The Office Order No. 2(5)/81-Admn. dated 07.09.1981 vide which the petitioner / workman was engaged as a Junior Clerk for a period of one month w.e.f. 08.09.1981 indicated that the wages to be paid to the petitioner / workman were Rs.15 per day inclusive of the payment of weekly off / holidays and the said terms were reiterated vide Office Order No. 2(5)/81-Admn. dated 13.10.1981, vide Office Order No. 2(5)/81-Admn. dated 16.11.1981, vide Office Order No. 2(5)/81-Admn. dated 17.12.1981, vide Office Order No. 2(5)/81-Admn. dated 04.01.1982, vide Office Order No. 2(5)/81-Admn. dated 20.01.1982, vide Office Order No. 2(5)/81-Admn. dated 06.02.1982, vide Office Order No. 2(5)/81-Admn. dated 08.03.1982, vide Office Order No. 2(5)/81-Admn. dated 12.04.1982, vide Office Order No. 2(5)/81-Admn. dated 15.06.1982, vide Office Order No. Admn.2(5)/81 dated 16.07.1982, vide Office Order No. Admn.2(5)/81 dated 17.08.1982, vide Office Order No. Admn.2(5)/81 dated 18.09.1982, vide Office Order No. Admn.2(5)/81 dated 19.10.1982, vide Office Order No. Admn.2(5)/81 dated 23.11.1982, vide Office Order No. Admn.2(5)/81 dated 24.12.1982, vide Office Order No. Admn.2(5)/81 dated 25.01.1983, vide Office Order No. Admn.2(5)/81 dated 28.02.1983, vide Office Order No. Admn.2(5)/81-Vol.II dated 30.03.1983, vide Office Order No. Admn.2(5)/81 dated 02.05.1983, vide Office Order No. Admn.2(5)/81 dated 04.06.1983, vide Office Order No. Admn.2(5)/81 dated 05.07.1983, vide Office Order No. Admn.2(5)/81 dated 06.08.1983 and vide Office Order No. Admn.2(5)/81 dated 06.09.1983 vide which it was extended upto 07.09.1983.

14. A catena of verdicts was relied upon on behalf of the petitioner:-

> ***"1. Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. dated 07.09.1978 (1997) 2 SCC 80,***
>
> ***2. Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya dated 12.08.2013 (2013) 10 SCC 324,***
>
> ***3. Jasmer Singh Vs. State of Haryana dated 13.01.2015 (2015) 4 SCC,***
>
> ***4. MCD Vs. Naresh Kumar, Delhi High Court,***
>
> ***5. Raj Kumar Dixit Vs. M/s. Vijay Kumar Gauri Shanker Kanpur Nagar dated 12.05.2015, Civil Appeal No. 4370 of 2015 and***
>
> ***6. Raj Kumar Vs. Director of Education, 2016 (6) SCC 541."***

to contend that in as much there was no fault of the petitioner, reinstatement and full back wages ought to have been granted to him in as much as the termination of his services was blatantly illegal.

15. It is essential to observe however that as rightly observed by the learned Labour Court No. IX, Tis Hazari Courts, Delhi that there is not a whisper of an averment in the claim of the petitioner / workman that the petitioner / workman had continued to remain unemployed since the termination of his services or that he was not able to find any alternative job and that in the circumstances no back wages could be granted to him.

16. On behalf of the respondent, reliance was placed on the verdict of the Hon'ble Division Bench of this Court in the case titled as ***Delhi Transport Corporation Vs. Presiding Officer & Anr. 82 (1999) DLT 648 (DB)*** wherein it has been observed to the effect : -

> ***"27. We find from the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back-wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back-wages is now the norm. In any case, since we are bound to follow the decision of the Constitution Bench, we, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back-wages."***

and thus in the said case where the matter related to an interregnum of 31 years from the date of illegal termination of services of the workman till the date before it was so decided in the LPA No. 117/82, it was held that directing reinstatement of the workman would result in several hypothetical questions in relation to the seniority, promotion etc. and would be unfair to the management and in the circumstances of that case, the workman was directed to be paid a sum of Rs.50,000/- in addition to the amount that had been directed to be paid during the pendency of the petition.

17. It is essential to observe that in the case titled as ***Vinod Kumar & others Vs. Salwan Public School & others WP(c) 5820/2011 dated***

17.11.2014, a verdict of this Court, it has been observed to the effect :-

> ***"11. Having considered the rival submissions of the counsels for the parties, I do not find any infirmity in the order of the Labour Court. It is a settled position of law that even if termination has been held to be illegal, reinstatement with full back wages is not to be granted automatically. The Labour Court is within its right to mould the relief by granting a lump-sum compensation. In fact, I note that the Labour Court has relied upon three judgments propounding the law that the Labour Court can mould a relief by granting lump sum compensation; the Labour Court is entitled to grant relief having regard to facts and circumstances of each case."***

18. The Hon'ble Supreme Court in ***Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Boards, Rohtak (Haryana); MANU/SC/0166/2010 : (2010) 3 SCC 637 held that the POLC-XVII, KKD, Delhi having held the termination of the services of the petitioner to be illegal, she ought to have been directed to be reinstated with full back wages in as much as there was nothing on record.***

19. The Hon'ble Supreme Court in ***Jasmer Singh Vs. State of Haryana MANU/SC/0026/2015 : 2015 II AD (SC) 215, it was held that the reinstatement in the job with continuity of services of full back wages ought to have been granted to the petitioner by the POLC-XVII, KKD, Delhi when termination of her services had been held to be illegal.***

20. The observations of the Hon'ble Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. ED.)***

& Ors. MANU/SC/0942/2013 : (2013) 10 SCC 324 observe to the effect that:-

> *"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."*

21. The verdict of this Court in ***The Management of Municipal Corporation of Delhi Vs. Presiding Officer, Industrial Tribunal and Anr. W.P. (C) 6024/19999 dated 25.08.2011 likewise holds that reinstatement ought to have been granted to the petitioner therein in as much as the work done by her as a safai karamchari was similar in nature of work to those performed by others in regular service.***

22. The verdict of the Hon'ble Single Bench Judge of this Court in ***Management of Garrison Engineer Vs. Bachhu Singh reported in MANU/DE/1495/2010 : 2010 (115) DRJ 576 in which it was observed to the effect that the workman was entitled to compensation in lieu of reinstatement and the Labour Court during the course of hearing had inquired the age of the respondent/workman and it was ascertained that he still had about 10 years of service left and the compensation amount of Rs. 75,000/- only given was enhanced to Rs. 4 lakhs. This judgment was assailed by the workman vide LPA No. 340/10 whereby the Hon'ble Division Bench of this Court vide verdict dated 02.12.2010 enhanced the compensation from Rs. 4 lakhs to Rs. 6 lakhs and it was thus reiterated on behalf of the petitioner that the amount of lump sum compensation even if so awarded ought to be enhanced.***

23. Further, the Supreme Court in the following judgments held as under:

> **(a) In the matter reported as Jaipur Development Authority v. Ramsahai, MANU/SC/8589/2006 : (2006) 11 SCC 684, the court has stated:**
>
> ***"However, even assuming that there had been a***

violation of Sections 25-G and 25-H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back wages. This Court time and again has held that the jurisdiction under Section 11-A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The respondent had not regularly served the appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs. 75,000 is awarded to the respondent by way of compensation as has been done by this Court in a number of its judgments."

(b) In the matter reported as Nagar Mahapalika v. State of U.P., MANU/SC/8136/2006 : (2006) 5 SCC 127, the court has stated:

"23. Non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, although, may lead to the grant of a relief of reinstatement with full back wages and continuity of service in favour of the retrenched workmen, the same would not mean that such a relief is to be granted automatically or as a matter of course.

25.....The appellant herein has clearly stated that the appointments of the respondents have been made in

violation of the provisions of the Adhiniyam An appointment made in violation of the provisions of the Adhiniyam is void.

The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money. Appointments of the respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefor having come to an end. It, therefore, in our considered view, is not a case where the relief of reinstatement should have been granted."

(d) In the matter reported as Jagbir Singh v. Haryana State Agriculture Mktg. Board, MANU/SC/1213/2009 : (2009) 15 SCC 327, the court has stated:

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. ...

14. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of

reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

24. The verdict of Hon'ble Supreme Court in ***Municipal Counsel Sujanpur Vs. Surinder Kumar MANU/SC/2679/2006 : 2006 LLR 62 observes to the effect that relief of reinstatement is not automatic but it was for the Labour Court to consider the facts of each case to ascertain the relief that can be granted in terms of Section 11A of the Industrial Disputes Act, 1947.***

25. The verdict of the Hon'ble Supreme Court in ***Haryana Urban Development Authority Vs. Om Pal MANU/SC/7290/2007 : (2007) 5 SCC 742*** is also to the effect that ***"the relief of reinstatement with full back wages should not be granted automatically only because it was lawful to do so and that the grant of relief would depend on the fact situation of each case and would depend upon several factors, one of which was as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any."***

26. The verdict of Hon'ble Supreme Court in case titled as ***Talwana Co-operative Credit and Service Society Limited Vs. Sushil Kumar MANU/SC/4523/2008 : (2008) 9 SCC 486*** lays down to the effect that ***the grant of relief of reinstatement was not automatic and that for the said purposes certain relevant factors as for example***

nature of service, the mode and manner of recruitment i.e. whether the appointment had been made in accordance with the statutory rules so far as a public service undertaking was concerned, had to be taken into consideration.

27. The verdict of the Hon'ble Supreme Court in case titled as ***Asstt. Engineer Rajasthan Development Corporation and Anr. Vs. Gitam Singh MANU/SC/0079/2013 : (2013), SCC 136*** is to the effect ***that a distinction has to be drawn between a daily wager and a regular employee's post for the purposes of a consequential relief and that where the length of engagement as a daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid.***

28. To similar effect is the verdict of this Court in ***Radha Vs. Food and Civil Supplies Department decided on 07.08.2018 in W.P.(C) No. 3642/2015 (2018) IV LLJ 303 Del.***

29. Taking the totality of the facts and circumstances of the case into account, which indicate that the petitioner / workman was a daily wager apparently from the date of his appointment i.e. 08.09.1981 till the date 21.09.1983 @ Rs.15 per day and that the petitioner / workman had not been appointed as a regular employee on the basis of any regular employment, it is held that the respondent no. 1 had rightly not granted the relief of reinstatement and full back wages with attendant benefits of increments and promotional benefits to the petitioner / workman.

30. However, the compensation awarded vide award dated 08.06.2000 of Rs.15,000/- in toto in the facts and circumstances of the

case where there has been an illegal termination of the services of the petitioner / workman in violation of the Section 25F of the Industrial Disputes Act, 1947 is meagre and it is considered appropriate to enhance the payment of the amount of compensation of the awarded amount from Rs.15,000/- as awarded thereby to Rs.80,000/-, which is directed to be paid to the petitioner / workman by the respondent no. 2 within a period of two months from the date of the judgment failing which the respondent no. 2 would be liable to additionally pay interest @9% per annum on the amount of Rs.80,000/- w.e.f. today i.e. 07.05.2019 till the realization thereof. This amount of Rs.80,000/- includes the amount of Rs.15,000/- directed to be paid to the petitioner / workman by the respondent no. 2 vide the impugned award.

31. The petition W.P.(C) 2600/2003 and CM APPL. 12011/2017 are disposed of accordingly.

ANU MALHOTRA, J

May 7th, 2019/*mk*

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

\+ W.P.(C) No. 4564/1997

% **15th January , 2015**

RAM KISHORE VASHISHT AND ANR. .....Petitioners
Through: Mr. H.K.Chaturvedi, Advocate for petitioner no.2.

VERSUS

FOOD CORPORATION OF INDIA & ORS. ..... Respondents
Through: Mr. Ajit Pudussery and Ms. Shruti Sharma Hazarika, Advocates for respondent/ FCI.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. In this writ petition filed under Article 226 of the Constitution of India petitioner no.2 had claimed originally a total of five effective reliefs and two other consequential reliefs. Essentially, the petitioner no.2 was seeking lateral movement from the ministerial cadre of the employer/respondent no.1/Food Corporation of India to the movement cadre. Transfer is sought to the movement cadre w.e.f. 1993.

2. This writ petition was dismissed by a judgment of this Court on 21.5.2013 inasmuch as, other persons who would have been adversely affected by the petitioner seeking the reliefs were not made parties. Reliance was placed for dismissing the petition on the judgment of the Supreme Court in the case of ***Girjesh Shrivastava and Ors. Vs. State of Madhya Pradesh and Ors. (2010) 10 SCC 707.***

3. A review petition was subsequently filed by the petitioner no.2 stating that in the writ petition challenge was laid to the *vires* of the FCI (Staff) Regulations, 1971 and therefore the matter should have been heard by the Division Bench of this Court and not by this Court as a Single Bench. Review petition was therefore allowed by an order of this Court dated 11.7.2013 and the matter was thereafter placed before the Division Bench of this Court.

4. When the matter came up before the Division Bench of this Court on 1.10.2013, petitioner no.2 gave up his challenge to the *vires* of the FCI (Staff) Regulations, 1971 and therefore the matter was remitted by the Division Bench of this Court to be decided by the learned Single Judge of this Court on merits.

5. A learned Single Judge of this Court thereafter on 11.2.2014 passed the order which records that the petitioner no.2 had given up all the reliefs except relief no.(iii) and the consequential reliefs no.(vi) and (vii).

6. The issue therefore which now remains is whether the petitioner no.2 is entitled to the reliefs claimed of lateral movement from the ministerial cadre to the movement cadre w.e.f 1993.

7. I put a query to the counsel for the petitioner no.2 that if monetary emoluments in the movement cadre are more than the ministerial cadre in which the petitioner no.2 was working as of 1993, and to which it is conceded that the emoluments for the same post in which the petitioner no.2 was working in the ministerial cadre are the same to the same post in the movement cadre with the only difference that in the movement cadre, there are greater chances of promotions for the petitioner no.2.

8. Counsel for the petitioner no.2 also concedes that on account of the petitioner no.2 remaining in the ministerial cadre from 1993 till this petition is coming up for hearing in 2015, petitioner no.2 in his ministerial cadre has in fact received certain promotions ie petitioner no.2 is working at a post which is higher than the post as he was working in the year 1993 and consequentially receiving higher emoluments.

9. The sequitur of the response of the counsel for the petitioner no.2 to the aforesaid two queries is that if the petitioner no.2 succeeds in this writ petition, petitioner no.2 will have to be placed in the movement cadre of his employer/respondent no.1 in the same position he was in 1993, because petitioner no.2 in this writ petition has not pleaded any rules entitling the petitioner no.2 to automatic promotion in the respondent no.1/employer in the movement cadre and which will give the petitioner no.2 a higher post in the movement cadre today as compared to when the petitioner no.2 was working in 1993. In fact, petitioner no.2 would loose out with respect to promotions he has been granted in the ministerial cadre since 1993 if he is today placed in the movement cadre at the post he was working in the ministerial cadre in the year 1993. This is because it is conceded that in the promotion rules in the movement cadre, there is no automatic promotion, and since there is no automatic promotion unless petitioner no.2 satisfies an eligibility criteria, petitioner no.2 will required to be selected by a Departmental Promotion Committee (DPC) for promotions in movement cadre and that too assumingly there arose vacancies in the posts in the movement cadre, and all of which undecided and uncertain aspects show that petitioner no.2 cannot be today placed at a post in the movement cadre which is higher than the post at which the petitioner no.2 was working in

1993 and therefore effectively by granting of the reliefs in the writ petition, petitioner no.2 would be severely prejudiced because petitioner no.2 will be demoted to a post which he was working in 1993 if the relief claimed in this petition is allowed.

10. As stated above a reading of the writ petition shows that no cause of action is averred as to automatic entitlement of the petitioner no.2 to promotions if the petitioner no.2 is granted appointment to the movement cadre since the year 1993, and once that is so, if petitioner no.2 is granted the relief of being appointed to the movement cadre since 1993, petitioner no.2 will have to refund all monetary benefits which he has received in the promotion posts which he has got in the ministerial cadre since 1993.

11. Counsel for the petitioner no.2 is arguing this case on behalf of the Legal Aid Committee, and this case is only argued on behalf of the petitioner no.2 because petitioner no.1 is no longer pursuing this writ petition. Even so far as petitioner no.2 is concerned, counsel for the petitioner no.2 has received no instructions, and in my opinion instructions were necessary because if I allow the reliefs claimed in this writ petition actually I will be grossly prejudicing the petitioner no.2 by putting the petitioner no.2 at a post much lower to the post in which he would be

presently working or would have worked after 1993, with the consequential effect of the petitioner no.2 having to refund the monetary benefits of the higher posts in the ministerial cadre inasmuch as, the petitioner no.2 cannot be granted automatic promotions in the movement cadre posts till the petitioner no.2 had pleaded and shown satisfaction of eligibility criteria for the promotions in the movement cadre of the employer, and which as stated above has not been done.

12. Dismissed.

JANUARY 15, 2015/ib **VALMIKI J. MEHTA, J**

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 214/2013 and CM No. 5780/2013

RAMESH CHANDER MALHOTRA ..... Appellant

Through: Mr H.K. Chaturvedi, Ms Anjali Chaturvedi and Mohd. Aqil Saifi, Advocates

versus

MOTHER DAIRY ..... Respondent

Through: Mr Abhay Singh, Ms Veena Singh and

Ms Yasmin Zafar, Advocates

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

22.07.2013

We have heard the learned counsel for the parties. However, without going into the merits of the matter it has been agreed by the appellant, who is also present, that if he receives a sum of ` 25,000/- from the respondent then the matter would be treated as fully and finally settled. The learned counsel for the respondent has accepted this and, therefore, we close this appeal by directing that the respondent shall pay a sum of ` 25,000/- to the appellant within four weeks. This is by way of full and final settlement and once this payment is made, the appellant would have no further grievance with the respondent.

The appeal stands disposed off accordingly.

BADAR DURREZ AHMED, ACJ

VIBHU BAKHRU, J

JULY 22, 2013 / SU

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2169/2013

NALIN DASS ..... Petitioner

Through: Mr.H.K. Chaturvedi and Mohd. Aqil Saifi,

Advocates

versus

MUNICIPAL CORPORATION OF DELHI AND ORS..... Respondent

Through: Ms.Vertika Sharma, Advocate for R=1.MCD

Mr.Parvinder Chauhan, Advocate for R=3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

O R D E R

05.04.2013

After some hearing in the matter, counsel for the petitioner wishes to withdraw the present writ petition, with leave of the Court to file a fresh comprehensive petition. The writ petition is accordingly dismissed as withdrawn, with liberty as prayed for.

G.S.SISTANI, J

APRIL 05, 2013

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

\+ LPA 186/2013

SAWHNEY RUBBER INDUSTRY ..... Appellant
Through: None

versus

MUNNA LAL ..... Respondent
Through: None

CORAM:
SH. VIRENDER BHATT (DHJS), JOINT REGISTRAR (JUDICIAL)

O R D E R

% 22.05.2017

This file has been put up through office note vide which clarification has been sought by the registry as to whether the amount in question should be paid to the respondent /workman by way of cheque or the same should be transferred to his bank account directly in order to prevent pilferage.

My learned predecessor in its order dated 23.01.2017 specifically directed to the registry to pay the amount in question to the applicant/respondent by way of cheque. In view of the same there arose no cause or occasion for the registry to seek clarification in this regard.

The registry shall follow the directions passed by my learned predecessor in this regard in the aforesaid order.

VIRENDER BHATT (DHJS)
JOINT REGISTRAR (JUDICIAL)

MAY 22, 2017
NR

High Court of Delhi

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S. No	Diary No. / Case No.[STATUS]	Petitioner Vs. Respondent	Listing Date / Court No.
1.	W.P.(C) 735/1991 [DISPOSED OFF] Order(s) Judgement(s)	S.V.SHARMA Vs. DIR.OF EDUCATION & ORS. Advocate : V.SHANKARA,	Court No. : 0 DISPOSED OFF on 08/01/2003

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Address: Registrar General, Delhi High Court,
Sher Shah Road, New Delhi - 110503

IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 626/2013

SMT SUSHILA ..... Petitioner

Through Mr. H. K. Chaturvedi, Advocate.

versus

SH HARISH VATS DEPUTY DIRECTOR

(REHABILITATION) ..... Respondent

Through Mr. Pervinder Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

20.02.2014

This is the second round of contempt petitions after the initial contempt petition, being Cont.Cas (C) No.521/2012, came to be disposed off by this Court on 17.08.2012 by the following directions:

?Mr. Chauhan, who appears for the respondent says that they shall treat the contempt petition as a representation and comply with the directions of this court dated 19.04.12. In case there are any deficiencies, the same shall be communicated to the petitioner within one week from today. if such a communication is received by the petitioner, she will attempt to cure the deficiencies pointed out by the respondent. Upon the petitioner doing so, the respondent shall adjudicate upon the claim of the petitioner and pass a speaking order one way or the other. In the event, petitioner is still aggrieved, she would be at liberty approach this court by way of an appropriate petition. With the aforesaid direction, the contempt petition is disposed of.?

Cont.Cas(C) No.521/2012 had arisen on the allegation that the

Cont.Cas(C) No.626/2013
Page 1

respondent has failed to comply with the relevant directions of Writ Court issued on 19.04.2012 whilst disposing off Writ Petition (C) No.8476/2011. In that matter, the relevant directions were as follows;

?6. In view of the aforesaid stand taken by respondent No.1/DDA and respondent No.3/DUSIB, it is deemed appropriate to dispose of the present petition with directions to the petitioner to appear before the Deputy Director (Rehabilitation), DUSIB on 02.05.2012 at 3 PM alongwith all the relevant documents she has in her possession for the purpose of verification of her case for rehabilitation under the existing policy. The said documents shall be examined by the aforesaid officer and if satisfied by the documents produced, the case of the petitioner shall be processed for rehabilitation, by allotment of an alternative plot/flat to her as permissible, within a period of eight weeks from the date of granting a hearing to the petitioner. however, if the respondent No.3/DUSIB is dis-satisfied with the documents that the produced by the petitioner, she shall be informed as to the deficiency in the documents, whereafter, the same shall be produced by her, for the respondent No.3/DUSIB to re-examine her case and take a decision thereon under written intimation to her within a period of four weeks from the date of production of the said documents by her. Respondent No.3 / DUSIB shall endeavour to adhere to the timeline indicated above. In case, the petitioner is still aggrieved by the inaction / adverse decision, if any, taken by the respondent No.3 / DUSIB, she shall be entitled to seek here remedies as per law.

The petition is disposed of.?

It was alleged that in terms of the directions issued by this Court on 19.04.2012 in Writ Petition No.8476/2011, the respondent was obliged to examine all the documents produced by the petitioner, and if satisfied by the same, to proceed with the further consideration of the petitioner?s claim for

Cont.Cas(C) No.626/2013
Page 2

rehabilitation. If, however, the respondent remains dissatisfied with

the documents produced, information with regard to deficiency should be given to the petitioner, who should be given further opportunity to make good that deficiency; and thereafter a final decision should be taken thereon. It was under these circumstances that the earlier Cont.Cas(C) No.521/2012 came to be disposed off by this Court on 17.08.2012 with further directions reproduced above.

In the instant contempt petition, the petitioner contends that after the aforesaid directions of 17.08.2012, the respondent appears to have proceeded to treat that contempt petition as a representation and ultimately issued an order dated 21.10.2013, which states as follows:

?....In compliance of Hon?ble High Court order in the matter of Shushila Devi V/s DDA and Ors. WP(C) 8476/2011 your case has been examined and Ration Card was got verified from concerned F.S.O. which is found invalid.

It is, therefore, intimated that your case for allotment of alternative plot as per policy can not be considered.?

It is, inter alia, contended that the respondents have failed to even consider the other documents or to point out any deficiency as directed.

Issue notice to the respondent to show cause as to why proceedings in contempt be not initiated against the respondent.

Mr. Pervinder Chauhan, Advocate, accepts notice and states that he has also filed a response to the petition, on the basis of an advance copy received, on 19.02.2014 vide filing No.31149. Let the same be taken on record by the Registry, if otherwise in order. He has also handed over another copy of the same at the bar, which is also taken on record.

He submits that the order dated 21.10.2013 constitutes a final decision

on the petitioner?s claim; and the rejection of her claim is predicated on the non-compliance with a mandatory requirement of valid Ration Card for a person to be entitled to the relief claimed in terms of the extant rules and regulations, and the policy. He further submits that since the petitioner was not in possession of a valid Ration Card, the question of examination of any further documents would not arise.

The statement of counsel for the respondent is accepted by this Court as constituting the basis for the issuance of the order dated 21.10.2013; and as already mentioned in the order of 17.08.2012 whilst disposing off Cont.Cas(C) No.521/2012, in case the petitioner remains aggrieved of the decision of 21.10.2013 of the respondent, she is at liberty to take such further steps as may be available to her, including by way of appropriate writ remedy.

Counsel for the petitioner states that under the circumstances, he does not wish to press this petition any further whilst reserving the right of his client to impeach the aforesaid communication dated 21.10.2013 of the respondent on the reasons, inter alia, propounded by counsel for the respondent before this Court today. He is permitted to do so.

Consequently, the petition is disposed off in the above terms.

SUDERSHAN KUMAR MISRA, J

FEBRUARY 20, 2014

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 591/2013

SH LAXMI NARAIN KHARE ..... Petitioner

Through Mr. H. K. Chaturvedi, Advocate.

versus

SH RAJESH LOOMBA ..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

08.11.2013

At the outset, and without going into the merits of the matter, counsel for the petitioner seeks leave to withdraw this petition and to take recourse to the provisions of the Industrial Disputes Act, 1947 to seek execution of the orders of this Court passed on 2nd May, 2013 in Writ Petition (C) No.2778/2012. He is permitted to do so.

The instant petition is dismissed as withdrawn.

SUDERSHAN KUMAR MISRA, J

NOVEMBER 08, 2013

dr

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 762/2013

SH SUNDER SINGH ..... Petitioner

Through: Mohd. Aqil Saifi, Advocate

versus

SH G L SHARMA ..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

30.09.2013

At the outset, and without going into the merits, counsel for the petitioner seeks to withdraw this matter to pursue the relief in terms of the Industrial Disputes Act. He is permitted to do so.

The petition is dismissed as withdrawn.

SUDERSHAN KUMAR MISRA, J.

SEPTEMBER 30, 2013

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

\+ CONT.CAS(C) 899/2013

RAM GOPAL ..... Petitioner

Through Mr.H.K.Chaturvedi, Advocate.

versus

MOHAN KUMAR AGGARWAL & ANR ..... Respondents

Through Mr.Parvinder Chauhan, Standing Counsel for DUSIB with Mr.Nitin Jain, Advocate.
Mr.Ajjay Aroraa with Mr.Kapil Dutta, Advocates for MCD.
Mr.Shatrajit Banerji, Advocate for GNCTD.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R

% 09.05.2017

Learned counsel for respondent No.3-DUSIB has filed a status report dated 28th February, 2017. Along with the said report, it has enclosed a speaking order dated 11th November, 2016, whereby the petitioner's claim for alternative accommodation has been rejected.

Learned counsel for the petitioner wishes to challenge the order dated 11th November, 2016.

Consequently, the present contempt petition is closed and the notices issued are discharged. The petitioner is given liberty to challenge the order dated 11th November, 2016 in accordance with law.

MANMOHAN, J

MAY 09, 2017/KA

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 46/2014

NANAK CHAND SHARMA ..... Petitioner

Through Mr.H.K.Chaturvedi, Advocate

versus

THE MANAGEMENT OF M/S SUN AUTO INDUSTRIES

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

06.01.2014

C.M Nos.71/2014 and 72/2014

Allowed; subject to just exceptions.

W.P.(C) 46/2014

1. The challenge in this writ petition is to the award dated February 07, 2013 passed by the Labour Court IX, Karkardooma Courts, Delhi in I.D No.417/2011 whereby the Labour Court awarded a lumpsum compensation of `28,000/- to the petitioner herein.

2. It was the case of the petitioner that he was employed with the respondent on August 01, 1994 as Die Fitter/Skilled Labour. His last drawn salary was `6100/- per month. According to him, as he demanded salary as per minimum wages, the respondent management got annoyed and illegally terminated his services on May 15, 2010. The respondent in its written statement before the Labour Court had contended that the petitioner was appointed by the respondent only on October 16, 2003 and his last drawn salary was `6450/-. According to the respondent the

services of the petitioner were never terminated. The respondent also contend that the petitioner had approached it on May 08, 2010 and demanded enhancement of wages of `9000/- which was not acceded to by the respondent. It is the case of the respondent that the petitioner has left the respondent services by collecting an amount of `4380/-. He has never been in employment after May 08, 2010.

3. The Labour Court primarily framed three issues, the first one being whether the petitioner had left the services of the respondent of his own on May 08, 2010. The Labour Court came to the conclusion that the petitioner has been working with the respondent from October 16, 2003 and not from 1994 as claimed by the petitioner. The Labour Court by referring to Exh.MW1/2 (Resignation Letter) and Exh.MW1/3 (copy of full and final payment) and on a comparison of the writing and the signatures on the statement of the claim prima facie came to the conclusion that the signatures on Exh.MW1/2 and Exh.MW1/3 are that of the petitioner. In other words, the Labour Court concluded that the petitioner had resigned from the Job. Further, as the Labour Court was of the view that the amount of `4380/- said to have been received by the petitioner does not appear to be a full and final payment, it had granted the compensation to the extent of `28,000/- which encompasses compensation for benefits like E.L, Bonus, Gratuity/Service Compensation.

4. The petitioner having joined the respondent in the year 2003 and having left the respondent in the year 2010 by tendering his resignation coupled with the fact that the respondent is a proprietorship concern, I am of the view that the amount of compensation to the extent of `28,000/- is justified. I do not see any merit in the writ petition. The same is accordingly dismissed.

5. No costs.

V. KAMESWAR RAO, J

JANUARY 06, 2014

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W.P.(C) 46/2014 Page 1 of 3

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

\+ W.P.(C) 2954/2014

RAM KISHORE ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate with Mr. Sagar Chaturvedi, Advocate

Versus

THE MANAGEMENT OF M/S PIONEER STAMPING PVT. LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% 26.11.2018

At request, list in the category of '*Regulars'* in *First Five Matters* in the week commencing on 17th December, 2018.

SUNIL GAUR, J

NOVEMBER 26, 2018
p'ma

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4639/2014

SUSHILA ..... Petitioner

Through: Mr H. K. Chaturvedi, Advocate.

versus

DELHI URBAN SHELTER IMPROVEMENT

BOARD AND ORS ..... Respondents

Through: Mr Jagat Rana, Advocate for R-1.

Ms Shobhana Takiar and Mr Udayan Khandelwal, Advocate for R-2.

Mohammad Yunus proxy Advocate for Ms Shabana, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

10.11.2014

The petitioner has filed the present petition impugning an order dated 21.10.2013 rejecting the petitioner?s claim for allotment of an alternative plot. The principal ground for rejection as stated in the impugned order is that the petitioner?s ration card was found to be invalid after verification.

The petitioner asserts that her ration card was valid before the cut off date. The learned counsel for the petitioner has also drawn the attention of this Court to a judgment dated 09.11.2005 in CCP No. 499/2004 titled ?Sushila and Anr. v. S. C. Batra. In paragraph 15 of the said judgment this Court had specifically noted that the petitioner was entitled to an alternate plot. Paragraph 15 of the said judgment is quoted below:-

?15. Though the respondents may be in breach of the orders passed by this Court, but I do not find any contumacious conduct. Additionally for the reason that the writ petition itself stands disposed of and contempt alleged is of interim orders passed therein as also the fact that petitioner No.1 has been held entitled to an alternative accommodation and petitioner NO.2 has not raised any grievance pertaining to his entitlement to an alternative plot, I discharge the notice of contempt.?

However, it would be important for the respondents to verify the veracity of the petitioner?s claim.

In view of the aforesaid finding the impugned order rejecting the petitioner?s application for an alternative plot is set aside and the matter is remanded to the concerned officer of DUSIB to decide afresh after affording the petitioner an opportunity to be heard.

The petitioner shall produce all original documents before the concerned officer. The respondents will examine the original documents and ascertain whether the petitioner?s name is listed on the voters list and also examine the original ration card. In the first instance, the petitioner shall present the documents before the concperned officer on 14.11.2014. The concerned officer shall pass a speaking order within six weeks from today.

The petitioner is at liberty to apply in case an adverse order is passed.

Dasti under the signatures of the Court Master.

VIBHU BAKHRU, J

NOVEMBER 10, 2014

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5535/2001

VIR BAHADUR ..... Petitioner

Through: Mr. H.K. Chaturvedi, Advocate

versus

FOOD CORPORATION OF INDIA ..... Respondent

Through: Mr. Manoj, Advocate with

Ms. Aparna Sinha, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

13.11.2014

CM APPL. 14530/2014 (by the respondent/FCI for directions)

1. On the last date of hearing, learned counsel for the petitioner had disputed the submission made by the other side to the effect that his client had been granted seniority as per his entitlement. Instead, he had stated that the petitioner had filed another writ petition for induction in movement cadre, which is pending consideration [W.P.(C) 4564/1997].

2. Learned counsel for the respondent/FCI states that he has obtained instructions from the Department to the effect that the FCI has no intention of withdrawing the office order dated 06.03.1986, subject matter of the present petition and further that all the dues

payable to the petitioner upon his superannuation in February, 2010 have already been released to him.

3. Counsel for the petitioner confirms the aforesaid position.

4. In view of the aforesaid submission, nothing survives for adjudication in the present petition, which is disposed of as infructuous while reserving the right of the parties to contest the other writ petition [W.P.(C) 4564/1997], which is pending adjudication.

5. The application is disposed of.

6. File be consigned to the record room.

HIMA KOHLI, J

NOVEMBER 13, 2014

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$~11 to 14

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

\+ CONT.CAS(C) 651/2014 & CM Appl. 19074/2014

SMT. MORBATI & ORS ..... Petitioner

Through: Mr. H.K. Chaturvedi, Adv.

versus

SH. R.K.MEENA ..... Respondent

Through: Mr. Parvinder Chauhan, Adv. for R-1/DUSIB.
Mr. Sanjeev Sabharwal, Standing Counsel with Mr. Hem Kumar, Adv. for DDA.

WITH

\+ CONT.CAS(C) 653/2014

SH. SHANKAR PRASAD ..... Petitioner

Through: Mr. H.K. Chaturvedi, Adv.

versus

SH. R.K.MEENA ..... Respondent

Through: Mr. Parvinder Chauhan, Adv. for R-1/DUSIB.
Mr. Sanjeev Sabharwal, Standing Counsel with Mr. Hem Kumar, Adv. for DDA.

WITH

\+ CONT.CAS(C) 654/2014

SH. SITARE & ORS ..... Petitioners

Through: Mr. H.K. Chaturvedi, Adv.

versus

SH. R.K.MEENA ..... Respondent

Through: Mr. Parvinder Chauhan, Adv. for R-1/DUSIB.
Mr. Sanjeev Sabharwal, Standing Counsel with Mr. Hem Kumar, Adv. for DDA.

AND

\+ CONT.CAS(C) 655/2014

SH. MUNNA SINGH & ORS ..... Petitioners

Through: Mr. H.K. Chaturvedi, Adv.

versus

SH. R.K.MEENA ..... Respondent

Through: Mr. Parvinder Chauhan, Adv. for R-1/DUSIB.
Mr. Sanjeev Sabharwal, Standing Counsel with Mr. Hem Kumar, Adv. for DDA.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R

% 19.11.2015

Present contempt petitions have been filed alleging wilful disobedience of the judgment and order dated 23rd September, 2011 passed in a batch of writ petitions wherein the following directions were given:-

(i) The agency owning the land underneath the JJC at Jasola, demolition action whereat was carried out on 09.06.2009, whether DDA or otherwise, is deemed to have made reference to the respondent No.3 DUSIB for determining the eligibility of the petitioners in all the four petitioners

for re-location / rehabilitation in accordance with the Policy of the respondent No.2 GNCTD;

(ii) The respondent No.3 DUSIB to accordingly so determine the eligibility of the petitioners;

(iii) The petitioners to appear before the respondent No.3 DUSIB along with all their documents in this regard, in the first instance on 20.10.2011 and thereafter on such further dates as may be necessary;

(iv) The respondent No.3 DUSIB to make endeavour to complete the enquiry / determination within one year thereof;

(v) The department of Food & Civil Supplies and other concerned departments from whom respondent No.3 DUSIB may need to verify to determine the eligibility of the petitioners, are directed to supply all information sought to respondent No.3 DUSIB and to render other assistance if any sought;

(vi) If the petitioners or any of them are so found eligible, they be re-located / re-habilitated in accordance with the Policy. However, the petitioners or such of them who are not found eligible, if not found eligible, shall have remedies in law."

Subsequently even review petitions were dismissed by the learned Single Judge.

Since in the present batch of petitions, it was stated that DUSIB had not determined the eligibility of the petitioners for relocation/rehabilitation in accordance with the policy of the GNCTD, notices were issued.

In response to the said notices, DUSIB has filed a Status Report. The relevant portion of the Status report is reproduced below:-

> *"8. That however, as now things turn out that, as a matter of fact, the Petitioner was never dispossessed. As such, the Petitioner had made deliberate false statement about their dispossession. The falsity of the allegations of the Petitioner about his/her dispossession is clearly revealed the contents of the C.M. No. 19074/2014 moved in the instant Contempt Petition. The falsity of the averments made by the Petitioner is also fortified in view of their representation which has been received in the office of the Director (SUR) of DUSIB on 03.03.2015. A copy of the said representation is annexed herewith as ANNEXURE-R1/1.*
>
> *9. That on a perusal of the aforesaid, it is evident that, even as per the Petitioner, she/he is still residing in his/her Jhuggie for the last more than 30 years.*
>
> *xxxx xxxx xxxx*
>
> *18. That since the Petitioner has not been disposed and, rather, is still living in her Jhuggi and also that the Petitioner has failed to furnish the requisite documents, the eligibility of the Petitioner cann't be determined. In view of the aforesaid, there is no deliberate or wilful violation of order of this Hon'ble Court. Hence, the notice issued to the deponent may kindly be discharged."*
>
> (emphasis supplied)

Till today no response has been filed by the petitioners.

Mr. H.K. Chaturvedi, learned counsel for Delhi High Court Legal Services Committee states that none of the petitioners have contacted him.

A perusal of the file reveals that in the present petitions, the petitioners had filed applications seeking stay of demolition of their properties on 18th November, 2014 through a private counsel.

From the status report filed by DUSIB as well as the applications filed through private counsel, it is apparent that the petitioners have made false averments not only in the present contempt petitions but also in their writ petitions inasmuch as they have never been dispossessed and are residing for the last 30 years at the same place.

This Court is also in agreement with the contention of learned counsel for DUSIB that since the petitioners have not been dispossessed, there is no question of their rehabilitation.

Accordingly, present contempt petitions are dismissed.

This Court is constrained to observe that the offices of the Delhi High Court Legal Services Committee have been misused by the present petitioners. Delhi High Court Legal Services Committee is directed to be more vigilant in future and to screen the cases more carefully.

MANMOHAN, J

NOVEMBER 19, 2015
nk

$~11 to 14

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

\+ CONT.CAS(C) 651/2014 & CM Appl. 19074/2014

SMT. MORBATI & ORS ..... Petitioner

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SH. R.K.MEENA ..... Respondent

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WITH

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versus

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CORAM:
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O R D E R

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MANMOHAN, J

NOVEMBER 19, 2015
nk

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4639/2014

SUSHILA ..... Petitioner

Through: Mr H. K. Chaturvedi, Advocate.

versus

DELHI URBAN SHELTER IMPROVEMENT

BOARD AND ORS ..... Respondents

Through: Mr Jagat Rana, Advocate for R-1.

Ms Shobhana Takiar and Mr Udayan Khandelwal, Advocate for R-2.

Mohammad Yunus proxy Advocate for Ms Shabana, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

10.11.2014

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However, it would be important for the respondents to verify the veracity of the petitioner?s claim.

In view of the aforesaid finding the impugned order rejecting the petitioner?s application for an alternative plot is set aside and the matter is remanded to the concerned officer of DUSIB to decide afresh after affording the petitioner an opportunity to be heard.

The petitioner shall produce all original documents before the concerned officer. The respondents will examine the original documents and ascertain whether the petitioner?s name is listed on the voters list and also examine the original ration card. In the first instance, the petitioner shall present the documents before the concperned officer on 14.11.2014. The concerned officer shall pass a speaking order within six weeks from today.

The petitioner is at liberty to apply in case an adverse order is passed.

Dasti under the signatures of the Court Master.

VIBHU BAKHRU, J

NOVEMBER 10, 2014

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