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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment reserved on*: 12.05.2026*
Judgment delivered on*: 03.07.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **LPA 662/2013**

DILBAGH SINGH(SINCE DECEASED)
THROUGH LEGAL HEIRS ....APPELLANTS

versus

DELHI TRANSPORT CORPORATION .....RESPONDENT

Advocates who appeared in this case

For the Appellants	:	Mr. Arun Bhardwaj, Senior Advocate with Mr. Pranava Rastogi and Ms. Ashu Tiwari, Advocates.
For the Respondent	:	Ms. Avnish Ahlawat SC, DTC, Mr. Uday Singh Ahlawat, Ms. Tania Ahlawat, Mr. Nitish Kumar Singh, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. This *intra* Court appeal lays a challenge to the order dated 03.05.2013 (impugned order) passed by the learned Single Judge in W.P.(C) No.1852/2011 filed by the Delhi Transport Corporation (in short 'Corporation') whereby the learned Single Judge has allowed the writ

petition.

2. The Corporation challenged the award dated 08.04.2010 passed in ID No.296/2008/1996 by the Presiding Officer, Labour Court, Karkardooma Courts, Delhi (in short 'Labour Court') whereby the industrial dispute with regard to the termination of Dilbagh Singh has been determined in favour of the deceased employee with a direction that he should be reinstated.

3. Suffice to state that the learned Single Judge has set aside the award dated 08.04.2010 by the impugned order.

4. During the appeal proceedings, employee –Dilbagh Singh had expired and in terms of order dated 31.08.2017, his legal hears were brought on record in his place.

5. The facts to be noted for the purpose of determination of this appeal are that the deceased employee was appointed as a driver in the Corporation in the year 1982. While working so, on 20.08.1987, he was issued a charge sheet for remaining on leave without pay which had the effect of being absent from duty between 01.01.1987 to 31.07.1987 which is for a period of 161 days. The deceased employee denied the charges; resulting in the conduct of departmental proceedings by the Enquiry Officer. The Enquiry Officer submitted his report to the Disciplinary Authority, who in turn issued a show cause notice dated 10.02.1988. Pursuant thereto, the deceased employee was removed from service.

6. Being aggrieved, the deceased employee raised an Industrial Dispute No.296/2008/1996 challenging his removal from service. It was the case of

the deceased employee before the Labour Court that he was constrained to avail leave on the ground of his and his wife's illness. He sent the applications seeking leave to the depot official, which was granted to him without pay.

7. The case of the Corporation before the Labour Court was that no intimation of deceased employee seeking leave was received by the Corporation and the deceased employee was a habitual absentee.

8. The Labour Court decided the issue with regard to the validity and fairness of the enquiry proceedings against the corporation *vide* order dated 04.06.2009 by holding that the proceedings were conducted in haste. It held if the enquiry had not been concluded on the same day, the deceased employee could have taken steps to produce medical certificates which he alleged to have submitted in the control room.

9. In so far as the charge is concerned, the Labour Court held that the deceased employee 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. The Labour Court ordered his reinstatement.

10. The case of the Corporation before the learned Single Judge was that the award of the Labour Court is without appreciating the material on record. It is stated that the Labour Court failed to appreciate that the respondent had not submitted any leave application. The case of the Corporation was also by producing the Master Attendance Register as Ex.MW2/1. Wherein at certain places 'NA' was written, which means 'no application'. It was the case of the Corporation that the factum of the

enquiry being concluded within a day is not a ground for holding that the enquiry has been vitiated, as the deceased employee was given full opportunity to participate in the enquiry proceedings. It was also stated that the deceased employee had not sought time either to lead any further evidence of his own, or to produce any other witness.

11. The reliance was placed by the Corporation on the judgment of the Supreme Court in the case of ***DTC v. Sardar Singh, AIR 2004 SC 4161*** to advance the argument that mere making of leave application is not sufficient to hold that the leave has been sanctioned, for an employee to avail leave.

12. According to the learned counsel for the Corporation, the burden of proving that the deceased employee was on leave with approval was on him by producing the leave record, which he has alleged to have submitted with the Control Room. It is for the reason that, he could not produce the medical certificates and other documents (except for six days), that the deceased employee was penalised.

13. On the other hand, the case of the deceased employee before the learned Single Judge was that the charge levelled against him that he availed leave without pay for 161 days and not that he was absent without permission. The very fact that the charge states that the deceased employee had availed leave without pay itself mean that such leave was sanctioned, without pay. In any case, it was urged on behalf of the deceased employee that he cannot be held guilty of being absent without permission as he was never charged for the same. The learned counsel for the deceased employee relied upon the decision in the case of ***Bhagwan Lal Arya v. Commissioner***

of Police, Delhi & Another, AIR 2004 SC 2131 to submit that absence on medical grounds cannot amount to grave misconduct. It was also stated that had the deceased been on unauthorised leave without sanction then attendance register would have had the remark of being absent as opposed to the remark 'leave without pay' against the name of the deceased employee, as is the case here.

14. The learned Single Judge while allowing the petition *vide* the impugned order, *inter alia,* has held as under:-

> *"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.

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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.

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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 DTC. 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.

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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.'

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."

15. Before us, Mr. Arun Bhardwaj, learned Senior Counsel appearing for the legal heirs of deceased employee would reiterate the submissions as were advanced before the learned Single Judge. It is his submission that the learned Single Judge has erred in holding that the every possible opportunity was given to the deceased employee to defend himself. According to him, the enquiry proceedings were conducted in a haste manner by breaching the rights of deceased employee. According to him, prejudice was caused to the deceased employee when the enquiry proceedings were conducted and concluded on the same day without calling upon the deceased employee to produce his leave applications for his absence for 161 days. He has also stated that the learned Single Judge has erred by placing the onus on the deceased employee to produce the leave applications submitted by him for his and wife's illness. According to him, the onus was on the Enquiry Officer to call for the record as the record was in the custody of the Corporation. Moreover, the deceased employee being a driver is not

expected to produce the record, because of lack of knowledge of the procedure governing the enquiry proceedings.

16. That apart, it is his submission by not allowing the deceased employee to appoint the defence assistant, the Enquiry Officer himself has acted as a prosecutor. Further the finding that the deceased employee has accepted the statement of Narain Singh, who produced the Master Attendance Register is clearly erroneous. The respondents were still required to prove the veracity of the attendance register. It is also stated that the Labour Court did not adopt the casual approach. The conclusion of the Labour Court was drawn on the basis of the evidence and record. He submitted that the medical certificates were on the record of the Corporation and to say that the deceased employee was not able to prove that he was unauthorisedly absent is contested.

17. Lastly, it is his submission that the deceased employee having worked for a period of five years, was entitled to be reinstated with back wages and benefits. In support of his submission, he has relied upon the Standing Orders(SO) as well as the judgment of this Court in the case of ***Roop Chand v. Delhi Transport Corporation, 2015:DHC:7020*** and that of the Supreme Court in the case of ***Union of India & Another v. Ram Lakhan Sharma, (2018)7 SCC 670.***

18. On the other hand, Ms. Avnish Ahlawat, learned Standing Counsel for the Corporation would contest the submission made by Mr. Bhardwaj by stating that proper opportunity was given to the deceased employee to prove his innocence in the departmental proceedings. She stated that the deceased

employee did not produce the leave applications along with the medical certificates to justify his absence from duty for 161 days. The conclusion drawn by the Labour Court was clearly perverse, being contrary to record.

19. In so far as the conclusion of the learned Single Judge, more particularly, on the issue that the deceased employee was denied the support of a defence assistant is concerned, paragraph 10 of the order dated 04.06.2009 passed by the Labour Court *inter alia,* reads as follows:-

> *"... One Chander Prakash was the Enquiry Officer. No doubt the workman has participated at the fore view of the proceedings, it gives an impression that that the workman was explained the charges and was also asked to have the help of the defence assistant, which he declined".*

20. The above order really proves that the deceased employee was accorded the opportunity of appointing a defence assistant, which he declined. Hence, in that sense, there was no violation of principles of natural justice.

21. In so far as the statement of department witness Narain Singh, on which reliance was placed by the learned Single Judge shows that the Labour Court in the very same paragraph of order dated 04.06.2009 noted as follows:-

> *"... One Narain Singh is examined. He has spoken with regard to the master attendance register to show that the workman was leave on 161 days without pay and six days leave for which he produced medical certificate. This witness was not cross examined by the workman. Statement of the workman was also recorded which is the defence evidence and the evidence was concluded on the same day".*

22. The Labour Court records the stand of the workman /deceased employee in paragraphs 8 and 9 in the following manner:-

> *"8. Workman in his affidavit at Ex. WW 1/A contended that enquiry is bad for the reasons that he was not explained of the procedure. There was no welfare officer nor a defence assistant. No list of documents, witnesses were given. Management has not filed any documentary evidence to prove the charge. Further he deposes that leave without pay is not a misconduct. The enquiry was conducted in haste. The enquiry report is perverse. In the cross examination he admits having received the charge sheet and the report at exhibits WW1/M-1 and M-2. He admits having participated in the enquiry.*
> *9. WW-1 was further examined and he deposes that he has sent the medical certificates through one Raj Singh and also the leave applications. In the evidence of MW-1, I find that the original attendance register is produced at Ex.MW 1/1 and the leave applications at Ex.MW1/2. In the cross examination it is elicited that no medical certificate produced by the workman"*

23. Based on the aforesaid position, the Labour Court formed the following view:-

> *"a)That the entire enqiry [sic. enquiry] was conducted and concluded on the of the same day.*
> *b) The defence of the workman was that the workman was ill for typhoid and that his wife was also ill.*
> *c) The report at Ex.WW1/M-4 shows that the enquiry officer only relied on the non production of the documentary evidence by the workman. His explanation that he was treated by the DTC doctors and other government hospitals and that he gave the certificates to the control room was to never considered.*
> *d) Only if the enquiry officer had not concluded the proceedings on the same day, workman would have produced or had taken steps to summons those documents*

from control room.
e) The enquiry was conducted in a haste.
f) That no presenting officer is appointed.
g) The enquiry officer had not collected the master attendance register and witness Narain Singh has not produced the same before the enquiry officer to sustain the charges."

24. The Labour Court resultantly answered the reference in favour of the workman.

25. Regrettably, we may state that the conclusion drawn by the Labour Court has no basis. The conclusion is despite the deceased employee had refused to take the help of the defence assistant; and also refused to cross examine Narain Singh – department witness. He had also not sought time from the Enquiry Officer to produce evidence on his behalf. There was no alternative with the Enquiry Officer but to proceed with the proceedings.

26. No doubt, the stand that the enquiry proceedings have been completed in a day's time, looks appealing on a first blush, but such a plea needs to be seen and considered in the facts of each case. Surely, the facts which have emerged in the present case, as noted above, do show a proper opportunity was given to the employee to defend himself. He had not sought time to produce the documents/evidence/witness in his favour.

27. We must also say that a reference has been made by the learned Single Judge in paragraph 18 of the impugned order that according to the chargesheet the deceased employee was penalised twice before, for availing excessive leave. In that sense, the deceased employee was a habitual absentee. In the facts of this case, we are of the view that the conclusion

drawn by the learned Single Judge in the impugned order, as noted by us, against the award of the Labour Court cannot be faulted.

28. Accordingly, the appeal being devoid of any merit is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JULY 03, 2026
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