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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Reserved on: 06.05.2026******Date of decision: 17.08.2026******Uploaded on: 17.08.2026***# **CNR No: DLHC011077262010**+ **W.P.(C) 4943/2010 & CM APPL. 9765/2010****DTC**

.....Petitioner

Through: Ms. Manisha Singh, Mr. George
Pothan Poothicote, Mr. Kanav
Khatan, Ms. Jyoti Singh and Ms.
Ojeswita Singh, Advs.

versus

PRATAP SINGH

.....Respondent

Through: Mr. Anil Mittal, Mr. Atul Chauhan,
Advs.

CORAM:**HON'BLE MS. JUSTICE SHAIL JAIN****JUDGMENT****SHAIL JAIN, J.**

1. The present Writ Petition has been filed by the Petitioner, Delhi Transport Corporation, under Articles 226 and 227 of the Constitution of India, assailing the Award dated 19th March, 2009 (hereinafter referred to as the "Impugned Award") passed by the learned Presiding Officer, POLC-XVII, Karkardooma Court, Delhi (hereinafter referred to as the "Labour Court") arising out of an industrial dispute between the petitioner - Management/Delhi Transport Corporation (hereinafter referred to as "DTC") and the respondent-workman, Sh. Pratap Singh.

2. The petitioner also assails the order dated 30.09.2004 passed by the Labour Court on preliminary issue viz the Departmental Enquiry.

**FACTS:**

3. The respondent joined the services of the petitioner–Delhi Transport Corporation ("DTC") as a Driver(Retainer) on 06.02.1981.
4. The controversy commenced with the issuance of a charge-sheet dated 28.06.1994 alleging that the respondent had remained absent from duty, without authority or sanctioned leave, for a period of 139 days between September 1993 to May 1994. The respondent submitted his explanation to the charge-sheet, pursuant where to a domestic enquiry was initiated in accordance with the applicable service regulations.
5. According to the respondent, while explaining the circumstances in which he remained absent, he never admitted the charge leveled against him. His grievance is that the Inquiry Officer misconstrued his explanation as an admission of guilt and, proceeding on that premise, returned a finding holding the charge of unauthorized absence to be proved.
6. Accepting the findings returned in the enquiry report, the disciplinary authority passed an order dated 28.11.1994 removing the respondent from service. Aggrieved thereby, the respondent invoked the jurisdiction of the Labour Court by raising an industrial dispute assailing the order of removal.
7. *Vide* an order dated 30.09.2004, the Labour Court held that the domestic enquiry stood vitiated, observing that the respondent's explanation could not be construed as an unequivocal admission of guilt. The issue relating to the validity of the enquiry was, accordingly, answered in favor of the respondent-workman.
8. Consequent upon the enquiry having been held to be vitiated, the parties were afforded an opportunity to lead evidence before the Labour Court on the merits of the dispute.



9. Upon appreciation of the evidence so led, the Labour Court, by its Award dated 19.03.2009, concluded that the respondent's removal from service was illegal and unjustified and, consequently, directed his reinstatement with continuity of service and 10% back wages.

10. The petitioner has, by means of the present writ petition under Articles 226 and 227 of the Constitution of India, laid challenge both to the order whereby the domestic enquiry was held to be vitiated as well as to the consequential Award directing reinstatement.

SUBMISSIONS OF THE PETITIONER:

11. Assailing the impugned Award, learned counsel for the petitioner submits, at the outset, that the Labour Court fundamentally erred in holding the domestic enquiry to be vitiated. According to him, the respondent had, during the course of the enquiry itself, admitted the factum of his unauthorized absence. Once such admission existed, the Labour Court could not have ignored the same and proceeded to hold that the charges had not been established. The finding that the enquiry stood vitiated is, therefore, urged to be contrary to the record.

12. Proceeding further, it is contended that, the respondent having admitted the misconduct, no occasion arose to invoke the principles of natural justice. The respondent was afforded every opportunity to defend himself during the enquiry, including the opportunity to lead evidence and make his final submissions. Having chosen not to avail of such opportunities, he cannot subsequently complain that the enquiry suffered from procedural infirmity.



13. Learned counsel would further submit that prolonged unauthorized absence from duty has consistently been recognized as grave misconduct. The Labour Court, according to him, overlooked the settled legal position that an employee who remains absent from duty for an extended period without authority commits misconduct warranting a major penalty. The punishment of removal, viewed in the backdrop of the nature and gravity of the misconduct, is, therefore, stated to be wholly proportionate.

14. It is next contended that, once the respondent admitted the factum of absence, the burden shifted upon him to establish that such absence was neither willful nor attributable to negligence. Instead, the Labour Court erroneously cast the burden upon the petitioner-management and thereby misdirected itself on a fundamental principle governing disciplinary proceedings.

15. The petitioner further submits that the Labour Court travelled beyond the limits of its jurisdiction while examining the validity of the domestic enquiry. Rather than confining itself to the limited scope of judicial review over disciplinary proceedings, it virtually assumed the role of an appellate authority and re-appreciated the findings recorded by the Inquiry Officer. Such an approach, according to the petitioner, runs contrary to the settled principles governing interference with domestic enquiries.

SUBMISSIONS OF THE RESPONDENT:

16. Per contra, learned counsel appearing for the respondent supports the impugned Award and submits that no case for interference under Articles 226 and 227 of the Constitution is made out.

17. At the threshold, it is submitted that the Labour Court rightly concluded that the domestic enquiry stood vitiated, as the respondent had



never made any clear or unequivocal admission of guilt. The Inquiry Officer, according to the respondent, erroneously elevated the explanation furnished by him regarding the circumstances of his absence to the status of an admission and proceeded to record findings of guilt solely on that basis.

18. It is further submitted that, after the enquiry had been declared invalid, the petitioner was granted adequate opportunity to establish the misconduct independently before the Labour Court. Despite such opportunity, however, the petitioner failed to produce the material records necessary to substantiate the allegation of unauthorized absence. The Labour Court was, therefore, fully justified in returning findings against the petitioner.

19. Learned counsel also points out that the respondent had submitted leave applications which were never rejected or communicated as rejected. Indeed, according to the respondent, the petitioner itself admitted before the Labour Court that no communication rejecting the leave applications had ever been issued, in derogation of its own service regulations.

20. Developing the submission further, it is urged that the Labour Court is the final fact-finding authority under the Industrial Disputes Act and that the conclusions recorded by it are based on a proper appreciation of the oral as well as documentary evidence available on record. No perversity, illegality or jurisdictional error, warranting interference in exercise of writ jurisdiction, is shown to exist.

21. The respondent thus submits that the present writ petition, in substance, seeks nothing more than a re-appreciation of evidence and substitution of the findings recorded by the Labour Court with another possible view. Such an exercise, it is contended, falls outside the well-



recognized limits of judicial review under Articles 226 and 227 of the Constitution and the petition, therefore, deserves to be dismissed.

DISCUSSION & ANALYSIS :

22. Having heard learned counsel for the parties and perused the impugned Award, the order dated 30.09.2004 passed by the learned Labour Court on the preliminary issue concerning the validity of the domestic enquiry, as well as the material placed on record, this Court is of the view that the controversy falls for consideration in three distinct stages. The first concerns the validity of the domestic enquiry conducted against the respondent-workman. The second concerns the finding recorded by the learned Labour Court on the charge of unauthorized absence, upon the evidence led by the parties after the enquiry was held to be invalid. The third concerns the relief of reinstatement with continuity of service and 10% back wages granted to the respondent.

23. At the outset, it is necessary to bear in mind the limited scope of interference available to this Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution. This Court does not sit as an appellate authority over an Industrial Tribunal or Labour Court and ordinarily does not substitute its own appreciation of evidence for that of the adjudicating authority. At the same time, where the decision under challenge proceeds upon an erroneous legal principle, ignores material evidence, suffers from perversity, or the decision-making process itself is vitiated by an error of law or violation of the principles of natural justice, interference would be warranted.



24. The first issue, therefore, is whether the learned Labour Court was justified in holding, by its order dated 30.09.2004, that the domestic enquiry conducted against the respondent stood vitiated.

25. The law relating to the minimum requirements of a fair and proper domestic enquiry is well settled. In **Sur Enamel and Stamping Works Ltd. v. Workmen**, 1963 SCC Online SC 97, the Supreme Court held that a domestic enquiry cannot be regarded as properly conducted merely because the employer has gone through the formal motions of an enquiry. The employee must be informed clearly of the charges, must be afforded an opportunity to meet the evidence against him, including an opportunity to cross-examine witnesses where necessary, must be afforded an opportunity to lead evidence in defense, and the Enquiry Officer must record his findings upon consideration of the material before him. The relevant extract reads as under:

“4. It has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper Domestic enquiry held in accordance with the Rules of natural justice and the conclusions reached at the enquiry are not perverse the Industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses



are examined — ordinarily in the presence of the employee — in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defense if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the Domestic Tribunal.”

(Emphasis applied)

26. These requirements, however, do not mean that a domestic enquiry is to be tested on the same standards as a criminal trial. Nevertheless, a domestic enquiry must adhere to a fair and reasonable procedure. A departmental enquiry is essentially a fact-finding proceeding, but the requirement of natural justice cannot be reduced to the mere observance of procedural formalities. What is required is that the delinquent employee be afforded a real, effective and meaningful opportunity to know, meet and



defend the case against him. The question, therefore, is not merely whether an opportunity was formally afforded, but whether the procedure adopted was such as enabled the employee to meaningfully avail of that opportunity and whether any denial or curtailment thereof caused prejudice to his defense.

27. The distinction between a denial of opportunity and a mere failure to avail of an opportunity is, in this context, fundamental. An employee who, after being afforded a genuine and effective opportunity, chooses not to avail of it cannot subsequently complain of violation of natural justice. Equally, however, the employer cannot discharge its obligation merely by recording, as a matter of form, that an opportunity was afforded. The Court must examine the substance of the proceedings to determine whether the opportunity so afforded was real and capable of being effectively utilized by the delinquent employee.

28. Examined from this perspective, this Court *prima facie* finds no infirmity in the conclusion of the learned Labour Court that the domestic enquiry stood vitiated for violation of the principles of natural justice.

29. It is reflected from the order of the learned Labour Court that considerable emphasis was placed upon the nature of the enquiry report and the manner in which the alleged opportunities to the respondent were recorded therein. The enquiry report as is reflected from the records is a one-page, pre-typed document, containing recitals to the effect that the respondent had been afforded an opportunity to represent his case, to produce witnesses and to make his submissions, with the document ultimately bearing his signature.



30. Such formal recitals, however, cannot by themselves establish compliance with the principles of natural justice. What was required was a meaningful opportunity to participate in the enquiry and to defend the charge. The material on record does not satisfactorily demonstrate that the opportunities recorded in the pre-typed enquiry report were actually extended and meaningfully available to the respondent. The manner in which the enquiry report came to be prepared, coupled with the absence of any substantive material evidencing effective participation by the respondent in his defense, supports the conclusion reached by the learned Labour Court that the opportunity afforded to him was merely formal.

31. The fact that the respondent was given an option to engage a representative but chose to conduct his defense himself cannot, by itself, amount to a waiver of his right to a fair enquiry. Likewise, his signature upon the pre-typed enquiry report cannot be treated as an unequivocal acknowledgment that he had been afforded a meaningful opportunity to defend himself. The enquiry proceedings must stand the test of substance and cannot be sustained merely on the basis of formal endorsements.

32. The petitioner's contention that the respondent did not examine witnesses, produce documents or otherwise avail of the opportunities allegedly afforded to him, therefore, cannot be accepted as sufficient to cure the defect. Had the record demonstrated that the respondent was given a genuine opportunity to lead his defense and had thereafter consciously chosen not to do so, the position would have been different. In the present case, however, the very manner in which the enquiry was conducted does not establish that such an effective opportunity was ever made available to him.



33. The finding of the learned Labour Court that the domestic enquiry was vitiated is, accordingly, upheld. This Court finds no perversity, illegality or jurisdictional error in the said finding warranting interference under Articles 226 and 227 of the Constitution.

34. The aforesaid conclusion, however, does not bring the matter to an end. Once a domestic enquiry is held to be vitiated, the question whether the misconduct alleged against the workman was nevertheless established on the evidence subsequently led before the Labour Court requires independent consideration.

35. The respondent did not dispute the basic fact of his absence from duty during the period in question. His explanation was that his wife was pregnant and required to undergo delivery and that, being the sole caretaker of his family, he was required to remain with her. His case was further that he had applied for leave and that the leave applications had been sent through a person known to him in his village. Thus, the respondent did not dispute the factum of absence; his defense was that such absence was justified and ought to have been treated as authorized leave.

36. The evidence led before the learned Labour Court, however, does not establish that the leave allegedly applied for by the respondent was ever sanctioned. The person through whom the leave applications were stated to have been forwarded was unable to furnish particulars regarding the precise dates or circumstances in which the applications were delivered to the management. The respondent himself admitted that he was not aware whether the leave applications had been rejected by the management.

37. It is also significant that, despite relying upon the pregnancy and related medical circumstances of his wife and child as justification for his



prolonged absence, the respondent did not produce material of sufficient probative value to establish that the entire period of 139 days was covered by such circumstances. The documents relied upon before the learned Labour Court, as noticed in the Award, did not correspond to or satisfactorily account for the entire period of absence.

38. As per the case of the petitioner-DTC, the respondent was absent for a total period of 139 days between September 1993 and May 1994. The absence was not necessarily continuous throughout this entire period; rather, the allegation was of absence on different days falling within the said period. This circumstance assumes significance. The respondent, having admittedly remained absent on the dates in question, had sufficient opportunity to ascertain the status of the leave allegedly applied for and to produce material demonstrating that the same had been sanctioned or otherwise authorized.

39. Once the factum of absence stood admitted, the evidentiary burden of establishing that such absence was sanctioned or otherwise justified lay upon the respondent. The ultimate burden of proving misconduct undoubtedly remained upon the management; however, the respondent could not, after admitting his absence and setting up a positive defence that the absence was authorized by leave, remain without producing material to substantiate that defense.

40. The learned Labour Court, nevertheless, appears to have placed considerable emphasis upon the non-production of the original Master Attendance Register and the leave applications by the management and proceeded on the premise that, since neither party had conclusively established its case in its entirety, the charge could not be held to have been



proved. In the facts of the present case, such an approach does not appear to be justified.

41. The absence of the original Master Attendance Register, by itself, could not efface the respondent's admission regarding his absence. Nor could the management be required to establish the fact of absence on every individual date in a manner akin to proof in a criminal prosecution, particularly when the factum of absence itself was not disputed. The relevant question was whether the respondent had remained absent without sanctioned leave or authority and whether the explanation furnished by him satisfactorily established otherwise.

42. The respondent's explanation that he remained away from duty on account of circumstances prevailing in his family may explain why he chose to remain absent; it does not, by itself, establish that the absence was authorized. Similarly, the assertion that leave applications had been sent through another person cannot amount to proof of sanctioned leave, particularly when neither the respondent nor the person through whom the applications were allegedly forwarded could establish that the leave had in fact been sanctioned by the management.

43. The learned Labour Court, therefore, fell into error in treating the absence of certain documentary evidence from the side of the management as sufficient to neutralize the admitted fact of absence and the respondent's failure to substantiate his defense. The evidentiary burden arising from the admitted fact of absence was not discharged merely by offering an explanation for such absence.

44. The material on record further reflects that the respondent had a substantial past disciplinary record, with more than thirty entries relating to



instances of misconduct. It is true that several of these proceedings resulted only in caution, warning or minor penalties, and such past conduct cannot constitute proof of the specific charge involved in the present proceedings. It is, however, a relevant circumstance while considering the nature of the misconduct and the question of punishment.

45. Unauthorized absence, particularly when frequent and extending over a substantial number of days, is a matter of serious concern in a disciplined organization such as the DTC. The fact that the absence occurred on different dates over a period extending from September 1993 to May 1994 does not dilute the misconduct; rather, it indicates repeated instances of absence for which the respondent was required to establish authorization or justification.

46. In the present case, the respondent admittedly remained absent for 139 days and failed to establish that the said absence was covered by sanctioned leave. The medical documents relied upon by him did not satisfactorily account for the period in which he remained absent as those documents were qua the month of April, 1993 and the absence in dispute related to the period from September 1993 to May 1994. The learned Labour Court, therefore, erred in extending the benefit of doubt to the respondent merely on account of the non-production of the original Master Attendance Register and certain leave-related documents by the management, despite the admitted factum of absence and the respondent's failure to establish that such absence had been duly authorized.

47. The learned counsel appearing for the respondent has relied upon ***Chikkam Koteswara Rao v. Chikkam Subbarao***, AIR 1971 SC 1542; ***Life Insurance Corporation of India v. R. Suresh***, (2008) 11 SCC 319; ***Mavji C.***



Lakum v. Central Bank of India, (2008) 12 SCC 726; and **State of Haryana v. Devi Dutt**, (2006) 13 SCC 32, in support of the submission that the findings of the learned Labour Court ought not to be interfered with and that the punishment imposed upon the respondent warranted interference.

48. The reliance placed upon these decisions, however, does not advance the case of the respondent in the facts and circumstances of the present case

49. In **Chikkam Koteswara Rao v. Chikkam Subbarao**, AIR 1971 SC 1542, the Supreme Court dealt with the evidentiary effect of an admission. The said principle is not attracted in the present case, where the respondent admittedly remained absent and his case was only that such absence was justified and covered by leave.

50. In **LIC v. R. Suresh**, (2008) 11 SCC 319, and **Mavji C. Lakum v. Central Bank of India**, (2008) 12 SCC 726, the Supreme Court considered the powers of the Industrial Adjudicator under Section 11-A of the Industrial Disputes Act, including the question of proportionality of punishment. Those decisions turned upon their respective facts and do not lay down that reinstatement must follow merely because the domestic enquiry is found to be defective. In the present case, the misconduct was subsequently established on the evidence led before the Labour Court.

51. Likewise, **State of Haryana v. Devi Dutt**, (2006) 13 SCC 32, reiterates the limited scope of interference by a writ Court with findings of fact. The present case, however, involves an erroneous appreciation of the evidentiary effect of the admitted absence of the respondent and his failure to establish that the absence was sanctioned or otherwise justified. The interference is, therefore, not on account of a mere re-appreciation of



evidence, but on account of the erroneous approach adopted by the learned Labour Court in determining whether the misconduct stood established.

52. The aforesaid judgments, therefore, do not assist the respondent in the facts and circumstances of the present case. **The finding that the domestic enquiry was vitiated is liable to be upheld. The finding of the learned Labour Court that the misconduct had not been established is, accordingly, unsustainable.** The material on record, when considered as a whole, establishes that the respondent's absence was unauthorized and constituted misconduct.

53. The next question is whether the punishment of removal from service warrants interference.

54. The power of a Labour Court to interfere with the punishment imposed by the disciplinary authority is not to be exercised merely because another punishment may appear to be preferable. The disciplinary authority is ordinarily best placed to assess the seriousness of the misconduct and the appropriate penalty. Interference is warranted where the punishment is shockingly disproportionate to the misconduct or where the relevant circumstances have been wholly ignored.

55. In the present case, the misconduct relates to prolonged and repeated unauthorised absence aggregating to 139 days. The factum of absence during the relevant period was not disputed by the respondent. His explanation was that he had applied for leave and that, for certain periods, the leave applications had been sent through another person or that the department had been informed telephonically. Once the misconduct is proved or found to have been established, the punishment imposed by the disciplinary authority ordinarily deserves to be upheld, unless it is



demonstrated that the punishment is so grossly or shockingly disproportionate to the misconduct proved as to warrant judicial interference.

56. In the present case, admittedly, the workman was absent for 139 days, as reflected in the charge-sheet. Though such absence was not the subject matter of the charge-sheet, it has been repeatedly stated by the management that the workman had also remained absent on previous occasions, i.e. prior to the charge-sheet, and even during the enquiry he had remained absent for certain days. This aspect could have been taken into consideration by the management while awarding punishment to the workman. Once the misconduct is held to have been proved, this Court does not find any justification to interfere with the punishment of dismissal awarded to the workman.

57. In the present case, the learned Labour Court's order granting reinstatement with continuity of service and back wages proceeded substantially from its conclusion that the misconduct itself had not been proved. Once that foundational conclusion is found to be unsustainable and the domestic enquiry is held to be vitiated, the consequential relief granted by the Labour Court cannot independently survive.

58. This Court is, therefore, of the view that, though the learned Labour Court was correct in holding the domestic enquiry to be vitiated, it erred thereafter, while considering the evidence led before it, in extending the benefit of doubt to the respondent merely because both parties had not produced every piece of evidence that could have been produced. The admitted fact of absence, coupled with the respondent's failure to establish



that such prolonged absence was duly authorised or sanctioned, could not have been disregarded in the manner in which it has been done.

59. The impugned Award, insofar as it holds the removal of the respondent to be illegal and unjustified and consequently directs his reinstatement with continuity of service and 10% back wages, therefore, cannot be sustained.

60. At the same time, this Court does not consider it necessary to undertake any further re-appreciation of the entire evidentiary record beyond what is necessary for determining the legality of the impugned Award. The interference herein is founded upon the erroneous legal approach adopted by the learned Labour Court in relation to the validity of the domestic enquiry and the consequent assessment of the charge and relief, and not upon a mere substitution of this Court's view for another possible view on the evidence.

61. The order of the learned Labour Court dated 30.09.2004 holding the domestic enquiry to be vitiated is upheld. However, the consequential Award dated 19.03.2009 directing reinstatement with continuity of service and 10% back wages is quashed. The order of removal from service, being founded upon misconduct which stands established on the evidence, is consequently restored.

62. **The Writ petition is, accordingly, partly allowed to the aforesaid extent.** Pending application(s) if any, stand disposed of. There shall be no order as to costs.

SHAIL JAIN
JUDGE

AUGUST 17, 2026/HP