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

Reserved on:5th March, 2015
% **Date of Decision: 24th March, 2015**

\+ W.P.(C) 4049/2012

SH. MOHD. AZIM ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate.

versus

SARV UP GRAMIN BANK ..... Respondent
Through: Mr. Rajesh Kumar & Mr. Gaurav Kumar Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This petition is directed against the award dated 28.02.2012 passed by learned Presiding Officer, Industrial Tribunal, Karkardooma Courts, Delhi in I.D. No.40/2010 whereby it was held that the termination of services of the petitioner was legal and justified and he was held entitled to no relief. The petitioner has also impugned order dated 08.02.2011 passed in the aforementioned industrial dispute whereby the learned Tribunal allowed the application of management and granted it opportunity to prove the misconduct committed by the petitioner.

2. Shorn off unnecessary details the facts leading to the present petition are that the petitioner was offered the post of driver-cum-messenger by the respondent vide letter dated 20.01.1988. He was

confirmed retrospectively w.e.f. 21.01.1989 to the said post vide letter dated 23.02.1989. Vide office order dated 25.01.2002, the petitioner was transferred to Duhari Branch of the Bank as a Messenger. The petitioner assailed the order of his transfer to the Duhari Branch before the High Court of Allahabad by way of a writ petition bearing W.P.(C) No.5464/2002, which was disposed of vide order dated 24.09.2003 holding that there was no legal error or arbitrariness in the order impugned in the said petition. It was observed by the High Court, in the said order that the services of the employee were transferable and he had been sent to Branch office to work as Messenger. The Senior Manager was also directed to consider assigning the petitioner duties of a driver whenever the work of driver would become available with it.

3. The petitioner joined Duhari Branch of the Bank on 20.12.2003. Thereafter, the petitioner received a show-cause notice dated 17.09.2007 wherein certain allegations were levelled against him and he was called upon to submit his reply to the same. In the said show cause notice it was alleged that the petitioner failed to perform the tasks allotted to him such as sealing daily vouchers, maintaining the voucher book, delivery of stationary and post from branch office, etc. The petitioner submitted his reply dated 03.10.2007 denying all the allegations.

4. On 16.10.2007, a charge-sheet was served upon the petitioner. On 29.11.2007, the charge-sheet dated 16.10.2007 was converted into a gross misconduct charge-sheet and articles of charges were sent to the petitioner. Thereafter, an inquiry was conducted against the

petitioner and the inquiry officer submitted an inquiry report dated 02.01.2009 to the disciplinary authority. The petitioner vide his reply dated 06.02.2009 replied to the said inquiry report. However, the respondent proceeded to impose the penalty of removal from service upon the petitioner vide office order dated 09.06.2009.

5. Against the said order, the petitioner/workman raised an industrial dispute. Post failure of the conciliation proceedings, the appropriate government vide order No.L-12012/67/2010-IR(B-I) dated 09.09.2010 referred the dispute for adjudication under the following terms of reference:

> "Whether the action of the management of Sarv UP Gramin Bank in terminating the services of Mohd. Azim, employed as Driver cum Messenger at Dhoori Branch, Ghaziabad, is legal and justified? If not, what relief the concerned workman is entitled to?"

6. Thereafter, the statement of claim was filed by the petitioner workman to which the respondent filed a written statement before the Industrial Tribunal. On the issue of validity of inquiry, the industrial adjudicator vide order dated 24.01.2011 held that the domestic inquiry, as conducted by the respondent, was contrary to the principles of natural justice and was consequently held vitiated. Subsequently, the respondent moved an application dated 08.02.2011 seeking the permission of the Industrial Tribunal for proving the charges against the petitioner/ workman which was allowed by learned Industrial Adjudicator vide impugned order dated 08.02.2011. The Industrial

Tribunal, after hearing both the parties, passed its award dated 28.02.2012 which is impugned before this court.

7. Learned counsel for the petitioner contended that the award dated 28.02.2012 as well as the order dated 08.02.2011 are illegal, unjustified, arbitrary, discriminatory and violative of Article 14, 16 & 21 of the Constitution of India. The industrial adjudicator erred by granting an opportunity to the respondent to prove the alleged charges of misconduct against the petitioner. The respondent has nowhere sought any opportunity in his written statement before the industrial adjudicator to prove the charges, in the event the inquiry is held vitiated by the industrial adjudicator and without such a prayer the same cannot be done. In support of his submission, he has relied upon judgment in '**Karnataka State Road Transport Corporation vs. Smt. Lakshmidevamma & Anr.**', *AIR 2001 SC 2090*.

8. It was further contended by learned counsel for the petitioner that the petitioner was appointed as a driver-cum-messenger whereas he was made to work as a messenger-cum-peon. He was not under an obligation to comply with the order passed by his senior which was not a part of his service condition. The order given by senior itself was illegal, unjustified and bad in law. The petitioner was not only made to work as a peon but his salary was also reduced from that of a driver to a peon. Lowering of pay scale as well as assigning the job of a peon amounts to change in service conditions of the petitioner and the same is required to be preceded by a notice under Section 9A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act')

however, no such notice was served by the respondent on the petitioner.

9. Another submission of learned counsel for the petitioner was that once a domestic inquiry is vitiated and is set aside, documents relied upon by the inquiry officer at the time of domestic inquiry cannot be considered by the industrial adjudicator until and unless the same are tendered and proved afresh before the industrial adjudicator. The management did not lead any fresh evidence and has relied upon the documents placed before the inquiry officer to prove the alleged charges against the petitioner.

10. It was lastly contended by counsel for the petitioner that the learned trial court has failed to appreciate that the petitioner has not committed any misconduct and even if it is presumed that the charges stood proved and amounted to misconduct, the punishment of removal from service is disproportionate and ought to have been set aside. The services of the petitioner were terminated in violation of Section 25F, 25G, 25H & 25N of the ID Act and also violate rules 76, 77 and 78 of the Industrial Disputes (Central) Rules, 1957.

11. *Per contra,* learned counsel for the respondent/ management urged that the present petition is misconceived and has been filed on the misinterpretation of provisions of ID Act and the law laid down by the Hon'ble Supreme Court in various judgments. The law is settled by the Hon'ble Supreme Court in '**Workmen of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. vs. Management and others**', *1973 AIR (SC) 1227* and '**Amrit Vanaspati Co. Ltd. vs. Khem**

Chand', *(2006) 6 SCC 325*, wherein it was held that even if no inquiry has been held by the employer or inquiry is found defective, the Tribunal in order to satisfy itself about the illegality and validity of order has to give an opportunity to the employer and the employee to adduce evidence before it. It was also held that it was open to the employer to adduce evidence for the first time justifying his action and it was open to the employee to adduce evidence contra. Hence, the learned industrial adjudicator was correct in allowing the respondent to prove petitioner's workman misconduct even though the inquiry was vitiated.

12. Relying upon **'Karnataka State Road Transport Corporation' (supra)** and '**Divyash Pandit vs. Management, N.C.B.M.**', *(2005) 2 SCC 684*, learned counsel for the respondent further submitted that the industrial adjudicator is well within its powers to permit parties to lead evidence to prove the misconduct committed by the workman at any stage of proceedings before the proceedings are concluded.

13. It was lastly submitted on behalf of respondent that the petitioner refused to perform the job of a messenger. As and when, the petitioner was commanded to see and maintain voucher register, seal and sign the documents, etc. he opted not to perform those duties, hence he committed misconduct for which he was dismissed from service.

14. I have carefully considered the submissions made by learned counsel for both the parties and have also perused the material on record.

15. The learned counsel for the petitioner has primarily contended that the Industrial Tribunal was not right in allowing the management to produce evidences to prove the misconduct committed by the workman/petitioner once it held that the domestic enquiry conducted by the management was bad and vitiated. This contention does not find favour with this court. It is now well settled that even if no inquiry is held by any employer before terminating the services of a worker or if the domestic enquiry held by the management is held to be defective by the Labour Court and the dispute raised by the dismissed workman comes to the Labour Court or Industrial Tribunal for adjudication either under the provisions of Section 10 or Section 33 of the ID Act the entire controversy between the parties become open for adjudication by the Labour Court or the Industrial Tribunal and both the parties, then, get an opportunity to substantiate their rival stand. In this regard, the Tribunal, in order to satisfy itself about the legality and validity of the order of termination of the workman, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra. In no case, the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

16. The Hon'ble Supreme Court in '**Workmen of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. vs. Management and others**', **(supra)**, speaking to the same effect held: -

> "27. From those decisions, the following principles broadly emerge:-
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> (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
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> (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
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> (3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
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> (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
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> (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of

dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The *Management of Panitole Tea Estate* v. *Workmens* [(1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal."

17. The learned counsel for the petitioner has further urged that the management did not seek the opportunity of producing its evidence to prove the misconduct before the Industrial Tribunal in its written submissions and an application for the same was made on 08.02.2011 after the domestic enquiry held by the management was held as vitiated by the Industrial Tribunal on 24.01.2011 which was not permissible. This contention too does not find favour with this court. The stage at which the management can move an application before the Labour Court/ Industrial Tribunal to adduce evidence to prove misconduct of the workman was a point of discussion before the Hon'ble Supreme Court. Various decisions of the Supreme Court, though, agreed on the confirmation of this right to the management, there was still a difference of opinion about the stage at which such an application can be moved. The law on this point was finally settled by the Hon'ble Supreme Court in '**Karnataka State Road Transport Corporation case' (supra)** wherein Santosh Hegde, J. speaking for himself and Bharucha, J. held: -

> "16. While considering the decision in *Shambhu Nath Goyal case* [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] we should bear in mind that the judgment of Varadarajan, J. therein does not refer to the case of *Cooper Engg*. [(1975) 2 SCC 661 : 1975 SCC (L&S) 443 : (1976) 1 SCR 361] However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in *Goyal case* [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the

> Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.
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> 17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in *Shambhu Nath Goyal case* [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in *Shambhu Nath Goyal case* [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] is just and fair."

18. However, in the same judgment, Shivaraj V. Patil, J. speaking for himself and V.N. Khare, J., concurring with Hegde, J. with a slight modification observed that no fetters can be placed on the powers of the Court/Tribunal requiring or directing the parties to lead additional evidence including the production of documents at any stage of the proceedings before they are concluded if on the facts and

circumstances of the case, it is deemed just and necessary in the interest of justice. Thus, it was observed: -

> "44. The question as to at what stage the management should seek leave of the Labour Court/Tribunal to lead evidence/additional evidence justifying its action is considered in the draft judgment of Hegde, J. and not the power of the court/tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of that case. As per Section 11(1) of the Industrial Disputes Act, 1947 (for short "the Act") a court/tribunal can follow the procedure which it thinks fit in the circumstances of the case subject to the provisions of the Act and the rules framed thereunder and in accordance with the principles of natural justice. Under Section 11(3), the Labour Court/Tribunal and other authorities mentioned therein have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit in respect of certain matters which include enforcing the attendance of any person and examining him on oath and compelling the production of documents and material objects.
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> 45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of

documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice."

(emphasis supplied)

19. Subsequently, a two Judge Bench of the Hon'ble Supreme Court in **'Divyash Pandit' (supra)** held: -

"8. The appellant has challenged this decision of the High Court before us. We are of the view that the order of the High Court dated 2-12-2002 as clarified on 3-3-2003 does not need any interference. It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in Karnataka SRTC v. Laxmidevamma [(2001) 5 SCC 433] this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman."

(emphasis supplied)

20. It is observed in the light of the decision of the Hon'ble Supreme Court in '**Karnataka State Road Transport Corporation' (supra)** that although the management has to seek the leave of the court/tribunal in the written statement itself to lead additional evidence to support its action, however, no fetters can be placed on the powers of the Labour Court/ Tribunal to require or direct parties to lead additional evidence including the production of documents at any stage

or proceedings before they are concluded. Thus, the Labour Court is well within its powers if it directs or requires from the management to produce evidence of misconduct of workman once the inquiry held by it is vitiated. In **'Divyash Pandit' (supra)** the Hon'ble Supreme court has gone a step ahead and held that the court may even permit the management to do so even though the management has not made any such prayer in its written statement.

21. In the case before this court the management has moved an application to lead evidences for proving charges against the petitioner on 08.02.2011 after the domestic enquiry held by the management was vitiated by the Industrial Tribunal on 24.01.2011. The said application was allowed by the Labour Court on the same day, i.e., vide impugned order dated 08.02.2011. As observed above, the consequence of the inquiry proceeding being struck down by the Labour Court/Industrial Tribunal is not an automatic order of reinstatement of the workman rather, the Labour Court/ Industrial Tribunal is competent to hear both the sides on the charges of misconduct of the workman. The Labour Court/ Industrial Tribunal is competent to allow the management to produce evidence to this effect even in the absence of the prayer made by the management in its written statements as per '**Karanata State Road Transport Corporation' (supra)** and **'Divyash Pandit' (supra)**. Hence, in the present case no infirmity can be attributed to the impugned order dated 08.02.2011 whereby the Industrial Tribunal allowed the management to produce evidences to prove petitioner's misconduct.

22. Pursuant to the said order of learned Industrial Tribunal, Mr. V.K. Kaul appeared on behalf of the management and tendered his evidence by way of an affidavit. In his statement before the Labour Court, the said witness has stated that work of driving was initially taken from the petitioner but on account of acute shortage of staff in the bank, it was decided by the competent authority to take the work of messenger from the petitioner/ workman. He further stated that the workman was continuously paid driving allowance without the work of driving. This witness has also produced and proved the Articles of charges, letters issued by the management to the workman and its reply by him, the letter of appointment of the workman and his confirmation letter, inquiry report, etc. as additional document. In his cross-examination he has stated that a driver-cum-messenger is supposed to drive the vehicle of the bank and to perform duties of stitching of vouchers, entering them in the register, putting his own signature on the vouchers, besides other subordinate cadre duties. He also stated that a messenger-cum-peon is under an obligation to perform aforesaid duties except the duty of driving vehicle of the bank and also stated that a driver-cum-messenger is given special allowance in respect of his duties of driving a vehicle. Further in his cross-examination on 16.03.2011 he stated that Ex.MW1/21 and Ex.MW1/54 pertain to the bank. It is mentioned in these documents that the custodian of vouchers is supposed to sign it. When claimant refused to sign on those documents, the branch manager had put his signature over them. He also stated that there was no vacancy of a driver hence bank could not offer work of driver to the claimant (petitioner) in pursuance of orders passed by High Court of Allahabad.

23. The petitioner did not produce any witness to counter the allegations made by the respondent. Rather, he adopted his affidavit Exhibit WW-1/A in rebuttal to the evidence of Mr. Kaul. In his cross-examination he admitted that despite directions of the Branch Manager, he did not sign the register of vouchers. He asserted therein that since he was appointed as a driver-cum-messenger it was not a part of his duties.

24. A perusal of the record shows that the petitioner/ workman was issued a notice dated 27.10.2006 (Ex. MW2/3) whereby the workman was asked reasons as to why the bank should not initiate legal proceedings against him for his denial to perform the work of sealing the vouchers and entering the same in the register. Further the workman was again directed by the respondent to perform various works such as stitching of vouchers and entering them in register vide letters dated 08.06.2007 (Ex. MW-2/2). With respect to the office order dated 06/2008 Ex. MW-2/7 / Ex. MW-2/5 issued to the petitioner, asking him to perform tasks such as; filing, sealing and registration of the vouchers, etc., the workman in his reply Ex. MW-2/6 denied performing the said tasks and stated that the said work was not a part of the post to which he was appointed. Vide letter dated 08.11.2008 (Ex. MW-2/11) the respondent informed the Regional Development Manager that the petitioner had again refused to perform the work allotted to him in his reply dated 06.11.2008 and asked the said authority to take action against him. The petitioner has also in his cross-examination on 23.03.2011 stated that the Branch Manager had instructed him to sign the register as messenger/custodian of vouchers.

Despite the directions of Branch Manager, he had not signed the register of vouchers since he was posted as Driver-cum-messenger and it was not a part of his duty. In reply to the question as to what would be the situation when a vehicle is not available and the driver-cum-messenger is asked to perform the duty of the messenger, the petitioner had stated that when a vehicle is not available, he would not perform the job of a messenger only.

25. Even in the present petition the workman has taken a stand that since the Equation Committee Report has equated the post of driver-cum-messenger to that of a driver, he was not obliged to perform the work of messenger alone such as signing of vouchers, stitching of vouchers, registering them, etc. At this stage, it is pertinent to note that against his order of transfer to Duhari Branch office of the respondent, the petitioner/ workman had preferred a petitioner bearing W.P.(C) No.5464/2002 before the Allahabad High Court wherein relying on the Equation Committee Report, the High Court of Allahabad observed:

> "……This Equation Committee report deals with the service of driver cum messenger. The relevant paragraph-2.7.19 is quoted as below: -
>
> > "The Committee is of the opinion, that keeping in view the provisions of the Award and the relief granted by the NIT, there is sufficient ground to equate the posts of drivers and driver-cum-messengers in RRBs with the posts of drivers in the Sponsor Banks. The drivers will also be entitled to the special allowance as provided for in various bi-partite settlements in sponsor banks. However, the committee does not approve of the demand of the Associations

> that in future, the services of drivers should solely be utilized for the purpose of driving work and no messenger work should be taken from them unless additional amount is paid. It is not uncommon in sponsor banks to give combined designations to drivers and assign to them the normal duties of sub-ordinate staff when they are not required to drive the vehicles. As the basic salary structure of Drivers is that of Messengers and as special allowance is paid for driving work, they are not entitled for any extra payments for discharging duties of sub-ordinate staff. Therefore, whenever there is no driving work in the RRBs, the drivers/ driver-cum-messengers should discharge the duties of Messengers."

The aforesaid award is binding between parties and shows that pay scale for the post of driver is same. Drivers are entitled to get special allowances only when they are doing driving work. They are not entitled to any extra payment for discharging duties of subordinate staff.

Petitioner was appointed as driver cum messenger. The fact that he was required to work as driver at the head office for some time does not entitle him to continue as driver. In the counter affidavit, it is stated in paragraph-6 that the Gypsy (Maruti) driven by petitioner has since been disposed off and that no other vehicle has been purchased to replace it and that petitioner was since thereafter working as messenger. I do not find any legal error or arbitrariness in the impugned order. Petitioner's services are transferable and that he has been sent to branch office to work as messenger.

This writ petition is as such dispose of with observation that whenever the work of driver becomes available the Senior Manager shall consider to assign to him the duties of a driver."

26. From a perusal of paragraph- 2.7.19 of the Equation Committee Report it is observed that the Committee has opined therein that the equation of the post of the drivers and driver-cum-messengers in the Rural Regional Banks with the post of drivers in the Sponsor Banks was for a limited purpose of their parity between the employees of the said two Banks in terms of allowances and benefits. It was further stated in the said report that the committee too did not approve of the demand of the Associations that in future, the services of drivers should solely be utilized for the purpose of driving work and no messenger work should be taken from them unless additional amount is paid. This Court is also in agreement with the view taken by Allahabad High Court on 24.09.2003 in W.P.(C) No.5464/2002 wherein it was observed that the fact that the petitioner was required to work as a driver at the head office for some time would not entitle him to continue as driver. Further, as per the confirmation letter issued to the petitioner by the management Ex. MW-2/13, it is observed that the petitioner was confirmed to the post of driver/messenger.

27. Simply because the workman was appointed as a driver-cum-messenger would not mean that the petitioner has to perform only the work of a driver and not that of a messenger. Even after the High Court of Allahabad in W.P.(C) No.5464/2002 had held that the petitioner was not entitled to continue as a driver, the petitioner consistently disobeyed the orders of his superiors asking him to perform the tasks falling within the scope of his employment. He had been adamant and denied performing the tasks allotted to him on the pretext that they fell

outside the scope of his employment which according to him was that of only driving the vehicle for the management. As observed above, he has stated in his cross examination before the Industrial Tribunal that in the absence of the vehicle with the respondent he would not perform the tasks of a messenger alone. Clearly the workman wants to continue with the management despite his refusal to perform the tasks which fall within the scope of his employment. It is a settled law that an employee is duty bound to obey lawful command of his superiors which fall within the scope of his employment and a refusal to do so without any justified reasons amounts to misconduct.

28. In view of the aforesaid discussion, the petition is devoid of any merit, same deserves to be dismissed and the same is hereby dismissed.

29. Trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

MARCH 24th, 2015
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