IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 11th July, 2017
Date of decision: 18th September, 2017

W.P.(C) 5731/2017

DEEN DAYAL ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate
versus

DELHI TRANSPORT CORPORATION ..... Respondents
Through: Mr.Sarfaraz Khan, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, Deen Dayal S/o Sh. Lal Singh vide the present petition has assailed the impugned award dated 4.11.2016 of the Presiding Officer, Labour Court XVII, Karkardooma Courts Complex, New Delhi in LIR No.6820/2016 (Old No.24/08) whereby the reference made by the Government of NCT of Delhi vide order dated 06.02.2008 F.24(1306)/06/Lab./1374-78 to the effect;

> *"Whether the punishment of removal from service imposed by the management on Sh. Deen Dayal S/o Sh. Lal Singh, conductor, Badge No.10530 vide order dated 01.04.92 is illegal and/or unjustified; and if yes, to what relief is he entitled?"*

was answered to the effect that the of the workman, i.e., the petitioner herein, Sh. Deen Dayal, who had claimed that he had been illegally removed from the services of the respondent management illegally on 1.4.1992 was dismissed, and it had been held by the Labour Court that the claimant i.e., the workman, i.e., the present petitioner herein, was not entitled to any relief.

2. The petitioner, apart from seeking the setting aside of the impugned award dated 4.11.2016 of the Labour Court also sought that the removal of the petitioner from the services of the respondent be declared illegal and unjustified and that he be held entitled to the relief of reinstatement of service along with full back wages and all consequential benefits thereto, it having been held vide the impugned award that the claimant, i.e., the workman/the petitioner herein, had been unauthorizedly absent from the duty for 174 days w.e.f. 1.1.1991 to 31.8.1991 and that thus this long absence showed complete lack of devotion to duty and consequently termination of services of the claimant, i.e., the petitioner herein, by the respondent was not disproportionate to his proved misconduct.

3. The learned counsel for the respondent was present on advance

notice of the petition and on the petition having been listed for the date 11.7.2017 when initial submissions were made on behalf of either side and the learned counsel for the petitioner Mr.Anuj Aggarwal and the learned counsel for the respondent Mr.Sarfarz Khan sought to place reliance on judicial precedents copies of which have been submitted on record by either side and the petitioner has thus been taken up for final disposal.

4. As observed vide the impugned award dated 4.11.2016, the claimant, i.e., the petitioner herein had claimed that he was working with the management as a 'Conductor' with Badge No.10530 and token No.21520 and had worked honestly and diligently with the management but had been removed from services illegally on 1.4.1992 and had not been afforded any opportunity of being heard and no charge sheet had been sent to him and he was not informed about any enquiry officer nor was he given any intimation about the proceedings held by the Enquiry Officer and that the only allegation against him was that he was absent from duty for a period of 174 days from January, 1991 to August, 1991 but he had sent his leave application due to *bona fide* and genuine grounds which had not been

considered by the management. As observed in the impugned award dated 4.11.2016 vide order dated 6.4.2016 of the Labour Court it had been held that no notice had been given by the management to the claimant to participate in the inquiry proceedings which were thus violative of the principles of natural justice.

5. As brought forth through the impugned award itself, the written statement submitted by the management was to the effect that the reporter had submitted a report dated 12.4.1991 of unauthorized absence of the claimant, the petitioner herein, for 174 days from 1.1.1991 to 31.8.1991 on which report the charge sheet dated 13.9.91 had been issued to which the workman had not replied and thus a domestic enquiry was entrusted to the Enquiry Officer vide order dated 22.11.1991 and the Enquiry Officer conducted the enquiry as per rules and regulations of the respondent corporation in accordance with the principles of natural justice and also afforded a full opportunity to the claimant to defend his case. It has further been observed vide the impugned award to the effect that the first date for inquiry was 13.12.1991 on which date the claimant did not appear and the enquiry proceedings were deferred to 26.12.1991 on which

date also the claimant was absent and the proceedings were adjourned to 3.1.1992 on which date also the claimant had not appeared and the Enquiry Officer recorded the statement of the reporter in the presence of the Labour Inspector and vide enquiry report dated 23.1.1992, the Disciplinary Authority of the respondent stated to have agreed with the inquiry report and issued a show cause notice dated 2.2.1992 to which he submitted no reply and after considering the enquiry report and documents and the past service record of the petitioner, the management issued the order dated 1.4.1992 vide which he was removed from service.

6. Issues were framed during the course of the proceedings on the reference dated 6.2.2008 recorded in LIR No.6820/2016 to the effect:

> "1. *Whether the management has conducted a fair and proper enquiry in accordance with the principles of natural justice?*
>
> 2. *Relief.*"

7. During the course of the proceedings before the Labour Court vide order dated 6.4.2016, the issue to the effect whether the management had conducted a fair and proper enquiry in accordance with the principles of natural justice was answered against the

respondent –management it having been observed to the effect that the notice Ex.MW-1/11 dated 27.12.1991 sent to the claimant by the management to participate in the domestic enquiry scheduled on 3.1.1992 was sent through an envelope Ex.MW-1/13 to the address of the workman with the name of his village as 'Kheda' though the address of the claimant was of the village 'Khaira' and no notice having been sent to the respondent at the address at 'Khaira' it was held to the effect that no notice had been given by the management to the claimant, i.e., the petitioner herein, to participate in the inquiry proceedings which was thus held to be violative of the principles of natural justice and the enquiry proceedings were set aside and the said issue was thus answered against the management as also observed vide the present impugned award.

8. As regards issue No.2 which relates to the terms of reference which terms of reference are in relation to the aspect as to whether the punishment and removal from service imposed by the management, i.e, the respondent herein on the petitioner, the conductor with badge No. 10530 vide order dated 1.4.1992 was illegal and/or unjustified and if yes, to what relief was he entitled to,

it was observed by the learned Labour Court that the claimant did not even choose to argue the case and that the claimant, as submitted by the management, had been unauthorizedly absent from the date 1.1.1991 to 31.8.1991 continuously for a long period of 174 days and that his past record also showed that he had taken **'leave without pay'** as follows:

Sr. No.	*No. of Days*	*Year*
(i)	*04*	*1977*
(ii)	*08*	*1978*
(iii)	*15*	*1979*
(iv)	*06*	*1980*
(vi)	*13*	*1981*
(viii)	*04*	*1982*
(ix)	*Nil*	*1983*
(x)	*73 (under suspension)*	*1984*
(xi)	*01*	*1985*
(xii)	*32(under suspension for 30 days)*	*1986*
(xiii)	*05*	*1987*
(xiv)	*32*	*upto 25.03.88*
(xv)	*227*	*1990*
(xvi)	*171*	*1991*
(xvii)	*91*	*upto March, 92.*

which established that the claimant had no interest in the job and that his past record was gloomy. The contention raised before the learned Labour Court by the management was also to the effect that the claimant, i.e., the workman, i.e., the petitioner herein, had been awarded punishment several times and the claimant had no intention

in performing his duty and had developed a bad habit of remaining absent from duty and had no interest in the job as he always remained absent.

9. Reliance was also placed in the impugned award by the Labour Court on the verdict of this Court in ***Bharat Bhushan V. Delhi Transport Corporation*** in W.P.(C) No.1771/2008 decided on 25.10.2010 wherein it was held to the effect:

> ***"16. In the case of DTC Vs. Sardar Singh, 2004 SCC (L&S) 946, the Apex Court at page 950 in para 9 has observed as under:***
>
> > ***"9. When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the***

> ***employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generatlisation. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings."***

and on the verdict of the Supreme Court in ***Indian Iron Steel Co. v. Their Workmen:*** AIR 1958 SC 130 wherein it was held to the effect

> ***"Mere fact that the workman applied for leave is no ground for excusing him when the leave was refused.***
>
> ***(18) In view of the settled law as on the fact and circumstances in the matter, I am of the considered view that the Tribunal was justified by not interfering with the punishment imposed by the respondent and this court does not find any valid***

ground mentioned in the writ petition to interfere with the same. The writ petition is dismissed. No orders as to cost "

10. Vide the impugned award, thus, the Labour Court held, as already observed herein to the effect that the punishment handed down to him was not disproportionate to the proved misconduct of his unauthorized absence from duty w.e.f. 1.1.1991 to 31.8.1991 for a period of 174 days.

11. Through the present petition, the petitioner has submitted that the impugned award is illegal, unjustified, arbitrary, discriminatory, perverse, unreasonable, unconstitutional and violative of Articles 14, 16, 21 and 311 of the Constitution and that the Labour Court had failed to appreciate that the respondent No.1 miserably failed to prove the alleged charge of unauthorized absence and that the burden of proving his absence from duty willfully was on the respondent management, which burden it had not discharged.

12. The petitioner further submitted that he could not join his duties during the period of 174 days on account of his critical illness as he was suffering from typhoid and was thus unable to attend to his duties and reliance was placed by the petitioner on the verdict of the

Supreme Court in ***Krushnakant B. Parmar v. Union of India & Another*** in Civil Appeal No.2106/2012 decided on 15.2.2012 *inter alia* to submit that the punishment of removal from services as imposed upon the petitioner by the respondent was shockingly disproportionate to his alleged misconduct and that the petitioner has been unemployed since the date of his removal from service by the Delhi Transport Corporation and despite his best efforts has not been able to procure any employment and is entitled to reinstatement of service with continuity of service and full back wages and all consequential benefits thereafter.

13. In O.P. No.142/92 on an application under Section 33(2)(1) of the Industrial Disputes Act, 1947 filed by the Delhi Transport Corporation, i.e., the petitioner in the said petition (arrayed as the respondent to the present petition) whereby the management had sought approval of the Presiding Officer of Industrial Tribunal-II, Karkardooma Courts Complex, Delhi for its decision taken for removal of the respondent from service on the ground of his having remained absent from duty for a period of 174 days for the period 1.1.1991 to 31.8.1991 unauthorizedly, which is the period under

consideration in the present writ also and vide the said order, the Presiding Officer, Industrial Tribunal-II, held that

> *"14. Thus, the facts of the case suggest that the absence of the respondent from duty during the period mentioned in the chargesheet was not unauthorized. If it was unauthorized the management treated it as leave without pay and, therefore, it loses the nature of unauthorisedness. Since the management treated the period of absence from duty as period of leave without pay, therefore, it permitted the employee to remain absent from duty. Hence, the respondent did not commit any misconduct as alleged against him. Issue is decided against the petitioner."*

thus holding that the respondent, i.e., the present petitioner had not committed any misconduct as alleged by the management and that since the management had treated the period of absence from out of his period of leave without pay it had therefore permitted the employee to remain absent from duty.

14. **The learned Presiding Officer, Industrial Tribunal-II, Karkardooma Courts Complex, however, held that the management had remitted one full month's wage to the workman on the date of his removal from service.**

15. **The said order dated 28.11.2000 of the Presiding Officer, Industrial Tribunal –II, Karkardooma Courts Complex, in OP**

No.142/92 was assailed by the management vide Writ Petition (C) No. 3004/2001 in this Court and vide order dated 10.1.2005, the said order dated 28.11.2000 was set aside and the matter was remanded back to the Industrial Tribunal-II for deciding it in the light of the judgment in *DTC v. Sardar Singh*, AIR 2004 SC 4161 wherein it has been laid down that leave without pay cannot be treated as a sanctioned or approved leave and as it was also not in dispute in the proceedings in Writ Petition (C) No.3004/2001 that the management had not led any evidence in support of its plea and thus the management, i.e., the petitioner therein, had been allowed to lead evidence not later than 12 weeks from the first date of hearing before the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts Complex, Delhi.

16. It is also brought forth through the petition and documents on record that thereafter vide order dated 10.1.2005, the said OP No.142/92 was allowed by the Presiding Officer, Industrial Tribunal-II whereby approval was accorded for the removal of the workman, i.e., the present petitioner herein, from the services of the DTC for his unauthorized absence for 174 days for the period from 1.1.1991

to 31.8.1991 and it was also held that there had been requisite compliance by the DTC by payment of one full month's salary to the workman.

17. This order in OP No.142/92 dated 10.1.2005 has not been assailed by the petitioner workman in any form.

18. The petitioner has submitted that thereafter the Appropriate Government had made the reference dated 6.2.2008 in relation to which the award dated 4.11.2016 in LIR No.6820/2016 i.e. the present impugned award was made.

19. Through the submissions that have been made on behalf of the petitioner, it was reiterated that the punishment of removal from service was shockingly disproportionate and that the learned Labour Court had taken into consideration the past record of the petitioner which was not permissible. Further more, it was submitted on behalf of the petitioner that his absence from duty, it was only as he was critically unwell.

20. Reliance was placed, thus, by the petitioner on the verdict of the Supreme Court in ***Smt.Krushnakant B. Parmar Vs. Union of India***, decided on 15.2.2012 in Civil Appeal No.2106/2012 to

contend that during the disciplinary proceedings, the enquiry officer ought to have taken into consideration the relevant fact of the ailment of the petitioner and the same having been overlooked, the petitioner was entitled to be reinstated with all backwages. Specific reliance was placed on behalf the petitioner on the observations in paragraph 21 of the said verdict, which are to the effect:

> "*21. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in M.B. Bijlani vs. Union of India and others reported in (2006) 5 SCC 88 wherein this Court held:*
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> *"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot*

enquire into the allegations with which the delinquent officer had not been charged with."

21. Reliance was placed on behalf of the petitioner on the verdict of this Court in ***Delhi Transport Corporation v. Shri Krishan Pal*** **and** ***Shri Krishan Pal v. Delhi Transport Corporation*** in W.P.(C) Nos. 15838/2004 and 264/2010 decided on 1.7.2010 wherein it was observed to the effect that mere absenteeism is a misconduct under the Standing Orders of the Delhi Transport Corporation and under the Standing Orders, if an employee is prohibited from absenting from duty without first obtaining permission except in case of sudden illness and that in case of sudden illness an employee is required to send intimation to the office immediately and if the illness lasts or is expected to last for more than three days at a time, applications of leave are to be accompanied by the medical certificate and that habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days renders an employee liable to be treated as an absconder resulting in the termination of his services, and that it is only habitual negligence of duties and lack of interest in DTC's work which is made a

'misconduct' which "may" entail punishment of removal from service.

22. It has been observed vide paragraphs 11 to 13 in the said verdict to the effect:

> **"***11. Thus notwithstanding the absenteeism of the workman in the present case, DTC was required to furnish an opportunity to him to explain and which had admitted ly been done. However such opportunity is not to be an empty exercise of to be a formality. An opportunity of hearing would be meaningless and its purpose would be frustrated if the authority giving the hearing does not consider the representation of the notice or does not give any reason for agreeing or disagreeing with the notice. DTC has not carried out the said determination in the present case. The principle requiring reasons to be given in support of an order is a basic principle of natural justice and it must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. (See Maruti Udyog Ltd. v Oncome Tax Appellate Tribunal MANU /DE/1460/2000 AND Asstt. Commissioner v. Shukla & Brothers MANU/SC/0258/2010)*
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> *12. Though the workman was absent in the present case and admitted the unauthorized absence but had furnished explanation for the same. However, DTC did not go into the question of whether the said explanation of the workman was correct or not and if it was correct whether it still entailed the harsh punishment of removal from service. Neither the Standing Orders of DTC nor the judgment in Sardar Singh hold that in all cases of absenteeism, whatsoever may be the*

> *explanation, the order of termination or any other punishment shall follow. If the reasons for absenteeism are found to be genuine and sufficient and similarly if the reasons for failure to apply for leave in advance or contemporaneously are found to be genuine and satisfactory, certainly the punishment or harsh punishment of removal from service cannot be meted out.*
>
> *13. Neither the Inquiry Officer nor the Disciplinary Authority of DTC has in the present case gone into the question of the validity of the reason furnished by the workman i.e. of his illness. It is not the case of DTC that the medical certificate and fitness certificate furnished by the workman were false or that the workman was hale and hearty and was feigning illness. Rather the said inquiry was not conducted at all. The Inquiry Officer as well as DTC had proceeded on the premise that mere absence is a misconduct but which is not so. It is only such absence which amounts to negligence, which is a misconduct under the Standing Orders of DTC."*

and thus the Delhi Transport Corporation in the said case was directed to reinstate the workman and to pay him back wages @ 75% from the termination till the date of his reinstatement, apart from the interest being incurred in the event of default.

23. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in ***Neeta Kaplish v. Presiding Officer, Labour Court and Another*** in Civil Appeal No. 6079/1998 decided on 4.12.1998 to contend that it was the duty of the Labour Court to

itself decide the merits of charges against the workman on the evidence produced and not to base its verdict only on the result of the domestic enquiry as the reference involved a determination of the larger issue of discharge or dismissal and not merely whether a correct procedure has been followed by the management before passing the order of the dismissal.

24. It is further submitted, thus, on behalf of the petitioner that it was open to the Labour Court to go through the merits of the charge if it came to the conclusion that the domestic enquiry has not been properly held and was violative of the principles of natural justice and an opportunity of personal hearing ought to have been given to the workman.

25. Reliance was also placed on behalf of the petitioner on the verdict of the High Court of Gujarat in ***Gujarat State Road Transport Corporation v. Bhailalbhali R. Patel*** decided on 16.04.2002 to contend that the consideration of the past record of the workman by the Labour Court was unjustified and if the Labour Court was satisfied that the order of dismissal was not justified, reliance on the past record of service was inappropriate.

26. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in ***Shri Bhagwan Lal Arya v. Commissioner of Police Delhi and Ors***., Civil Appeal No.1625/2004 decided on 16.3.2004 to contend that the punishment of termination of service on the ground of absence for two months and eight days where leave without pay was sanctioned was held to be totally disproportionate to prove the misconduct of the workman as the absence of that workman on medical grounds without an application for leave as well as sanction of leave could not be termed as misconduct or rendering him unfit for service and as he was not habitual in taking leave and he was on leave under compulsion because of his grave condition of health.

27. Reference was also placed on behalf of the petitioner on observation in paragraph 13 of the said verdict to the effect:

> **"***13. In B.C.Chaturvedi V. Uniion of India[AIR 1996 SC 484 , (three Judges Bench)] the question posed for consideration was as to whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation. In this case, at para 18, this Court has observed as under:-*

> *"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact- finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."*

28. On behalf of the respondent, learned counsel for the respondent, whilst placing reliance on the verdict of the Supreme Court in ***International Airport Authority of India v. International Air Cargo workers' Union*** 2009 AIR (SC) 3063, *inter alia* contended to submit that it would not be appropriate for this Court to interfere with the award of the Industrial Tribunal/Labour Court as this Court cannot sit in appeal to re-appreciate the evidence and that the findings of the Tribunal ought not to be interfered with in writ

jurisdiction merely on the premise that the material on which the tribunal had acted was insufficient or not credible and it was thus submitted on behalf of the petitioner that there is no infirmity whatsoever in the impugned award.

29. Reliance was also placed on behalf of the petitioner on the verdict of the Division Bench of this Court in ***Delhi Transport Corporation v. Rajender Kumar***, 2016 (234) DLT 9, a decision dated **30.9.2016** on the facts stated to be in *pari materia* with the facts of the instant case where the workman had availed of 118 days' leave without pay which had been sanctioned on the basis of the verdict of the Supreme Court in ***Delhi Transport Corporation v. Sardar Singh, (2004) 7 SCC 574*** and the verdict of this Court in ***Delhi Transport Corporation v. Nain Singh*** in W.P.(C) Nos. 3798/2011 decided on 20.10.2015 and the verdict of the three-judge Bench of the Supreme Court in the ***State of Madhya Pradesh v. Hari Harihar Gopal***, (1996) 3 SLR 274 to contend an order passed for treating absence as leave without pay after passing an order of termination is only for the purposes of maintaining the correct record of service and the same does not detract from the right of the

employer in passing the order of termination/removal, if the same is warranted especially in terms of the Standing Orders of the organization which in the case of ***Delhi Transport Corporation v. Sardar Singh*** was of the respondent corporation itself. Likewise, reliance was placed on behalf of the petitioner on the specific observations on the verdict of the Supreme Court in ***Delhi Transport Corporation v. Sardar Singh (supra)*** with specific reference to paragraphs 8 to 14 to the effect:

> *"**8:** In all these cases almost the whole period of absence was without sanctioned leave. Mere making of an application after or even before absence from work does not in any way assist the concerned employee. The requirement is obtaining leave in advance. In all these cases the absence was without obtaining leave in advance. The relevant paras of the Standing Order read as follows:*
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> "4. Absence without permission:-
>
> (i) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the competent officer except in the case of sudden illness. In the case 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, applications for leave should be duly accompanied by a medical certificate, from

a registered medical practitioner or the Medical Officer of the D.T.S. In no case shall an employee leave station without prior permission.

(ii) 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.

19. General Provisions: - Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as mis-conduct:

(a).....

(h) Habitual negligence of duties and lack of interest in the Authority's work."

9: Clause 15 of the Regulations so far as relevant reads as follows:

"2. Discipline:- The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority :-

(i).....

(vi) Removal from the service of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority. ....."

10: *When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order as quoted above relates to habitual negligence of duties and lack of interest in the Authority's work. When an employee absents himself from duty without sanctioned leave the Authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.*

11: *Great emphasis was laid by learned counsel for the respondent- employee on the absence being treated as leave without pay. As was observed by this Court in State of Madhya Pradesh v. Harihar Gopal 1969 (3) SLR 274 by a three-judge Bench of this Court, even when an order is passed for treating absence as leave without pay after passing an order of termination that is for*

the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the Governing Standing Orders unauthorized leave can be treated as misconduct.

11: *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.*

12: *The Tribunal proceeded in all cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave.*

13: *That being the factual position, the Tribunal was not justified in refusing to accord approval to the order of dismissal/removal as passed by the employer. The learned Single Judge was justified in holding that the employer was justified in passing order of*

> *termination/removal. The Division Bench unfortunately did not keep these aspects in view and reversed the view of learned Single Judge."*

wherein the Supreme Court had remanded the matters back to the Tribunal to consider the matter afresh after granting due opportunity to the parties.

30. On a consideration of the oral submissions made on behalf of the either side and the rival written submissions of the petitioner and the catena of verdicts relied upon on behalf of either side, it is essential to observe as already observed elsewhere herein above that the findings in OP No.142/92 of the Presiding Officer: Industrial Tribunal, Karkardooma Courts dated 10.1.2005 whereby approval was accorded by the Industrial Tribunal Act to the respondent/management's application under Section 33(2)(b) of the Industrial Disputes Act, 1947 for action of removal of the petitioner herein, from its services on account of unauthorized absence of the petitioner herein for 174 days for the period from 1.1.1991 to 31.8.1991 which was the period under consideration even in the proceedings in LIR No.6820/16 considered vide the impugned award dated 4.11.2016 have thus attained finality, wherein the Presiding

Officer Industrial Tribunal, had categorically observed to the effect that the petitioner herein who contended that he remained absent on the genuine and *bona fide* grounds of illness of his father and kidney operation of his father and the demise of his elder brother after a long illness indicated that the petitioner had submitted a leave application only for five days and did not submit any application for the remaining days of his absence, i.e., there was no application for leave for 169 days of absence and even the application given for leave for five days had been rejected as the same was a delayed one; as it was held by the Presiding Officer Industrial Tribunal that the unauthorized absence of the petitioner herein, i.e., the workman for 174 days for the period 1.1.91 to 31.8.91 showed his lack of interest in the work with the management, in as much as the said order of the Industrial Tribunal dated 10.1.2005 in OP No.142/92 has not been assailed by the petitioner.

31. The verdict of the Supreme Court in ***Delhi Transport Corporation v. Sardar Singh*** (supra) makes it amply clear that even if the absence of the petitioner had been treated as leave without pay, the same would not detract from the order passed by the management

for treating the workman as 'on leave without pay' after passing an order of termination for maintaining the correct record of the service. The standing orders of the DTC which were applicable to the respondent make it amply clear through Standing Order '4' thereafter that if a person has taken ill, he is expected to send intimation to the office immediately and to submit a leave application which is to be duly supported by a medical certificate of a duly registered medical practitioner, if the illness lasts or is expected to last for more than three days.

32. Reliance has been placed by the respondent herein thus on the standing orders of the DTC which are to the effect:

> **"**4. Absence without permission:-
>
> (ii) An employee shall not absent himself from his duties without having first obtained the permission from the Authority or the competent officer except in the case of sudden illness. In the case 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, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of the D.T.S. In no case shall an employee leave station without prior permission.

> (ii) 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.
>
> 19. General Provisions: - Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as mis-conduct:
>
> (a).....
>
> (h) Habitual negligence of duties and lack of interest in the Authority's work."

33. It is essential to observe that it has categorically been laid by the Supreme Court in paragraph 11 in ***DTC vs. Sardar Singh (Supra)*** in the said case that in view of the Governing Standing Orders of the DTC, unauthorized leave can be treated as a misconduct and that habitual absence is lack of interest in the work.

34. In the instant case, as held vide order dated 10.1.2005 in OP No.142/92, the petitioner herein had submitted a leave application for only five days and had not submitted any application for the remaining absence and even the application seeking leave for five days had been received late and had thus been rejected and thereafter he failed to show his submission of leave application for the latter

period of absence and that his leaves had thus not been duly sanctioned. As laid down in the State of ***Madhya Pradesh v. Hari Harigopal*** by the Supreme Court, a mere order for regularization of the absence does suffice to detract from the authority of a termination order passed when an employee had been proved to have failed to report for duty and remained absent without obtaining leave in advance.

35. The verdict of the Division Bench of this Court in ***Delhi Transport Corporation v. Rajender Kumar***; 2016 (234) DLT 9 is on facts *pari materia* to the facts of the instant case where the workman had been on leave for 118 days unauthorizedly and the said leave had been sanctioned as leave without pay/regularized by the DTC, in relation to which the workman admitted that he had not sought leave for a period of 37 days. It was laid down vide paragraph 9 of the said verdict that when an employee absents himself from duty, even without sanction of leave for a very long period, it *prima facie* shows lack of interest in work. In the present case, the petitioner has been unauthorizedly absent for 174 days of which he sought leave only for five days, which too was a much belated application, which was

rejected by the employer.

36. The catena of verdicts relied upon on behalf of the respondent Delhi Transport Corporation and the Standing Orders of the respondent Corporation, in view of the verdict of the Supreme Court of India in ***Delhi Transport corporation v. Sardar Singh*** (supra) and the verdict of the Division bench of this Court in ***Delhi Transport Corporation v. Rajender Kumar*** (supra) bring forth expressly that unauthorized absence from work amounts to misconduct for which a penalty of removal can be imposed and that the said unauthorized absence if it was because of a sudden illness needed to be informed to the employer and if the sudden illness lasted for more than three days, the applications were required to be duly accompanied with the medical certificate from a registered medical Practitioner of the Corporation. The available record and the submissions made before the Labour Court indicate that no such documents were produced by the petitioner and rather in his testimony on oath on 30.9.2016 as indicated in LIR No.6820/16, the proceedings in which the impugned award was made placed at Annexures P-16 filed with the petition, **the petitioner as WW2 states in his cross-examination that during**

the period of 174 days from 1.1.1991 to 31.8.1991 he was ill and was suffering from typhoid which deteriorated and hence he was unable to work and sent leave applications and medical documents for that period but that he had no knowledge whether his leave application for five days was allowed or rejected and that he did not have medical papers regarding his illness and he had not retained any copy of the application and that he could not produce any copy of the application sent by him. Significantly in the proceedings in OP No.142/92, the petitioner herein, as respondent thereto in the application filed by the Delhi Transport Corporation seeking approval of his action for removal under Section 33(2)(b) of the Industrial Disputes Act, 1947 had submitted that he had remained absent during this period from 1.1.1991 to 31.8.1991 because of the sickness of his father who was operated upon his kidney and his elder brother also expired during the said period, whereas in the proceedings in LIR No.6820/16 resulting into the impugned award dated 4.11.2016, the workman had claimed that he had sent applications for leave for the period from January, 1991 to August, 1991 on genuine grounds which the

management had not considered.

37. On the other hand, in the present petition vide ground 'C', it was sought to be contended by the petitioner that he was suffering from Typhoid and incapable to attend the duties. The record thus indicates that the petitioner has been taking varying stands for his absenting unauthorizedly from duty.

38. Even the plea raised on behalf of the petitioner that leave had been sanctioned to him does not suffice to aid the petitioner in any manner in view of the verdict in ***State of Madhya Pradesh v. Hari Harigopal*** (supra) which categorically lays down that mere regularization of absence from duty does not detract from issuance of order for removal from service where an employee who has been charged for failure to report for duty had remained absent without obtaining leave in advance.

39. Reliance placed by the petitioner on the verdicts relied upon is wholly misplaced as they are in the facts and circumstances of the said cases, which are wholly distinguishable from the facts of the instant case in as much as in ***Krushnakant B. Parmar v. Union of India & Another***, (supra) the workman therein had been able to

explain his absence and likewise in ***DTC v. Shri Krishan Pal***, (supra) for the number of days that the workman had been on leave he had submitted a medical certificate to bring forth his ailment which is not so in the case of the present petitioner.

40. The reliance placed by the petitioner on the verdicts of the Supreme Court in ***Delhi Transport Corporation v. Sardar Singh*** ***State of Madhya Pradesh v. Hari Harihar Gopal*** and on the verdict of this Court in ***Delhi Transport Corporation v. Nain Singh*** in W.P(C) No.3798/2011 decided on 20.10.2015, the facts of which are in fact *pari materia* to the instant case is wholly apt as they and the judgment of the Division Bench of this Court in ***DTC v. Rajinder Kumar*** (Supra) categorically lay down that where the workman has been unauthorizedly absent from work, merely because he has subsequently sent applications for leave as merely because the period of unauthorized leave has been treated as 'leave without pay', the same does not detract from the employer's right of removal of the workman from the service of the employer, where the Governing Standing Orders of the employer Corporation treat unauthorized leave as misconduct, permitting removal from service.

41. It is thus held that there is no infirmity whatsoever in the impugned award dated 4.11.2016 in LIR No.6820/2016 (Old No. 24/08) of the Presiding Officer, Labour Court XVII, Karkardooma Courts Complex, New Delhi, nor is there any ground to re-appreciate the findings arrived at vide the impugned award.

42. The petition is thus dismissed.

ANU MALHOTRA, J

SEPTEMBER 18, 2017/sv