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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 02nd September, 2026*

CNR No. DLHC010232972003

+ W.P.(C) 3374/2003

D.T.C.

.....Petitioner

Through: Ms. Manisha Tyagi, Adv.

versus

SHYAM SUNDER

.....Respondent

Through: Mr. Jatin Rajput, Mr. Amit Kumar Raghav, Mr. Sandeep Kumar, Mr. Rajendra Pratap Singh, Mr. Varun Panwar, Mr. Rajesh Kumar Jha, Ms. Iqra Malik and Mr. Gaurav Tripathi, Advs.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed under Article 226 of the Constitution of India assailing order dated 22.07.2002 (hereinafter, impugned award) passed by the learned Industrial Tribunal whereby the application filed by the petitioner under Section 33(2)(b) of the Industrial Disputes Act, 1947 was dismissed.

2. Briefly stated, the respondent workman was working as a driver with the petitioner department. The respondent workman was issued a charge sheet dated 18.06.1992 as he had allegedly remained absent



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without permission from 07.05.1992 till the date of the charge sheet. The respondent workman filed his reply dated 09.07.1992, wherein he stated that he could not attend his duties from time to time due to his wife's illness and had been sending his leave applications to the petitioner department through a colleague. He further stated that his wife's treatment was ongoing and requested for leave upto 08.07.1992. The enquiry officer in view of the said reply noted that the respondent workman admitted the charges against him and hence there was no need for further evidence and the enquiry was concluded.

3. The disciplinary authority, keeping in view the findings of the enquiry officer decided to remove the respondent workman from services and issued a show cause notice dated 30.07.1992 providing an opportunity to the respondent workman to file a written representation against the proposed action within 10 days of receipt of the said notice.

4. The respondent workman did not reply to the said notice, however, filed a civil suit challenging the authority and locus standi of the disciplinary authority to issue the show cause notice dated 30.07.1992. The said suit, however, came to be dismissed on 27.02.1993. The respondent workman was removed from services *vide* order dated 17.05.1993.

5. Thereafter, the petitioner department filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval of the termination of the respondent workman on the ground of misconduct. The learned Industrial Tribunal framed a preliminary issue as under:

“Whether the applicant held a legal and valid enquiry against the respondent according to principles of natural justice”



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6. The learned Tribunal *vide* order dated 27.04.2001 decided the preliminary issue against the petitioner department, noting that the enquiry against the respondent workman stood vitiated since the procedure adopted by the enquiry officer was faulty and the enquiry report was perverse.

7. The petitioner department thereafter requested that it may be given an opportunity to establish misconduct on the part of the respondent workman before the learned Tribunal, the said request was allowed and the following issues were framed:

- “1. Whether the respondent committed the misconduct as alleged against him in the petition filed u/s 33(2) (b) of I.D. Act? OPM.*
- 2. Whether the full one month’s wage remitted to the respondent at the time of his removal from service?*
- 3. Relief.”*

8. The learned Tribunal dismissed the application of the petitioner department under Section 33 (2) (b) of the I.D. Act *vide* the impugned award noting that the petitioner department failed to lead any evidence to prove the misconduct of the respondent.

9. Aggrieved thereby, the present petition has been filed.

10. This Court allowed the application filed by the respondent workman under Section 17B of the ID Act *vide* order dated 13.01.2010, however, the said order was recalled by this Court *vide* order dated 21.01.2013 noting that the workman had already attained the age of super annuation on 30.04.2003, before the said application had been filed.

11. The learned counsel for the petitioner submits that the learned Tribunal has erred in dismissing the approval application filed by the



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petitioner department.

12. She submits that the workman had admittedly remained absent from duty from 07.05.1992 till 18.06.1992, when the charge sheet was issued to him. She submits that the past record of the workman also shows multiple adverse entries against him, proving that he was a habitual offender.

13. She submits that though the respondent workman in his reply stated that he sent leave applications through a co-worker, however, he failed to produce him before the enquiry officer or even provide his name or address.

14. She submits that the petitioner department followed all the principles of natural justice and thus, the learned Tribunal ought to have allowed their approval application.

15. *Per Contra*, the learned counsel for the respondent workman vehemently opposed the present petition.

16. He submits that the learned Tribunal *vide* order dated 27.04.2001 held that the enquiry against the respondent stood vitiated and accorded an opportunity to the petitioner department to lead their evidence to show misconduct of the respondent. He submits that the said order was never challenged by the petitioner department and they only produced one witness before the learned Tribunal, who, only proved that the respondent workman was paid one full month's wage at the time of removal from service.

17. I have heard the counsel for the parties and perused the record.

18. At the outset, it is necessary to note that the scope of interference under Articles 226 and 227 of the Constitution of India with an Award



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passed by the Industrial Tribunal is limited. Interference is warranted only where the Award suffers from patent illegality, perversity or an error apparent on the face of the record. The present Petition does not invite this Court to re-appreciate the evidence or disturb findings of fact but is confined to examining the legality and propriety of the relief granted by the Industrial Tribunal.

19. Adverting to the merits of the present case, the learned Tribunal *vide* order dated 27.04.2001 held that the enquiry proceedings against the respondent workman stood vitiated and granted opportunity to the petitioner department to lead evidence before the learned Tribunal to prove misconduct against the respondent workman.

20. The said order was admittedly never challenged by the petitioner department. Even otherwise, a perusal of the record clearly shows that the respondent workman had though admitted remaining absent from his duties, he had also furnished an explanation of his wife suffering from illness, due to which he could not attend his duties. Further, the respondent workman had also stated that he had sent leave applications to the petitioner department through a co-worker. In view of the said reply of the workman, the enquiry officer erroneously recorded that the workman had admitted the charges against him and no further evidence was required. Further, the learned Tribunal has also observed that the enquiry officer has relied on certain documents of the management without affording an opportunity to the workman to explain himself. In view of the same, the observations of the learned Tribunal in order dated 21.04.2001 cannot be faulted.

21. It is pertinent to note that the petitioner department, even after



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being afforded the opportunity to lead evidence before the learned Tribunal to prove the misconduct of the workman, failed to produce any evidence in that regard. Thus, in the opinion of this Court the learned Tribunal rightly held that the petitioner department failed to prove misconduct against the respondent workman and rightly dismissed the approval application filed by the petitioner department.

22. In view of the foregoing discussion, this Court is of the considered view that the present petition, having been filed under Article 226 of the Constitution of India, does not warrant interference with the impugned order passed by the learned Tribunal. The view taken by the learned Tribunal is a plausible view based on the material placed before it. No perversity, patent illegality, or jurisdictional error is discernible in the impugned order so as to warrant exercise of the extraordinary writ jurisdiction of this Court.

23. Accordingly, the present petition is dismissed.

24. Pending application(s), if any, also stand disposed.

AMIT MAHAJAN, J

SEPTEMBER 2, 2026

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