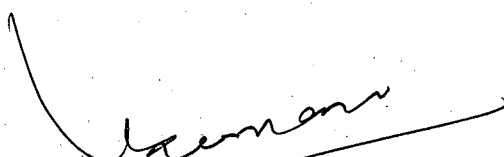


Sr. No.	Date	Orders
		<p>%13.12.2004</p> <p>Present: Mr.M. Taiyab Khan, Adv., for the petitioner.</p> <p><u>+W.P.(C).No.2372/2003</u></p> <p>*</p> <p>This case has been called out twice but nobody appears on behalf of the workman. Even on the last date of hearing, nobody appeared on behalf of the respondent/workman. Thus, there is no option before the court except to hear this matter <i>ex parte</i> and proceed with the matter in accordance with law.</p> <p>Challenge in this petition under Article 226 of the Constitution of India is to the order dated 12.12.2002 passed by the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi, vide which he rejected the application of the management under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and declined its approval.</p> <p>The workman who was working as a driver with the respondent/Corporation had unauthorisedly absented himself during the period 1.6.1992 to 14.7.1992. This was</p>

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Sr. No.	Date	Orders
		<p>treated as misconduct by the Corporation under Para 19 (h) and (m) of the Standing Orders governing the conduct of DTC employees. After conducting a domestic enquiry, the disciplinary authority removed the workman from service vide order dated 17.5.1996. An application was filed under Section 33 (2) (b) of the Industrial Disputes Act, 1947 before the Industrial Tribunal for grant of its approval, which as already noticed above, was declined vide order dated 12.12.2002.</p> <p>Vide order dated 5.3.1999, the Tribunal held that the enquiry conducted by the Corporation was not fair and proper and finally declined its approval. At the very outset, it may be useful to note the findings recorded by the Industrial Tribunal while rejecting the application as well as deciding the other issue against the Corporation. The recorded findings read as under:-</p> <p>“...He further admitted that respondent was not informed that his leave application had been rejected. He admitted that leave application of respondent dated 15.7.92 was rejected by the authority. I have gone through the document Ex.AW1/1 in which the period of absence of respondent i.e. From</p>

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		<p>1.6.92 to 14.7.92 was treated as leave without pay. The admitted position is that availing of leave without pay is not a misconduct as per its own order of DTC dated 14.12.88. Consequently, it is held that applicant has failed to prove the alleged misconduct against the respondent. Consequently, the issue is decided against the applicant."</p> <p>The above finding and the reasoning given in support thereof is in apparent conflict with the judgment of the Supreme Court in the case of <u>Delhi Transport Corporation vs. Sardar Singh, JT 2004 (6) SC 342</u>. The mere fact that for the purpose of completion of service record, it was recorded by the Disciplinary Authority that the petitioner was treated to be on 'leave without pay' would condone the misconduct, if otherwise proved on the part of the workman, is not sustainable.</p> <p>For the reasons afore-recorded and the law enunciated by the Supreme Court in <u>Sardar Singh's</u> case (supra), this Court has no option, but to set aside the order dated 12.12.2002 and remand the matter to the Industrial</p>			
		<p><u>W.P.(C) No. 2372/2003</u></p>			
		<p><u>Page 3 of 4</u></p>			

Date	Orders
	<p data-bbox="314 280 1406 772">Tribunal to be processed in accordance with law. Accordingly, the writ petition is allowed and the order dated 12.12.2002 is set aside. The matter is remanded back to the Labour Court which shall proceed with the matter in accordance with law, after granting opportunities to the parties.</p> <p data-bbox="314 817 1406 952">The writ petition is accordingly disposed of, while leaving the parties to bear their own costs.</p> <p data-bbox="314 996 1406 1131">Parties are directed to appear before the Industrial Tribunal on 18.1.2005.</p> <div data-bbox="314 1265 672 1355"><p>December 13, 2004</p><p>sk</p></div> <div data-bbox="907 1108 1406 1332"><p>Swatanter Kumar, J.</p></div>