

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

+ W.P.(C) 8439/2003

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D.T.C. .... Petitioner  
Through Mr. J.N. Aggarwal, Adv.

versus

BIR SAIN SHRIDHAR & ANR. .... Respondent  
Through Ms. Rasmeet K. Charya, Adv.

AND

+ W.P.(C) 19706/2004

D.T.C. .... Petitioner  
Through Mr. J.N. Aggarwal, Adv.

versus

BIR SAIN SHRIDHAR & ANR. .... Respondent  
Through Ms. Rasmeet K. Charya, Adv.

**CORAM:**  
**HON'BLE MS. JUSTICE GITA MITTAL**

**ORDER**

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**29.03.2006**

1. The DTC has filed these two writ petitions. The first being Writ Petition (C) No. 8439/2003 challenging the order dated 7<sup>th</sup> October, 2002 whereby the Industrial Tribunal refused to accord approval to the application filed by DTC under Section 33 (2) (b) of the Industrial Disputes Act, 1947. By way of second writ petition being Writ Petition (C) No. 19706/2004, the DTC has assailed the award dated 23<sup>rd</sup> August, 2002 whereby

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reference at the instance of the workman challenging the termination of his services has been answered in favour of the workman. 14

2. There is no dispute to the factual matrix of the instant case and to the extent necessary, the facts shall be noticed herein. The workman was appointed as a chargeman in June, 1976 which post was re-designated as assistant foreman and with effect from 26<sup>th</sup> February, 1985, the workman was promoted as a foreman. On the 9<sup>th</sup> of December, 1985, according to the DTC, the Depot Manager along with their other officials including one Shri Silak Ram and other Shri Shyam Singh had conducted a sight inspection of the Bawana Depot. The respondent/workman on this date was performing his duties. It was alleged by DTC that the workman while performing duty as a night shift incharge in Bawana Depot workshop, had permitted one training supervisor to sleep on the chair and two workmen-employees to sit idle in his office. A charge sheet dated 8<sup>th</sup> January, 1986 was issued to the workman and a disciplinary enquiry was also conducted by the DTC and thereafter it was proposed to impose punishment on the workman. Show cause notice dated 25<sup>th</sup> April, 1986 was issued to the workman to show cause as to why he should not be removed from the service of the DTC.

3. It appears that the workman challenged this action by filing a suit against the said show cause notice and obtained a stay from the Civil Court on 8<sup>th</sup> May, 1986. The DTC passed an order dated 9<sup>th</sup> March, 1994 terminating the services of the workman and also filed an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 seeking approval of the disciplinary action and the order passed by the DTC against the workman. This application of the DTC was registered as O.P. No. 24/1994. By an order dated 24<sup>th</sup> February, 1999, the Industrial Tribunal arrived at a conclusion that the workman was not permitted assistance of a co-worker and hence the enquiry was conducted in violation of

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principles of natural justice and consequently answered the preliminary issue with regard to the validity of the enquiry against the DTC.

4. The application of the DTC under Section 33(2) of the Industrial Disputes Act, 1947 was finally declined by an order passed on 7<sup>th</sup> October, 2002 which has been assailed by the DTC by way of Writ Petition (C) NO. 8439/2003.

5. It appears that the workman had also complained against the termination of his services before the Labour Authorities. By an order dated 30<sup>th</sup> August, 1996, the competent Government passed an order (under Section 10(1) (c) read with Section 12(5) of the Industrial Disputes Act, 1947 for referring the following dispute for adjudication to the Labour Court :-

“Whether the removal of Sh. B.S. Sridhar from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

6. Learned counsel for the petitioner submits that DTC had terminated the services of the workman in accordance with law and principles of natural justice after conducting an enquiry. The preliminary issue with regard to the legality and validity of the enquiry was also framed in these proceedings which was answered against the DTC by an order dated 26<sup>th</sup> July, 2000. The DTC sought opportunity to prove the allegation of misconduct against the workman. It examined Shri Shyam Singh in support of its case. The evidence of the witness was led by filing his deposition by way of affidavit. In the affidavit which was filed by the witnesses, he had merely reproduced the contents of the charge-sheet. However, the truth came up in cross-examination of the witnesses.

7. In his cross examination, Shri Shyam Singh, clearly stated that at the time of inspection on the night of 9<sup>th</sup> December, 1985, the workman Shri B.S. Sridhar was busy in his work in the work shop. While the other employees are concerned, the witness

stated that their work having been finished, the respondent had sent them for taking tea.

So far as the witness Shri Silak Ram is concerned, though he was not cross-examined as a witness, however, the submission in his cross examination was proved as evidence in O.P. No. 24/1994 before the Industrial Tribunal by the workman.

8. It would be necessary to notice the deposition of these witnesses in the O.P. No. 24/1994. In his cross-examination dated 24<sup>th</sup> November, 1999, Shri Silak Ram had made a statement as AW-2. It is stated in his evidence that when the inspection was conducted, the respondent was found busy in his job and that after leaving the place, the Depot Manager told him to prepare the report as per the dictates. This witness stated that he had prepared a report against the respondent under the pressure of the Depot Manager which was taken away by the Depot Manager.

Similarly Shri Shyam Singh had been tendered for cross-examination in respect of the affidavit which he had filed as AW-3 wherein he had also given a statement which demolishes the case of the petitioner and was identical to the statement given before the Industrial Tribunal.

9. In this background, it is evident that the evidence which was laid by the DTC before both the Labour Court as well as Industrial Tribunal against the workman was in favour of the workman and was totally contrary to the charge which was levelled against the workman. The Labour Court and the Industrial Tribunal have arrived at a conclusion that the DTC had failed to prove the charges against the workman and that the allegation of misconduct was not established by any cogent evidence. In this background, the termination of services of the workman was held to be illegal in the award dated 23<sup>rd</sup> August, 2002 and the application filed by DTC under Section 33 (2) (b) of the Industrial Disputes Act, 1947 was also dismissed by the order dated 7<sup>th</sup> October, 2002.

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10. Learned counsel for the petitioner has not been able to point out any material which would enable this court to arrive at a finding that the award dated 7<sup>th</sup> October, 2002 is perverse or contrary to evidence which was raised before the industrial adjudicator. The findings of fact have been returned after a detailed consideration of the evidence led by the DTC as well as of the applicable law on the issues raised.

11. It is well settled that the scope of interference in industrial adjudication which has culminated in the passing of the award in favour of the workman and rejection of application filed under Section 33 (2) (b) of the Industrial Disputes Act, 1947 is restricted. The award and the order of the Labour Court and the Industrial Tribunal, are based on evidence which were produced before them by the DTC itself and the evidence of its witnesses, who were actually eye witnesses to what transpired on the night of 9-10<sup>th</sup> December, 1985.

12. The present case is a prime example of a case where the witnesses of the DTC has deposed against it and had completely demolished the charges which were levelled against the workman.

13. I find no merit in these writ petitions which have be rejected.

14. In view of the award in favour of the workman, the workman would be entitled to reinstatement immediately thereupon. Accordingly, the DTC is directed to pass appropriate orders of reinstatement into service of the workman with continuity of service and full back wages within a period of six weeks from today. The DTC shall effect computation of wages in terms of the award after adjusting the amounts, if any, paid to the workman since the passing of the award. DTC shall make payment of arrears, if any, to the workman within a period of four weeks thereafter. The petitioner shall communicate, both the order of reinstatement into service of the workman as well as

computation of the amount which according to the DTC was or is payable to the  
workman in terms of the award dated 23<sup>rd</sup> August, 2002.

15. These writ petitions shall be dismissed with costs.

Dasti to both the parties.

**MARCH 29, 2006**

**SD**

  
**GITA MITTAL, J**