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

% ***Date of Decision: July 13th, 2026***

\+ **W.P.(C) 8886/2008**

NARENDER SINGH .....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Bhumica Kundra, Ms. Kritika Matta, Mr. Pradeep Kumar, Ms. Tanya Rose, Mr. Shubham Bahl, Mr. Nikhil Pawar, Mr. Lovekesh Chauhan, Mr. Manas Verma, Mr. Shakib Malik and Ms. Anjali Bansal, Advs.

versus

D.T.C. .....Respondent

Through: Ms. Manisha Tyagi, Adv.

\+ **W.P.(C) 8737/2005**

NARENDER SINGH .....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Bhumica Kundra, Ms. Kritika Matta, Mr. Pradeep Kumar, Ms. Tanya Rose, Mr. Shubham Bahl, Mr. Nikhil Pawar, Mr. Lovekesh Chauhan, Mr. Manas Verma, Mr. Shakib Malik and Ms. Anjali Bansal, Advs.

versus

D.T.C .....Respondent

Through: Ms. Manisha Tyagi, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. Through the present writ petitions, the petitioner has challenged the following orders:

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1.1. Order dated 25.02.2005 (hereafter '**impugned order**') passed by the learned Presiding Officer, Industrial Tribunal – II, Karkardooma Courts, Delhi in O.P. No. 119/1991 whereby the approval application filed by the respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval of its action to remove the petitioner from service was allowed.

1.2. Award dated 25.07.2007 (hereafter '**impugned award**') passed by the learned Presiding Officer, Labour Court No. VII, Delhi in I.D. No. 105/2000 whereby the industrial dispute raised by the petitioner against his removal from service was dismissed and the issue was decided in favour of the respondent.

2. Succinctly stated, the material facts germane to the adjudication of the present petition are as follows:

2.1. The petitioner was appointed as conductor with the respondent department on 19.11.1982 and was lastly posted at Vasant Vihar Depot. For the period between 01.01.1989 to 31.12.1989, the petitioner absented himself from work for a period of 119 days in different stretches. For the same, *vide* chargesheet dated 27.06.1990, the petitioner was charged for availing 119 days leave without pay unauthorisedly during the period between 01.01.1989 to 31.12.1989. The petitioner submitted his reply to the same.

2.2. Thereafter, a departmental enquiry was conducted and the enquiry officer found that the charges against the petitioner were proved. Thereafter, show cause notice was issued to the petitioner on 10.09.1990 to which the petitioner submitted his reply on 01.08.1991. Thereafter, upon a consideration of a totality of circumstances, the

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petitioner was found guilty of misconduct for remaining unauthorisedly absent for a period of 119 days and was removed from service *vide* letter dated 13.12.1991.

2.3. The management filed an application under Section 33(2)(b) of the ID Act and the approval application was allowed by the learned Industrial Tribunal *vide* impugned order dated 25.02.2005. It was noted that the petitioner committed misconduct by remaining absent for a period of 119 days between 01.01.1989 to 31.12.1989.

2.4. The petitioner thereafter also challenged his removal from service and the industrial dispute was decided against the petitioner *vide* the impugned award. The learned Labour Court noted that the respondent was running a business of transport and unauthorised absence for a prolonged period not only causes disruption in the work of the management but also inconvenience to the general public. It was consequently found that the act of the petitioner in remaining unauthorisedly absent for such long periods amounted to serious misconduct. The learned Labour Court also found the punishment imposed upon the petitioner, being removal from service, to be proportionate. Hence the present petitions have been preferred by the petitioner.

3. The learned counsel for the petitioner submits that the impugned order and impugned award are perverse and are liable to be set aside. He submits that no misconduct has been committed by the petitioner and consequently the petitioner's removal from service *vide* order dated 13.12.1991 is unjustified.

4. He submits that while the petitioner availed a leave of 119 days

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Signing Date:16.07.2026 16:32:50

during the period between 01.01.1989 to 31.12.1989, the same was availed because the petitioner was suffering from acute knee pain and severe illness. He consequently submits that the petitioner's absence from duty was not wilful and were for circumstances beyond the control of the petitioner. He submits that the petitioner also duly submitted leave applications alongwith medical certificates.

5. He submits that only wilful unauthorised absence from duty can tantamount to misconduct and mere absence from duty does not amount to misconduct. He submits that the onus of proving that the petitioner's absence from duty was wilful lay upon the respondent and submits that respondent has failed to prove the same. He submits that the medical certificates as submitted by the petitioner were never disputed by the respondent.

6. He relies upon the testimony of one Smt. Rajbala before the learned Labour Court in the proceedings under Section 33(2)(b) of the ID Act and submits that Smt. Rajbala herself admitted that out of 115 days, 84 days were on medical grounds and that 12 medical certificates were submitted by the petitioner.

7. He further relies upon the testimony of one Shri Sharat Kumar, who appeared as a management witness before the learned Labour court in the proceedings under Section 10 of the ID Act, and submits that the said witness admitted that no acknowledgement was given to the petitioner/workman in token of receipt of leave application.

8. He submits that the inquiry conducted by the respondent was in violation of the principles of natural justice inasmuch as no oral evidence was led by the respondent before the inquiry officer. He

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Signing Date:16.07.2026 16:32:50

consequently submits that the inquiry conducted by the inquiry officer was illegal and contrary to law.

9. *Alternatively*, the learned counsel for the petitioner submits that the punishment of removal from service is disproportionate to the gravity of the alleged misconduct. He submits that prior to his removal from service on 13.12.1991, the petitioner worked with the respondent as a permanent conductor for 9 years.

10. *Per contra*, the learned counsel for the respondent submits that the impugned order and impugned award suffer from no infirmity and the same do not warrant any interference. She submits that the petitioner was a habitual absentee and he had availed 106 days of leave without pay in the year 1988 as well, due to which, he was previously punished with stoppage of one increment without cumulative effect. She submits that due procedure was followed in the inquiry proceedings and the petitioner failed to ascertain whether he had been granted leave pursuant to his applications. She consequently submits that the present petitions are liable to be dismissed.

11. I have heard the counsel and perused the record.

12. At the outset, it is relevant to note that the jurisdiction to issue a writ of certiorari is limited and the Court is not entitled to act as an Appellate Court. This Court cannot review or reweigh the evidence and jurisdiction to issue a writ of certiorari is essentially a supervisory jurisdiction to ensure that the inferior Tribunals have acted within their jurisdiction [Ref. ***Central Council for Research in Ayurvedic Sciences v. Bikartan Das :*** **(2023) 16 SCC 462**].

13. The sole charge levelled against the petitioner was that of

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Signing Date:16.07.2026 16:32:50

unauthorised absence of 119 days in different spells during the period between 01.01.1989 to 31.12.1989, which purportedly showed his negligence and lack of interest in work.

14. The petitioner has sought to justify his absence by contending that he was sick as he was suffering from acute knee pain. Reliance is placed on certain medical certificates. On the other hand, the respondent maintained that no applications were received in time, and some which were received were rejected.

15. Pertinently, the petitioner had also asserted that he had sent the leave applications through his colleague– Mahender Singh, however, the said person was never examined by the petitioner to buttress timely tendering of the applications for leave. Be that as it may, although the petitioner had also sought to assert before the learned Tribunal that his leaves were duly sanctioned, this claim was rightly rejected due to the petitioner's failure to adduce any supporting material in this respect. Even if rejection of the petitioner's applications was not communicated to him, the same does not further his case as an employee cannot simply *presume* that tendering of leave applications shall entitle him to grant of leave. Merely giving applications for leave is of no assistance unless the employer sanctions leave in pursuance of the same. Further, the nature of sickness claimed by the petitioner also does not justify his absence for such an extensive period of time. It is also imperative to note that the Management Witness Rajbala categorically deposed that only 84 days of leave were on medical grounds, and there is no cogent explanation for absence for the remaining days. In such circumstances, the view taken by the learned Tribunal is a plausible one which warrants

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no interference.

16. Though it is also argued on behalf of the petitioner that the enquiry was not conducted in a fair manner as he was not afforded a proper opportunity to defend himself, this Court finds the said assertion to be without any merit. The learned Labour Court appreciated the material on record and rightly found that the petitioner had failed to show as to how he had been prejudiced. The petitioner had himself admitted in cross-examination before the learned Labour Court that a copy of the chargesheet had been supplied to him and he had participated in the enquiry. He had also admitted that the record of the enquiry proceedings bore his signatures at certain marks. Even if there were certain irregularities in the enquiry proceedings, the same does not help the case of the petitioner as his misconduct was proved by his categorical admission that he had been absent for 119 days during the relevant period. While the petitioner stressed that his absence was on account of sickness, as discussed above, this Court is not persuaded by the said assertion, especially since 31 leaves were without medical and there was no application for four leaves.

17. Insofar as the issue of proportionality of penalty is concerned, though charge of misconduct is proved, this Court finds the penalty of removal from service to be harsh in the facts of the present case. Even though the respondent has stressed that the petitioner was penalised with stoppage of increment due to him availing 106 leaves without pay previously in the year 1988, considering that the petitioner's absence was not continuous but in sporadic stretches and that he rendered around a decade of service, this Court is of the opinion that the imposed

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penalty is shockingly disproportionate. However, as significant time has lapsed since the petitioner's removal from service, the relief of reinstatement cannot be granted at this juncture.

18. In view of the aforesaid discussion, this Court is of the opinion that interests of justice would be met if a one-time lump sum compensation of ₹4,00,000/- is awarded to the petitioner instead. Let the said amount be paid by the respondent to the petitioner within a period of three weeks.

19. The present petitions are disposed of in the aforesaid terms.

20. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

JULY 13, 2026
'KDK'

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