

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 101/2020

Date of Passing Award- 20.10.2022

Between:

Shri Sanjay Kumar,
S/o Shri Ram Mehar,
R/o House No. 895-C/31, Ward No.8,
Mehrauli, New Delhi-110030.

Through- The Secretary, Delhi Labour Union,
Agarwal Bhawan, G T Road, Tis Hazari, Delhi-110054.

Workman

Versus

The Chairman cum Managing Director,
Indian Railway Catering & Tourism Corporation,
Corporate Office:- B-148, 11th Floor, Statesman House,
Barakhamba Road, New Delhi-110001.

Management

Appearances:-

Shri N Bhusan
(A/R)

For the claimant

None for the management
(A/R)

For the Management

A W A R D

This is an application filed by the claimant invoking the provision of sec 2A of the ID Act 1947, wherein he has challenged the order of Termination of his service, describing the action of the respondent as illegal, arbitrary and harassing.

As stated in the claim petition, the claimant Sanjay kumar had joined the service of the respondent in September 2006 as an apprentice to discharge the duty of Food and Beverage Service Attendant. In April 2009, his service was regularized in the post of Food and Beverage Service Attendant/W-1. For his satisfactory

performance, in 2012, he was given promotion to the post of Food and Beverage Service Attendant/W-2 and working at IST/ITCTC/NRC. On 12.02.2015, he was orally informed by the supervisor Mr. Hitesh Sharma to report for duty at the cafeteria in the 5th floor of Ministry of Corporate Affairs, Shastri Bhawan, New Delhi. On the same day the claimant reported at his new place of duty and was assigned the duties to be performed. When he was discharging his duties in the cafeteria, on 16.06.2015, the then DGM, NRP called him to his office and asked how he is working in the cafeteria at Shastri Bhawan without any order of transfer. On hearing the explanation offered by the claimant with regard to the oral instruction of the supervisor, the DGM, NRP, on 23.06.2015 gave a written communication to the claimant to the effect that his place of duty is ISTM/IRCTC/NRC. This letter was received by the claimant on 27.06.2015 and immediately thereafter i.e on 29.06.2015, he reported for duty to one Mr. Jai Singh, supervisor of ISTM/IRCTC/NRC and worked there till 14.07.2015 as Food and Beverage Service Attendant, when the supervisor Mr. Jai Singh again verbally instructed him to join his duty in the base kitchen, New Delhi Railway Station. In view of his past experience, the workman asked for a written order of his relocation. Instead of giving any such written order, the supervisor Mr. Jai Singh took the claimant in his car to the base kitchen on 14.07.2015. There, instead of assigning duty, the workman was asked to proceed on leave for 8-9 days during which the written order of his transfer will be communicated to him. The workman being left with no other option, proceeded on leave as advised. But to his astonishment, no written order of transfer was communicated as assured by the supervisor Jai Singh. On 24.07.2015, he visited his earlier place of posting i.e ISTM/IRCTC/NRC and asked for his order of transfer to the base kitchen. He was not even allowed to mark his attendance there. He made communication by writing letters to the higher authorities apprising as how he has been kept out of performing his duties. But the said communication was never replied by the Management. Instead, to his utter surprise, on 24.08.2015, the workman was placed under suspension by a written order issued from the office of the IRCTC, base kitchen New Delhi. On 09.05.2016, the order of suspension was revoked and the workman was directed to report for duty immediately at the base kitchen, even though there was no written order of transfer to that place.

During the period of suspension the workman was served with a charge sheet dated 22.02.2016, alleging unauthorized absence. The workman had given a written reply dt16.04.2016, denying the charge. Though he had gone to the office of ISTM/IRCTC/NRC, again and again with the intension of joining duty, the authorities did not allow him. He was informed about appointment of Mr. Darshan Kumar as the inquiry officer of the domestic inquiry initiated against him. Though the workman was attending the inquiry on each date of the proceeding and requesting the inquiry officer to take note of the fact that he is not getting the subsistence allowance during the period of suspension, the same was never taken note of. He had last appeared before the inquiry officer on 18.10.2016 and there after the date of adjournment was never communicated to him. On the contrary, suddenly on 15.01.2017, he was informed about the closure of evidence and asked to submit the written submission if any. The workman wrote a letter requesting the communication to be provided in Hindi as he is not conversant with English. The request was not complied. Suddenly the work man received a communication dated 29.05.2019, according to which the charge against him was held proved and the penalty of dismissal from service was imposed on him. Before that final order the order of the inquiry officer was never served on him nor he was called upon to show cause against the order of the inquiry officer and the punishment proposed. Finding no other way, the workman has approached the labour commissioner for redressal of his grievance. Steps were taken by the conciliation officer for settlement of the dispute. But for the non co operative attitude of the Respondent no solution could be arrived and the failure report was communicated to the work man. Having no other remedy available, he approached this Tribunal for setting aside the order of dismissal on the ground that the inquiry was not fairly conducted and the punishment is an action of vindication, though he is innocent.

Notice of the proceeding was served on the Respondent by post being sent by this Tribunal. But the Respondent did not appear to participate in the proceeding. Thus by order dated 3rd January 2022, fresh notice was issued to the respondent as well as the claimant since there were enblock adjournments on account of COVID guideline and suspension of physical functioning of the Tribunal. In response to the said notice which were served on both the parties, the workman appeared on 21st March 2022, but the respondent did not appear. Hence by order dated 21.03.2022, the

Respondent was proceeded ex parte and the matter was adjourned for work man evidence. On the next date the workman testified as WW1 and produced several documents, which were taken on record as ww1/1 to ww1/40. These documents are the legal demand notice sent to the management copy of the postal receipt showing dispatch of the same the copy of the claim filed before the Labour Commissioner the reply filed by the management to the said claim, his appointment letter, office order dated 22.1.2015 several correspondence made by the claimant to the management copy of the leave application seeking leave from 15.07.2015 etc. the claimant besides filing the documents in his oral statement has fully supported the stand taken in the claim petition.

On perusal of the oral statement and the document which has been marked as WW1/4 and the reply given by the management to the claim of the workman before the commissioner the admitted facts are that the workman had joined into the employment of the management in the year 2006 and on 29.04.2009 his service was regularized. On 13.07.2015 he was asked to work in the base kitchen at Railway Station New Delhi. Whereas the claimant states that after reporting at the base kitchen he was asked to go on leave, the management in his written reply before the labour commissioner had stated that the claimant voluntarily proceeded on leave and thereafter instead of joining in the base kitchen he went to the office of NRC Unit/ ISTM with his father on 14.08.2015 and created nuisance. He interfered in the smooth functioning of the office for which he was warned. He went on alleging that his transfer is legal and did not join duty at the base kitchen. For the unauthorized absence charge was framed and he was proceeded with. At the end of the inquiry he was found guilty and major punishment was imposed.

This statement made by the respondent before the labour commissioner was never recorded in this proceeding for the non appearance of the management. Thus, the evidence of the claimant with regard to the illegal termination has remained unchallenged and rebutted. On the basis of the unchallenged evidence adduced by the claimant this tribunal comes to a conclusion that the management IRCTC had imposed a major punishment on the claimant without conducting a proper domestic inquiry against him. As such the punishment so imposed is liable to be set aside as illegal and arbitrary. Hence, ordered.

ORDER

The claim be and the same is allowed. It is held that the management IRCTC illegally terminated the service of the claimant without holding a proper domestic inquiry and imposed a major penalty on him by dismissing him from service. Accordingly it is held that the claimant is entitled to the relief of reinstatement with back wages and continuity of service. Accordingly it is directed that the claimant shall report at the base kitchen of IRCTC New Delhi railway station within one month from the date of publication of award and the management shall allow him to join the duty. The management is further directed to pay 50% of the wage for the intervening period between the date of termination and reinstatement to the claimant and treat the said period as continuous service of the claimant and all other service benefits of the same period shall be granted to him. The accrued back wages shall be paid to the claimant within two months from the date of his joining on reinstatement without interest failing which the amount so accrued shall carry interest @ 6% per annum from the date of accrual and till the final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
20th October, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
20th October, 2022.