

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

Present:

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

**INDUSTRIAL DISPUTE CASE NO. 266/2015**

**Date of Passing Award- 25.05.2022**

Between:

Ms. Shivani Dey,  
R/o E-64, Gali No.3, Hardev Nagar,  
New Delhi-110084.

Workman

Versus

Shri Rajneesh Pandey,  
Sr. Deputy General Manager/HR  
Metro Bhawan, Fire Brigade Lane,  
Barakhamba Road,  
New Delhi-110001.

Management

Appearances:-

Shri Ravinder Kumar  
(A/R)  
Shri Pankaj Malik  
(A/R)

For the claimant

For the Management

**A W A R D**

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Delhi Metro Rail Corporation, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/179/2015 (IR(DU) dated 08/12/2015 to this tribunal for adjudication to the following effect.

“Whether the applicant, Ms. Shivani Dey, should be treated to have been removed from services of inaction of management and non-issue of formal relieving order should be construed to be in service as leave without pay? to what relief is the workman entitled to in view of circumstances of the case?”

The facts pleaded by the claimant in short is that after qualifying in the competitive examination she was appointed as a Customer Relation Assistant in the establishment of DMRC w.e.f 12.02.2010 vide appointment order dated 12.02.2010. The post was carrying the pay scale of Rs. 10170/ -18500/-. After her joining she was sent for Service Training at the Training Institute and thereafter posted at a specific metro station. She completed the training program satisfactorily. During the period of training she made an application

to the management seeking permission to prosecute her further studies as she had qualified the national eligibility test conducted by the UGC prior to her joining in the organization in DMRC. With a view to complete her PHD course she made an application to the authorities of the management on 23.03.2010 requesting to accord her permission for the same. But no response was ever received from the management in this regard. During her employment though she was very disciplined and had never given any chance to the authorities to raise any complaint against her, for her misfortune one Manish Yadav the then Assistant Manager line 1 of Shashtri Park Metro Station where the claimant was posted, was bent upon to harass her directly or indirectly and being instructed by the Mr. Yadav, his PA too was harassing the claimant. They used to ask her to accompany them to the uniform store after 6.00PM though her duty was ending at 3.00PM. The said harassment continued and finding no other way the claimant had raised objection before the senior officers at Metro Head Quarters. The parents of the claimant had also lodged complaint about the harassment to Shri S.K Sinha the then GM (HR) on 18.10.2010 at Metro Bhawan. Though Mr. Sinha had assured to prevent the harassment, nothing of such kind happened. Rather Mr. Manish Yadav became more furious towards her. Suddenly she was shifted from Shashtri Park Metro Station to Silampur Metro Station which caused inconvenience for her in travelling the distance. On 08.04.2011 the claimant met a complaint in this regard to the GM Mr. S.K Sinha. Being unable to cope with the situation, on 20.06.2011 she met one Amit Kumar Jain the Assistant of the GM Shri S,K Sinha and intimated that for the prevailing circumstances she is not able to continue in DMRC and also apprised that on some earlier occasions the complaint lodged by her remained unheeded. But no action was taken to redress her grievance. Finding no other way she submitted an application on 30.07.2011 to the incharge of Line 2 Chandni Chowk Metro Station intimating that she would not be coming to attend her duty from 01.08.2011. This application was received personally by Shri Ajay Gautam the then station manager line 2 Chandni Chowk. Even though she left the job of DMRC w.e.f 01.08.2011 Manish Yadav and his Associates followed and harassed her. On 12.11.2013 one notice was issued to her through an advocate calling her to showcause as to why administrative authority shall not take action for her unauthorized absence. This notice was issued after a long time since the claimant stopped attending her duty. Thereafter the management passed an office order dated 08.07.2014 by which the service of the claimant was terminated w.e.f 08.07.2014. Before issuing that order of termination the management never took steps of replying to the complaints raised by the claimant against Manish Yadav. The claimant by filing one RTI application short information on the action taken which revealed that no action was ever taken against Manish Yadav on the complaints of the claimant. the claimant has further stated that the action of the management DMRC in terminating his service 3 years after the complaints made by her is illegal and arbitrary and the action violates the Principles of Natural Justice as no domestic inquiry was ever held against her. Finding no other way the claimant raised an industrial

Dispute where the conciliation taken up failed and the appropriate government referred the matter for adjudication. In this claim petition the claimant has prayed that for the illegal order of termination she is entitled to reinstatement into service with continuity of service and full back wages from 16.07.2011 and her seniority may be maintained and she be promoted to the next higher grade to which her juniors have already been promoted. She has also advanced the claim for other financial and service benefits due to her.

When notice of the claim was served the management appeared and filed a written statement refuting the stand of the claimant. It has been admitted that the claimant had joined the service of the management as Customer Relation Assistant w.e.f 12.02.2010. The management had to spend a good amount for her training. But soon after joining DMRC i.e. within 2 months she joined a full time PHD Program on 26.03.2010 in Jamia Milia Islamia University without the written permission of the management. While in the service of DMRC not only she joined the full time PHD Program but also started drawing UGC Fellowship unauthorizedly. She voluntarily and unauthorizedly remained absent from duty w.e.f 01.08.2011 and to avoid disciplinary action started leveling charges of harassment against her superiors which were found baseless. Before obtaining a proper relieving order she joined the PHD Program and went on claiming bonus and other financial benefits from the management. Noticing her unauthorized absence, on 12.11.2013 a notice was served calling her to showcause as to why disciplinary action shall not be taken. But the claimant did not submit any reply. She was then asked to complete the due procedure for acceptance of her resignation and formalities for relieving her from service. Instead of complying the same she went on leveling allegations against the authorities intending to forestall her action of unauthorized absence. While denying the allegations made in the claim petition as baseless the management has stated that the claimant is due to deposit 101281/- to the management as per the terms and condition of her employment. The management has thus, prayed for dismissal of the claim petition.

The claimant filed replication denying the stand taken by the management.

On these rivals pleading the following issues were framed for adjudication.

### **ISSUES**

1. Whether the claim is not legally maintainable in view of the various preliminary objections.
2. In terms of reference.

The claimant then examined herself as WW1 and produced a series of documents marked as WW1/1 to WW1/10. These documents include her appointment letter salary details the letter expressing her desire to resign, the reminder given to the management etc. Similarly on behalf of the management one Rajnish Pandey testified as MW1. When the matter was posted for

argument the A/R for the claimant intimated the tribunal that the claimant is no more interested for reinstatement but more interested in getting her terminal benefit like PF, Gratuity, Bonus etc which have not been paid to her so far. In view of the same adjournment was allowed to facilitate conciliation between the parties. Thereafter no conciliation could be effected and the argument was heard. During course of argument the A/R for the management expressed that the management is ready to pay all terminal benefits permissible under law.

### **FINDING**

The admitted facts are that the claimant had joined the service of the management on 12.02.2010 and on 08.04.2011 she submitted a written application expressing her intention to resign from the service of DMRC (Exhibit WW1/3). It is not disputed that after 08.04.2011 she never reported for duty. It is the allegation of the management that for her unauthorized absence and joining full time PHD Program without prior permission her service was terminated in accordance to Rule 19 of the DMRC Service Condition Rules. The claimant during her examination in the tribunal was confronted with the said rule and she admitted the same. Not only that the claimant during cross examination has clearly admitted that she joined the PHD Program on 26.03.2010 and continued till 29.11.2016 and during this period she was drawing the scholarship which was initially Rs. 22000/- per month and increased from time to time and lastly it was Rs. 36000/- per month as a senior Research Fellowship. She has also admitted to have expressed her desire to resign from the service of the management. But during cross examination she stated that at present she is ready and willing to join back the service and her absence was not unauthorized but under intimation and for the mental harassment caused to her. She has also admitted that she joined the PHD Program without the prior permission of the authority. The witness examined on behalf of the management as MW1 is the Senior DGM of HR and his testimony reveals that the claimant had remained absent unauthorizedly w.e.f 01.08.2011. He has stated that showcause notice dated 25.10.2011 and 27.01.2014 were issued to the claimant but she didn't reply. Thus, as per rule 19 of DMRC on service matters her service was terminated. But before that she was asked several times to regularize her resignation procedure and get the relieving order after obtaining NOC from various department of the management. Since, the claimant did not comply the same no relieving order was issued and her service was terminated. For such action taken the management cannot be found with fault. The procedure laid down under Rule 19 has been filed and marked as WW1/M1. Many other documents have been filed and marked as MW1/7, MW1/8 and MW1/9. These documents deal with the representation of the claimant for grant of salary and demanding action on her complaint. All those were duly answered by the management. However, the management witness has stated that the claimant is liable to refund Rs. 1,00,000/- to the management as agreed during the time

of employment. Citing the judgment of **Thankur Singh Rawat and others vs. Jagjit Industries Ltd. deciding in W. A No. 585 of 2003** by the Hon'ble High Court of Delhi, the Ld. A/R for the management submitted that the claimant is not entitled to the back wages as claimed by her for the termination of her service.

From the evidence adduced it clearly appears that the claimant has admitted at different stages of the proceeding about her unauthorized absence from duty. She has also admitted about joining the PHD Program with UGC Scholarship while under the employment of DMRC. In such a situation grant of back wages for the said absented period and thereafter during which the claimant had not discharged any work would amount to unjust enrichment which cannot be granted. In the case of **Rajasthan State Road Transport Corporation vs. Phool Chand AIR 2018 SC 4534** the Hon'ble Supreme Court while discussing the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (2013)10SCC324** have observed that the workman cannot claim award of back wages in all the cases. The factors like nature of misconduct are to be considered by the court and the workman cannot claim back wage as the matter of right. In this case since, the claimant had seriously misconducted herself by remaining absent unauthorizedly and by availing a gainful employment causing unjust enrichment to her she cannot be granted the back wages. However, the management has not disputed the claim of the claimant with regard to her terminal benefits like PF, Gratuity, and bonus and this admission has been recorded by order dated 15.11.2008 passed by this tribunal. Hence, after a careful consideration of the evidence and the materials placed on record it is held that the claimant cannot be held to have been removed from service illegally and the said intervening period between his voluntarily absence and termination cannot be treated as duty without pay. But the claimant is held entitled to the benefits like PF, Gratuity and bonus etc according to her eligibility to be decided by the management. Hence, ordered.

### **ORDER**

The reference be and the same is answered partially in favour of the claimant. it is held that the claimant is not entitled to reinstatement into service with back wages and the period of absence cannot be treated as duty without pay. However, she is entitled to other service benefit like PF, Gratuity and bonus as due to her for the service rendered to the management. The management is directed to settle the dues of the claimant within 3 months from the date of publication of the award. 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.  
25<sup>th</sup> May, 2022

Presiding Officer.  
CGIT-cum-Labour Court.  
25<sup>th</sup> May, 2022