

**Dtc Vs. Narendra Kumar**

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**SooperKanoon Citation :** [sooperkanoon.com/919864](http://sooperkanoon.com/919864)

**Court :** Delhi

**Decided On :** Jul-19-2011

**Judge :** Rajiv Sahai Endlaw, J.

**Appeal No. :** W.P.(C) 9108/2008 & CM No.17480/2008

**Appellant :** Dtc

**Respondent :** Narendra Kumar

**Advocate for Def. :** Mr. G.S. Charya, Adv.

**Advocate for Pet/Ap. :** Mr. Anand Nandan, Adv.

**Judgement :**

1. The challenge in the writ petition is to the award dated 2 nd June, 2008 of the Industrial Adjudicator on the following reference:-

**"Whether Sh. Narender Kumar S/o Shri Govind Ram has been removed from services by the management illegally and/or justifiably, if so, to what relief is he entitled and what directions are necessary in this respect."** of reinstatement with 50% of the back wages, only in so far as the relief granted to the respondent workman of 50% of the back wages is concerned; else it is stated that the petitioner employer has no objection to reinstatement of the respondent workman.

2. Notice of the writ petition was issued and the operation of the award stayed. Counter affidavit has been filed by the respondent workman and the counsels for the parties have been heard.

3. The Industrial Adjudicator has in the award, qua back wages held that though the respondent workman had in his statement of claim alleged that he had been unemployed since the date of termination but had not placed any cogent evidence on record to show that he had been unemployed all along, after the termination. The award further records that the petitioner employer also had not been able to show that the respondent workman was gainfully employed during the period of termination. The Industrial Adjudicator on such facts awarded only 50% of the back wages.

4. The counsel for the petitioner employer has at the outset contended that the past service record of the respondent workman in the present case has been bad and thus he should not have been awarded even 50% of the back wages. The petitioner employer before the Industrial Adjudicator had pleaded that the respondent workman was a habitual absentee and had been punished as many as six times in the past for various misconducts. The Industrial Adjudicator has however not taken the said factor into consideration while granting the relief of back wages. I am however unable to agree with the said contention. In my opinion the past misconduct of the respondent workman would have no bearing on the award for back wages. The respondent workman is presumed to have already suffered the consequences of the earlier unfavourable entries if any in the service record and cannot be punished for the same in proceeding for a different misconduct. Moreover the Industrial Adjudicator in the present case has held that the departmental enquiry preceding termination of services of the respondent workman held by the petitioner employer was invalid and that the petitioner employer had failed to prove any misconduct before the Industrial Adjudicator. That is why the relief of reinstatement which has not been challenged in this petition also, has been granted to the respondent workman. In such a situation, merely because of past adverse entries in the service record, no error can be found in the award for 50% of the back wages.

5. Another petition being W.P.(C)7129/2008 titled DTC v. Ram Avtar Sharma preferred by the petitioner DTC against another award for 50% of the back wages was also heard and decided today. The counsel for the petitioner DTC in that case had relied upon a number of judgments but all of which also lay down that the method and nature of appointment, qualifications, length of service, availability of alternative work are the factors that have to be considered while deciding whether the workman is to be entitled to full or part back wages. The respondent workman in the present case was permanently employed with the petitioner employer as a conductor since the year 1983 and was alleged to have remained unauthorizedly absent from 1 st November, 1995 to 30th April, 1996 ( for 65 days) from his duty, was charge sheeted and his services terminated vide order dated 24th March, 1998. Considering the long employment of the respondent workman with the petitioner employer, no unreasonableness/perversity can be found in the award of 50% of back wages.

6. It is however found that though the termination of the respondent workman was on 24th March, 1998, the dispute was raised by the respondent workman only in the year 2004 i.e. after six years. There is no explanation whatsoever for the long delay of approximately six years in raising the dispute. In my opinion the respondent workman is not entitled to any back wages for the period prior to raising of the dispute. The said factor has not been considered by the Industrial Adjudicator. The award to the said extent is found to be unreasonable and cannot be allowed to stand.

7. The petition is therefore allowed partly. The award in so far as for payment of back wages from the date of termination i.e. 24 th March, 1998 till the date of reference i.e. 13th July, 2004 is set aside/quashed. The respondent workman however shall be entitled to 50% of the back wages from the date of reference i.e. 13 th July, 2004 onwards.

8. Cost of `5,000/- of litigation was directed to be deposited by the petitioner employer and is reported to have been deposited and if not withdrawn by the respondent workman till now, may be so withdrawn. Copy of this order be given dasti.

