



Sr. No.	Date	Orders
		<p>% 25.10.2004</p> <p>Present: Mr. Hanu Bhaskar for the Petitioner. Mr. H.K.Chaturvedi for Respondent No.2.</p> <p>+ <u>WP (C) No.4313/2003 &amp; CM No.274/2004</u></p> <p>•</p> <p>During the course of hearing of this petition, learned counsel appearing for the petitioner questions the legality of the Award dated 27.11.2002 on the ground that the same is contrary to the principle enunciated by the Supreme Court in <u>Civil Appeal No. 9600/2003, Delhi Transport Corporation vs. Sardar Singh</u> decided on 12<sup>th</sup> August, 2004. He further contends that the Award is liable to be set aside and the writ petition preferred by the management should succeed.</p> <p>Learned counsel appearing for the respondent workman on the other hand contended that even if the judgment of the Supreme Court is applied to the facts of the present case still it will have to be determined as to whether the accent was otherwise for bonafide reasons or not. According to him the workman has submitted application and medical certificate.</p> <p>It will be appropriate at the outset to record the findings recorded by the Industrial Tribunal in the Award in</p>



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		<p>question :</p> <p>"Perusal of file shows that the report submitted with regard to the alleged absence is dated 6.1.93 in which the workman has been shown on leave without pay for 172 days in the year of 1991. There is nothing on the record to establish which shows that the workman was absent from his duty from 1.10.91 to 31.3.92. The report dated 6.1.93 shows that in the year 1991, workman/respondent availed the leave of 172 days and in the year 1992 upto November for 331 days. Total has been shown as 503. From the record it is clear that neither any SAR nor MAR has been produced. During the cross examination AW-2 admitted that workman was not paid the salary of the period mentioned in the charge sheet and leave applications were not being acknowledged by the DTC. He admitted that leave application and medical certificate were entered into the register but he has not produced the same in the Court. He categorically admitted that he has not brought the application of 137 days, received from the respondent. He has also not produced any rejection of those application on record."</p> <p>The findings recorded in the earlier part of the above referred paragraph are hit by the law stated by the Supreme Court in <u>Sardar Singh's case</u> (supra) and to that extent the Award needs to be corrected. However, the latter part of the findings clearly shows that there was a case which the workman could prove as to the factum of submission of application/medical certificate etc. and its</p>



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		<p>effect on the workman and the extent of punishment inflicted by the employer on the workman. Learned counsel appearing for the parties commonly <del>concede</del> <sup>concede</sup> that in these circumstances the Award dated 27.11.2002 should be set aside and the matter remanded back to the learned Industrial Tribunal for determination in accordance with law and in view of the above circumstances. Consequently, the writ petition is allowed. The Award dated 27.11.2002 is set aside and the matter is remanded back to the Industrial Tribunal. The Tribunal shall proceed in accordance with law and record its findings on merits of the case and in the light of the above observations. The parties shall appear before the Industrial Tribunal on 7.12.2004.</p> <p>The writ petition is disposed of in the above terms leaving the parties to bear their own costs.</p> <p>October 25, 2004 m</p> <p>WP (C)No.4313/2003</p> <p style="text-align: right;"><i>Swatanter Kumar, J</i> SWATANTER KUMAR, J</p> <p style="text-align: right;">Page 3 of 3</p>