

**(2011) 08 DEL CK 0071**

**In the Delhi High Court**

**Case No :** Letters Patent Appeal No. 624 of 2011

Management of Ashok Hotel

APPELLANT

Vs

Mohinder Singh

RESPONDENT

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**Date of Decision :** 04-08-2011

**Acts Referred:**

**Citation :** (2011) 08 DEL CK 0071

**Hon'ble Judges :** Dipak Misra, C.J; Sanjiv Khanna, J

**Bench :** Division Bench

**Advocate :** Ujjawal K. Jha and Kanwaljeet Singh, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Sanjiv Khanna, J.—Management of Hotel Ashok has filed the present intra court appeal against the decision dated 10th May, 2011, dismissing Writ Petition (Civil) No. 12391/2006 filed by them. Learned single Judge has upheld the award dated 25th October, 2005, passed by Industrial adjudicator holding inter-alia that the Appellant Management had failed to lead evidence to prove the charges against the workman Mohinder Singh, the Respondent herein. The Respondent workman was awarded punishment of stoppage of three annual increments with cumulative effect and had raised an industrial dispute. Before the industrial adjudicator, the Appellant conceded and accepted that the departmental proceedings were vitiated and there was violation of principles of natural justice. However, the Appellant Management was given an opportunity to prove the misconduct by the Respondent workman.

2. The contention raised by the learned Counsel for the Appellant is that the industrial adjudicator has wrongly ignored and rejected as here say the evidence of Ashok Lamba, Manager (Vigilance & Security) and the said finding is incorrect and contrary to law. He has further submitted that learned single Judge has also committed the same error.

3. We have examined the affidavit filed by Ashok Lamba which has been placed

on record as Annexure A-8. The charge against the Respondent workman was that he had deliberately left the place of duty, i.e. the supply gate, on 9th March, 1988, and had gone to the car parking area in connivance with one Mr. J.K. Rout, Foreman Grade-I, and a representative of M/s Cactus Lilly Enterprise so as to smuggle out 2 extra empty gas cylinders and 26 filled gas cylinders instead of 150 empty gas cylinders for which gate pass had been prepared and signed by J.K. Rout.

4. As per the affidavit of Ashok Lamba, gate pass of 150 gas cylinders and challan of M/s Cactus Lilly was seized from J.K. Rout, Foreman who was standing inside the hotel. The truck carrying the said gas cylinders had not left the hotel. The filled gas cylinders were without seal cap, which are found on filled cylinders and are removed before a cylinder is used. When Ashok Lamba reached the spot, the truck driver was found sitting on the Driver's seat along with some employees. The aforesaid affidavit does not show and establish any connivance between the Respondent workman, representatives of Cactus Lilly and J.K. Rout. The Respondent workman is not the person who was responsible for overseeing loading of the gas cylinders and whether or not the gas cylinders were filled or empty. It is not alleged that the cylinders were to be loaded in his presence. It is not stated by Mr. Ashok Lamba that it was the duty of the Respondent workman to ensure that the filled gas cylinders or extra cylinders were not loaded. The truck had not left the hotel compound and was still parked. It cannot be presumed that the Respondent workman would not have reached the supply gate and verified the cylinders with the gate pass. The contention that the Respondent security guard should not have left the supply gate or should have kept it locked, does not impress us and does not show or indicate that the Respondent workman was guilty of fraud or had acted dishonestly. Admittedly, he was within the hotel compound. The Respondent workman was held guilty and punished for a different charge.

5. In view of the aforesaid, we do not find any merit in the present appeal and the same is dismissed.