
(2004) 02 DEL CK 0096
In the Delhi High Court
Case No : CW No. 787 of 1988

Babulal (Conductor)		APPELLANT
	Vs	
Delhi Transport Corporation and Another		RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Citation : (2004) 73 DRJ 150 : (2004) 3 SLJ 269

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Kunwar C.M. Khan, for the Appellant; Geeta Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—By and under Order dated 18.9.1987, the following penalty was imposed upon the petitioner:-

"He is removed from the service of the Delhi Transport Corporation w.e.f. 19.9.1987."

2. The order of removal was preceded by issuance of a charge sheet to the petitioner. Pursuant thereto, an enquiry was held. The enquiry report indicted the petitioner. Based on the report of the Enquiry Officer, show cause notice was issued to the petitioner. Along with the same report of the Enquiry Officer was furnished. Petitioner's response was obtained.

3. Petitioner was employed in the Delhi Transport Corporation (for short "DTC"). As per the petition, till the incident in question, there was nothing adverse against the petitioner and he had a good record of service, a fact disputed by the respondent to which I would refer to later. On 2.11.1985, charge sheet was issued to the petitioner. Charge leveled was that he was found missing from duty on 2.10.1985 at 12.30 hours by the Vigilance Department which showed that the petitioner was not taking interest in the work of the Corporation. By a corrigendum, it was clarified that the time, 12.30 hours was a typing mistake

and should be read as 2.30 hours.

4. In the charge sheet it was specifically intimated to the petitioner:-

"A copy of your past record is also enclosed. It will be taken into consideration at the time of passing the final orders giving recommendations in this case."

5. The petitioner denied the charges under cover of his reply dated 2.12.1985.

6. The Enquiry Officer was appointed. After recording evidence he gave his report indicting the petitioner. As per the report, it was established that the petitioner was indeed found missing from duty when the Vigilance caused an inspection to be made. Petitioner did not deny before the Enquiry Officer that he was missing but took a defense that after reporting for duty he felt unwell and as a result thereto left, to avail medical aid. While he was leaving, he made out an application for leave, which he handed over to his colleague, Raghu Raj, TTC, to be delivered to the In-charge. Said defense was considered by the Enquiry Officer and it was held to be an after thought, inasmuch as no such leave application was found entered in the Register maintained where such leave applications have to be entered. Besides, evidence of witness Raja Ram showed that when the inspection was made, Raghu Raj wrote out the application. defense of the petitioner was, Therefore, rejected by the Enquiry Officer, Agreeing with the report of the Enquiry Officer, the Disciplinary Authority issued a notice to the petitioner on 31.8.1987 to show cause as to why penalty of removal be not passed. Petitioner submitted his reply pointing out that he had medical evidence in the shape of OPD card issued by the All India Institute of Medical Science to show that he had visited the OPD on the date in question and that his defense was not properly appreciated, in that, the Enquiry Officer did not consider that the in charge, to whom the application had to be submitted was not available. Testimony of Raghu Raj was ignored, which showed that the petitioner felt unwell in the post lunch session. He prepared the leave application but could not give it to the in charge as the in charge was not in his room. Petitioner left as he needed urgent medical treatment and while leaving, left the application with Raghu Raj.

7. Learned counsel for the petitioner arguing the petition, urged this Court to quash the impugned order, inter alias on the ground that medical record was not considered and the statement of Raghu Raj was completely ignored. In any case, penalty imposed was disproportionate to the offence.

8. Ms. Geeta Sharma, learned counsel appearing for the DTC replied that the Enquiry Officer as well as Disciplinary Authority had taken into account all the probable factors and had come to a finding that since the application in question was not entered in the concerned register, it had been created when absence of the petitioner was detected. It was not a case of no evidence, nor was it a case where the view taken could be said to be perverse. Learned counsel argued that if, on the evidence on record, the view taken was possible, this court in exercise of power under Article 226 of the Constitution of India would not set aside the

finding of the Enquiry Officer or the Disciplinary Authority. Learned counsel further contended that the petitioner had a right of appeal which he had exercised. Without waiting for the decision in appeal, petitioner rushed to the Court. On 9.5.1988, limited show cause was issued as under:-

"Notice to the respondents to show cause, as to why the appeal against the order of the Depot Manager dated 18.9.1987 has not been disposed of, returnable on 16.8.1988."

9. Counsel contended that on 5.1.1989, it was informed to the petitioner, as noted in the order passed by this Court that the appeal filed by the petitioner had since been disposed of. The order of the Disciplinary Authority had merged with the appellate order and the petitioner having not amended the petition to challenge the appellate order, writ petition be dismissed, contended Ms. Geeta Sharma, counsel for the DTC. Alternatively, contended the counsel that if this court dealt with the issue on merits, her submissions pertaining to the jurisdiction of this Court under Article 226 be taken note of. As regards the contention of the petitioner, the penalty imposed was disproportionate, counsel contended that in the charge sheet itself, it was intimated to the petitioner that his past record would be considered. Past record of the petitioner was given to him. Petitioner's assertion in the writ petition that his past conduct was good was incorrect. Evidence thereof was the fact that the petitioner joined service under the DTC on 13.1.1972 and till the incident in question, he was issued 3 warnings, 3 advices, 1 caution, 3 penalty of stoppage of increment were imposed. He was found to be absent from duty twice. Once he was found sleeping while on duty and seven times, he was found to be issuing tickets for lesser journey but charging the passengers the full amount. Record of the petitioner showed that till the incident in question, there were 15 disciplinary actions recorded against him in the service report.

10. It is settled law that exercising jurisdiction under Article 226 of the Constitution of India, this court would not reappreciate the evidence. If on the evidence on record, the view taken is possible, that would be the end of the matter as far as the challenge to the finding recorded by the Enquiry Officer is concerned. Plausibility of the other view is no ground for judicial interference to upset the findings of the Enquiry Officer. Petitioner did not dispute his absence when the inspection was caused to be made. He took a defense that he felt sick and had to visit the Doctor. He took a defense that he made out the leave application but could not give it to the in charge and, Therefore, handed over the same to Raghu Raj with a request that it should be given to the in charge. Raghu Raj supports the petitioner, but another witness, Raja Ram states that when petitioner's absence was noticed, Raghu Raj wrote out the application. We, Therefore, have two versions. One inference could be that petitioner wrote the application and gave it to Raghu Raj, but the other is equally possible that Raghu Raj, to help his colleague wrote out the application. Admittedly, the application was not entered in the register maintained where leave applications have to be

entered. Absence of the petitioner was noted at 2.30. p.m. To my mind, it is a material circumstance from which an inference could be drawn that the application was a created application. In any case, such view cannot be said to be a perverse view. It is not the case of the petitioner that the in charge was not available in the office till 2.30 p.m. No Explanation has come on record either from the side of the petitioner or from Raghu Raj as to why till 2.30 p.m. the letter was not brought to the notice of the in charge, or why it was not got entered in the register.

11. In any case, it is not for this court to weigh the merits and demerits of the rival versions. Jurisdiction of this court is limited to the question, whether on the evidence on record, the finding of guilt could be returned or is it a case of finding based on no evidence or it is a case of a perverse finding. I neither find the finding returned as perverse nor I find it to be a finding based on no evidence.

12. In the charge sheet it was clearly intimated to the petitioner that his past record would be considered and past record was furnished to the petitioner. I do not find a whisper in the writ petition regarding justification in defense of what was entered in the service record in the past. As noted above, 15 misdemeanors have been recorded against the petitioner. Indeed, the misdemeanors noted were that the petitioner was absent without prior intimation; issuing tickets of less denomination, but collecting excess amounts; non-issuance of tickets after collecting the amount; leaving the place of work without reporting and sleeping while on duty. In the judgment reported as (2003) 4 SCC 33, Director General RPF and Ors. v. Ch. Sai Babu, the Supreme Court held:-

"Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard, to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

13. Considering the totality of the circumstances and also taking notice on one fact namely, rank indiscipline in the staff of the DTC which has today accumulated loss as of more than Rs. 500 crores, I find no infirmity in the action taken by the Management of DTC. The writ petition is without any merit. The same is accordingly dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.