

(2010) 02 DEL CK 0228

In the Delhi High Court

Case No : Writ Petition (C) No. 1038 of 2010

Delhi Metro Rail Corporation Limited

APPELLANT

Vs

Inderjeet

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 323, 325, 34, 341

Citation : (2010) 02 DEL CK 0228

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Tarun Johri, for the Appellant; K. Prabhakar Rao, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Delhi Metro Rail Corporation Limited has challenged the order dated 21st December, 2009 in OA 1086/2009 titled Sh. Inderjeet Vs. Delhi Metro Rail Corporation Ltd. Passed by Central Administrative Tribunal setting aside the order dated 3rd June, 2008 passed by the Disciplinary Authority of the petitioner imposing the major penalty of removal from service and also dismissing the order dated 17th October, 2008 passed by the Appellate Authority dismissing the appeal of the respondent and confirming the punishment of the respondent and also quashing the order dated 3rd March, 2009 passed by Reviewing Authority confirming the punishment.

2. A memorandum of charge sheet dated 22nd November, 2007 was issued pursuant to an internal audit report that the false information had been furnished and the material information suppressed by the respondent and consequently, his service would be liable to be terminated.

3. The petitioner had offered a job of Messenger/field helper to the respondent and he had filled the application form and in answer to a question as to whether he had ever been prosecuted, a negative answer was given. The petitioner had sent the attestation form before appointing the respondent for police verification

when it transpired that an FIR was lodged against the respondent however, he was subsequently discharged from the case.

4. The petitioner, therefore, before his appointment was called upon to explain as to why he had suppressed the information regarding the registration of an FIR in 1995 against him u/s 325/34 IPC which was compromised in August, 1997 prior to the respondent applying for the job in 1999.

5. The respondent explained about not disclosing about the FIR registered against him in 1995 which was settled in 1997 contending that since the criminal case was dismissed long before respondent applied for the job as messenger/field helper, therefore, he did not mention about it in the attestation form.

6. The petitioners have not disputed that explanation of the respondent was examined by the competent authority at that time and since the explanation was found to be satisfactory, which was accepted, therefore, appointment letter in March, 1999 was issued to him pursuant to which the respondent joined duty in April, 1999.

7. The petitioner has also not disputed that in 2007 Group C & D employees of the petitioner had formed a Union and got it registered and the respondent became founder President of the Union. After formation of union, the respondent sought the status of protected workmen of the Union and immediately thereafter, the memorandum of charge-sheet dated 22nd November, 2007 was issued alleging that at the time of joining as messenger/field helper, the respondent had not rendered the complete information and therefore, he is liable for the consequences of the same.

8. After the inquiry, the Disciplinary Authority awarded the punishment of removal from service which had been sustained in the appeal and by the Reviewing Authority which had been set aside by the Central Administrative Tribunal, Principal Bench primarily on the ground of condonation of alleged misconduct even before appointment of the respondent. The facts about non declaration of relevant information had come to the notice of the petitioner on account of police verification and an explanation was sought from the respondent which explanation was accepted by the competent authority and only after finding the explanation for non-disclosure about the FIR registered in 1995 and settled in 1997 prior to appointment in 1999, the respondent was appointed in March, 1999. The Tribunal has held that once any misconduct has been condoned, an employer cannot after such condonation go back upon his condonation and claim a right to punish the employee again after a number of years.

9. The respondent was ordered to be removed from service on account of not disclosing the registration of an FIR in 1995 though this would not have rendered the respondent unfit for employment. However after considering his explanation which was accepted by the competent authority the respondent was appointed as messenger/field helper. After finding the information which could have rendered

the employee unfit for employment and after considering his explanation if an employee is found to be fit for employment later, on the same ground it cannot be allowed to hold that the respondent was unfit for employment and order with removal from service can be passed.

10. The respondent after his appointment in 1999, worked for eight years without any complaint. Thereafter, after he became President of a Union and claimed the status of protected workman, on the ground that prior to employment, he had not disclosed some information for which the explanation was sought and was found to be satisfactory, would not be a ground for removal from the service.

11. The Tribunal has rightly noted that non-furnishing of information did not come to the notice of the petitioner during the employment of the respondent nor has rendered him unfit in any manner. In the circumstances, there was no ground to remove him from service. It appears to me more on account of formation of union of Group C & D employees and on account of the respondent seeking the status of a protected workman that the matter was reinitiated though the Tribunal has not gone into this aspect of the matter.

12. Though the ground that the competent authority who accepted the explanation given by the respondent at the time of his employment regarding non-disclosure of information was only the Managing Director and no one else could accept the explanation was taken before the Tribunal, which had been negated and not accepted by the Tribunal however, this plea has not been raised by learned counsel for the petitioner before us.

13. Learned counsel for the petitioner has also relied on *Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar*, where the Supreme Court had set aside the order of the High Court directing the Delhi Administration for re-consideration of the case of a person who was found physically fit and who had passed the written test and interview and was provisionally selected but who was rejected on account of his antecedent record. The Supreme Court had held that though such a candidate was discharged or acquitted of the criminal offences, prior to his applying for selection to the post of constable but it is for the authority to consider as to what is the relevant conduct or character of the candidate to be appointed to a service and the Tribunal was unjustified in giving direction for re-consideration of the case of such a candidate. Apparently, the case relied on by the petitioner is distinguishable as in *Delhi Administration vs Sushil Kumar* (Supra) the candidature of the candidate was rejected on account of his antecedents whereas in the case of the respondent even before his appointment, the facts pertaining to the registration of FIR, which was compromised had come to the notice of the petitioner and an explanation was sought which was found to be satisfactory and only thereafter the respondent was appointed to the post. Consequently, on the ratio of the said precedent, the petitioner is not entitled to impugn the order passed by the Tribunal. The other precedent relied on by the petitioner *Kendriya Vidyalaya Sangathan and Others*

Vs. Ram Ratan Yadav, is also distinguishable as in that case suppression of factual information affecting the character of the candidate had come to the notice of the authorities after the appointment of such a candidate and his misconduct was not condoned. In Ram Ratan (Supra), the candidate was selected to the post of physical education teacher and appointment order was issued to him and thereafter he was required to fill the attestation form where the information was suppressed by him and later on the explanation given by him was that he had studied in Hindi medium and therefore he had failed to understand the contents of the relevant paras of the attestation form and had consequently not given the correct information, was not accepted by the Supreme Court on the ground that no prudent man can accept that the candidate did not know or did not find out the meaning of whatsoever was stated in the form. Other distinguishing feature of the case relied on by the petitioners is that when the attestation form was filled by the candidate, the case u/s 323, 341, 294, 506-B r/w Section 34 IPC was pending against that candidate and despite that the information was not disclosed whereas in the case of the respondent, the FIR was registered in 1995 and the matter was compromised in 1997 and the respondent had filled the attestation form in 1999 and the explanation for not disclosing this information before the appointment was given to the petitioner which was accepted and only thereafter, the respondent was appointed to the relevant post.

14. The other plea raised by the petitioners before the Tribunal was that the appointment of the respondent was an administrative mistake and that the right to rectify that mistake at any time, was not accepted by the Tribunal on the reasoning that this was not the ground on which the order of removal of the respondent was passed nor the respondent was proceeded in the departmental proceedings on that ground. In any case, it was held that if there was a mistake on the part of the petitioner in appointing the respondent, that could not be a ground for misconduct nor the respondent could be removed from the service after departmental proceedings on that ground.

15. In the circumstances, learned counsel for the petitioner has failed to make out any ground which will entail any interference by this Court in exercise of its jurisdiction against the order dated 21st December, 2009 passed in OA 1086/2009 setting aside the order of removal of the respondent. The writ petition in the facts and circumstances is without any merit and it is therefore, dismissed.