

(2004) 09 DEL CK 0128

In the Delhi High Court

Case No : Writ Petition (C) 8053 of 2002

Delhi Transport Corporation

APPELLANT

Vs

Brahm Prakash

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2004) 09 DEL CK 0128

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Gita Sharma, for the Appellant; K.K. Tyagi and M.I. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Petitioner is aggrieved by an order dated 27th July, 2001 passed by Industrial Tribunal No.II in OP No.320/92. By the impugned order, the learned Tribunal dismissed an application filed by the Petitioner u/s 33(2)(b) of the Industrial Disputes Act, 1947 (the Act).

2.The allegation against the Respondent/workman was that while he was on night duty on 13th April, 1991 for the period from 2100 hours to 0530 hours, he did not perform any work after 0130 hours. At about 0445 hours it was noticed that the Respondent/workman was not available in the depot of the Petitioner and it was found that he had left without any intimation or permission. On these facts, it was alleged that the Respondent/workman had committed misconduct.

3. A report was prepared by one Vijay Pal Singh, Foreman of the depot stating the above facts and Raghubir Singh, Assistant Foreman, witnessed this report.

4. On the basis of the report prepared by Vijay Pal Singh, a charge sheet was issued to the Respondent/workman. It is said that the Respondent/workman did not participate in the resultant inquiry and he was accordingly found guilty of misconduct. The disciplinary authority thereafter issued him a notice dated 18th

November, 1991 to show cause why he should not be removed from service. After considering the reply of the Respondent/ workman, an order was passed on 29th July, 1992 removing him from service. The Respondent/workman was paid his wages for one month and an application for approval of the discharge was filed in the learned Tribunal u/s 33(2)(b) of the Act.

5. A preliminary issue was framed by the learned Tribunal to the effect whether the domestic inquiry had been conducted in accordance with law. By an order dated 30th November, 1999, it was found that there was nothing to show that the Respondent/workman had been issued any notice of inquiry. Since no notice was given to the Respondent/workman, it was held that the domestic inquiry was vitiated. The Petitioner has not challenged this order dated 30th November, 1999.

6. The learned Tribunal gave an opportunity to the Petitioner to lead evidence in support of its allegation of misconduct.

7. Vijay Pal Singh appeared in the witness box and confirmed his report as well as the allegation made against the Respondent/workman.

8. In so far as the Respondent/workman is concerned, he put up a case that he was on leave during the period 11th April, 1991 to 15th April, 1991 and that he was not even on duty when the incident of his unauthorized absence is alleged to have taken place.

9. Raghubir Singh entered the witness box in support of the case of the Respondent/workman. He deposed that in so far as the complaint of Vijay Pal Singh is concerned, he merely signed it without having actually read its contents. But more substantially, he stated on oath that the Respondent/workman was not on duty from 11th April, 1991 to 15th April, 1991. He also stated that the Respondent/workman had submitted an application for leave along with a medical certificate when he rejoined duty on 16th April, 1991.

10. The learned Tribunal noted that in view of the dispute whether the Respondent/workman was at all on duty on the crucial date, the best evidence that could have been produced by the Petitioner was the attendance register which would have shown whether the Respondent/workman was on duty or not. Unfortunately, the Petitioner did not produce this register.

11. Yet another register that would have been relevant for determining whether the Respondent/workman was on duty on that date is the register of leave. The Petitioner did not produce even this register and so it could not be ascertained whether the Respondent/workman was on leave on the crucial date.

12. In view of the conflicting evidence and in view of the Petitioner failing to produce relevant documentary evidence, the learned Tribunal came to the conclusion that it was not established that the Respondent/workman was on duty on the night of 13th /14th April, 1991 or that he had not performed his duties or that he left unauthorizedly without informing anybody.

13. Even if it is assumed that the report given by Vijay Pal Singh about the absence of the Respondent/workman is correct, the fact remains that some doubt was sought to be cast on the veracity of his report by the statement given by Raghubir Singh who said that the Respondent/workman was not even on duty on the fateful day. Under the circumstances, I think the learned Tribunal was right in coming to the conclusion that the best evidence to show whether the Respondent/workman was on duty on the fateful day is the attendance register and the leave register of the Respondent/workman. Unfortunately, the Petitioner did not produce either of these registers.

14. In view of the above, I think the learned Tribunal rightly concluded that the benefit of doubt must go to the Respondent/workman and it must be held that he had not committed any misconduct, as alleged.

15. Consequently, I do not find any error in the impugned order.

16. Learned counsel for the Petitioner contended two further points. Firstly, it was contended that the past record of the Respondent/workman was deplorable and that he was in the habit of absenting himself or not performing his duties. While this may be so, the mere fact that the Respondent/workman had not performed his duties in the past does not mean that he did not perform his duties on the night of 13th/14th April, 1991. Secondly, learned counsel for the Petitioner contended that the question of the Respondent/workman being absent from duty was not raised by him at any point of time earlier. It appears to me that the Respondent/workman could not raise this defense in the domestic inquiry because he was not even called to attend the domestic inquiry. It is true that the Respondent/workman did not make out this case in the written statement filed by him before the learned Tribunal, but no objection appears to have been taken to the Respondent/workman making out a case of his bona fide absence. In any case, it was not difficult for the Petitioner to produce the relevant attendance register and leave register for giving a lie to the case made out by the Respondent/workman. Why this material was withheld by the Petitioner from the learned Tribunal must remain a mystery.

17. There is no merit in this writ petition. The same is, accordingly, dismissed. No costs.