
(2005) 12 DEL CK 0108

In the Delhi High Court

Case No : Writ Petition (Civil) No. 727 of 2001

Delhi Transport Corporation

APPELLANT

Vs

Ramphal

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Delhi Police Act, 1978 — Section 92, 93, 97
Penal Code, 1860 (IPC) — Section 294

Citation : (2005) 12 DEL CK 0108

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : M. Taiyab Khan, for the Appellant; Pradeep Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The respondent in this instant case was appointed as a conductor with the Delhi Transport Corporation (‘DTC’ for brevity). The petitioner herein as back as on 23rd May, 1977, on the allegation that on 13th August, 1985, the respondent was found in a state of intoxication while on duty and on allegations that he used unparliamentary language towards the duty officer on duty in the night shift, a charge-sheet dated 22nd August, 1985 was issued to the respondent. It was stated that these actions of the respondent tantamounted to misconduct within the meaning of para 19-f, g, h & m of the standing orders governing the conduct of DTC employees. The charge-sheet required the respondent to explain as to why disciplinary action under Clause 15(2) of the D.R.T.A. (Conditions of Appointment & Rules) Regulation, 1952 read with the Delhi Road Transport Clause (Amendment) Act, 1971 should not be taken against him for these irregularities. The petitioner had framed the following charges against the workman:-

1. That on 13.8.85, you were performing your duty with bus No.DEP 8369 of route no.114/9A. You were found in the state of intoxication while on duty.

2. That you used unparliamentary language towards the duty officer on duty in the night shift and threatened him for dire consequences. This shows your disorderly behavior towards your senior.

2. According to the petitioner before this court, the respondent submitted a reply dated 23rd August, 1985 wherein he stated that after performing duties, the driver had offered him one glass of Campa Cola and that it may be possible that he might have mixed up some wine of which the respondent had no knowledge. In this reply, the respondent clearly stated that he was in full senses and that he had correctly deposited the cash and had kept the ticket safely in the locker while he was waiting for a bus at the Depot for going home, the driver had persuaded the police and got him arrested.

3. The respondents had initiated disciplinary proceedings. In these proceedings, a report dated 16th September, 1985 was given. The enquiry officer noticed that Shri Silak Ram, traffic supervisor had stated that the driver Batch No.9310 had come to the depot and parked the bus in improper manner. This driver was in a state of intoxication and used unparliamentary language and threatened the officials with dire consequences. The witness gave the name of the driver as Shri Jai Pal. The matter was reported to police post, Bawana and the driver Shri Jai Pal as well as the conductor Shri Ramphal (present respondent) were taken to the police post Bawana. They were medically examined at the Hindu Rao Hospital. A case was also registered against them under Sections 92, 93 & 97 of the Delhi Police Act. This witness, Shri Silak Ram, clarified that Shri Ramphal, conductor had neither abused him nor threatened him of dire consequences and that all this was done by the driver. The witness confirmed that the conductor had deposited his cash and tickets back properly with the depot authority. This statement of Shri Silak Ram was corroborated by the evidence of Shri Chandgi Ram, another driver of the DTC, who was present at the spot on 13th August, 1985 as well as Shri Jai Dev, a security guard. Other witness, Shri Mohinder Singh, a security hawaldar also corroborated the statement and clearly stated that the conductor did not abuse anybody and was not even present when the driver was misbehaving.

In these circumstances, it was held by the enquiry officer that he agreed with the plea given by the present respondent that he neither used unparliamentary language nor threatened anybody and consequently held that the second charge against the respondent/workman was not established. However, on a construction of the reply given by the respondent to the charge-sheet that on completion of his duty he was offered campa cola by the driver and that the driver may have mixed wine with it, the enquiry officer held that the same amounted to admission and consequently held the first charge as established. The enquiry officer also held that the fact that the respondent was medically examined by the police and that a case under Sections 92, 93 & 97 of the Delhi Police Act was registered against the respondent-conductor also established his involvement and proposed his removal from service of the corporation.

After issuance of a show cause notice and receipt of reply from the respondent workman, vide an order dated 8th October, 1995, the Depot Manger imposed the punishment of removal from the services of the corporation w.e.f. 8th October, 1985 upon the respondents.

4. The workman assailed his removal from service and made a complaint before the labour authorities. Vide an order dated 29th September, 1987, the complaint of the respondent was referred for adjudication by the Government of Delhi on the following terms:-

Whether the removal from service of Sh. Ram Phal is illegal and/or justified, if so, to what relief is he entitled and what directions are necessary in this respect

5. The Labour Court treated an issue relating to the legality and validity of the inquiry conducted by the DTC as a preliminary issue. The petitioner/DTC again examined detailed evidence. Shri Silak Ram was its main witness whose statement was recorded on the 27th October, 1999. This witness, in his cross-examination, admitted that the workman neither abused him nor threatened him. He clearly stated that the witness was not under intoxication. This witness also admitted that the driver against whom the witness had made a statement before the inquiry officer had been taken back on duty by the DTC.

6. The enquiry proceedings were challenged by the workman on several grounds including on grounds of violation of principles of natural justice. The industrial adjudicator considered the matter at length and vide an order dated 19th August, 1999 held that the departmental inquiry conducted by the respondents was vitiated and that the present case was a case of no evidence against the workman. The Labour Court noted that none of the witnesses examined by the management testified that the workman was intoxicated, on the contrary, all of them testified that he had properly deposited the cash as well as his tickets in the office. The statement of the workman to the same effect that he was not under the influence of any liquor remained unchallenged.

7. The Labour Court further dealt at length with the contention of the DTC that a case under Sections 92 & 93 read with Section 97 of the Delhi Police Act had been registered against the workman and that he was convicted for the offence and a fine of Rs.50/- was imposed on him in these proceedings conviction which, by itself established the fact that the workman was intoxicated.

8. In this behalf, the labour court placed reliance on the pronouncement of this Court in reported in Nathu Lal, Inspector Vs. Director General, Central Industrial Security Force and Others, . which was cited on behalf of the workman and held that the plea of guilt in a petty offence, which was disposed of in a summary manner, was of no significance. Furthermore, none of the particulars as to the nature of allegations in the criminal prosecution in respect of the respondent/workman were brought before the court other than an entry in the register of the court showing that a case has been registered and that the respondent had been fined. It was further held that the fine in such a minor offence did not amount to

involvement and conviction in an offence involving moral turpitude on the part of the person accused. For this reason, no significance could have been attached to the fine imposed on the present respondent in the alleged offence.

9. The petitioner did not challenge the order dated 19th August, 1999. On the contrary, they sought opportunity to prove the misconduct against the workman in court. None of the witnesses uttered a word against the respondent/workman and the only allegations which were made were against the driver of the bus. The workman proved on record that he was unemployed since the date of his termination and that expenses of his living and that of his family were met by his father. There was nothing proved on record to establish that the workman was gainfully employed. The labour court, however, passed the award dated 2nd December, 1999 directing reinstatement into service of the workman with only 50% of the back wages and continuity in service.

10. The present writ petition has been filed by the DTC aggrieved by this award of the labour court primarily on the plea that the labour court has acted without jurisdiction in going into the merits of the matter. It has been contended that the scope of judicial review into disciplinary proceedings is extremely limited. It has further been contended that the workman himself had made an admission in his reply to the charge-sheet that he had consumed alcohol and for this reason, there was no warrant for deciding against the petitioner on the issue of the misconduct of the workman.

11. Having heard learned counsel for the parties and perused the available record, it is noteworthy that none of the witnesses examined by the petitioner/DTC uttered a word against the respondent. They did not make any statement against the respondent either to the effect that he was intoxicated or that he had misbehaved with any of them. Furthermore, even the respondent/workman, in his reply dated 23rd August, 1985, merely stated that after the end of his duty, the driver had offered him a campa cola. He indicated that the driver may have put some wine into it. There was no statement by the workman that the driver had actually mixed alcohol in the campa cola. There is no statement in the reply even to the effect that the workman had at all consumed the campa cola. In these circumstances, in my view, there was no admission on the part of the respondent on record on which a finding of the workman having consumed alcohol during duty hours could be arrived at. The statement made by the respondent has to be read in absolute terms and in the manner it has been made. The workman has clearly stated that the campa cola was offered after the duty and not while the workman was still on duty. In these circumstances, in the absence of any third party or independent evidence and there being no admission on the part of the workman that he had consumed anything to drink while on duty, there is no evidence even in support of the petitioner's allegations against the workman. Certainly the charge that "on 13th August, 1985, you were performing your duty with Bus No.DEP 8369 of route No.114/9A, you were found in the state of intoxication while on duty" is not made out against the respondent/

workman.

12. Learned counsel appearing for the respondent submits that the petitioner itself did not treat the reply as containing any admissions on the part of the respondent and that they cannot be permitted to misinterpret the statement in the reply of the workman. In the writ petition, the petitioner has averred that the petitioner found the respondent's reply to the charge-sheet unsatisfactory and, for this reason, had conducted the enquiry against him.

13. Much emphasis has been laid on behalf of the petitioner on the respondent's implication in the case which was made out by the police under Sections 92, 93 read with Section 97 of the Delhi Police Act and the imposition of the fine of Rs.50/- by way of punishment on the respondent. It is contended that this fine, by itself, establishes a guilty of the petitioner and that the punishment of removal from service imposed upon him based thereon was Therefore justified.

14. In this behalf, it is noteworthy that the charge-sheet is not based on any such allegations. The Apex Court has had occasion to deal with such conviction in Pawan Kumar Vs. State of Haryana and another, wherein the court held thus:-

We had required of the respondents to produce before us the copy of the judgment whereby the appellant was convicted for the offence. As was expected only a copy of the institution/summary register maintained by the Court of the Chief Judicial Magistrate, Bhiwani was placed before us showing that the appellant on 4.6.1980 was imposed a fine of Rs.20/-. A copy of the treasury challan supporting that the fine paid was deposited by the Chief Judicial Magistrate the same day has also been produced. The copy of the summary register neither discloses the substance of the allegations put to the appellant, nor the words in which the plea of guilt was entered. It is of no significance that the appellant treats himself a convict as he had pleaded guilty. Ex-facie it only shows that the entry concerns FIR No.231 of 3.6.1980 u/s 294, IPC. there from it is difficult to discern the steps taken in the summary trial proceedings and what had the appellant pleaded to as guilty, whether to the allegations in the FIR or to the provision of the IPC or any other particular Mere payment of fine of Rs.20/- does not go to show that the conviction was validly and legally recorded. Assuming that the conviction is not open to challenge at the present juncture, we cannot but deprecate the action of the respondents in having proceeded to adversely certify the character and antecedents of the appellant on the basis of the conviction per se, opining to have involved moral turpitude, without satisfying the tests laid down in the policy decision of the Government. We are rather unhappy to note that all the three Courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction u/s 294, IPC per se established moral turpitude.

15. It is, Therefore, apparent that implication and even imposition of find in a petty offence cannot be treated as involvement and conviction in an offence involving moral turpitude which would invite the punishment of major penalty in

a disciplinary proceeding. Even assuming that the respondent had actually been found guilty of having been intoxicated, as alleged, and was convicted for this reason, in view of the principles laid down by the Apex Court, it cannot possibly be contended that he had been involved or convicted in any offence involving moral turpitude by such act of intoxication alone, which would have rendered him liable for major penalty.

16. In any case, it has been noted by the Labour Court that no order or proceedings of the criminal court were produced before the Court. Even the complaint against the respondent relating to the case under Sections 92, 93 of the Delhi Police Act was produced. The petitioner placed reliance on a register which merely showed that the respondent was fined with Rs.50/- in a case under Sections 92, 93 read with Section 97 of the Delhi Police Act. This by itself would not establish implication and conviction in an offence involving moral turpitude.

17. In this behalf, I may usefully advert to the principles laid down by this court in *Nathu Lal, Inspector Vs. Director General, Central Industrial Security Force and Others*, wherein it was held thus:-

11. The Deputy Inspector General, who heard the petitioner on the 16th of November, 1995, had not even noted what was stated by the petitioner before him. While imposing the punishment, the Deputy Inspector General was bound to give the reasons for imposing the punishment and mention the details of the representation made by the petitioner. The petitioner had mentioned in the Explanation that there was some sort of misunderstanding between the petitioner and the person who made the complaint and a false case had been fabricated against the petitioner, and having regard to the circumstances, the Magistrate, without recording any finding, imposed a fine of Rs.40/-, in a summary trial, treating the matter as a petty one. The Deputy Inspector General in the light of the facts stated by the petitioner in the Explanation, should have called upon the complainant to explain the position to find out whether the petitioner was guilty of any offence. That was not done.

13. In the light of the decision of the Supreme Court, I am satisfied that the order passed by the Deputy Inspector General on the 23rd of January, 1995 cannot at all be sustained. That was perhaps the reason that in spite of receipt of information on 1.9.1988 (sic. 1.9.1993), till 28.11.1994 no action was taken against the petitioner and that was not even brought to the notice of the DPC held in October, 1994. The appellate authority had concurred with the view taken by the Disciplinary Authority and had confirmed the order of the Disciplinary Authority by its letter on 8.6.1995. The petitioner was not found guilty of any moral turpitude and the imposition of Rs.40/- by the Metropolitan Magistrate without any finding of guilt on the facts after recording evidence cannot, in law, be put against the petitioner. Consequently, the petitioner is entitled to succeed.

18. Mr. M. Taiyab Khan, learned counsel for the petitioner had also placed strong reliance on a medical examination apparently conducted by the medical

authorities. I find that the court has noticed that the report of the medical authorities merely recorded that the petitioner smelt of alcohol. This observation did not, by any manner, indicate or establish that the respondent had consumed liquor. Such a finding or an observation could have been returned only if a scientific test had been conducted. This commonly is in the nature of a blood test and it was not even the petitioner's case that any scientific methodology or forensic test or blood test had been conducted upon the respondent to establish intoxication.

19. At this stage, it is important to note that Shri Jai Pal Singh, driver of the bus against whom there was material evidence to the effect that he was under a state of intoxication and he had abused and threatened the staff of the DTC at the Depot, had been terminated from service under Clause 9(b) of the D.R.T. Act. It has been contended that Shri Jai Pal Singh had assailed this termination before this court and an order had been passed in his favor on 27th November, 1990. The D.T.C. took no further action against the driver against whom there was evidence and he was called to report for duty vide a memo no.NR/PLD/2/1/90/3529 dated 7th December, 1990. An office order has been placed before this court dated 11th December, 1990 wherein it is noted that the driver has reported for duty on 11th December, 1990.

Even the labour court has noticed that the workman had specifically stated that he was unemployed since the date of his termination and his family expenses are being met by his father and further that he is residing in his native village. Even the cross examination does not reflect any allegation that the workman was gainfully employed.

The labour court has deemed it appropriate to award only 50% back wages. There is no challenge to the award by the workman.

20. What else can this be called but a travesty of justice where the respondent against whom there is no evidence, is still languishing in unemployment and suffering the insecurities of hotly contested litigation since 13th August, 1985 and the driver who was arrayed on the same charges, against whom evidence was also given by the witnesses, has not only gone scot-free but is enjoying the security of his employment with the petitioner.

21. For all the foregoing reasons, I find no merit in this writ petition which is hereby dismissed.

22. In the award dated 2nd December, 1999, it was held that the workman shall be entitled to 50% of the back wages w.e.f. 8th October, 1985 when he was terminated from service till 2nd December, 1999 when the award was passed.

23. Accordingly the DTC shall make payment of the 50% back wages granted to the workman with effect from 8th October, 1985 when his services were terminated till 2nd December, 1999 when the Award directing his reinstatement was passed.

24. Inasmuch as the respondent became entitled to reinstatement upon the passing of the award and consequently would have drawn full wages thereupon, the DTC shall make payment of full wages to the workman as if he had been reinstated into service with effect from 3rd December, 1999 till the date on which his services are actually reinstated.

The DTC shall also pass orders directing reinstatement of the petitioner within a period of two weeks from today.

25. I find that vide order dated 2nd February, 2001, this court granted conditional stay of the award in favor of the DTC which was made subject to the petitioner depositing 50% back wages in terms of the award. Out of this amount, a sum of Rs.5,000/- was permitted to be withdrawn towards litigation expenses vide orders dated 16th August, 2002.

The Registry shall release the balance amount which is lying deposited in favor of the workman forthwith.

26. The petitioner shall effect computation of the arrears payable to the respondent/workman within the period of two weeks.

27. Vide orders dated 18th October, 2005, DTC was directed to pay wages to the workman. It is made clear that the DTC shall be entitled to deduct the amount deposited in this court vide orders dated 2nd February, 2001 minus a sum of Rs.5,000/- towards the litigation expenses and such amount paid to the respondent under orders dated 18th October, 2005 while computing the amount which it is liable to pay to the workman in terms of the present judgment.

Payment shall be made to the workman within a further period of four weeks from the date of passing of the orders.

The respondent shall be entitled to costs of the present proceedings which are assessed at Rs.15,000/-