

(2019) 11 DEL CK 0470

In the Delhi High Court

Case No : Letters Patent Appeal No. 751 Of 2019

Dharam Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(1)(c), 12(5)

Citation : (2019) 11 DEL CK 0470

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;C.Hari Shankar, J

Bench : Division Bench

Advocate : Rakesh Kumar, Rupesh K. Saha, Avnish Ahlawat, N.K. Singh

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

CM APPL.51393/2019

The instant application has been filed by the counsel for appellant seeking condonation of delay of 22 days in filing the Letters Patent Appeal.

For the reasons stated in the application, the delay of 22 days in filing the Letters Patent Appeal is condoned.

The application stands disposed of.

LPA 751/2019

1. This Letters Patent Appeal has been preferred by the original petitioner in W.P. (C) 1977/2019 which has been dismissed by the learned Single Judge vide judgment and order dated 31st July, 2019 (Annexure P-1) whereby an award dated 3rd July, 2018 passed by the Industrial Tribunal No.2, Dwarka Courts, New Delhi has been upheld and the claim of this appellant (original petitioner) was not accepted by the learned Single Judge because of misconduct committed by

this appellant (original petitioner). After holding the enquiry, two increments of this appellant were stopped with cumulative effect. This order of punishment has been upheld by the Industrial Tribunal No.2, Dwarka Courts, New Delhi as well as by the learned Single Judge. Against this concurrent finding of facts, the original petitioner has preferred the present Letters Patent Appeal.

FACTUAL MATRIX

? On 26th July, 2004 this appellant (original petitioner) was on duty on Bus No.DL-IPA-3460 from Kanpur to Delhi.

? When the bus reached near Bilsuri Police Post, the bus suddenly pulled on the right side and hit a eucalyptus tree on the other side of the road and caught fire.

? Initially, this appellant (original petitioner) was suspended. Thereafter on 18th August, 2004 (Annexure P-4) an Enquiry Officer was appointed. Management witnesses and workmen witnesses were examined and cross-examined and thereafter Enquiry Officer gave its report dated 30th September, 2004 (Annexure P-8). As per enquiry report, the charges of negligent driving were levelled against the delinquent - appellant (original petitioner) and the same was admitted as proof. Thereafter second Show Cause Notice was given on 11th March, 2005.

? The punishment was awarded on 11th February, 2005 which stopped two increments with cumulative effect. Departmental appeal was preferred by this appellant on 20th October 2005.

? The departmental appeal preferred by this appellant against the order dated 19th April, 2005 was dismissed vide order dated 19th July, 2005. Thereafter an industrial dispute was raised which was espoused by the trade union and the reference was made under Sections 10(1)(c) and 12(5) of the Industrial Disputes Act, 1947 being Reference No.F24/(76)/09lab./CD/640.

? After giving an adequate opportunity of being heard, award was passed vide order dated 3rd July, 2018 and the punishment awarded upon this appellant was not interfered with by the Industrial Tribunal No.2 Dwarka Courts, New Delhi. The writ petition preferred by this appellant (original petitioner) being W.P.(C) 1977/2019 was also dismissed by the learned Single Judge vide detailed speaking order dated 31st July, 2019 (Annexure P-1), hence the present Letters Patent Appeal has been preferred by this appellant (original petitioner).

Arguments advanced by the counsel for appellant

? Counsel for the appellant submitted that no adequate opportunity of being heard was given to this appellant while holding the departmental enquiry. The quantum of punishment inflicted by this appellant is grossly disproportionate and unreasonably excessive.

? Counsel for the appellant has read over the deposition given by Shri Rajpal Singh. Management witness No.2 submitted that there was an accident and not

negligence on the part of the present appellant. This aspect of the matter has not been properly appreciated by the Industrial Tribunal while passing the order dated 3rd July, 2018 nor has the same been appreciated while dismissing the writ petition filed by this appellant and both the award, and judgment and order deserve to be quashed and set aside.

? Counsel for the appellant submitted that the evidences on record have not been appreciated by the Departmental Enquiry Officer. Principles of Wednesbury Unreasonableness has also been argued out i.e. reasons which are ought not to have been considered, have been considered by the Departmental Enquiry Officer. None of this contention is accepted by this Court mainly for the reasons:

(a) We are not sitting in appeal against the Enquiry Officer's report;

(b) By no stretch of imagination, it can be said that the Enquiry Officer's report is based upon no evidence on record.

(c) On the contrary, looking to the Enquiry Officer's report, it can be said that the report is fully based on the evidences on record of the management side witnesses as well as workmen side witnesses.

(d) Looking to the Enquiry Officer's report it cannot be said that the facts which are ought not to have been considered, have been considered by the Enquiry Officer. Thus, principle of wednesbury unreasonableness is not applicable in the facts of the present case.

REASONS

2. Having heard the counsel for appellant (original petitioner) and looking to the facts and circumstances of the case and looking to the judicial pronouncements, we see no reason to entertain this appeal mainly for the following facts, reasons and judicial pronouncements:

(i) For the negligence of the present appellant (original petitioner) a charge-sheet was filed on 18th August, 2004 (Annexure P-4 to the memo of this writ petition). The charges levelled against this appellant read as under :

"Charges

On 26.7.2004 you were on duty at Bus No.3460 Route Kanpur-Delhi 5A and when you were coming on the trip Kanpur-Delhi and when you reached near Bilsuri Police Post the bus collided with a eucalyptus tree on the right side of the Road being driven at over speed and the same caught fire.

Therefore, it appears that the accident took place because of your negligence and over speed at which you were driving the bus and because you lost control. The Bus suffered a loss which is accessed at about Rs.2,85,000/-. The bus did not remain pliable. Thus you have flouted the rules of the corporation and cause financial loss to the corporation.

Your above mentioned acts are misconduct within meaning of Para 19 (b) (h) &

M of the Permanent office Order regulating conduct of DTC employee."

(ii) Enquiry Officer was appointed. The enquiry was conducted. Management witnesses as well as delinquent side witnesses were examined. Opportunity of cross-examination was also given. Thus, there is no procedural lacuna in holding the enquiry. Adequate opportunity of being heard was given to this appellant - Delinquent Officer. Enquiry Officer gave his report on 30th September, 2004 (Annexure P-8 to the memo of this appeal). Looking to the said enquiry report, on the basis of the evidences on record, Enquiry Officer has come to the conclusion that the charges levelled against this appellant were proved. Thus, it cannot be said that the enquiry report is based upon no evidence. On the contrary, looking to the Enquiry Officer's report, there is a proper appreciation of the evidences on record.

(iii) Much has been argued out by the counsel for appellant on the basis of the evidences on record and submitted that the charges have not been proved. We are not in agreement with the contention of this appellant. We are not sitting in appeal against the Enquiry Officer's report. This issue has been settled by the Hon'ble Supreme Court in following decisions:

(a) The Hon'ble Supreme Court in *Central Industrial Security Force & Ors. v. Abrar Ali* (2017) 4 SCC 507 has held that it is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the constitution of India.

(b) In *Bank of India and Anr. v. Degala Suryanarayana* (1999) 5 SCC 762 : 1999 SCC (L&S) 1036 the Hon'ble Supreme Court has held that the court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding.

(c) In *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaiya* (2011) 4 SCC 5841 the Hon'ble Supreme Court has held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, or interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.

(d) The Hon'ble Supreme Court in *Union of India & Ors. v. P. Gunasekaran* (2015) 2 SCC 610 has held that the High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence.

(iv) In view of the aforesaid decisions, we see no reason to entertain the fine niceties of the appreciation of the evidences at this stage.

Suffice it is to say that Enquiry Officer's report is based upon evidences on record and it has been held by the Officer that the charges against this delinquent has been held as proved and we see no reason to interfere with the conclusion of the Enquiry Officer.

(v) Thereafter second Show Cause Notice dated 11th March, 2005 has also been given by the respondent for quantum of punishment and after hearing the delinquent, punishment order dated 11th April, 2005 has been passed. The punishment read as under:

"GZDP/AT (T)/CS-58/04/05/322

The explanation submitted by Shri Dhararm Singh, Driver B No.16666 in response to Charge Sheet No. PGD/AI (T)/CS-58/04/756 dated 18.08.2004 and during the course of enquiry which was concluded on 10.11.2004 as also that given to the Show cause notice no. GPD/AI(T)/CS-58/04/05/059 dated 11.03.2005 have been considered thoroughly and found not satisfactory. The following punishment is therefore imposed upon him:-

"His next two annual Increments are stopped with cumulative effect"

The allowances given during the period of suspension shall be considered sufficient."

(vi) Thereafter departmental appeal has also been preferred by this appellant on 20th October, 2005 after opportunity of being heard was given and the departmental appeal was also dismissed vide order dated 19th July, 2005.

3. Thus, there is no lacuna in holding the departmental enquiry and adequate opportunity of being heard to this appellant - delinquent. Now the only question left out for this Court to be decided is the quantum of his punishment i.e. whether the quantum of punishment is shockingly disproportionate or is unreasonably excessive looking to the nature of misconduct?

4. Looking to the nature of misconduct that this appellant was a driver of the respondent, he was driving a bus from Kanpur to Delhi. The bus collided with a tree and thereafter bus caught fire. The bus was in a very high speed as per the factual aspects on record. Looking to overall aspects of the matter and the nature of the misconduct, the punishment inflicted upon this appellant by the management of stoppage of two increments with cumulative effect cannot be levelled as shockingly disproportionate nor it can be levelled unreasonably excessive punishment.

5. These aspects of the matter have been properly appreciated by the Industrial Tribunal No.2, Dwarka Courts, New Delhi as well as by the learned Single Judge while dismissing the writ petition preferred by this appellant. Hence, we see no reason to interfere with the order passed by the learned Single Judge as no error

has been committed by the passing of judgment and order dated 31st July, 2019 in W.P.(C) 1977/2019.

6. For the aforesaid facts and judicial pronouncements, we see no reason to entertain this appeal. Hence, the appeal is hereby dismissed.