

(2007) 08 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) No. 1595 of 1992

D.T.C.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2007) 115 FLR 444 : (2008) 2 SLJ 59

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : J.N. Aggarwal and Rama Nath Jha, for the Appellant; R.M. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—By way of the present petition, the DTC seeks issuance of an appropriate writ, order or direction to set aside the judgment and order dated 25th September, 1991 passed by the Presiding Officer, Labour Court whereunder it was held that though the enquiry conducted by the DTC was fair and proper, however the punishment imposed by it on the respondent workman was reduced from termination of service, to that of warning only and the DTC was accordingly directed to reinstate the workman with continuity of service and full back wages.

2. Facts of the case are that the respondent workman got employed with the DTC in May 1973 and was brought on monthly rate of pay basis in November, 1974. On 3rd June, 1988, while the respondent workman was performing his duty on Bus No. 1218, Route No. 445, his bus was checked by the checking officials and it was found that the respondent workman was going to Alaknanda via DDA Kalkaji, whereas as per the duty allotted to him, he was supposed to go via Tara Apartment. It is the case of the DTC that on being asked for an Explanation, the respondent workman failed to show sufficient reason for the said irregularity in diverting from the charted route and instead, the respondent workman

misbehaved with the checking officials and accordingly he was challaned. Thereafter a charge sheet was issued to the respondent on 30th June, 1988 for the irregularity/misconduct committed by him, to which the respondent workman filed his reply. The reply not being found satisfactory, the case was entrusted to the Enquiry Officer for conducting a detailed enquiry. The Enquiry Officer, in his findings held that the charges as leveled against the respondent workman stood proved, and on the basis of the said findings and the past records and performance of the respondent workman, the respondent driver was removed from services of the DTC with effect from 25th January, 1989.

3. Being aggrieved by the said removal order, the respondent workman raised an industrial dispute which was referred to the Labour Court for adjudication in the following terms of reference:

Whether the removal from service of Shri Swaminath Prasad is illegal, and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect.

4. On the basis of the pleadings of the parties, the following issues were framed by the Labour court:

- i. Whether the enquiry conducted by the management was fair and proper?
- ii. To what relief, if any, is the workman entitled in terms of the reference?

5. Vide its award dated 25th September, 1991, while deciding the first issue in favor of the DTC on the ground that the propriety and legality of the enquiry was not disputed by the respondent workman, the second issue was decided in favor of the respondent workman, thereby holding that the punishment of termination of service imposed by the DTC could not be sustained. Accordingly, the Labour Court reduced the punishment imposed on the respondent workman from "termination" to that of "warning" only. The Labour Court further directed that the respondent workman be taken back in service with continuity and full back wages. The said award has been impugned by filing the present petition.

6. It is pertinent to mention at the very outset that the respondent workman has retired during the pendency of the present petition, on 30th November, 2003 and that while 50% of his basic pay was paid to the respondent workman vide order dated 13th September, 1995, the balance 50% was paid to him at the time of his retirement, i.e. on 30th November, 2003.

7. During the course of arguments, learned Counsel for the DTC submitted that the impugned award is bad in so far as the reduction in quantum of punishment is concerned. It was stated that the quantum of punishment imposed on the respondent workman was commensurate with the irregularity/misconduct committed by him, and that the punishment of termination from services was imposed on him, keeping in view not only the misconduct/irregularity for which he was charged, but also his past record which was not at all satisfactory. It was submitted that the respondent workman had a tainted service record with as

many as 29 irregularities committed by him in the past for which he was cautioned, warned, censured, advised, fined and many a times his increments were stopped and he was even suspended for misconducts during his service period. Reference was made to the charge sheet dated 30th June, 1988 issued to the respondent by the DTC, wherein it was clearly mentioned that the past records of the respondent workman were to be considered at the time of passing the final orders in the case.

8. Counsel for the DTC further challenged the award on the ground that it was based on a wrong understanding of the facts, as the Labour Court had assumed that the issuance of a challan to the respondent workman preceding the issuance of charge sheet to him, were two separate proceedings and amounted to double jeopardy. However, it was stated, that challan and charge sheet were different stages of the same disciplinary proceedings and Therefore it did not amount to double jeopardy.

9. Counsel for the DTC argued that the Labour Court ought not to have interfered with the quantum of punishment imposed by the DTC, as the said punishment was not so shockingly disproportionate so as to warrant any interference by the Labour Court. In this regard reliance was placed on the following judgments rendered by the Supreme Court:

(i) Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma,

(ii) U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal,

10. On the other hand, counsel for the respondent workman sought to repel the arguments advanced on behalf of the DTC by stating that there was no act of irregularity/misconduct committed by respondent workman in so far the deviation from the fixed route was concerned. It was clarified that the respondent workman deviated from the fixed route in order to avoid heavy traffic congestion and as such the route taken was longer than the normal route only by a kilometer and that neither the passengers nor the conductor complained about the said deviation to the ATI. It was averred that the respondent workman had deviated from the route with the consent of the passengers and the conductor, who was the in-charge of the bus. Counsel for the respondent workman sought to fortify the above position by stating that no disciplinary proceedings were conducted against the conductor of the bus who was equally responsible and the respondent workman alone was punished for misconduct.

11. As regards the past conduct of the respondent workman, it was argued by his counsel that the irregularities referred to by the counsel for the DTC were of a minor nature running into a career span of 18-19 years, and Therefore the same could not have been taken into consideration for imposing such a grave punishment on the respondent workman.

12. In his rejoinder, counsel for the DTC clarified that conductor is not the in-charge of the bus, as claimed by the respondent workman, but his duties were

confined to collecting fares and issuing tickets to the passengers.

13. I have heard the counsels for the parties and have perused the material placed on record, including the impugned award. The only issue that needs to be addressed here is as to whether it was appropriate for the Labour Court to have interfered with the quantum of punishment as imposed by the DTC on the respondent workman and to have reduced the same from "termination" to only "warning".

14. The scope of interference with quantum of punishment has been the subject-matter of judicial scrutiny on a number of occasions by the Supreme Court as well as by this Court. It is no longer rest integra that such interference cannot be a routine matter and the quantum of punishment can be interfered with only when it is found to be arbitrary or shockingly disproportionate to the charges framed against the delinquent employee.

15. In the case of B.C. Chaturvedi Vs. Union of India and others, , the Supreme Court made observations to the following effect:

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either by directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

16. The aforesaid position was followed and reiterated by the Supreme Court in the case of Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari, wherein relying on its earlier judgments in the case of Om Kumar and Others Vs. Union of India, and Union of India and another Vs. G. Ganayutham (Dead) by LR., , it was held as under:

12. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal,

there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

17. Reliance has rightly been placed by the counsel for the DTC on the case of M.P. Electricity Board (supra), wherein it has been held that the Labour Court/Tribunal can interfere with punishment in exercise of its powers u/s 11A of the Industrial Disputes Act, 1947, only when it is satisfied that the discharge or dismissal is not justified, and similarly, the High Court gets jurisdiction to interfere with the punishment while exercising jurisdiction under Article 226 of the Constitution of India only when it finds that the punishment imposed is shockingly disproportionate to the charge proved. It was also held that the jurisdiction vested with the Labour Court to interfere with the punishment was not to be exercised capriciously and arbitrarily.

18. The position of law as regards the scope of interference by the Labour Court/Tribunal in the quantum of punishment having been culled out as above, the question that needs to be answered is as to whether the punishment imposed on the respondent workman was so harsh or so disproportionate to the charge proved, that it warranted interference by the Labour Court.

19. A perusal of the impugned award would show that the factors that weighed with the Labour Court while reducing the punishment from "termination" to "warning" were firstly that diverting from chartered route due to traffic jam or otherwise, could not be said to be misconduct grave enough for imposition of a punishment of termination from service, and secondly that the challan issued to the respondent workman for the said misconduct and the disciplinary proceedings initiated against him were emanating from two different proceedings directed against the same misconduct, and Therefore it amounted to imposing a double jeopardy on the respondent workman.

20. So far as the findings of the Labour Court as regards the second issue pertaining to double jeopardy caused to the respondent workman are concerned, the Labour Court has evidently erred in proceeding on the premise that the issue of challan was a completely different proceeding from that of the issue of charge sheet and the enquiry that followed. There is force in the contention of the counsel for the DTC that challan is part of the same disciplinary proceedings by which punishment was imposed on the respondent workman, and as such, there was no question of the respondent workman having suffered on account of any double jeopardy.

21. Also, there is no illegality or arbitrariness on the part of the Disciplinary Authority in considering the past service record of the respondent workman while imposing punishment on him. The justification offered by the counsel for the respondent workman to the effect that 29 instances of misconduct having taken

place in a long span of 18-19 years ought to have been ignored, is taken note of only to be rejected because misconducts whether of a minor nature or otherwise, not only reflect on an employee's dedication towards his duty and his conduct and discipline at the workplace but also adversely affects the level of confidence that an employer reposes in his employee.

22. In so far as interference in the quantum of punishment is concerned, the Labour Court was justified in observing that diversion from the charted route due to traffic jam could not be defined as such a grave misconduct so as to visit the respondent workman with a punishment of termination from service.

23. However, in view of the above discussion, the inevitable conclusion that follows is that the Labour Court erred in concluding that the respondent workman suffered from double jeopardy and while it was justified in coming to the conclusion that the punishment imposed was shockingly disproportionate to the guilt of the respondent workman, it erred in substituting the said punishment with that of "warning". Thus, both the penalties imposed on the respondent workman, namely, one of "termination from service" imposed by the Disciplinary Authority, and the other of "warning" imposed by the Industrial Adjudicator are found to be too extreme, the former being too harsh, and latter being too mild. So, where shall the twain meet?

24. If the Labour Court found the punishment of "termination" to be disproportionate to the charge proved, the normal course open to it ought to have been to remit the matter back to the Disciplinary Authority for reconsideration of punishment. It is only to shorten litigation and in exceptional and rare cases that it may itself impose appropriate punishment by recording cogent reasons in support thereof. This view has been taken by the Supreme Court consistently in various cases including that of B.C. Chaturvedi (supra) and Dwarka Prasad Tiwari (supra). Needless to state, that in the present case, there were no such exceptional or extraordinary circumstances made out for the Labour Court to have proceeded to reduce the quantum of punishment itself, especially in view of the fact that the award was passed in September 1991 and had the matter been remanded back to the Disciplinary Authority with directions to reconsider the punishment imposed, there was sufficient time in hand, as the respondent workman was to retire from services only in November, 2003.

25. Keeping in view the facts and circumstances of the present case, the impugned award dated 25th September, 1991 in so far as it has reduced the quantum of punishment imposed on the respondent workman from "termination from service" to "warning", is set aside. In the light of the above discussion, the Competent Authority is directed to pass fresh orders with respect to the quantum of punishment to be imposed on the respondent workman after perusing the records and keeping in view the past conduct of the respondent workman, preferably within a period of six weeks under written intimation to the respondent workman. The writ petition is allowed to the above extent. Parties are left to bear their own costs.