
(2009) 04 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition (Civil) No. 16404 of 2006

Hari Om

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2009) 04 DEL CK 0034

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Arvind Kr. Gupta, for the Appellant; Amit Mehra, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—The petitioner has challenged the award dated 4th August, 2006 passed by the Fast Track Court-XXI, Karkardooma, Delhi in ID No. 313/06/97 in case titled Shri Hari Om v. Delhi Transport Corporation. By virtue of the aforesaid award, the learned Labour Court has not found any illegality committed by the respondent/DTC in conducting the domestic inquiry against the petitioner for his alleged misconduct nor the punishment of removal imposed on the petitioner has been considered to be shockingly disproportionate so as to substituted by any other punishment. Accordingly, the learned Labour Court held that the punishment did not warrant any interference keeping in view the gravity of the proved misconduct.

2. The petitioner feeling aggrieved by the aforesaid award has challenged the same in the present writ petition.

3. After completion of the pleadings, I have heard the learned Counsel for the petitioner who has challenged the only quantum of punishment which has been imposed on the petitioner on the ground of proportionality.

4. It has been contended by the learned Counsel for the petitioner that keeping in view the past conduct of the petitioner that he was not involved in any

misconduct and had an unblemished service record, accordingly, the imposition of punishment of removal from service was grossly disproportionate. It was contended by the learned Counsel for the petitioner that the punishment of removal should be substituted with a lesser punishment. The learned Counsel for the petitioner had placed reliance in support of his contention on the judgment in case titled Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., to urge that the Hon"ble Supreme Court has made a reference that the past conduct of the workman may be persuade the Court to reduce the punishment.

5. The learned Counsel for the respondent has vehemently contested the proposition advanced by the learned Counsel for the petitioner that merely on account of the fact that the past conduct of the delinquent in a given case is good does not reduce the gravity of the offence or the misconduct which has been proved against him. It could not be a ground for imposition of a lesser punishment than the punishment which has been found appropriate by the disciplinary authority. For this purpose, the learned Counsel for the respondent also placed reliance on Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., as well as on case titled Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others, .

6. I have considered the submissions of the respective sides carefully and gone through the record before dealing with the submission raised by the respective sides. It would be pertinent here to give brief facts of the case. The petitioner was served with a charge sheet dated 1st July, 1986 wherein allegations were made against the petitioner which was as under:

That on 01.07.1986 at about 11.30 hrs, when you asked from Sh. Abdul Latif, A/foreman about struck of your name from the defect register who had shown inability for the same. You used abusive language and assaulted Sh. Abdul Latif, A/Foreman and torn the official record in the presence of other workshop staff.

Your above act tantamount to misconduct within the meaning of para 19(g) & (m) of the standing orders governing to the conduct of D.T.C. employees.

7. The petitioner denied the allegations as fabricated, vague and alleged that there was a conspiracy to victimize him on account of the internal politics of the Corporation. The respondent/DTC appointed one Shri L.K. Batra as Inquiry Officer. The Inquiry Officer recorded the evidence and conducted the inquiry; give a report that the misconduct of the petitioner in using filthy abusive language and assaulted Abdul Lathif A/Foremen and torn the official record in the presence of the workshop staff is proved.

8. On the basis of the said report of the Inquiry Officer, the petitioner was visited with the punishment of removal from service. The petitioner challenged the said imposition of punishment before the learned Labour Court where an issue was framed as to whether the domestic inquiry was conducted in accordance with law and principles of natural justice which was decided against the petitioner. The next question which arose for consideration of the learned Labour Court was as

to whether the punishment which has been imposed on the petitioner is grossly disproportionate. The learned Labour Court while dealing with the said issue referred in case titled *State Bank of Patiala and Ors. v. S.K. Sharma* 1996 2 CLR 29 and *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, and came to a holding that the punishment of removal which was imposed on the petitioner keeping in view the proved misconduct was not grossly disproportionate or shockingly disproportionate, and therefore, did not interfere with the same. It is in this background that the submissions have been made before this Court for interfering with the punishment.

9. The law regarding proportionality of punishment and the scope of judicial review is very well settled by now. The fundamentals of these principles of judicial review are that:

(a) that imposition of punishment on the basis of the proved misconduct is essentially the job of the disciplinary authority. The Courts as a matter of course ought not to be interfere with the quantum of punishment imposed on the delinquent for the proved misconduct unless and until the punishment which has been imposed on the delinquent on account of the proved misconduct is "shockingly disproportionately" or "grossly disproportionate" or "shocks the conscious of the Court".

(b) The various terms which has been used by the Apex Court in different judgments thereby referring essentially are to the factum that while considering the scope of judicial review of punishment imposed at the delinquent, there must be something abhorrent to the judicial mind keeping in view the proved misconduct.

(c) Even in cases where the Court has come to a conclusion that the punishment which is imposed on the delinquent in a given case is grossly disproportionate to his proved misconduct, normally the matter must be remanded back to the disciplinary authority after setting aside the punishment so as to enable the disciplinary authority to impose the punishment afresh. In a very exceptional and rare case where the Court feels that sending the case back to the disciplinary authority is not warranted in facts of the case or is likely to result in some irreparable loss, or delay, then in such a matter as an exception, the Court itself may substitute the punishment for the one which has been imposed by the disciplinary authority.

10. Coming back to the facts of the present case, the learned Labour Court in exercise of its power u/s 11A of the Industrial Disputes Act, 1947 has not only upheld the fairness and the impartially of the Inquiry Officer but has also judicially considered and examined the proportionality of punishment of removal which has been imposed on the petitioner for the proved misconduct. The proved misconduct which admittedly in this case was not only the use of abusive language against his superiors but also assaulted Abdul Latif, co-employee and

tearing the official record. This was something very serious in as much as the imposition of punishment other than the one which was done by the disciplinary authority in the instant case would impinging on the overall maintenance of discipline and decorum of the organization.

11. The argument which has been made by the learned Counsel for the petitioner is that the past conduct of the petitioner has been very good, and therefore, because of this one incident he should not have been visited with the extreme penalty of removal. No doubt, in Mahindra and Mahindra (supra) the past conduct has been taken note of but even that case also the delinquent who was guilty of using abusive filthy language against his superior officers, the punishment of dismissal was not held to be disproportionate. Therefore, the Mahindra and Mahindra case (supra) which has been relied upon by the petitioner instead of supporting his case is in fact supporting the respondent case of the respondent. In other case also the Hon"ble Supreme Court has echoed the same sentiments that the past conduct may not be always relevant as a mitigating factor of punishment. The totality of the circumstances have to be seen. An misplaced sympathy may mar the discipline of the organisation.

12. Keeping in view the aforesaid facts that the petitioner was guilty of using filthy abusive language, assaulted superiors and torn of official record, I feel that was an act of gross misconduct impinging on overall discipline decorum of the organization and if visited with the punishment other than removal or dismissal will give impetus to other with similar proclivities to act in the same manner, and therefore, the learned Labour Court has very rightly rejected the plea of the petitioner to interfere in the same.

13. I do not find any perversity, illegality or any reason to interfere in the quantum of punishment which has been imposed on the petitioner, and accordingly, the writ petition is dismissed.