

(2018) 09 CAT CK 0032

In the Central Administrative Tribunal

Case No : Transfer Application No. 24 Of 2013, Civil Writ No. 2248 Of 1994

Harinder Pratap Singh

APPELLANT

Vs

Delhi Transport Corporation And Ors

RESPONDENT

Date of Decision : 27-09-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Leave) Rules, 1972 — Rule 19
Constitution Of India, 1950 — Article 14

Citation : (2018) 09 CAT CK 0032

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Vinay Sabharwal, Chandra Shekhar Goswami, Karunesh Tandon

Final Decision : Dismissed

Judgement

V. Ajay Kumar, J

1. The petitioner, a Driver in the respondent-Delhi Transport Corporation, filed Civil Writ No. 2248/1994, which was transferred to this Tribunal and numbered as the instant TA No.24/2013 seeking his reinstatement with retrospective effect, i.e., from 26.03.1988 by quashing the Annexure P-1 dismissal order dated 26.03.1988.

2. The Administrator of the Union Territory of Delhi on being satisfied that in the public interest it is necessary and expedient so to do, has issued an order on 11.03.1988 prohibiting strike in any service in or in connection with the working of the Delhi Transport Corporation under Section 3 (1) of the Essential Services Maintenance Act, 1981. However, in spite of the said prohibition of strike, when the workmen of the DTC went on strike, number of employees were dismissed from service by the DTC. Annexure P-1 dismissal order dated 26.03.1988 was also one such order, whereunder the petitioner was dismissed on the ground that he participated in the strike at the relevant point of time.

3. Heard Shri Vinay Sabharwal, learned counsel for the petitioner and Shri Chandra Shekhar Goswami for Shri Karunesh Tandon, learned counsel for the respondent and perused the pleadings on record.

4. Shri Chandra Shekhar Goswami, learned counsel appearing for the respondent, at the outset submitted that the instant TA is not maintainable in view of the judgment of the Hon'ble High Court of Delhi dated 20.12.1988 in Civil Writ Petition No.763/1988 in Ramesh Chander and Another Vs. Delhi Transport Corporation. It is submitted that the petitioner along with number of identically placed workmen, who were dismissed from service under identical circumstances, such as passing of the impugned Annexure P-1 dismissal order dated 26.03.1988, approached the Hon'ble High Court by jointly filing the said CWP No.763/1988 challenging the vires of proviso (ii) of Clause 15 (2) of the Delhi Road Transport Authority Regulations, 1952 and for a consequential declaration that the impugned dismissal orders are in violation of Section 33 of the Industrial Disputes Act, 1947. The Hon'ble High Court of Delhi disposed of the Writ Petition as under:-

"59. As a result of the above discussion, the batch of the writ petitions are disposed of in these terms :-

(a) We uphold the virus of proviso (ii) to Clause 15(2) (c) of the DRTA Regulations, 1952 by reading down the expression "exceptional cases" to cover cases "where it is not reasonably practicable to comply with all or any of the provisions of the main clause".

(b) The exercise of the power that it was not reasonably practicable to hold the disciplinary enquire, was bona fide and for relevant and germane reasons arid we uphold it.

(c) We leave the petitioners to pursues their remedies for the contravention of the provisions of Section 33 of the I.D. Act, if they so desire, under the provisions of Section 33A of I.D. Act.

(d) We hereby quash the orders by the Appellate Authority in whichever cases they have been passed. wherein it declined to go into the question of each of the dismissed employee's participation and his instigating and inciting other loyal workers and direct that the Appellate Authority shall hold the enquiry itself or direct that such enquiry be. held in accordance with the provisions of Clause 15(2) (c) and then pass such orders as it deems fit.

(e) The petitioners who have not preferred the appeals under Clause 15 (3), may do so within the same prescribed period commencing from today and those appeals will also be determined in the similar manner as indicated above.

(f) The parties are left to bear their own costs on the facts and circumstances of the case".

5. The learned counsel for the respondents further submits that the case of the

petitioner is also covered by the said judgment as he was one of the petitioner therein. If the petitioner has filed any appeal against the impugned Annexure P-1 dismissal order dated 26.03.1988 and the said appeal was rejected, para 59 (d) is applicable and if the petitioner has not filed any appeal at all, para

59 (e) would be applicable to him. In any event, the learned counsel for the respondent submits that, the instant TA is not maintainable.

6. On the other hand, Shri Vinay Sabharwal, learned counsel for the petitioner failed to state that once he challenged the very same Annexure P-1 dismissal order dated 26.03.1988 by way of the Civil Writ Petition No.763/1988, why he filed the instant Civil Writ No.2248/1994 on 03.04.1994 which was later transferred and numbered as the instant TA No.24/2013 before this Tribunal. The learned counsel also failed to state that in pursuance of the orders of the Hon'ble High Court of Delhi in CWP No.763/1988, whether any enquiry was conducted against the petitioner and if so, what happened therein. The learned counsel was also not able to oppose the submission made by the respondent counsel in any manner, even after taking time, specifically, for this purpose.

7. In the circumstances and for the aforesaid reasons, we do not find any merit in the TA and accordingly the same is dismissed. No costs.