

(2011) 03 DEL CK 0196
In the Delhi High Court
Case No : LPA No. 747 of 2010

Kishori Lal

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0196

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Piyush Sharma, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

CM No. 5151/2011 (for exemption)

Allowed, subject to all just exceptions.

CM No. 5150/2011

This is an application for condonation of delay in re-filing the application for restoration of the appeal.

For the reasons stated in the application, the delay in re-filing the application for restoration of the appeal stands condoned.

The application stands disposed of.

CM No. 5149/2011

This is an application for restoration of the appeal.

Mrs. Avnish Ahlawat, learned Counsel for the Respondent has no objection for the restoration. Accordingly, the appeal is restored to file on its original number.

The application stands disposed of.

1. The Appellant, a conductor in DTC, was charge sheeted on 14th November, 1994 for not having issued tickets to three passengers after collecting fare from them. He was found guilty and was removed from services vide order dated 5th February, 1996. The Appellant unsuccessfully challenged the removal order in proceedings under the Industrial Dispute Act, 1947. The Industrial Tribunal held that the findings recorded in the domestic inquiry were justified and no ground to interfere was made out. The Appellant held a position of trust wherein honesty and integrity were in-built requirement and was guilty of misconduct. Accordingly reference was answered against the Appellant vide the award dated 9th July, 2008.

2. By impugned order dated 13th May, 2009, the writ petition filed by the Appellant against the award dated 9th July, 2008 has been dismissed. The learned single judge has rejected the contention that the quantum of money involved did not deserve the punishment imposed. It was held that the doctrine of proportionality did not warrant interference with the order imposing punishment of removal.

3. We have examined the contention raised by the Appellant. On 21st October, 1994 the checking staff found that three passengers had alighted the bus without tickets at Kharar. They had stated that they had paid the fare but the Appellant had not issued tickets. The Appellant admitted his fault and surrendered three unpunched tickets. Statements made by two passengers were recorded. ATI-Balbir Singh had recorded a written complaint. The Appellant refused to sign the passengers' statements. Before the enquiry officer the said statements were reiterated by Mr. Zile Singh who was a part of the checking team with Sohan Singh and Balbir Singh. The statement of Balbir Singh was also recorded. After considering the evidence on record the Enquiry Officer had recorded his findings against the Appellant. It cannot be said that finding of Enquiry Officer is perverse as relevant and cogent evidence has been taken into consideration.

4. Learned Counsel for the Appellant has submitted that Enquiry Officer had acted as a presenting officer. We have examined the statement of Zile Singh and Balbir Singh recorded before the Enquiry Officer. It is noted that statements of the witnesses were recorded in chief and then witnesses were permitted to cross-examined by the Appellant. The Enquiry Officer had put some questions to Zile Singh. No questions were put by the Enquiry Officer to Balbir Singh. It is not possible to accept the contention of the Appellant that the Enquiry Officer was prejudice or had acted as a presenting officer because he had asked questions to Zile Singh. The purpose and object of the enquiry is to find out the truth. By asking questions, the Enquiry Officer does not become impartial or biased. It is well settled that strict and sophisticated rules of evidence under Indian Evidence Act, 1872 do not apply to domestic enquiry. A writ court or a forum exercising power of judicial review in essence is to examine whether there is objectivity, exclusion of extraneous material and consideration and observance of the rules

of natural justice. There should be fair play and no perversity and arbitrariness in rendering justice. (See State of Haryana and Another Vs. Rattan Singh,

5. In Cholan Roadways Limited Vs. G. Thirugnanasambandam, it has been observed that the standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities. Standard of proof cannot be put in a straitjacket formula. Similarly in Delhi Transport Corporation Vs. Shree Kumar and Another, , several other judgments of the Supreme Court and this Court have been noticed and it has been held as under:

10. In Shyam Sunder v. Delhi Transport Corporation (supra) this Court held that since the enquiry officer based his findings on the examination of the checking staff, there was independence evidence to link the Petitioner with the charges leveled against him, and consequently it was held that the statement of the passengers, not being the sole material against the Petitioner, the domestic inquiry was not vitiated. The aforesaid decision of this Court as also the decision of the Supreme Court in Rattan Singh (supra) and many other decisions were noticed by this Court in the decision in Delhi Transport Corporation v. N.L. Kakkar and Anr. (supra). After noticing all the judgments, this Court held that it is quite clear that consistent view of the court over the last few decades has been that non-production of the passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic inquiry should not be interfered with so long as they are based on some evidence. It was further held that the value of that evidence and what weight is to be attached to it is within the jurisdiction of the tribunal. In the said judgment this Court also noted the law laid down by some other High Courts and thereafter it was held that the production of passengers either in a domestic inquiry or before the Labor Court in an industrial dispute is not at all necessary. This Court was of the view that in most cases this would be highly impractical because it would mean that passengers would have to be traced out, chased and brought before the inquiry officer or the Labor Court causing them unnecessary inconvenience. I am of the considered opinion that all the aforesaid decisions are fully applicable to the facts and circumstances of the present case.

11. In the present case, there was evidence before the enquiry officer in the form of statements of the six passengers which were also signed by the Respondent No. 1, the unpunched tickets and also the evidence of the checking staff. In my considered opinion, there being independent evidence like the evidence of the checking staff and unpunched tickets to link the Respondent No. 1 with the charge leveled against him, the Tribunal did not appreciate the issues in the right perspective and on the basis of settled position of law and, therefore, it committed an error. The Tribunal also committed an error in holding that there was violation of the principles of natural justice in conducting the enquiry. I am also of the considered opinion that this is not a case where it could be said that there was violation of the principles of natural justice or where the enquiry was vitiated as was held by the Tribunal inasmuch as there was definitely legal

evidence before the enquiry officer having nexus with the events that were being enquired into. The guilt of the Respondent No. 1 was correctly established in the domestic enquiry proceedings and the Tribunal fell into an error in holding that the domestic enquiry was vitiated. In that view of the matter both the orders of the Tribunal are liable to be set aside.

6. In the present case, the allegation is that the Appellant had indulged in malpractices and there were several adverse entries against him. Even penalty of stoppage of increments with cumulative effect was imposed on him for non-issuance of tickets. The Industrial Tribunal noticed that the Management had not proved the said documents but even one instance of cheating can be fatal to an employee.

7. The contention of the Appellant with regard to quantum of punishment imposed has been rightly dealt by the learned Industrial Tribunal as breach of trust by an employee holding a position of trust is a serious misconduct. It was further observed that where a person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is must and unexceptionable. Therefore what is relevant is not the amount involved, but the breach of trust by the Appellant.

8. In view of the above, we do not find any merit in the present appeal and the same is dismissed.