

(2020) 07 DEL CK 0175

In the Delhi High Court

Case No : Civil Writ Petition No. 6204 Of 2017, Civil Miscellaneous Application
No. 13572 Of 2020

M/S Delhi Transport Corporation

APPELLANT

Vs

Dheer Singh

RESPONDENT

Date of Decision : 28-07-2020

Acts Referred:

Citation : (2020) 07 DEL CK 0175

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Purvesh Buttan, Umesh Suri, Avinash Suri

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. Mr. Dheer Singh (hereinafter, "Employee/Driver") was engaged as a Retainer Crew Driver (RC Driver) with the Petitioner corporation, M/s

Delhi Transport Corporation i.e. DTC since 1981. The incident took place on 10th June, 2006 when the Driver was performing his duties on bus no.

3176 plying on route no. 33.

2. The said bus was operating from Bhajanpura to Noida Sector 37 and on the way, the bus met with an accident near subway Gokalpuri Delhi at

around 18:30 hours (06:30 pm). The passengers called the Police Control Room (PCR). According to the conductor, Mr. Satyapal Singh, the Driver

was found to be drunk. There was no injury to the passengers. Another driver of Bawana Depot drove the bus to Noida Depot thereafter.

3. The incident was reported to ATI Tulsi Ram, badge No. 23014 on 10th January, 2006. On 12th January, 2006, the employee was suspended with

immediate effect. However, on 14th February, 2006, the said suspension letter was revoked, pending enquiry into the case, as a Chargesheet had been issued to the driver on 13th February, 2006. On 24th January, 2006 the driver submitted his reply to the charge-sheet, wherein he denied the charges levied against him. Thereafter, an Enquiry Officer conducted an enquiry on behalf of the DTC and recorded statements of all witnesses etc. The driver was found guilty in the departmental proceedings and a report in this regard was submitted by the Enquiry Officer to the Depot Manager, Noida. A Show-Cause Notice dated 2nd June, 2006 was issued to the driver, to which reply was also submitted on 15th June, 2006. Services of the driver were terminated by the DTC, effective from 30th June, 2006.

4. The order of termination was challenged by the driver before the Industrial Disputes Tribunal. Vide order dated 28th May, 2016, the Id. Tribunal concluded that proceedings held before the Enquiry Officer were proper and valid. Thereafter, vide final judgment dated 6th September, 2016, the petition of the Claimant i.e. the Employee in this petition, was partly allowed. The termination order was upheld but 50% back wages were awarded from 1st July, 2006 onwards till the driver had attained the age of 55 years i.e. till 30th November, 2006, with consequential benefits. The operative portion of the said judgment dated 6th September, 2016 is set out herein below:-

â??17. It is not disputed that claimant's date of birth is 14.11.1956. Retirement age of drivers in DTC is 60 years, but they are to undergo medical examination every year after attaining age of 55 years and if they are found fit, they are allowed to continue till the age of 60 years. In the case in hand, it cannot be said that claimant was medically fit when he had attained the age of 55 years or subsequently.

Taking into account all these facts, the termination order is modified to the extent that claimant shall be deemed to have retired at the age of 55 years. The management is directed to give him 50% of back wages from the next day of termination i.e. from 01.07.2006 onwards till the date the claimant had attained the age of 55 years i.e. till 30.11.11 with consequential benefits. The management is directed to pay the said amount to him within one month from the date of publication of the award, failing which it shall be liable to pay interest on it @ 9% per annum from today till its realization. Parties to bear their own costs. Reference is

answered accordingly. Award is passed accordingly.â??

5. On behalf of the DTC, Mr. Purvesh Buttan, Id. counsel submits that the enquiry was held in a proper and fair manner, which is evident from the

Proceeding Sheets of the Enquiry Officer. He submits that there were two issues which were framed by the Id. Tribunal during the course of

proceedings, one relating to whether the enquiry conducted against the workman was just, fair, proper and valid and the other being as per the terms

of reference. On issue No. 1, the finding of the Tribunal was that the enquiry was fair and principles of natural justice were followed. Vehement

reliance is placed on the statement of the conductor, who confirmed that the driver was drunk on the night of the incident.

6. On the other hand, on behalf of the employee, it is argued that the termination is completely unjustifiable. Mr. Umesh Suri, Id. counsel submits that

there was no damage to the bus or to the passengers. In fact, the manager at the Noida bus depot confirmed that the driver himself came to submit

the memo in the control room. It is further argued that there is no evidence that the driver was drunk on the night of the incident, as there was no

medical check up which was conducted to confirm that he was under the influence of alcohol and no FIR was registered. Thus, punishment meted out

to driver is completely disproportionate. Reliance is placed on the judgment of this Court in Delhi Transport Corporation vs. Ramphal, [W.P(C) No.

727/2001, decided on 23rd December 2005].

7. Counsel for the parties have also given their written submissions, which have been perused by the Court. After hearing Id. Counsel for the parties

and after perusing the records, it is seen that on 10th January, 2006, the conductor, Mr. Satyapal Singh submitted a report to Mr. Tulsi Ram at the

Noida Depot. The report records the statement of the conductor which reads as under:-

â??When we were coming from Bhajanpur bringing a trip of 18:30 p.m. to Noida Sector -37 then drive(r) hit the bus from subway near

Gokulpuri but there had no harm to the bus, I reached forward and saw that driver was in drink. PCR was called by the Passengers. PCR

men took the license and Badge Number of driver. After some time license and Badge was given to me. A Bawana Depot driver who was

coming to Noida took the bus to the depot because the driver was not in a

position to drive the bus. After coming to the depot driver having

Badge No. 10695 not found in the depot. I deposited the Memo, License and Badge of the Driver bearing Badge No. 10695 to the depot.

The written statement of the conductor is attached herewith this report. Detailed information to be taken from the conductor bearing Badge

No. 21504. Driver Badge No. 10695 came to the depot but not found in the depot whose license and Badge received with T I schedule

report.â??

8. Immediately on 12th January, 2006, a suspension order was issued to the driver by the DTC. The DTC recorded that the conduct of the driver was

in violation of rules of the corporation and in fact constitutes carelessness. It also tarnishes the image of the corporation and caused economic loss to

them. The charge sheet was thereafter, issued on 13th February, 2006. In the charge sheet, the following allegations were recorded:-

(i) The Employee was found to be in a drunken condition by the conductor while operating the 18:30 trip from Bhajanpura to Noida Sector 37.

(ii) The passengers had called the PCR.

(iii) The police took the License and Badge of the Employee and handed over the same to the conductor.

(iv) Since the Employee was not in a position to drive the bus, the bus was taken to Noida depot by a driver of Bawana Depot.

(v) The conductor deposited Bus Memo, License and Badge No. in the Depot.

9. The driver was asked to submit his reply to the charge sheet, which was issued by the Depot Manager. Since the enquiry had commenced, the

suspension of the employee was revoked on 14th February, 2006. In reply to the charge sheet, the driver simply denied the allegations as being

baseless and unfounded. It was claimed by him that he was not aware of the report which was given by the conductor to the Duty Officer. During the

Enquiry, the driver was present in the proceedings. The statement of Mr. Tulsi Ram, the Transport Inspector/Duty Officer who recorded the

statement of the conductor on the night of the incident, was then recorded. He was also cross-examined. The proceedings took place in the presence

of the Labour Welfare Inspector. The driver from Bawana Depot, who drove the bus was also called to give evidence. On some dates of the enquiry

proceedings, the driver remained absent. The statement of the conductor was

also recorded, which reads as under:-

My duty on 10.1.2006 was with the Driver Dhir Singh, Badge No. 10695 at 33/55A Bus No. 3176. We moved bringing a trip from

Bhajanpura to Sector 37 Noida at 18.330 0, clock then but hit with subway near Gokulpuri flyover. I went forward to the driver his mouth

was giving wine smell. One of the passenger called the PCR through mobile and said driver has drunk. He cannot drive the bus. He can hit

the bus somewhere. PCR men took away the driver in PCR van and key of the bus handed over to me. I began to wait to sit the passengers

another bus but not a single bus came for Noida. After some time PCR men left the driver Dhir Singh at the bus. When I entered into the bus

i saw the two policemen and driver were sitting in the bus. Police told that he cannot drive the bus, tell us the depot number. I told them

depot number and they made a call but it did respond. They said that take the bus slowly by the driver. I was handed over his license/ badge

number to me by police and said that they would take it from me if required. They driver took the bus slowly to Noida. On the way a

passenger boarded on the bus I asked him for ticket, he told he was a staff. I asked him about his designation then he told him the driver of

Bawana. I enquired him where he is going? He answered, Noida. I requested him to drive the bus then he brought the bus to depot. I

handed over the driver Dhir Singh to D.O. in the depot he gave the above statement to the D.O. D.O. asked to give the statement in writing.

I handed over the License and Badge of the driver to the D.O. and also gave the written statement. There is nothing else to say.

10. The enquiry was, thereafter, concluded. The findings of the enquiry officer are as under:-

(i) The Accused Employee was given the option of seeking assistance of any of his co-worker/Labour Welfare Inspector/Officer, which the

Employee did not avail.

(ii) The charge sheet was duly served on the Employee.

(iii) The Employee denied the charges raised in the Chargesheet.

(iv) The Employee was given full opportunity to cross examine the witnesses, including Mr. Tulsi Ram. On several occasions, the Employee remained

absent from the enquiry proceedings.

- (v) That the badge of the Employee was submitted by the conductor to the Depot.
- (vi) Mr. Tulsi Ram gave evidence in support of the Employee.
- (vi) The Duty Officer, Mr. Tulsi Ram could not have known whether the employee had consumed wine or not. As per his own statement, he could not find the driver when the badge was surrendered.

11. Thereafter, it was also recorded that the employee is guilty of habitual misbehaviour and thus, Show-Cause Notice ought to be issued. The Show-Cause Notice, issued to the driver on 2nd June, 2016, proposed severe punishment of dismissal from service. In response to the said Show-Cause Notice, the driver merely replied that the investigation was one sided and that he could not participate in the enquiry proceedings, due to his illness.

The driver was, thereafter, terminated, effective from 30th June, 2016. The driver then approached the Id. Tribunal challenging the order of termination. Vide order dated 28th May, 2016, the Tribunal held that the enquiry officer had not violated the principles of natural justice and that the report did not suffer from any infirmity. Thereafter, the matter was put up for final judgment.

12. In the final award dated, 6th September, 2016, i.e. the impugned award in the present case, the Id. Tribunal distinguished the judgment in Delhi Transport Corporation vs. Ramphal (supra). The Id. Tribunal took into consideration that though the Employee was not medically examined to know the contents of alcohol in his blood, the same could also be established through circumstantial evidence. The conductor had given a clear statement against the Employee. Passengers had also called the PCR. The bus had hit the footpath in subway. These facts proved that the situation was not normal. The ultimate fact that the bus was driven to Noida Depot, by a driver from Bawana Depot also shows that the Employee was not in his senses.

13. The Id. Tribunal also observed that non-reporting of the matter to the police or non-registration of an FIR cannot help the Employee. Since nobody was injured and bus was also not damaged, the management may have taken a decision not to register an FIR. Thus, non-registration of FIR was held to be not fatal to the case of the DTC. The Tribunal has also considered the fact that there were 31 adverse entries against the Employee. Even on an earlier occasion i.e. on 28th June 1990, he was found to be heavily drunk in the

night and had abused somebody, for which he had been suspended.

14. The Id. Tribunal also considered the mitigating circumstances being the driver's length of service, his wife's medical condition as also the

medical condition of his son. However, following the decision of this Court in Delhi Transport Corporation vs. Ramphal (supra), it was held that it

cannot be contended that intoxication alone constitutes an offence involving moral turpitude. Though, the termination order was upheld, 50% back

wages were granted as the driver had been unemployed all throughout, since termination.

15. A perusal of the evidence on record shows that the driver admits that the conductor had no enmity with him. He also admits that he received the

charge sheet and all the documents. The driver himself confirmed that he had participated in the enquiry. On some occasions he absented himself. But

the most crucial part of his statement is:-

“It is correct that on 10.01.2006, PCR was called by the passengers in my bus. It is correct that on 10.01.2006, my bus hit the footpath in

the sub-way, it is correct that I have been punished many times by the DTC for my misconduct. It is correct that my services were terminated

on 30.06.2006. After 30.06.2006, I did not apply for any job. It is incorrect to suggest that on 10.01.2006, I was heavily drunk and hence,

my bus collided.”

16. The driver relies heavily upon the statement of the duty officer, Tulsi Ram who stated that:-

“On 10.01.2006, I was posted at Noida Depot as Duty Officer in the night duty from 9.00 p.m to 5.30 a.m next day. No incident

happened regarding Bus No. 3176 on the route No. 33 on that day. On that day, memo was deposited by the Driver Dheer Singh. I did not

find him drunk in any manner. After Dheer Singh left, the Conductor, whose name I do not remember, gave a complaint in writing against

Dheer Singh which I forwarded to Depot Manager. I did not make enquiries regarding the contents of the complaint. It was the last trip for

the driver for the day.”

17. The disciplinary authority also gave his evidence. A perusal of the evidence and analysis of the orders passed by the Id. Tribunal shows that the

evidence of Mr. Tulsi Ram given before the Tribunal does not inspire confidence

and contradicts his own report. The conductor's statement, the PCR call, the fact that another driver from a different depot drove the bus to Noida depot - all these facts establish beyond any doubt that the driver was not in a proper condition to drive.

18. The DTC renders services to members of the public. A driver plays a very crucial role in the safety of the passengers. The bus met with an accident "fortunately without any serious injuries or casualties. The conductor found the driver to be drunk and the passengers called the PCR. The threshold conduct for a driver is much higher than for other employees as the safety of passengers depends on him. It has come in evidence that another driver of the DTC drove the bus to the depot. Thus the mere non-conduct of a medical test would not be sufficient to completely exonerate him. The events which took place on the day of the incident cannot be ignored. The past conduct of the employee/driver also shows that this was not the first time that he was drunk. He was reprimanded in the past for being drunk while being on the job. The evidence on record and the proceeding sheets of the enquiry by the disciplinary authority clearly go to show that the bus met with an accident and passengers called the PCR. Obviously, the conductor may not have noted the PCR or constable number or name but that does not mean that the events did not take place. In fact, the driver himself admits that the bus hit the footpath in the subway. He merely denies that he was drunk.

19. Thus, this case is clearly distinguishable from *Delhi Transport Corporation vs. Ramphal* (supra), where this Court held in favour of the conductor on various grounds. In the said case, none of the witnesses gave a statement against the conductor therein, the allegation was that he had used abusive language and moreover, the consumption of a drink by the accused employee was at the end of duty. On the other hand, in the present case, the bus met with an accident while it was being driven by the driver. The lack of a medical report to support the fact that the driver was drunk cannot completely obliterate the remaining evidence in this case, which clearly shows that all was not well on the day of the incident. Since the employee in this case was a driver who put many passengers in danger, as also due to his past conduct, the termination order cannot be held to be illegal.

20. In *B.C. Chaturvedi v. UOI & Ors.*, AIR 1996 SC 484 cited by Ld. Counsel for

the DTC, the Supreme Court has clearly laid down the scope of interference by the High Court to be limited and observed:

18. 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 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.

21. The Id. Tribunal has considered all the mitigating circumstances and has awarded 50% of the back wages. In view of the long service of the driver, this Court is not inclined to interfere in the same. When this case was initially admitted, vide order dated 24th July, 2017, 50% of the awarded amount was deposited in the form of an FDR with the Syndicate Bank, DTC Depot, IP Estate, Delhi. The original FDR be released immediately to the Respondent through counsel by the High Court Registry to enable the Respondent to approach the Syndicate Bank for release of the amount. The Syndicate Bank is directed to release the entire amount lying in the FDR bearing no.91264050015210/2 for a sum of Rs.3,65,957/- along with all the interest accrued, after deducting any TDS as per the applicable rules, in favour of the driver within one week after the original FDR is deposited by the Petitioner with the bank. The same be done within a period of two weeks.

22. However, in respect of the amount which was not deposited by the DTC, which is to be now paid, the rate of interest awarded shall be reduced to 5% p.a. instead of 9% p.a. The remaining amount i.e., 50% of the awarded amount be now paid by the Petitioner to the driver with 5% simple interest, within a period of six weeks.

23. The petition is disposed of in the above terms, along with all pending

applications.