

(2007) 11 DEL CK 0292

In the Delhi High Court

Case No : LPA 1825 of 2006 and CM No. 12171 of 2006

Om Prakash

APPELLANT

Vs

D.T.C.

RESPONDENT

Date of Decision : 19-11-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2008) 116 FLR 1168

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Shravan Dev, for the Appellant; J.S. Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the order dated 3rd September, 2004 passed by the learned Single Judge dismissing the writ petition filed by the appellant challenging the order of the Industrial Tribunal in an application filed u/s 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. On the ground of commission of misconduct of collecting fare without issuing the tickets, a departmental proceeding was instituted against the appellant herein. On completion of the said inquiry, the appellant was found guilty of the charges framed against him and accordingly upon consideration of the reply filed by the appellant, a show cause notice was issued to him as to why his services should not be terminated. Disciplinary authority finally passed an order on 16th October, 1992 terminating the services of the appellant by giving him one month's wages.

3. After passing the aforesaid order and as required under the provisions of Section 33(2)(b) of the Act, the respondent filed an application before the Tribunal seeking approval of the aforesaid termination order issued by the respondent. On receipt of the said application, the learned Industrial Tribunal

took up the matter for consideration and on consideration of the records and the evidence adduced by the parties and on the basis of the records available herein held that there is no violation of the principles of natural justice in conducting the inquiry. The learned Presiding Officer, Industrial Tribunal, upheld the legality and validity of the domestic inquiry held against the appellant and thereafter, proceeded to deal with the additional two issues which were framed in the said proceedings. The first being as to whether the management was entitled to the approval of the action as claimed and the second as to whether the workman is guilty of misconduct. Entire records were examined by the Presiding Officer, Industrial Tribunal and thereafter, it was held that the action taken is according to law. The Tribunal recorded a finding of fact that the appellant had in fact collected money for 14 1/2 tickets but did not issue tickets to the passengers and that during the raid, unpunched tickets were given to the inspecting staff. It was held that the appellant had misconducted himself by collecting the due fare from the passengers and not issuing tickets for the fare collected. The defense taken by the appellant, as it appears, that he had developed acute stomach pain as soon as he boarded the bus and that he was suffering from fever on that day and Therefore he had requested the driver of the bus to give the tickets was rejected after examining facts and evidence on recorded. On going through the records, we find that the said bus driver was not produced as a defense witness by the appellant. Besides, when the appellant could collect the fare from those passengers, he could have definitely issued tickets to them as and when he received the fare from the aforesaid passengers.

4. Considering the aforesaid facts, the learned Industrial Tribunal allowed the application filed by the respondent and granted approval to the order of termination of service of the appellant. The appellant being aggrieved by the aforesaid order filed a writ petition in this Court which was dismissed by the learned Single Judge by passing the impugned judgment and order.

5. Being aggrieved by the said order, the appellant has filed this appeal. However, while filing the present appeal in this Court, there is a delay of about 569 days. The appellant has tried to explain the said delay by contending inter alias that although the writ petition was dismissed on 3rd September, 2004, he was not informed by his counsel till the month of March, 2006, when he first came to know of the dismissal of the aforesaid writ petition. It is also pleaded that even thereafter, the counsel could not give him the complete papers except few papers. It is stated that the counsel who is appearing now for the appellant although was residing in a nearby colony, yet it was not possible for the appellant to contact his advocate and Therefore, there was a delay of about 569 days in filing the appeal.

6. We have gone through the records and we are of the considered view that the appellant has failed to establish sufficient cause and properly explain the delay of 569 days in filing the present appeal. The writ petition was dismissed as far back as 3rd September, 2004. It was the responsibility and duty of the appellant to

inquire about the fate of the case, once he came to know that the writ petition was heard and the judgment was reserved. The records indicate that the judgment was reserved on 27th August, 2004 and immediately thereafter the judgment was pronounced on 3rd September, 2004. It was necessary for the appellant to keep track of the fate of the case and he was required to inquire as to whether or not the judgment was pronounced by the learned Single judge. The Explanation which is sought to be given is also very vague as to why the appellant did not inquire about the fate of his writ petition from 3rd September, 2004 till the first week of March 2006. Nothing substantial has been stated in the application to explain this delay from September 2004 till March 2006, Therefore, we are of the considered opinion that this is not a case which calls for condensation of delay. The appellant has failed to make out a case of sufficient cause, Therefore, we dismiss the application holding that there is no ground for condensation of delay as sought to be made out by the appellant.

7. Since the appellant has also submitted on merits during the course of the arguments, we deem it appropriate to deal with the said submissions also in this order. The defense taken by the appellant would indicate that he did not dispute that he had received fare for 14 1/2 tickets but had not issued the tickets, as according to him he being unwell and, Therefore, had entrusted the said duty of issuing the tickets to the driver. However, the said defense is not corroborated by independent evidence. Even the driver on whom the responsibility is sought to be shifted by the appellant was not produced by him as a defense witness. A finding of fact is recorded by the Industrial Tribunal that the petitioner is guilty of misconduct alleged against him. It was specifically held by the Industrial Tribunal that the appellant had collected the fare but did not issue any tickets. The learned Single Judge appreciated the said fact and came to the finding that the said findings do not call for any interference.

8. We may also at this stage refer to the observations of the learned Single judge in his order that the appellant was well enough to collect the fare and Therefore, the plea that he was not well enough to issue the duly punched tickets could not be accepted. It was also held that if the appellant was unwell for two days, then he should have taken leave instead of being on duty. Therefore, we also find no ground to interfere with the order passed on merits.

9. The appeal has no merits and is dismissed as such.