
(1998) 08 DEL CK 0041
In the Delhi High Court
Case No : CW.No. 2081 of 1992

O.P. Gupta

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Citation : (1998) 6 AD 435 : (1998) 75 DLT 560 : (1998) 47 DRJ 808

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. K.C. Mittal, for the Appellant;

Judgement

K. Ramamoorthy, J.—The petitioner, who was working as Depot Manager(Assistant Engineer(M) was chargesheeted and ultimately by order dated 13.11.1991 he was dismissed from service. He preferred an appeal and the decision of the Board of the respondent DTC, was communicated to him vide order dated 12.3.1992 confirming the order of dismissal.

2. The charge-sheet dated 17.7.1989 is as follows:-

"Shri O.P.Gupta, Asstt.Engineer(M) is required to explain as to why disciplinary action under Clause 15(2) of the D.R.T.A.(Conditions of Appointment & Service) Regulations, 1952 read with Section 4(e) of the Delhi Road Transport Laws (Amendment) Act, 1971 should not be taken against him for the following irregularities committed by him during the course of his employment in this Corporation:-

1. He, while functioning as Depot Manager, Nand Nagri Depot, misused his official position with ulterior motive & to fabricate disciplinary case against Shri Hari Ram, Assistant Foreman, by pressuring & Compelling his subordinates namely S/ Shri Satish Chander, Asstt.Fitter, B.No.7048, Ranvir Singh, T.T.C. P.T.No.16071 & Satbir Singh, Driver, B.No.16637 to give false statements which they gave under pressure & compulsion as disclosed by them subsequently. Copies of the relevant statements of S/Shri Satish Chander, Asstt.Fitter, Ranvir Singh, TTC & Satbir

Singh, Driver, B.No.16637 are attached to Annexure A/I, A/II, A/III & A/IV. The statements subsequently given by them disclosing the facts are also attached at Annexure B/I, B/II, B/III & B/IV.

2. He implicated Shri Hari Ram, Asstt.Foreman, B.No.1513 in a disciplinary case by placing him under suspension vide memo No.NND/AT(T)/88/1459 dated 19.4.88 & by issuing charge sheet No.NND/AT(T)/CS/88/1834 dated 5.5.88 on the basis of preliminary enquiry conducted by Shri K.L.Dawar, A.T.S.,N.N.D. wherein the statements of the witness were got recorded by him (Shri O.P.Gupta) under pressure as mentioned in charge NO.1 above.

3. He, in connivance with Shri Satvir Singh, Driver B.No.16637 & Shri Satish Chander, Asstt.Fitter, B.No.7048, arranged on 17.4.88 to place the following items (DTC properly) in matador No.8783 attached to him for official duty, with the motive to pilfer the same:

- i) Shock absorber
- ii) Hose piper(new)
- iii) Injector pipe
- iv) Side glass
- v) Fuse head light bulbs
- vi) Roof-light bulbs
- vii) Gear leave no be

Matador No.8783 was checked on 17.4.88 at about 1600 hrs. when it was ready for out shedding for official use by Shri O.P.Gupta, by Shri Nagender Singh, Security Hawaldar on the verbal request of Shri Hari Ram Asstt.Foreman and the above mentioned items were recovered from the matador.

The above said acts on the part of Shri O.P.Gupta, tantamount to misconduct within the meaning of paras 2(i), 19(b) & 19(m) of the standing orders governing conduct of employees of the Corporation.

A copy of the statement of imputation of misconduct on the basis of which articles of charges have been framed against him is enclosed.

His past record will be taken into consideration at the time of taking final decision.

If he desires to be heard in person, a request to that effect be made in his Explanation.

His Explanation should reach the undersigned within 10 days of the receipt of this charge-sheet by him. In case he wishes to inspect any of the relevant documents of reliance available on record, he will be allowed to do so and for this purpose he should report to the undersigned within 24 hours of the receipt of this memo by him.

In the event of failure on the part of Shri O.P.Gupta to report to the undersigned for inspection of documents within 24 hours and thereafter to submit his Explanation to the charge-sheet within 10 days, it will be assumed that he does not wish to avail of the opportunity of inspection of documents, and that he has no Explanation to submit in response to this charge-sheet and further action in the case will be taken in accordance with the rules."

3. With reference to charges 1 & 2, the officer is alleged to have pressurised three subordinates, namely, Shri Satish Chander, Ranvir Singh and Satbir Singh, to give false statements against Shri Hari Ram who was Assistant Foreman under the petitioner, who was then the Depot Manager. In the charge-sheet nothing is mentioned as to why the petitioner had to pressurise those three persons against Hari Ram. For the purpose of issuing the charge-sheet on the ground mentioned therein, there must have been some act of commission and omission on the part of Hari Ram which prompted the petitioner to take action against him or there must have been some motive for the petitioner to take action against Hari Ram. The respondent No.1, DTC, had merely stated that the petitioner had pressurised the aforesaid three persons.

4. Before the Inquiry Officer, those three persons, when specific questions were put to them - whether they were pressurised by the petitioner - said "No". Therefore, the charge that the petitioner pressurised those three persons would fall to the ground.

5. The second charge is only a corollary to the first one. If the first charge cannot stand because of the reasons mentioned by me above, the second charge automatically goes. There is absolutely no material on record to show that the petitioner had any part to play to implicate Hari Ram in any disciplinary action. This is one of clear cases of no evidence and, Therefore, the second charge also goes.

6. The Inquiry Officer instead of considering the material on record in their proper perspectives had taken the matters which had been brought on record at the time of inquiry. He had come to the conclusion on the basis of report of the Vigilance Officer that it was not furnished to the petitioner.

7. Regarding the third charge, the respondents had not let in any evidence but relied upon the report of the Vigilance Officer. At the time of inquiry, on the 31st of July, 1989, the petitioner requested for the relevant documents for the purpose of evidence. That letter has been filed by the petitioner as Annexure P-9 and the letter reads as under:-

"Reference Charge-Sheet No.DG(HQ)/29/89/626 dated 17.7.1989. Before I submit my Explanation regarding the contents mentioned in the Charge-Sheet, the following papers may please be supplied to me. It is added that the complete case file has not been shown to me opportunity for which was offered to me in the Charge Sheet itself. I am mentioning some doubts, which may also be cleared to me in the light of justice for which I shall be thankful to you.

1. The copy of the reply of Shri Hari Ram Asstt. Foreman in response to the Charge-Sheet served upon him submitting on dated 13.6.1988 to the D.M., N.N.Depot available at page 30 in the case file.
2. Copy of the letter to Dy.S.O.(HQ) demanding the report, which was submitted by Shri Hari Ram, Asstt. Foreman on the date of incident to the Security Havaldar by the D.M., N.N.Depot (available at page 29 in the case file).
3. Copy of the report of Shri Hari Ram, Asstt. Foreman initially made to D.M., N.N.Depot and Security Havaldar at the time of incident.
4. Copy of the report of vigilance officer submitted to D.M.(HQ) on dated 22.6.89 available at pages 51 & 52 in the case file.
5. Copy of the statement of Shri Satish Chander, Asstt.Fitter, which is available at page 60 in the case file.
6. Copy of the Stores Verification given by Shri Subey Singh, A.S.K. on dated 18.4.89 available at page 65 in the case file.
7. The copy of the observation & recommendations of the Sr.V.O. given in this case may also be supplied.

It will not be out of place to mention here that I have been suffering in the past on account of such cases and after decision of the cases my losses can never been fulfilled, because this has become the practice of the corrupt officer of the DTC to implicate me in fabricated and bogus cases. I may please to clear for the favor of justice that in the position this case is found fabricated and on the basis of personnel motivation will the suitable action be taken against that officer/ official."

8. The DTC gave reply to the request of the letter of the petitioner dt.31.7.1989 on the 25th of August, 1989. According to the DTC, the vigilance report and the observations and the recommendations of the Vigilance Officer were confidential and they cannot be supplied to the petitioner. Having refused to give the documents to the petitioner, the inquiry officer had, in its report, relied upon the investigation report. The inquiry officer had stated:-

".....the investigation report of the V.O. produced with several documentary evidence confirmed that the DM Shri Gupta had made all out efforts to implicate Shri Hari Ram, A/Foreman in a disciplinary case by using his official position and getting the evidence recorded on his whim and suit in fabrication of a disciplinary case. Thus as stated in charge-sheet under reference the first charge of misuse of his official capacity by way of pres certain evidences to fabricate a case stands established without any doubt."

9. This is contrary to the dictum laid down by the Supreme Court and all principles of natural justice. With reference to all the three charges, the respondents had not let in any evidence and a perusal of the report of the Inquiry Officer would completely betray the case of the DTC.

10. Yet, the disciplinary authority, without discussing any point and without referring to the report of the inquiry with reference to the details mentioned therein, had passed the order of dismissal. The disciplinary authority had not even considered the concept of proportionality in arriving at the conclusion. The appellate authority, the Board, had simply put its seal of imprimatur to the order of the disciplinary authority.

11. Having regard to the principles laid down by the Supreme Court and considering the materials placed on record, I am of the view that there is only one conclusion is possible and that is the order of dismissal and the charge against the petitioner cannot be sustained. It is very unfortunate that an officer who had been doing well and who had been certified to be very good by the General Manager as having worked against hardships and without cooperation from his subordinates, owing to which the petitioner also had to suffer from heart trouble. Therefore, the punishment is not at all warranted in law. I have no hesitation in coming to the conclusion that the whole thing is a gross misuse of power and the order of dismissal and the order of the appellate authority are liable to be set aside. Accordingly, they are quashed. The writ petition is allowed.

12. The petitioner shall be entitled to all consequential benefits. The DTC shall pay all the consequential benefits to the petitioner as if the petitioner had continued in service until the date of superannuation and shall also pay him pension, if permissible in law. Such payments shall be made to the petitioner on or before the 31st of October, 1998.

13. There shall be no orders as to costs.