
(2001) 04 DEL CK 0053

In the Delhi High Court

Case No : C.W.No. 3805 of 1994 and CM 6978/94

Rama Nand

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Citation : (2001) 04 DEL CK 0053

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. B.S. Charya, for the Appellant;

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—The present petition is filed by the petitioner being aggrieved by the order dat. 1.6.1988 passed by the respondent corporation removing the petitioner from service under Clause 15 (2)(VI) of the D.R.T.A. (Conditions of Appointment & Service) Regulation, 1952. The petitioner was appointed as a Conductor by the respondent corporation on 5.1.78. On 22.9.87, a charge-sheet was issued to the petitioner contending, inter alia, that from the leave record of the petitioner for the period from January, 1987 to August, 1987, it was revealed that the petitioner was habitual of availing excessive leave without pay as held had availed 95 days leave without pay during the aforementioned period, which caused heavy loss to the Corporation. On the aforesaid charges, an enquiry was conducted against him and on completion of the enquiry, a show cause notice was issued to the petitioner on 12.4.88 directing the petitioner to show cause why he should not be removed from service. The petitioner failed to submit any reply to the aforesaid show cause even in spite of reminders issued thereto. Accordingly, the impugned order dt. 1.6.88 has passed by the respondent corporation removing the petitioner from service.

2. Mr. Charya, learned counsel appearing for the petitioner submitted that the

present writ petition is covered by the decision of the Supreme Court in *The State of Punjab and Others Vs. Bakshish Singh*, and also in *STATE OF M.P. VS. HARIHAR GOPAL* reported in 1969 SLR 274. It was submitted by him that once the period of absence is treated as leave of the kind whatsoever, as is indicated from the chargesheet itself, the allegation that the delinquent remained absent from duty cannot be sustained after a person has been treated on leave. It was submitted by him that since the absence of the petitioner has been regularised, no charge could be framed nor any disciplinary proceeding could be conducted against the petitioner nor the petitioner could be removed from service on the aforesaid allegation.

3. Respondents were not represented by a counsel during the course of arguments but they have filed a counter affidavit as also an additional affidavit, the contents of which were taken note of by me. The chargesheet was issued to the petitioner under Clause 15(2) of the D.R.T.A. (Conditions of Appointment & Service) Regulations, 1952. A copy of the relevant provisions of the said Regulations has been placed on record. Clause 15.2 thereof relates to the penalties that could be imposed by the disciplinary authority on the delinquent official. Removal from service of the Delhi Road Transport is one of the penalties that could be imposed by the disciplinary authority. General provisions under Clause 19 of the Standing Order governing the conduct of the D.R.T.A. employees deal with the concept of misconduct according to which if the misconduct is proved, action could be taken under clause 15 of the Regulations. Sub-Clause (h) of Clause 19 includes "habitual negligence of duties and lack of interest in the Authority's work", as misconduct. It is stated by the respondents in their pleadings that in the present case, the employee was found guilty of misconduct under clause 19(h) and was chargesheeted accordingly. A perusal of the aforesaid sub-clause (h) would indicate that if a person is habitually negligent of his duty and if there is lack of interest in the authority's work, the same would amount to misconduct and if the said misconduct is proved in respect of the delinquent official, action could be taken in terms of Clause 15 of the Regulations. When a person is absent for a long period from duties it is established that he is habitually negligent of his duties and there is lack of interest in the work. So far the contention of the learned counsel appearing for the petitioner that the absence was regularised by granting leave without pay and, Therefore, the action taken by the respondents for unauthorised absence is illegal is concerned, the same cannot be accepted, for here the action is not taken against the petitioner for unauthorised absence but because of his habitual negligence of duties. He had been absent for a long time, which though was regularised in accordance with the Rules could not amount to absolving him from the position that there is negligence of duty and lack of interest by habitually remaining absent for a long period of 95 days.

It is contended in the additional affidavit that even earlier to the aforesaid period the petitioner had been regular absentee from duty and in support of the said contention a copy of the past record of the petitioner dt.24.8.87 and a copy of

combined leave record and past record are placed on record as Annexure R-2. It is stated in the additional affidavit that the petitioner had been habitually irregular/negligent in attending his duties and been regular absentee throughout during the period of his service in the Corporation, which is revealed from his past record. A copy of the monthly attendance register of relevant period i.e. January, 1987 to August, 1987 is also placed on record, which indicates that the petitioner remained absent in his services of the Corporation for 95 days without prior permission or leave. It is also stated that even in most of the aforesaid period he remained absent without moving any application for seeking permission and in respect of some other period he had although furnished medical certificate from private medical practitioner, permission was rejected by the concerned authority. The aforesaid documents placed on record indicate that the petitioner had been absent from duties for a long period of time. On the basis of the said records enquiry was conducted against the petitioner on the ground that he is habitually negligent of his duties and there is lack of interest in the authority's work, which fact was found to be proved during the course of enquiry by the Enquiry Officer and the disciplinary authority. Accordingly action was taken against the petitioner by the respondents by removing him from service. The said records are sufficient to justify the conclusion of the respondents that the petitioner was habitually negligent in his duties and that there was lack of interest in the authority's work.

4. The contention of the counsel appearing for the petitioner that the ratio of the decision in Bakhshish Singh's case (supra) is applicable to the facts and circumstances of the present case is also misplaced for the simple reason that in the said case a reference was made to the order regularising the absence from duty as leave without pay. As has been held by a Division Bench of this court in the case of Ex. Constable Maan Singh Vs. Union of India and Others, , the case of Bakhshish Singh (supra) had been decided on its own facts and situation. In the said judgment of Bakhshish Singh's case, the Supreme Court has laid emphasis on the findings laid down by the trial court, on which the suit was decreed, that appropriate opportunity of personal hearing was not afforded to the respondent in the departmental proceeding; that his signatures were obtained under duress in the departmental proceedings and that the charge of absence from duty did not survive, were not set aside by the appellate court. In the said decision the Supreme Court held that the lower appellate court could not have remanded the case to the punishing authority for passing a fresh order of punishment. However, the Division Bench of this court in the matter of Ex. Constable Maan Singh (Supra) held that there is nothing in the judgment of Bakhshish Singh's case (Supra), which expressly or by implication overrules the judgment in Harihar Gopal's case. The division Bench in the said decision has held that the Harihar Gopal's case still holds the field. It was further held that the dicta laid down by the Supreme Court in Harihar Gopal's case in unambiguous and still holds the field, namely, that it is open to the Punishing Authority to direct the Record Keeper to complete the service record by treating

the period of absence as one without pay. It was further held that the judgment of the Supreme Court in Bakhshish Singh's case is per incuriam and does not overrule nor differentiate the judgment in Harihar Gopal's case.

5. However, the facts and circumstances of the present case are completely different and distinct. In the present case the charges are not on the ground of unauthorised absence but the same are on the ground that the petitioner was habitually negligent of duties and that there was lack of interest in the authority's work. In my considered opinion, the aforesaid decisions, Therefore, would not stand on the way of the respondents in imposing the penalty of removal from service of the respondent. It is also stated by the respondents that the request of the petitioner for grant of leave was rejected by the respondent and that during the aforesaid period from January, 1987 to August, 1987, the petitioner remained absent from the service of the respondent corporation for 95 days without prior permission or leave. It is also stated that when against an employee on leave is due and his application for leave is rejected, it has been the practice and usage of the Corporation to treat the said unauthorised absence as "leave without pay" to maintain the correct record of the employee although against each day of absence, in the monthly attendance register, it has been noted in each case what whether any medical certificate with application has been moved or not and the same is rejected or not.

6. In the context of the said statement and stand of the respondent even if it is assumed that the absence of the petitioner was regularised as leave without pay, the same would not change the position. Therefore, even if the said absence is regularised by treating his leave without pay, action could be taken against the petitioner for his negligence of duties and lack of interest, which is not protected even assuming that the absence was regularised by treating it was leave without pay, which would indicate that no leave was admissible to the petitioner in normal circumstances. In that view of the matter, it cannot be held, as submitted by the counsel appearing for the petitioner that the action of the respondent in regularising the absence of the petitioner as leave without pay would absolve the petitioner from the liability. A regular enquiry was conducted and the petitioner was found guilty of the charges leveled against him and action was taken under Clause 15(h).

7. The records indicate that the petitioner had been a habitual absentee from duties and that he was negligent in his duties and Therefore, the charge stands proved. In the case of a person, who is absent from duty for 95 long days without any prior permission and without obtaining leave, no other conclusion could be arrived at than what is arrived at by the disciplinary authority in the instant case. The petition has no merit and the same along with the pending application stand dismissed.