(2017) 02 DEL CK 0177

In the Delhi High Court

Case No : Writ Petition(Civil) No. 11309 of 2016

Roshan Lal	APPELLANT
Vs	
Delhi Transport Corporation	RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Citation : (2017) 1 CLR 1007

Hon'ble Judges : Mr. Sanjiv Khanna and Chander Shekhar, JJ.

Bench : Division Bench

Advocate : Mr. Vinay Sabharwal, Advocate, for the Petitioner; Mr. Vibhor Mathur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Sanjiv Khanna, J.(Oral)—The petitioner-Roshan Lal impugns the order dated 4th April, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) dismissing TA No. 22/2012.

2. The petitioner, a Security Guard in Delhi Transport Corporation, was served with the charge memorandum dated 25th June, 2007, which, when translated in English, reads:-

"that the petitioner had been made excess payment of salary for 154 days on account of forged attendance slips furnished and given to Pay Bill Clerk for the period between January, 2002 to August, 2002, September, 2004 to July, 2005 and August, 2006 to January, 2007 when the petitioner was posted at Keshopur Depot, Shadipur Depot and Peera Garhi Depot respectively."

3. The petitioner had disputed the said charges. An Enquiry Officer was appointed, who vide report dated 10th September, 2008, had held that the charges stand proved. This report primarily relies on the statements of Harbhajan Singh, Assistant Security Inspector and Arjun Prasad, Security Inspector Traffic.

4. The Disciplinary Authority, i.e., the Chief Security Officer thereafter issued notice vide O.M. dated 30th September, 2008 proposing reduction of pay to the preliminary pay of the Security Guard for a period of five years and deduction of 154 days of salary. The petitioner replied on 11th October, 2008, again denying the allegations. Penalty fixing the pay of the petitioner at the preliminary pay of the Security Guard for a period of five years was imposed by the Disciplinary Authority vide order dated 24th October, 2008. It was also ordered that there would be deduction of 154 days of salary wrongly paid.

5. It appears that the petitioner did not prefer departmental appeal, challenging the order imposing punishment.

6. On 7th March, 2009, the petitioner filed Civil Suit No. 104/2009 praying for a decree of declaration that the order dated 24th October, 2008 passed by the disciplinary authority was void ab initio, unwarranted and unenforceable. Other prayers included decree of mandatory and permanent injunction for restraining the authorities from making any deduction on account of salary for 154 days, and that the suspension period between 15th May, 2007 to 27th August, 2008 should be counted as period spent on duty and the difference between suspension allowance and the salary should be paid.

7. The aforesaid civil suit was transferred to the Central Administrative Tribunal, Principal Bench, at New Delhi pursuant to Gazette Notification No. SO-2824(E) dated 1st December, 2008 and renumbered as TA No.22/2012. The Tribunal vide order dated 4th April, 2016, dismissed TA No. 22/2012, which has resulted in the present petition.

8. We have heard learned counsel for the petitioner at some length and have also perused the departmental proceedings. Counsel for the petitioner has submitted that the authorities had failed to produce the attendance register as also the alleged forged pay slips. He asserts that this is a case of no evidence and, therefore, the enquiry report, the order passed by the Disciplinary Authority and the impugned order passed by the Tribunal are liable to be set aside. Reliance is placed on the judgment of the Supreme Court in Delhi Cloth and General Mills Company v. Ludh Budh Singh, (1972) 1 SCC 595. It is submitted that in the present case the findings recorded by the Enquiry Officer and the decision of the Disciplinary Authority were perverse as they were not justified or based on legal evidence.

9. We have perused the enquiry report as well as the statement of witnesses and in particular statements of Harbhajan Singh and Arjun Prasad. Harbhajan Singh had stated that in January 2007 he had visited Nangloi Depot to correct Roshan Lal''s attendance record for one day. He was shown the attendance slips for the month of January, 2007 by the Pay Bill Clerk. The said attendance slips were not prepared by him and were forged. He did not know who had prepared the said attendance slip. Accordingly, he had informed the authorities that the attendance slips were forged. Harbhajan Singh was cross-examined by the petitioner.

However, no questions were put specifically to negate or contradict Harbhajan Singh''s version that the attendance slips of the petitioner shown by the Pay Bill Clerk for the month of January, 2007 were forged and fabricated.

10. Arjun Prasad had conducted a detailed enquiry thereafter. He had examined the attendance register for the period January, 2002 to January, 2007 and the attendance slips on the basis of which Roshan Lal was paid his salary. The attendance slips with the pay bill office did not match with the attendance as recorded in the attendance register. The petitioner had been overpaid for 154 days even when he was on leave and had not worked. Arjun Prasad had submitted his report, affirming the factual position. Arjun Prasad was cross-examined, albeit the petitioner did put forth any question to contradict or confront this witness on the relevant and material aspects on verification of the attendance records and matching the data and details with the attendance slips available in the pay bill office, or the factum that there was discrepancy of 154 days for which the petitioner had been paid excess salary though he was absent. In fact, the cross-examination of Arjun Prasad would show that the petitioner deliberately and intentionally did not confront and contradict this witness on these pertinent facts. Avoidance is palpable.

11. During the course of hearing, question had arisen whether the report submitted by Arjun Prasad was filed in the inquiry proceedings. The Enquiry Officer has specifically examined and referred to "the report". Obviously, the reference is to the report submitted by Arjun Prasad. Perhaps, the petitioner wants to take advantage and benefit of incomplete records.

12. The petitioner would be correct for the respondents should have produced the original attendance register as well as the attendance slips available in the pay bill office, albeit their failure to produce the same, given the facts of the present case would not be a sufficient and justifiable ground to dislodge and upset the findings of fact recorded by the Enquiry Officer and upheld by the Disciplinary Authority. Disciplinary proceedings are not governed by strict law of evidence. In the facts of the present case, the authorities have relied on the statements made by Harbhajan Singh and Arjun Prasad to affirm and accept the charges against the petitioner. On the question, that there was discrepancy in the attendance as recorded in the registers and pay slips, and that the pay slip of January, 2007 was not in the handwriting of Harbhajan Singh, their statements went unchallenged and uncontested. Their versions were credible and given credence, in view of the vacuous cross-examination. The petitioner, as a result of the fabricated attendance slips, had been paid excess salary. The petitioner was the beneficiary of the said forged and fabricated attendance slips. No third person would have benefitted by submitting wrong or forged attendance slips.

13. Learned counsel for the petitioner had submitted that the petitioner, in the normal course of service, would be entitled to casual leave or even earned leave. This aspect would be irrelevant, because the attendance slips were forged and wrongful payments were made. The charge against the petitioner was that he

had been paid on the basis of attendance slips, which had been forged. Secondly, the attendance mentioned in the attendance slips was not as per the attendance register. An employee must maintain probity in his conduct. Employer and employee''s relationships are based on mutual trust and faith, breach and infraction, as in the present matrix, would constitute misconduct. Statements of Harbhajan Singh and Arjun Prasad, and the refrained and checked cross-examination would clearly reflect that the petitioner was unable to counter and negate avowed assertion by these witnesses against the petitioner. Resultantly, we would not over turn the factual findings of the Enquiry Officer and the Disciplinary Authority upheld by the Tribunal, while exercising our power of judicial review.

14. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed. No order as to costs.

