
(2010) 07 DEL CK 0019

In the Delhi High Court

Case No : Writ Petition (C) No. 4772 of 1996

Shri Brij Pal Singh

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 DEL CK 0019

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : U.S. Choudhary, for the Appellant; J.N. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner workman by this writ petition impugns the award dated 22nd July, 1996 of the Labour Court holding the departmental/ domestic inquiry conducted prior to the termination of services of the petitioner workman by the respondent No. 2 DTC to be valid and legal and in accordance with the principles of natural justice and further finding the punishment of dismissal from service meted out to the petitioner workman to be not disproportionate to the misconduct with which he was charged and found guilty and accordingly holding the petitioner workman to be not entitled to any relief.

2. The petitioner workman was employed as a Driver with the respondent No. 2 DTC since the year 1973. He was suspended on 7th February, 1984 and chargesheeted on 23rd February, 1984 for refusal to outshed the bus which he was to drive and/or directed to drive and with disorderly behavior and use of abusive language in the premises of the respondent No. 2 DTC while on duty. The Inquiry Officer found the petitioner workman to be guilty and the Disciplinary Authority of the respondent No. 2 DTC accepted the report of the Inquiry Officer and inter alia in view of the past conduct of the petitioner workman, of 20 adverse entries during the service record of 12 years of public complaints, accidents, misbehavior, manhandling and further in view of the petitioner

workman on two earlier occasions, having been censured, on yet other two occasions having been reprimanded and on yet an other occasion in the past having been punished with stoppage of two increments with cumulative effect, ordered the dismissal of the petitioner workman from service. The petitioner workman raised an industrial dispute and on which, reference was made to the Labour Court. The Labour Court framed a preliminary issue of validity of the domestic inquiry preceding the punishment and vide award impugned in this petition found no infirmity in the inquiry and held the petitioner workman to be not entitled to any relief.

3. The respondent No. 2 DTC has in its counter affidavit to the writ petition also mentioned about the past complaints and punishments meted out to the petitioner workman. The petitioner workman in his rejoinder to the counter affidavit has generally denied the paragraph of the counter affidavit containing the said averments and further pleaded that he was never asked to explain or heard before the said punishments were meted out to him and the same being made behind his back are of no consequence. The petitioner workman however did not raise any dispute regarding the said earlier adverse entries in his record and/or the punishments earlier meted out to him. The only conclusion is that the past conduct of the petitioner workman, notice whereof has been taken by the Disciplinary Authority of the respondent No. 2 DTC while meeting out the punishment of dismissal from service to the petitioner workman, is undisputed. The counsel for the petitioner workman during the hearing also did not challenge the same.

4. Yet another factor found relevant may be noted. It was informed by the counsel for the respondent No. 2 DTC and not rebutted by the counsel for the petitioner workman that the retirement/superannuation age for drivers in DTC is 55 years and the petitioner workman has since attained the same.

5. The only question for adjudication in this writ petition is whether the finding of the Labour Court of there being no infirmity in the departmental inquiry preceding the order of termination of the petitioner workman requires interference by this Court.

6. The main thrust of the arguments of the counsel for the petitioner workman was that though the respondent No. 2 DTC had filed a written statement before the Labour Court and contested the claim of the petitioner workman but subsequently failed to lead any evidence; the evidence before the Labour Court was led only by the petitioner workman and who was not even cross examined by the respondent No. 2 DTC. It is contended that in the absence of contravention by the respondent No. 2 DTC of the ex parte evidence of the petitioner workman of the inquiry being defective, the Labour Court ought not to have decided against the petitioner workman. In this context, it is also pointed out that the Labour Court has erroneously treated the onus of the inquiry being defective to be on the petitioner workman. Attention is invited to the order dated 8th August, 1989 of the Labour Court framing issue No. 1 as under:

Whether the domestic inquiry held by the management against the workman is improper and invalid?

It is contended that subsequently on 29th September, 1993, the following issue was framed:

Whether proper inquiry was held by the management before terminating the workman?

It is contended that the award is perverse for this reason only.

7. Merely because a party is proceeded against ex parte, does not automatically entitle the other party to relief. As far as the inconsistency of onus in the issue framed twice as aforesaid is concerned, in my view, the difference in placing the onus while framing issues twice is of no significance. The present was not a case of the management/employer pleading that an inquiry was conducted and the workman denying the same. If that be the state of pleadings, the onus to prove that an inquiry was held would certainly be on the management/employer only. In the present case, the petitioner workman in his claim petition admitted that he was chargesheeted and compelled to face the inquiry proceedings. He also cross examined the witnesses of the respondent No. 2 DTC and examined his own witnesses before the Inquiry Officer. His challenge to the inquiry proceedings was for the reason of having not been supplied the necessary documents and important questions having been disallowed at the instance of the Inquiry Officer and/or certain statements being not taken on record and for the reasons of his request for change of Inquiry Officer having been declined and the Inquiry Officer having taken up the job both, of a judge as well as of a prosecutor and of the report of the inquiry proceedings having not been supplied to him. In the face of the said pleadings, the onus was upon the petitioner workman to prove the infirmities averred in the claim statement qua the record of the inquiry proceedings. The record of inquiry proceedings was placed before the Labour Court and which was not in dispute. No perversity can be found in the award on the said ground.

8. One of the challenges of the petitioner workman to the inquiry proceedings was on the ground of non supply of documents. The petitioner workman in his ex parte evidence also deposed that in the inquiry proceedings he had been asking for documents in support of his defence but to no effect and because of the non-supply of the said documents he could not effectively defend himself in those proceedings. He proved the copies of the representations/requests for documents as Exhibit WW1/3 to 20.

9. The Labour Court has found on perusal of the inquiry proceedings and the inquiry report that no objection of non-supply of documents along with chargesheet was taken by the petitioner workman in the proceedings conducted on 18th December, 1984; on the other hand he had cross examined the witnesses. The Labour Court further held that the evidence of the petitioner workman before the Labour Court also was not of non supply of annexures of the

chargesheet - the emphasis was in respect of the documents related to his defence. With respect to Exhibit WW1/3 to 20, the Labour Court held that some of the representations were of dates subsequent to the inquiry proceedings and none of the said letters/representation were addressed to the Inquiry Officer but were addressed to the Depot Manager who was not the Inquiry Officer. The petitioner workman has before this Court contended that the Depot Manager was also the Inquiry Officer and thus Exhibit WW1/3 to 20 were in fact addressed to the Inquiry Officer. The signatures which appear on the report of the Inquiry Officer and on the order of termination of service issued by the Depot Manager as the Disciplinary Authority, are different. There is no challenge that none of the Exhibits WW1/3 to 20 were addressed to the Inquiry Officer. In the circumstances, the view taken by the Labour Court of the demand for documents being made to the Depot Manager and not to the Inquiry Officer as was required to be made is a possible view incapable of interference in judicial review under Article 226 of the Constitution. The said finding of the Labour Court is not such a finding which no reasonable person could have reached and/or which is based on no material whatsoever.

10. The petitioner workman has also raised a grievance about non supply of record of the inquiry proceedings and the inquiry report. The Labour Court has held that the position in law at that time was not such as to require the supply of the inquiry report to the delinquent officer. The said reasoning of the Labour Court has neither been controverted by the petitioner workman nor anything to the contrary cited. Thus the award does not require any interference on the said ground also.

11. The counsel for the petitioner workman has also sought to challenge the inquiry by contending the same to be vitiated for the reason of the Inquiry Officer and the Disciplinary Authority having not given due weightage to the deposition of the witnesses examined by the petitioner workman before the Inquiry Officer. However, the said contention is beyond the domain of judicial review at this stage. Moreover, the finding of the Labour Court is of a valid inquiry having been held. The Supreme Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, has held that if the inquiry is found to be valid, the question of going into the findings of the said inquiry does not arise.

12. The counsel for the petitioner workman has next contended that the petitioner workman had before the Labour Court also moved an application for production of documents and of which certain documents were directed to be produced but which the respondent No. 2 DTC failed to produce. It is contended that the Labour Court ought to have held against the respondent No. 2 DTC for this reason alone.

13. The documents sought to be produced before the Labour Court were the same as the documents with respect whereto Exhibit WW1/3 to 20 were written. Upon the failure of the respondent No. 2 DTC to produce the said documents before the Labour Court, the Labour Court had observed that adverse inference

shall be drawn against the respondent No. 2 DTC for the same. However, the Labour Court having found as aforesaid with respect to demand for documents before the Inquiry Officer, the question of / the occasion for drawing such adverse inference against the respondent No. 2 DTC for non production of the documents did not arise.

14. The counsel for the petitioner workman has also urged that the charge against him of not outshedding the bus is false and fictitious. It is contended that the then Depot Manger was inimical towards him and had framed him. The bus was defective and could not be plied. However, the same was falsely got reported as having been repaired. It is urged that the spare parts required for repairing the defect in the bus were not then available with the Depot and hence the question of bus being repaired did not arise and the respondent No. 2 DTC also failed to produce before the Labour Court the documents requisitioned in this regard.

15. The aforesaid contentions of the counsel for the petitioner workman would also be on the merits of the findings of the Inquiry Officer and not qua the validity of the inquiry. The procedure adopted in the inquiry having been found to be valid and the inquiry having been found to be in accordance with the principles of natural justice, all the said questions did not arise for consideration.

16. The counsel for the respondent No. 2 DTC has drawn attention to the counter affidavit filed in this Court wherein it is stated that inspection of all the documents was given on 28th September, 1984 and all the documents were also supplied under cover of the letter dated 28th January, 1986. It is also urged that the petitioner workman failed to even reply to the chargesheet and thus in any case is not entitled to take the said grounds.

17. The petitioner workman has thus not been able to make out any case for interference with the award impugned in the petition.

The writ petition is dismissed.

No order as to costs.