

(2004) 10 DEL CK 0085
In the Delhi High Court
Case No : WP (C) 3912 of 1992

Shri Dharam Pal Singh

APPELLANT

Vs

Delhi Transport Corporation and Another

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 10 DEL CK 0085

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Nem, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The grievance in this petition under Article 226 of the Constitution is against a notice dated 4.9.1992 by which, the petitioner was called upon to show cause in relation to findings of an enquiry proceeding into his conduct.

2. The petitioner was appointed as driver by the respondent ("DTC") on 7.9.1973. He was issued with a charge-sheet on 11.2.1992 stating that for the period 1.1.1991 to 31.12.1991 he had availed 251 days leave without pay, out of which 228 days were unauthorized leave/absence. The allegation was that such conduct amounted to breach of Regulations 4 and 19 of the Delhi Road Transport Regulations, governing the services of employees of D.T.C.

3. The petitioner appears to have replied denying the charges. The D.T.C decided to hold an enquiry. The petitioner participated in these enquiry proceedings. Thereafter, a second show cause notice was issued on 4.9.1992 to the petitioner requiring him to disclose as to why the proposed penalty of removal from service be not taken.

4. The petitioner has approached this court questioning the show cause noticed dated 4.9.1992 on the following grounds:

(a) That as per certain circulars, the corporation has directed that wherever the employee is granted leave without pay, disciplinary proceedings against him should be dropped;

(b) that he was denied the benefit of assistance by a co- worker; and

(c) that a copy of the enquiry report was not supplied to him.

5. This petition was entertained on the last ground, namely, denial/with-holding of the copy of the office enquiry report, as is evident from a reading of the order dated 5.11.1992. The impugned show cause notice was stayed on that date. Later on 21.1.1993, the interim stay was confirmed.

6. Today, despite issuance of Court Notice (by order dated 1.10.2004), none appear for the parties.

7. The issue raised by the petitioner, namely, right to have a copy of the enquiry officer's report during the course of the disciplinary proceedings is no-longer res integra; it is covered by the decision of the Supreme Court in Managing Director, ECIL v s.B. Karunakar¹ in which a Constitution Bench reiterated the law laid down in Union of India vs. Mohd. Ramzan Khan's², i.e. where the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt and innocence of the employee in regard to the charges leveled against him and imposes penalty in that regard. It was further held in Karunakaran's case that the law so declared would be operative prospectively from the date of judgment in Mohd. Ramzan's case dated 28.11.1990.

8. As a consequence of the above declaration of law, it is now settled that every employee facing disciplinary charges is entitled to a copy of the enquiry report before action can be taken on the misconduct alleged against him. In the present case, the report was not furnished to the petitioner. Accordingly, the present petition is entitled to succeed to that limited extent.

9. I, Therefore, allow the present petition and direct the respondent to furnish a copy of the enquiry report to the petitioner within a period of four weeks from the receipt of this order. It shall be open to the respondent to take action in accordance with law from that stage after giving appropriate opportunity in that regard to the petitioner. All other contentions and pleas raised in the petition are left open.

10. Rule is made absolute in the above terms. No orders as to costs. Copy of this order be sent to the respondents for due compliance.