
(2009) 07 DEL CK 0268

In the Delhi High Court

Case No : Writ Petition (C) No. 10175 of 2009 and CM No. 8642 of 2009

Shri Mahavir Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 07 DEL CK 0268

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Dharam Raj Ohlan, for the Appellant; Jitender Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition filed by the workman (the petitioner herein) is directed against an award dated 29.01.2008 passed by

Ms. Nisha Saxena, POLC XXI, Delhi rejecting the claim of the petitioner for his reinstatement and back wages for his removal from service by

Delhi Transport Corporation (the respondent herein) w.e.f. 09.07.1992.

2. Heard.

3. The petitioner was appointed as a conductor in Delhi Transport Corporation on 31.03.1979. In the course of his employment with Delhi

Transport Corporation, he got 18 adverse entries in his service record prior to he was charge-sheeted on 20.03.1992 for his remaining absent

unauthorizedly for 77 days during the period from January, 1991 to December, 1991. Domestic inquiry was held against the petitioner. He was

found guilty of the charges attributed to him by the Inquiry Officer. The disciplinary authority after considering the report of the Inquiry Officer and

taking into account the past conduct of the petitioner decided to remove the petitioner from its service and accordingly the petitioner was removed

from service of Delhi Transport Corporation w.e.f. 09.07.1992.

4. The petitioner, aggrieved by his removal, raised an industrial dispute which was referred by the appropriate Government for adjudication to the

Labour Court. Both parties adduced evidence before the Labour Court on the point of inquiry issue. The court below vide its order dated

04.12.2007 decided the inquiry issue against the workman and it was held that the principles of natural justice were duly adhered to while holding

the departmental inquiry against the petitioner. After the inquiry issue was decided by the court below against the workman, the court below heard

the learned Counsel for both the parties on the question of quantum of punishment and after taking their submissions into account and relying on

various judgments referred in the impugned award, came to the conclusion that the removal of the petitioner from the services of the Delhi

Transport Corporation was justified and for that reason, declined to grant any relief to him.

5. The petitioner aggrieved by the impugned award of the court below has filed the present writ petition seeking to set aside the said award.

Learned Counsel appearing on his behalf has contended that the petitioner has remained absent unauthorizedly only for a period of 77 days during

13 years of his service and therefore, according to him, the punishment of removal from service is highly disproportionate to the misconduct proved

against the petitioner. Learned Counsel for the petitioner also contends that as per the standing order R-90-14(1)(c), an employee of Delhi

Transport Corporation can be terminated only when he remained absent for more than 90 days. It is submitted that since the unauthorized absence

of the petitioner was only for 77 days, he could not have been removed from service in view of the above standing order. It may be noted that the

petitioner has not annexed the copy of the standing order R-90-14(1)(c) referred in ground "A" at page 4 of the writ petition. On being asked the

counsel has not been able to show this rule even at the time of hearing of this writ petition and therefore, there is nothing before the Court to know

what exactly the standing order referred above relied upon by the petitioner's counsel says. Even if it is assumed that as per the standing order

relied upon by the petitioner's counsel, services of an employee of Delhi Transport Corporation cannot be terminated unless he remains absent for

90 days, still this rule does not help the petitioner. This rule at best deal with the continuous absence of more than 90 days wherein in the case of

the petitioner it has been proved that he was a habitual absenter and during one year in 1991, he remained unauthorizedly absent for 77 days. It is

an admitted case of the petitioner himself that he remained unauthorizedly absent for 77 days in 1991 and his case in the writ petition is that his

absence for 77 days does not deserve to be visited with penalty of removal from service. It shall be significant to mention that the petitioner had 18

adverse entries in his service record all relating to his unauthorized absence from duty and does it not show that the petitioner is a habitual absenter

which amounts to a mis-conduct in terms of paras 19 (f), (h) & (m) of certified standing order applicable to him. In Borman v. Presiding Officer,

Labour Court and Ors. 2003 LLR 364, the court held that absence of a workman for 62 days will justify his dismissal from service. In identical

circumstances in Delhi Transport Corporation Vs. Sardar Singh, , the Hon''ble Supreme Court has held that the habitual absence of a conductor

from service of Delhi Transport Corporation amounts to a grave misconduct requiring his removal from service of Delhi Transport Corporation. In

my view, the impugned award of the court below is a well reasoned award and hardly calls for any interference by this Court in exercise of its

extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India.

6. In view of the above, this writ petition is dismissed in limine. Since the main writ petition has been dismissed, application being CM No.

8642/2009 filed by the petitioner for condonation of delay of more than one year in filing of the present writ petition does not survive for any order.