

(2009) 07 DEL CK 0182

In the Delhi High Court

Case No : Writ Petition (C.) No. 2333 of 2008 and C.M. No. 4475 of 2008 (for stay)

Shri Tulsi Ram

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0182

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

Bench : Single Bench

Advocate : Chandra Shekhar Panda, for the Appellant; Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition filed by the workman (petitioner herein) is directed against an award dated 06.12.2007 passed by Ms. Nisha Saxena, Presiding Officer, Labour Court XXI, Delhi dismissing his claim for reinstatement with back wages.

2. Heard.

3. Brief facts of the case relevant for disposal of this petition are that the petitioner was appointed as Conductor with Delhi Transport Corporation (DTC) in April 1983. He suffered 15 adverse entries in his service record at the time he was served with a charge-sheet (Annexure P-2 at Page 34) on 09.05.1995. The charge attributed to the workman was that while he was deployed for duty as Conductor on 09.04.1995 on Inter-State Route, Delhi to Chandigarh, his bus was checked by the checking staff at Dera Basi at 22.30 hours and it was found that he had not issued tickets to 8 passengers though had collected fare from them. Domestic inquiry was held against the petitioner in which he was found guilty of the charges leveled against him. The disciplinary authority after considering the inquiry report and taking the past conduct of the petitioner into account decided

to remove the petitioner from service and accordingly he was removed from service of the DTC w.e.f. 10.04.1996.

4. Aggrieved by his removal, the petitioner raised an industrial dispute which was referred by the appropriate Government for adjudication to the Labour Court. Both parties produced their evidence before the Court below on the inquiry issue and also on other facts of the case. The Court below on the basis of the evidence that was produced by the parties before it, vide its order dated 20.10.2007, decided the inquiry issue against the workman and held that the principles of natural justice were duly adhered to while holding domestic inquiry against the petitioner. The Court below in its impugned award has also taken into account the past conduct of the petitioner for holding that the removal of the petitioner from service of DTC was justified.

5. Mr. C.S. Panda, learned Counsel appearing on behalf of the petitioner has argued that the inquiry issue vide order dated 20.10.2007 was wrongly decided by the court below against the workman and according to him the domestic inquiry held against the petitioner was violative of principles of natural justice. He has submitted that the Inquiry Officer did not permit the petitioner either to examine the Driver of the bus or the two passengers he wanted to examine to prove his innocence. He has further submitted that the inquiry report is also vitiated on account of the fact that there was no Presenting Officer in the inquiry and according to him, the Inquiry Officer has acted as a Judge as well as the Prosecutor.

6. I am not convinced with any of the above arguments advanced by the Counsel appearing on behalf of the petitioner. In my opinion, no prejudice was caused to the workman by declining the request to examine the Driver of the bus or the two passengers he wanted to examine. The Driver of the bus which was checked by the checking staff could not have any knowledge for non-issuance of tickets by the petitioner for which he was charge-sheeted vide charge-sheet dated 09.05.1995. As far as the non-examination of the passengers by the workman is concerned, I am of the view that it is not easy for a delinquent Conductor to arrange for the evidence of the passengers travelling in the bus at the time of its checking unless the passengers are won over by the delinquent employee. The record of the inquiry reveals non-cooperation on the part of the petitioner at the time of checking of his bus by the checking staff and this further proves misconduct on his part. It may further be noted that the Court below in para 8 at page 29 of the Paper Book has noted that there were 15 adverse entries on earlier occasions in the service record of the petitioner which all related to similar types of mis-conduct. This finding of the fact recorded in the impugned award has not been assailed by the petitioner in the writ petition. On being asked, Mr. Panda, Counsel appearing on behalf of the petitioner could not show from the writ petition where the petitioner might have assailed this finding of the fact. This clearly shows that the petitioner admits that he was habitual of not issuing tickets to the passengers after collecting fare from them even in the past. The

petitioner cannot be permitted to go scot-free on technical grounds, more so when he was guilty of the charges leveled against him for the 16th time vide charge-sheet dated 09.05.1995. No prejudice, in my opinion, seems to have been caused to the petitioner in the course of domestic inquiry held against him. The petitioner is guilty of mis-conduct within the meaning of para 6, 7 and 21(iv) of the Executive Instructions (i.e. Duties of a Conductor) read with Clauses 19(b), (h) & (m) of the Standing Orders governing the conduct of DTC employees.

7. For the foregoing reasons, I do not find any reason to interfere in the impugned award of the Court below as the said award by no means can be said to be suffering from perversity. This petition along with stay application therefore fails and is hereby dismissed in limine.