
(2013) 04 DEL CK 0073
In the Delhi High Court
Case No : W.P. (C) 7316/2000

Subhash Chander

APPELLANT

Vs

Presiding Officer Labour Court

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 138 FLR 281 : (2013) LLR 567

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order of removal from service dated 24.06.1987, passed by the respondent ? DTC; the order dated 25.08.1995, and; the final Award dated 06.05.1988 passed by the Labour Court ? IX in old I.D. No. 623/88 and new I.D. No. 586/94. By the order dated 24.06.1987, the petitioner was removed from service by the respondent ? DTC with immediate effect. By the order dated 25.08.1995, the preliminary issue with regard to the validity of the domestic enquiry held by the respondent against the petitioner was decided in favour of the respondent and against the petitioner holding the enquiry to have been properly held in compliance with the principles of natural justice. By the final Award dated 06.05.1988, the reference made to the Labour Court by the appropriate Government on 16.09.1988 with regard to the removal of the petitioner from service has been answered in favour of the respondent, and against the petitioner workman. The petitioner was appointed as a Conductor by the respondent - DTC in 1979. On 18.11.1985, the checking staff of the DTC found the petitioner to have not issued the ticket to a lady passenger of 30 paise after pocketing the said amount. On checking his cash, he was found in possession of excess cash of Rs. 1.90/-. The statement of the petitioner was recorded on 22.10.1985 (Ex. A) in his own handwriting and bearing his signatures wherein he admitted his guilt. The respondent then held a domestic enquiry against the petitioner wherein the statements of several witnesses produced by the Management were recorded and opportunity to cross-examine

them was given to the petitioner. On the preparation of the domestic enquiry report, the petitioner was granted an opportunity to make his representation. After considering the same, the respondent/employer passed the order dated 24.06.1987 removing the petitioner from service with immediate effect. Since the petitioner raised an industrial dispute in respect thereof, the same was referred by the appropriate Government for adjudication to the Labour Court which has rendered its Award as aforesaid.

2. While passing the order dated 25.08.1995 on the preliminary issue with regard to the validity of the domestic enquiry, the Labour Court examined the petitioners plea that he had withdrawn his handwritten and signed statement dated 22.10.1985 vide letter dated Ex. B, wherein the petitioner had claimed that Ex. A had been written under coercion and at the dictates of the checking staff. The Labour Court observes that the petitioner in his statement made before the Court on 24.08.1995 had admitted his handwritten and signed statement Ex. A dated 22.10.1985. In this document, he admitted that on 22.10.1985 while he was on duty as a conductor, he has taken 30 paise from a lady passenger but did not give her ticket. He admitted his guilt and prayed to be excused. This constitutes his admission of his guilt. In respect of Ex. B - the letter of retraction, the Labour Court observed that no such objection had been taken in the reply filed by the petitioner workman to the charge-sheet issued to him. Further, witness Gyan Chand, Supervisor, in his testimony stated that when the conductor was confronted with the lady passenger, he had admitted that he taken the money. The witness Hari Chand similarly stated that the conductor had admitted his guilt in writing. Similarly, Amar Nath, ATI also stated that the conductor had admitted his guilt in writing. The Labour Court observed that these witnesses were cross-examined by the workman but the deposition of these witnesses to the effect that the workman concerned had admitted his guilt was never challenged. It was also not put to these witnesses that the said admission was obtained under coercion or at the dictates of the checking staff comprising of these witnesses. The Labour Court held that the plea of coercion appeared to be an afterthought and, consequently, the same was rejected.

3. The Labour Court observed that though the Management had not produced the original enquiry record, the petitioner had admitted the correctness of the various documents on record like the enquiry proceedings, enquiry report, charge-sheet and other documents. Since the petitioner had admitted the same, the Labour Court - while expressing its displeasure in the manner in which the proceedings had been conducted by the respondent-employer before the Labour Court, held the domestic enquiry to have been duly conducted. The Labour Court then proceeded to consider the aspect of proportionality of punishment. By the impugned Award dated 06.05.1988, the Labour Court held the punishment to be proportionate to the misconduct proved on record. It was held that the punishment could not be said to be disproportionate. While doing so, the Labour Court observed that the latest trend of the legal pronouncements was that the Courts should be slow in interfering with the quantum of punishment as it is the

prerogative of the management to decide the quantum of punishment and not that of the Court. Reliance was placed, inter alia, on the decision of the Supreme Court in 1997 (77) FLR 79 Supreme Court. Other decisions were also considered by the Labour Court.

4. The first submission of learned counsel for the petitioner is that the petitioner's retraction contained in Ex. B has not been duly considered by the Labour Court. I do not find any merit in this submission. A perusal of the impugned order dated 25.08.1995 shows that the Labour Court has considered the worth of the said letter Ex. B in depth. As aforesaid, the said retraction has been viewed in the light of the petitioner's response given to the charge-sheet, as well as in the light of the cross-examination of the management's witness undertaken by the petitioner. It was not for the Labour Court, much less is it for this Court to re-appreciate or re-evaluate the evidence. The reasoning adopted by the Labour Court is good and there is no perversity pointed out therein to require interference by this Court in exercise of its writ jurisdiction.

5. Learned counsel for the petitioner next submits that the original enquiry report and enquiry proceedings were not produced before the Labour Court. This aspect has been noted by me above. No doubt, the originals of the said enquiry proceedings were not produced before the Labour Court. However, the petitioner never challenged the correctness of the copies which were produced before the Labour Court. Even before this Court, the petitioner has not sought to raise any challenge or doubt about the record that was produced by the respondent-employer before the Labour Court. It has not been pleaded or shown as to how the petitioner was prejudiced by the production of copies when the petitioner does not dispute their correctness. Consequently, I find no merit in this submission as well.

6. Learned counsel for the petitioner next argued that punishment imposed upon the petitioner was highly disproportionate. He submits that the petitioner was found to have not issued a ticket to one passenger of only 30 paise after pocketing the proceeds. He further submits that this was only the second instance when the petitioner was caught cheating. Learned counsel for the petitioner places reliance on the administrative order dated 03.01.1966 which lays down the guidelines for dealing with such like misconduct. He submits that the punishment of removal from service cannot be resorted to in the light of the said administrative order dated 03.01.1966 only on the second occasion. He submits that the petitioner should have been inflicted a minor punishment-such as stoppage of increments etc.

7. On the other hand, learned counsel for the respondent submits that the petitioner having admitted his guilt, which was even otherwise duly proved during the course of the domestic enquiry by leading independent evidence by the Management, was found guilty of indulging in misconduct of cheating. This is a serious misconduct. He submits that so far as the administrative order dated 03.01.1966 is concerned, the same itself gives the discretion to the Management

to inflict major penalty of removal from service, and it does not lay down binding mandate that on second instance of cheating by the conductor such a penalty cannot be imposed. Learned counsel for the respondent has also placed reliance on a Division Bench judgment of this Court in Sheo Raj Singh Vs. D.T.C. in L.P.A. No. 243/2007 decided on 10.10.2007 as also the decision of the Supreme Court in Depot Manager, APSRTC Vs. B. Swamy, .

8. I do not find any merit in the submission of the petitioner that the punishment imposed upon him is highly disproportionate to his misconduct of his cheating. The submission that the amount involved was only 30 paise and, therefore, a lenient view should be taken, has no merit. The amount involved may appear to be very small in today's time. The incident is of the year 1985 when even 30 paise had purchasing power as is evident from the fact that a passenger ticket of the DTC was available for 30 paise. The issue is not about cheating of only 30 paise. One cannot lose sight of the fact that the petitioner was found in possession of excess cash of Rs. 1.90. He may have been caught cheating the respondent employer in one instance, but the presence of excess cash of Rs. 1.90/- shows that he could have been involved in similar acts of cheating on the same day before the checking party caught him red-handed in the act of cheating. The petitioner has not sought to explain as to how he was possessed of excess cash of Rs. 1.90/-. Even if one were to accept that 30 paise and Rs. 1.90/- are small amounts, what is of significance is the act of cheating and not the amount involved. The petitioner was a bus conductor. Obviously, if he was habitual and morally oriented to cheat the respondent-employer, he would cheat in the discharge of his official duties as a bus conductor. His acts of cheating, therefore, would involve such amounts only. When such acts are viewed in the light of the fact that hundreds of passengers travel in a public transport buses of the kind in which the petitioner was performing his duties as a bus conductor, the magnitude of the loss that the petitioner may have caused, or could cause in a day; in the month; in a year or in his entire tenure would translate into a significant amount. If the argument about the money involved being small were to be accepted, no person involved in cheating having a small monetary value would ever get caught or punished. Pertinently, this was the second instance when the petitioner was caught in the act of cheating and punished there for. He did not learn his lesson even after the first act when he was caught and punished. The fact that that he was caught the second time does not mean that this was the second time that he indulged in such act of cheating.

9. A Division Bench of this Court in Sheo Raj Singh (supra), dealt with a similar situation in the light of the circular dated 03.01.1966 and the subsequent guidelines issued by the respondent on 26.05.2000. In that case as well, the Court was dealing with an order of removal from service passed by the respondent ? DTC on account of a second instance of cheating by the conductor. The Court observed, as follows:-

Besides the aforesaid, notification issued on 3.1.1966 also enables the

disciplinary authority to impose the extreme penalty of dismissal or removal from service in a case of repetition of punishment. We have already referred to one of the past incident where the appellant was given the punishment of stoppage of increment and, therefore, the offence of misconduct of misappropriation for which action is taken was in the nature of repetition of punishment and, therefore, the said circular does not in any manner come in assistance or protection of the appellant. We may also, at this stage, mention that there is a guideline issued by the corporation dated 26.5.2000 which justifies the quantum of punishment imposed on the appellant. In any case, the contention of the counsel appearing for the appellant that the quantum of punishment is disproportionate to the offence alleged against the appellant cannot be accepted. The punishment imposed keeping in view the offence cannot be called as shocking the judicial conscious of the court. It is not the quantum of the amount but the nature, type and character of the misconduct which is relevant and the determinative factor.

10. Learned counsel for the respondent has tendered in Court the guideline dated 26.5.2000. As per this guideline, for the offence of "Theft dishonesty fraud forgery or mis-appropriation including cheating and non-issue of tickets after collecting fare, in connection with the cash property or business of the undertaking", the quantum of punishment that may be imposed is, "Stoppage of increment with cumulative (sic cumulative) effect reducing to lower post or time scale or lower stage in time-scale removal or dismissal." (emphasis supplied). Therefore, the removal from service is one of the prescribed punishments for the act of cheating and non-issue of ticket after collecting the fare by the conductor.

11. The Supreme Court in B. Swamy (supra) dealt with a similar plea of the act of cheating by a bus conductor being a first time act. The Supreme Court held that even one act of dishonesty amounts to breach of faith and may invite serious punishment. In that case, the bus conductor was found guilty of misappropriating ticket money. He had charged higher fare from 16 illiterate persons, but had issued tickets for a lower fare. Merely because it was the first occasion when the respondent conductor was caught, was held not to be a ground to conclude that it was accidental. It was held that the bus conductor enjoys the faith reposed in him. If he is dishonest in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimised by the fact that he was not earlier caught indulging in such dishonest conduct. The judgment of the High Court interfering with the punishment on the ground of it being disproportionate was set aside.

12. For the aforesaid reasons, there is no merit in the plea of the petitioner that the punishment of removal from service is disproportionate to the petitioner's misconduct, and the same is rejected.

13. Before parting with this judgment, I wish to express my dismay at the standards adopted by the respondent with regard to the level of honesty that it expects its workmen to follow. The objective of office order No. 1 dated

03.01.1966 is stated to be, to minimise "the cases of non-issue of tickets, possession of or sale of used tickets, issue of tickets of lesser denomination on the part of the conductors involving cheating". It states that it has been decided, "to deal with these cases more severely specially when there is repetition of such cases and the corrective measures and imposition of lighter punishments have failed to yield the desired results". In spite of the aforesaid being the objective, the respondent lays down guidelines purporting to give as many as four chances to such dishonest conductors before considering the extreme penalty of removal or dismissal from service. No doubt, the said circular also states that it shall be in the discretion of the respondent to impose a severe punishment even in the first or second instance of cheating, but what I find bothersome is the level of tolerance that the respondent is willing to show in respect of its dishonest conductors. Cheating is a serious offence and misconduct. It involves moral turpitude. It is a prime example of exhibition of disloyalty by the workmen towards the employer. The employer would be justified in showing zero tolerance towards such dishonest conduct. The office order No. 1 purports to convey to the bus conductors that it is alright for them to try their luck and to continue to cheat the respondent corporation, as it is unlikely that they would be punished with the extreme punishment of removal or dismissal from service until they are caught for the fourth time. As noticed above, the public transport vehicles of the DTC carry a very large load of passengers in Delhi every day. A dishonest conductor could be cheating the corporation of a substantial amount on daily basis. The first act of cheating for which a conductor is caught is not necessarily his first act of cheating. It is high time the respondent raises the levels of morality and the benchmark of honesty and insists that it expects its staff, including conductors, to maintain that level. The respondent cannot show such latitude to its workmen in matters involving dishonesty - which is leading to a financial drain on the resources of the respondent. In the light of the aforesaid discussion, the present petition is dismissed leaving the parties to bear their respective costs. A copy of this order be communicated to the Chairman of the respondent corporation for taking appropriate steps in terms of the foregoing paragraph.