

(1986) 11 DEL CK 0044

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 1321 of 1973

Sultan Singh

APPELLANT

Vs

Delhi Transport Corporation and Others

RESPONDENT

Date of Decision : 10-11-1986

Acts Referred:

Citation : (1987) 12 DRJ 116 : (1987) 54 FLR 116

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : Geeta Sharma, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) This petition under Article 226 of the Constitution of India is directed against the order of the Industrial Tribunal dated 2/4/1973 granting approval to the respondent-Delhi Transport Corporation u/s 33(2)(b) of the Industrial Disputes Act.

(2) The two main grounds on which the removal of the petitioner has been challenged are : (1) that the order of removal was not passed by the competent authority inasmuch as the order of removal was passed by the Deputy General Manager whereas the order of removal could be made only by the General Manager; and (2) that the passenger witness who had given a statement against the petitioner had not been examined and thus the petitioner did not have sufficient opportunity to cross-examine this witness and, Therefore, the inquiry was vitiated.

(3) This petition was dismissed in default on a previous occasion, however in the interest of justice the petition was restored. Even today, no one appears for the petitioner. Since the petition involves a short question, I think it is in the interest of justice to decided the case on merits rather than dismissing it in default for the second time.

(4) Learned counsel for the respondent has brought to my notice the order dated 14/5/1962 which is an order of appointment of the petitioner on monthly rate of wages and appointed on probation as Conductor which indicates that the order of the appointment of the petitioner was made by the Assistant General Manager and not by the General Manager. Learned counsel submitted that in the year 1961 the power of appointment to the post of Conductors was deluded by the General Manager to the Assistant General Manager. She referred to the judgment of the Supreme Court in Delhi Transport Union v. B.B.L. Hajelay and Another, 1973(1) L J 76. Assistant General Manager is lower in rank than the Deputy General Manager. This being the position since the order of removal was passed by a higher authority, there is no illegality committed by the respondent.

(5) As regards the second ground, learned counsel referred to the judgments of this Court in C.W. 156/75 (Mahinder Singh v. The Presiding Officer) decided on 10th February 1979 and L.P.A. 38/78 (D.T.C. v. The Presiding "Officer of the Industrial Tribunal) decided on 9th July 1979 wherein it has been held that even if the passenger witnesses are not examined and if there was enough other evidence to prove the misconduct of the employee the inquiry is not vitiated. In the present case also, there is a clear finding that the checking officers were examined and they gave evidence to prove the misconduct and the statement of the passenger was recorded in the presence of the petitioner. Thus, even if the statement of the passenger witness is held to be inadmissible since there was other evidence, the order cannot be held to be invalid.

(6) Thus, in my opinion since the petitioner has not made out any case the petition deserves to be dismissed. No costs. Addenda:-

(7) After the judgment was dictated/delivered, Mr. D.N. Vohra, counsel for the petitioner appeared and requested that he may be heard. Since the judgment was not typed and signed he was allowed to address his arguments. Learned counsel raised a preliminary objection that the respondent should not be allowed to refer to the appointment letter because this document is annexed with the counter-affidavit which was filed late and since the delay has not been condoned by this Court it was not yet part of the record. In my opinion, this objection is highly unjustified. By order dated 8/8/1984 this Court had ordered that the application for bringing the counter on record to be heard Along with the main petition. I see no reason why the delay cannot be condoned particularly when the petition filed by the petitioner was dismissed after the date the respondent filed the application and then later on restored.

(8) On merits, it was contended that the power of removal cannot be delegated and thus the Deputy General Manager could not remove the petitioner from service.

(9) No doubt the power to remove cannot be delegated to an inferior officer but then in the present case from the letter of appointment it appears that the appointment itself was made the Assistant General Manager. This being the

position the Assistant General Manager could exercise the power of removal also. Such an action has been approved by the Supreme Court in D.T. U. v. B.B.L. HaJelay & Another (supra) as well wherein it has been held : "That the proviso to Section 95(1) gives protection to every officer and employee of the undertaking that he may not be removed or dismissed from service by an authority subordinate to that by which he was appointed. It maybe that in 1961 the functions of the General Manager (Transport) have been delegated to the Assistant General Manager. The only consequence is that after 1961 the Assistant General Manager makes the appointment of a driver like respondent No. 2 and he would no doubt be entitled to remove him from service."

(10) Thus, there is no force in the contention of the learned counsel for the petitioner. The petition is dismissed. No costs.