

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 1054/2006

% Date of Decision: 21st January, 2008

DHARAM PAL Appellant
Through: Mr. Rakesh Kumar, Mr. Rajesh Kumar and
Ms. Punam Kumari, Advocates

versus

D.T.C. & ANR Respondents
Through: Mr. J.N. Aggarwal with Mr. Rama Nath Jha,
Advocates for DTC

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

% **21.01.2008**

: **DR. MUKUNDAKAM SHARMA, CJ. (ORAL)**

1. This appeal is directed against the order dated 5th April, 2006 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein.
2. The background facts are as follows: On the allegation that the appellant submitted a false claim for leave travel concession, a departmental proceeding was initiated against the appellant. An enquiry officer was appointed to go into the charge which was framed against the appellant to the following effect:

“That on 15.03.83, you submitted an L.T.C. Claim in respect of your family members consisting of wife and two sons aged 24, 12 and 7 respectively for having travelled by Bus No.DLP-4750 from Delhi to Kanya Kumari on 20.2.82 and back on 8.3.82 for the block year

1982-85. The printed money receipt bearing No.25 dated 9.3.82 for 2½ tickets for Rs.1,250/- produced by you and issued by M/s. Goswami Travels, 304 Navin Shahdra, Delhi, is alleged to be a fictitious as the Transport Authority has confirmed that no such permit was issued from this route to the above transporter for conducting tour to Kanya Kumari on this specified date which clearly shows that you have tried to cheat the Corporation by submitting a forged claim.”

3. It was alleged that by the aforesaid misconduct the appellant had violated paragraph 19(b) and (m) of the Standing Orders governing the Conduct of the DTC employees. The reply submitted by the appellant was found to be not satisfactory and accordingly an enquiry officer was appointed, who conducted a detailed enquiry. During the course of the said enquiry, an application was submitted by the appellant which was in Hindi dated 17.07.1982. In the said application, he stated that the transporter with whom his family members travelled up to Kanyakumari and back had shifted from his previous address and had gone to an unknown place and, therefore, he may be given 3-4 days to find out and ascertain the fresh address of the said transporter. The aforesaid request of the appellant was acceded to by the enquiry officer and he was given time to furnish the fresh address of the transporter. However, the fresh address of the transporter was not given to the enquiry officer. The enquiry officer completed the enquiry proceedings and thereafter submitted his report with his findings. In the said report, the enquiry officer found the appellant guilty of the charge framed against him holding that the family members of the appellant did not actually travel to Kanyakumari, which was established from the fact that permit No.1055 which was shown by the transporter as against Kanyakumari had actually been issued by the STA for vehicle No.DOP 3502 from Delhi to Agra/Fatehpur Sikri and back for 14.02.1982. It was accordingly held that the charge levelled against the appellant in the charge sheet stood fully established. The disciplinary authority accepted the aforesaid findings and agreed with the same. Consequently an order removing the appellant from service was passed by the respondent.

4. Being aggrieved by the aforesaid action of the respondent, the appellant raised an

industrial dispute before the appropriate Government, who made a reference to the Labour Court in the following terms:

“Whether the removal from service of Shri Dharam Pal is legal and justified and if not to what relief is he entitled and what directions are necessary in that respect?”

5. The learned Labour Court framed issues in the reference proceedings and also recorded the evidence adduced by the parties and thereafter passed an award on 10.02.1994, holding that the appellant had attempted to cheat the management by presenting a false claim of Rs.1,250/-. It was also held that he would have otherwise cheated the management, but for the fact that the anomaly was detected, as there was discrepancy in permit No.1055. It was, therefore, held that the appellant had committed an act of serious misconduct and, therefore, the penalty of dismissal passed by the disciplinary authority was found to be justified. However, the Labour Court directed that the management should pay the dues of the appellant till the date of his dismissal minus the amount of the interim relief already paid to the appellant.

6. Being aggrieved by the aforesaid order, the appellant filed a writ petition in this Court, which was considered by a Division Bench of this Court. The Division Bench, however, quashed and set aside the impugned order of removal from service dated 07.09.1982, the award dated 10.02.1994 and the memo Annexure P-1 on the ground that the disciplinary proceedings were not conducted in accordance with law, inasmuch as no evidence was adduced by the management and no opportunity was afforded to the appellant to lead his evidence. Consequently, it was held by the Division Bench that the appellant was entitled to be reinstated in service with all benefits in accordance with law. The learned Division Bench, however, gave an opportunity to the respondent/DTC to proceed departmentally against the appellant on the charges in question in accordance with law.

7. The Corporation, being aggrieved by the aforesaid order passed by the Division Bench of this Court, preferred a Special Leave Petition before the Hon'ble Supreme

Court, which was entertained. The Hon'ble Supreme Court disposed of the aforesaid Special Leave Petition with the following order, which was passed on 31st March, 1999:

*“IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2285/1999
(Arising out of SLP(Civil) No.7768 of 1998)*

*Delhi Transport Corporation & Anr. Appellant
versus
Dharam Pal Respondents*

ORDER

*Delay in refiling the special leave petition is condoned.
Special leave granted.*

This appeal has been preferred by the Delhi Transport Corporation against the award passed by the Labour Court. The High Court of Delhi by the order dated 13th September, 1996 in Civil Writ Petition No.2387 of 1995 quashed the award passed by the Labour Court on the ground that once the Labour Court had come to the conclusion that the enquiry was defective, it could not have permitted evidence to be adduced before it. This view of the High Court is contrary to the judgment of this Court in The Workmen of M/s Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors. reported in 1973 (1) SCC 813. On this ground the judgment of the High Court is liable to be set aside. The High Court has not gone into other aspects of the matter. Therefore, we remit the matter back to the High Court for fresh disposal in accordance with law.

In the circumstances, the judgment under appeal is set aside. The writ petition is remitted to the High Court for being heard and disposed of afresh in accordance with law. There will be no order as to costs.

*Sd/-
(M. Jagannadha Rao)
Sd/-
New Delhi;
March 31, 1999 (Syed Shah Mohammed Quadri)”*

8. As the matter was remitted back to the High Court, the same was taken up by the learned Single Judge and by order dated 5th April, 2006, the learned Single Judge dismissed the writ petition. It was held by the learned Single Judge that the respondent-Corporation had been able to prove before the Labour Court that the application which was submitted by the appellant for claiming leave travel concession was a bogus one and that the appellant had failed to challenge the testimony given on behalf of the Corporation in this regard. The learned Single Judge accepted and agreed with the findings recorded by the Labour Court. It was held by the learned Single Judge that the

Labour Court had returned a clear finding of fact that the DTC had succeeded in establishing that the appellant had submitted a bogus claim of Rs.1,250/- towards the leave travel concession in respect of a journey purportedly undertaken by his wife and two children whereas they had actually never travelled in the aforesaid manner. The contention of the counsel for the appellant that the Corporation was required to lead evidence and should have produced a witness from the transporter viz. M/s. Goswami Travels was found to be misconceived as it was held that the burden of proof for proving a fact which is set up lies on the party which is placing reliance on the aforesaid submission and, therefore, the appellant should have led such evidence as he relied upon in support of his contention before the Labour Court, which he has failed to do.

9. Having held thus, it was further held by the learned Single Judge that the appellant cannot possibly shift the onus upon the respondent to prove the case which had been set up by him. The learned Single Judge held that the act which the appellant had committed was a dishonest act and amounted to a serious misconduct and, therefore, the respondent was justified in considering such a charge as an act of moral turpitude resulting in loss of confidence in him, which justified the penalty of dismissal from service. The learned Single Judge also held that the order of dismissal was rightly held to be effective from the date of award. The writ petition was accordingly dismissed by the aforesaid order dated 5th April, 2006.

10. Being aggrieved by the said order, the present appeal was filed, on which we have heard the learned counsel appearing for the parties, who have taken us through the documents placed on record. Our attention has also been drawn to the findings recorded by the enquiry officer. Having gone through the same minutely, we propose to dispose of the writ petition giving our reasons therefor.

11. We have already referred to the charge which was framed against the appellant. During the enquiry proceedings, the appellant took up a stand that on 20.02.1982, his wife and two sons had travelled by Bus No.DLP-4750 from Delhi to Kanya Kumari on

20.2.82 and back on 8.3.82 for the block year 1982-85 and had paid a sum of Rs.1,250/- for 2½ tickets. However, in the said enquiry itself, evidence was led which indicated that permit No.1025 which was submitted by the petitioner had actually been issued by the State transport authorities for vehicle No.DGP 3520 for its journey from Delhi to Agra/Fatehpur Sikri on 14.02.1982. It is also established that the said bus could go only upto Agra/Fatehpur Sikri and could not have travelled to Kanya Kumari. Therefore, the enquiry officer came to the conclusion that the charge levelled against the appellant stood proved in view of the aforesaid findings on record. The State transport authority had also written a letter confirming that no such permit was issued for the aforesaid route to the said transporter for conducting a tour to Kanya Kumari on the specified date. The appellant also took time for getting the appropriate address of the said transporter, which ultimately he could not procure and place before the enquiry officer. In the light of the aforesaid facts, the disciplinary authority was justified in taking a decision that the charge against the appellant was proved. The learned Single Judge as also the learned Industrial Adjudicator have recorded their findings that the charge against the appellant was proved and that the tickets which were sought to be produced are forged tickets as no permit was issued by the said transport authority to M/s. Goswami Travels, who had allegedly issued the aforesaid tickets. The aforesaid findings cannot be upset or reappreciated by this Court sitting on the appellate side in order to come to a different conclusion, the learned Industrial Adjudicator and the learned Single Judge having appreciated the evidence on record and thereafter recorded the aforesaid findings. We have also considered the findings recorded by the enquiry officer and found that the aforesaid findings are just and proper and cogent reasons have been given for arriving at the conclusions recorded.

12. The next submission which was made before us was that the punishment of removal from service was disproportionate to the misconduct alleged. We are unable to accept the aforesaid contention for the simple reason that when the appellant misconducted himself by producing forged tickets, it cannot be said that the punishment

of removal of service was not justified. Even otherwise, this Court should not and would not interfere with the satisfaction of the disciplinary authority that the misconduct alleged having been proved, the only punishment that could be awarded was a punishment of removal from service. This Court is also not inclined to interfere with the punishment awarded as it cannot be said that the said punishment is shocking to the conscience of the Court.

13. In that view of the matter, we find no merit in this appeal. LPA 1054/2006 is accordingly dismissed.

CHIEF JUSTICE

REVA KHETRAPAL, J

JANUARY 21, 2008
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