

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 371/2010**

% **Date of Decision: 20.01.2010**

DELHI TRANSPORT COPORTATION Petitioner

Through: Ms.Avnish Ahlawat, Advocate

Versus

SURENDER SINGH Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: **MOOL CHAND GARG, J.**

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1. This writ petition has been filed by the Delhi Transport Corporation against the order dated 10.08.2009 of the Central Administrative Tribunal in TA No. 330/2009 titled as *Surender Singh Vs. Delhi Transport Corporation and Anr.*, whereby the Tribunal has set aside the punishment imposed on the respondent Surender Singh on the ground of discrimination, directed reinstatement of the said respondent but restricted his back wages only to the extent of 25% with continuity in service.

2. The respondent filed a Writ Petition (Civil) bearing No. 319/1996 before this Court, which later on was transferred to the Tribunal vide order dated 2.2.2009 in view of the Notification issued by the Central Government on 1.12.2008.

3. The respondent at the relevant time was working as a driver with the Delhi Transport Corporation and was removed from service in the year 1996 after the charges as per the charge sheet served upon him were found to have been proved during the course of investigation. The charges were to the effect that he came to Depot with a snake on 13.9.1995 along with Jagpal Singh, conductor, who gave him full company. Seeing the snake, the workers of the Depot became frightened. A report was lodged against the respondent and Jagpal Singh by Traffic Inspector, who is the complainant. On that basis both respondent and Jagpal Singh were proceeded departmentally. Both of them were suspended immediately and thereafter, they were served with a charge sheet. After the enquiry was completed, the respondent was removed from service. However, the conductor, Jagpal Singh, who had been accused of similar charges, had been left off with a minor penalty viz. stoppage of one increment for one year without cumulative effect.

4. In the writ petition, the respondent had submitted that he was subjected to discrimination in the matter of imposition of penalty and the allegations as found proved is drastically different from the report, which became the foundation for the action. The statement of the

Traffic Inspector as noted down by the Tribunal in the impugned order is as follows:-

“Above conductor Shri Jagpal Singh, B.No. 14685 came in the Depot along with Sh. Surinder Singh, Driver, B.No. 17568 and took a snake from Shri Surinder Singh and frightened the workers of Schedule Section with snake and at that time I was there.

On this the Conductor Shri Shardha Ram B.No. 19248 and Shri Niranjana Kumar B. No. 18044 forbade to misbehave, then he started abusing both of them. And then these two Conductors with a great difficulty ousted the Conductor Shri Jagpal Singh from the room and the Depot who was troubling the workers.

Due to this act on the part of conductor Shri Jagpal Singh and Driver Shri Surinder Singh all the employees were under fear and it caused disruption in the Govt. work.

Report is submitted for further action.”

5. This discriminatory treatment was not disputed by the counsel on behalf of Delhi Transport Corporation. It was only argued that imposition of penalty is a matter which falls within the discretion of the competent authority and the Tribunal should not interfere in the matter of quantum of punishment.

6. However, the Tribunal after considering all the submissions made on behalf of both the parties made the following observations:-

7. Of course, the principles as stated by the standing counsel requires acceptance. But it also depends on the facts and circumstances of each case when the justifiability is tested in an adjudication.

When Mr. Sudan pointed out that practically the allegations are identical in all respects and the conductor had also been misbehaving and using abusive words, adoption of different yardsticks may by itself spell out unreasonableness, unless satisfactory explanation forthcomes. There is no marked difference as between the misbehavior committed by the driver and the conductor. Really the suggestion is that conductor was the more active participant on the date. It is also not explained whether they had any other ulterior motives for their extraordinary conduct on that day while exhibiting their pet. The altogether different manner and yardstick by which the two employees had been dealt with by the corporation is not explained. When it is decided that Jagpal Singh deserved only a minor penalty, there should be very strong reason to differentiate the conduct of the driver. It is not made clear whether any one of them were on duty, and whether it was a case of a frolic or frivolousness which suddenly went out of hand. The evidence in the enquiry is preciously minimal, so as to throw light as to what exactly had transpired.

8. We also notice that there is no reference in the penalty advice that the applicant had any bad records of service, which could have justified an aggravating condition.

9. As no explanation forthcomes for the differential treatment, we set aside the impugned orders. We would have directed the respondents to come up with further orders vis-à-vis the applicant in line with the orders that had been issued while dealing with the case of co-delinquent, Jagpal Singh, but because of passage of years, we think it will be appropriate that the issue is given quietus, in these proceedings itself.

10. We hereby direct the respondents to reinstate the applicant in service but he will be entitled to 25 % of the back wages till the date of his reinstatement. However, he should be deemed as to have continued in service. He is to be given fixation of salary on that basis. For the purpose of backwages salary which he was drawing as on the date of his removal alone need be taken into consideration. Implementation orders are to be issued within two months from today. We make no order as to costs.

7. Learned counsel for the petitioner submitted that this order passed by the Central Administrative Tribunal is required to be set aside for the reason that despite upholding of the guilt of the respondent, the Tribunal has not permitted the petitioner to pass an appropriate order in the form of any other penalty in place of penalty of removal from service.

8. We have given our thoughtful consideration to the submissions made on behalf of the petitioner and we find that in the present case in view of the conduct of the petitioner in having treated differently the two employees of the DTC viz. Surender Singh and Jagpal Singh, who, as stated above, were guilty of similar misconduct, the order passed by the Tribunal in setting aside the punishment awarded to the respondent i.e. removing him from service, which was not justified, does not call for any interference. One of the factors considered by the Tribunal is the time gap and rightly so.

9. Insofar as the arguments made by Ms.Ahlawat that in this case the department should have been given an opportunity to pass an appropriate order of sentence, we feel that restricting of back wages to the extent of 25% takes care of the situation. Moreover, we do not find any infirmity in the order which requires intervention of this Court under Article 226 of the Constitution of India. Accordingly, the writ petition filed by the petitioner is dismissed, of course, with no order as to costs.

C.M.No. 779/2010 (Stay)

In view of the orders passed above, this application has become infructuous and is disposed of accordingly.

MOOL CHAND GARG, J.

JANUARY 20, 2010

ANIL KUMAR, J.

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