

. * **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 1771/2008**

% Judgment pronounced on: 25.10.2010

BHARAT BHUSHAN Petitioner
Through: Mr. Ram Sewak, Adv.

Versus

DELHI TRANSPORT CORPORATION Respondent
Through: Mr. Abir Phukan, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner against the impugned order dated 07-08-2007 and impugned award dated 11-09-2007 praying to set aside the said order and the award. Also to quash the removal order of the respondent dated 20-10-1994.

2. According to the petitioner he was working as a driver under badge no. 10913, under the respondent since 09-02-1982 at the Kalkaji depot in New Delhi. In 1992, the petitioner fell ill and therefore took leave starting 05-08-1992. He sent a leave application accompanied with a medical certificate of his sudden illness through some employee of the depot to the depot manager.

3. Petitioner joined his duty on 17-08-1992 and again applied for the leave through submitting a leave application with medical certificate for the reason of his sudden illness. As per the petitioner there was no reply to this leave application and medical certificate by the respondent. On 24-11-1992 respondent issued a chargesheet against the petitioner under Road Transport Corporation Act, 1950 and the Delhi Road Transport Laws (Amendment) Act, 1971 with DRTA (Conditions of Appointment and Services) Regulations alleging his unauthorized absence from work between the period 05-08-1992 to 25-08-1992 for 21 days alleging misconduct as per the above mentioned regulations.

4. The petitioner filed a reply to the charge sheet denying the said accusations. Respondent referred the case to the Enquiry Officer for enquiry, without giving any information to the petitioner and without supplying relevant documents.

5. According to the petitioner the report of the enquiry officer dated 23-02-1993 was not based on adequate corroborative evidence. On the basis of the said enquiry report the petitioner was terminated from the service on 20.10.1994.

6. Petitioner thereafter raised an industrial dispute before the conciliation officer. The conciliation officer submitted his failure report to the Government of Delhi, which referred the matter to the Labour Court for adjudication. The Presiding Officer Fast Track Court passed the impugned order dated 07.08.2007 and thereafter the impugned award dated 11.09.2007 against the petitioner.

7. Petitioner in his grounds contented that fast track court failed to take into consideration the inconsistency between the charge sheet dated 24-11-1992 and the witness of Shri Rishi Nagar. Petitioner contented that findings of the enquiry officer were not based on adequate and corroborative evidence. Petitioner contented that fast track court erred in considering his past records in investigating the said matter on misconduct in the impugned award dated 11-09-2007. Petitioner thus requested to set aside the impugned order and impugned award of fast track court dated 07-08-2007 and 11-09-2007 respectively and to quash the removal orders of the respondents relating to his removal from the said services.

8. Thus the petitioner filed a writ petition in this hon'ble court under article 226/227 of The Constitution of India for the relief from his above mentioned grievances.

9. In counter affidavit filed by the Respondent, respondent it has been stated that the Petitioner was habitual in taking leaves and negligent in performing his duties which showed his lack of interest towards his work. According to his past records he had taken a lot of leaves without pay and had also taken leaves without giving any leave applications and had even been punished several times for taking such unauthorized leaves. Also as the respondent is a corporation running public utility services of running buses, it is in the nature of good public policy to remove the petitioner for his habitual negligence in performing his duties.

10. The petitioner in his case had stated that he had taken the

leave for his felling suddenly ill whereas his reply to the charge sheet and in his statement in front of the enquiry officer he stated that he took these unauthorized leaves because of the illness of his wife. Thus his contention of suddenly felling ill being false, it appears that petitioner was making excuses to remain absent from his work. Also the petitioner has not stated the name of the employee through whom he had sent his leave application and medical certificate initially itself. The petitioner had submitted application for leave and medical certificate on 25-02-1992 and not before that.

11. As per the statement of claim filed by the petitioner before the Labour Court-VII, Tis Hazari, Delhi, that the petitioner was served with the charge sheet on 24.11.1992 for his absence from the duty from 5.8.1992 to 25.8.1992 for 21 days without information or prior permission of the higher authority. The petitioner in his statement of claim has denied the fact that he has committed any misconduct as he had submitted leave applications in time along with medical certificates. However, he was never informed that his leave applications had been rejected. It is also alleged in the statement of claim that he had given reply to the charge sheet and there was no occasion upon the respondent to order for domestic enquiry which is biased and illegal. He was also not given the help of a co-worker which is a condition precedent in the enquiry and the enquiry proceedings were wrongly recorded. The respondent did not supply the list of witnesses and list of documents. According to him, availing of leave without pay is not misconduct and the

workman has not been paid salary for the leave availed. Therefore, he could not be punished twice. The petitioner has also challenged of the order dated 20.10.1994 on the ground that the depot manager is not an appointing authority of the workman. Therefore, he was not competent to pass the impugned order dated 20.10.1994.

12. In para 6 of the written statement filed by the respondent it is stated that the petitioner remained absent for 21 days without any information to the respondent. However, it is not denied by the respondent that the petitioner had submitted his application along with medical certificate on 25.8.1992. Prior to the said date, the petitioner neither informed the management about the sickness nor any application/information was ever sent to the respondent and it constitutes misconduct as per the DRTA Rules.

13. It is specifically mentioned in para 11 of the written statement that the Enquiry Officer had conducted the enquiry as per rules and followed the principles of natural justice. The workman was given full opportunity during the enquiry proceedings as per rules and after the charge sheet one more opportunity was given to the petitioner to give the reply to the show cause notice and thereafter, considering the facts and circumstances of the case, the disciplinary authority removed from the service.

14. It is pertinent to mention that despite specific statement made by the respondent in para 6 of the written statement that prior to 25.8.1992 the petitioner had not informed to the respondent about the

sickness and no application/ information was ever sent to the respondent, there is no specific rejoinder to this effect. In response to the specific statement made in paras 6, 9-13 of the written statement, the petitioner in the rejoinder has simply made the statement that these are not admitted as correct and the statement made in the statement of claim is reaffirmed.

15. It appears that in the statement of claim there is no specific averment by the petitioner that prior to 25.8.1992 or during the period 5.8.192 to 25.8.1992 he had made any application in time along with medical certificate and informed the respondent about his sickness. Merely a statement has been made in para 6 of the statement of claim that he submitted all the applications along with medical certificate before the respondent and he was never informed that his applications were rejected. No specific detail has been given in the statement of claim. In the award, the Labour Court has also discussed about the petitioner's past record as well as adverse entries of the petitioner. The detail in the award reads as under:

“The past record of the claimant must be within his knowledge and if he wanted a copy of the past record, it was obligatory on his part to at least move some application demanding copy of the past record. When the show cause notice was given to the workman, it was specifically stated in the notice that he could peruse any record which he wanted to. After issuance of show cause notice dated 23.3.93, the workman moved an application dated 6.4.93 before the Depot Manager asking for supply of a number of documents to enable him to show cause as desired. However, in this application, he nowhere made mention of the past record and if he wanted he could have easily got a copy of the past record alongwith the other documents. The claimant has not made out any cause of any kind of prejudice caused to him in the absence of non supply of copy of past record. Since he never raised demand for the same, it can be safely presumed that it was not within his

knowledge as major punishments were earlier given to him as reflected by his past record. His past record has as many as 12 adverse entries out of which 7 entries are in respect of absence from duty without information. He absented from duty w.e.f. 11.10.87 to 23.10.87 without any information for which he was warned. He was absent from duties w.e.f. 9.2.88 to 3.4.88 without information for which he was reprimanded. He again absented from duty without information from 26.2.89 to 5.4.89 for which he was censured. He availed 150 days leave without pay during the period from 1.1.89 to 31.8.89 for which punishment of stoppage of next due increment without cumulative effect was imposed upon him. He also absented from duties from 17.7.88 to 10.8.88 for which punishment of stoppage of next due two increments was imposed. He again absented from duty from 10.10.90 to 29.10.90 for which he was warned. He availed excess leave without pay for the year 88, 89, 90 for which punishment of stoppage of next due one increment with cumulative effect was imposed. As there were a number of adverse entries, it cannot be said that it was not in the knowledge of the workman and he was prejudiced due to non supply of past record.”

16. In the case of *DTC Vs. Sardar Singh*, 2004 SCC (L&S) 946, the Apex Court at page 950 in para 9 has observed as under:

“9. When an employee employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority’s work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer’s work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalisation. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.”

17. In the case of *Indian Iron Steel Company Vs. Their Workmen*, AIR 1958 SC 130, it was held:

“Mere fact that the workman applied for leave is no ground for excusing him when the leave was refused.”

18. In view of the settled law as well as on the facts and circumstances in the matter, I am of the considered view that the Tribunal was justified by not interfering with the punishment imposed by the respondent and this Court does not find any valid ground mentioned in the writ petition to interfere with the same. The writ petition is dismissed. No orders as to cost.

MANMOHAN SINGH, J.

OCTOBER 25, 2010
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