

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

+ **WP(C) No.2870/2010**

% **Date of Decision: 29.04.2010**

Delhi Transport Corporation & another Petitioners
Through Ms.Aarti Mahajan Shedha, Advocate.

Versus

Sh.Bhim Singh Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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 |

ANIL KUMAR, J.

*

The petitioner, Delhi Transport Corporation & another, have impugned the order dated 3rd December, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No. 592 of 2009, titled as 'Sh. Bhim Singh v. Delhi Transport Corporation & others', by setting aside the orders dated 9th September, 1998 and 15th December, 1998, removing the petitioner from service by a non-speaking order and rejecting the appeal also by a stereotype order dated 15th December, 1998 and ordering that the respondent shall be entitled

to consequential benefits and allowing the Original Application of the respondent.

The respondent was served a memorandum dated 15th February, 1991 alleging that he had been involved in a moral turpitude offence allegedly committed by him in the night of 5th -6th August, 1990 at 1:45 AM in Humayun Pur Village pursuant to which an FIR dated 6th August, 1990 was registered which fact was allegedly concealed by the respondent and in his application dated 6th August, 1990, he requested for three days earned leave w.e.f. 6th August, 1990 to 8th August, 1990, and therefore, his actions tantamount to misconduct within the meaning of paras 19(k), 19(l) & 19(m) of the standing order governing the conduct of DTC employees.

The respondent was granted bail on 10th August, 1990 by the Addl. Session Judge, and later on the respondent was acquitted of the charges made against him. Though the incident is of 6th August, 1990, however, about the case the respondent had intimated the authorities only on 10th August, 1990.

The respondent was given a show cause notice on 31st January, 1992 asking him to explain as to why he should not be removed from service for not intimating about the case against him from 6th August,

1990, and allegedly the case was registered till 10th August, 1990 ,when he had intimated about the case. Though the respondent gave reply but without considering his application, according to respondent, he was removed from service w.e.f. 9th September, 1998 by a non-speaking order. The order dated 9th August, 1998 is as under:-

“Reply dated 21.07.1998 submitted by Sh.Bhim Singh, Traffic Supervisor, pay Token No.3449 in response to show cause Notice but found not satisfactory, I, therefore, confirm the provisional decision and imposed upon him the following punishment:-

“He is removed from the services of this Corporation w.e.f. 9.9.1998 under paras 15(2)(VI) of the D.R.T.A.(Conditions of Appointment and Service) Regulations, 1952.”

The subsistence allowance already paid to him during the period he remained under suspension is also considered adequate.

He is required to deposit all the D.T.C. articles (uniform, B.No./Name Plate, Identity Card-Cum-Bus, Medical Card, etc.,to the Depot Manager KJD within 24 hours of the receipt of this order by him, failing to do so render him liable to pay a penalty of Rs.2/-per day for the days he keeps any articles of this Corporation in his possession of specified period of 24 hours.”

The appeal filed by the respondent was also rejected by order dated 15th December, 1998 which is as under:-

“Reference your appeal to Chairman-cum-Managing Director, dated 18.09.1998 for re-installation in the services of the Corporation as Tr.Supervisor. You are hereby informed that the competent authority has rejected your appeal.”

The respondent had challenged his removal from services w.e.f 09.09.1998 under para 15(2)(VI) of the D.R.T.A. (Conditions of Appointment & Service) Regulations, 1952 by filing the writ petition which was later on transferred to Central Administrative Tribunal. The respondent had challenged punishment of removal on the ground that there was no violation of any standing order as an employee is guilty of misconduct if he is convicted for offence involving in a moral turpitude and not merely if he is charged with an offence under para 19(k). Because under para 19(l) of the standing orders though it is the duty of an employee who has been arrested in any reason to intimate the fact of his arrest to his officer, however, the respondent was never arrested, and therefore, he had not committed any charge as envisaged in para 19(l), the respondent had neither been convicted, nor arrested by the police and on 10th August, 1990 after getting anticipatory bail, he immediately informed the petitioner about his false involvement and implication in criminal case. The respondent had also filed a Civil Suit where it was observed that prima facie no charge was made out against the respondent under paras 19(k) & (l) as the respondent was neither convicted for any offence, nor he was even arrested by the police. The respondent was also asserted that he was acquitted honourably and in the circumstances, the removal order had been passed without appreciating the provisions of Regulation 19 of D.R.T.A. Regulations.

The Tribunal relied on a fact that by the judgment dated 26th February, 1996 of Additional Districts & Sessions Judge. The respondent was acquitted honourably of the criminal charges and therefore, it cannot be held that he was involved in a case of moral turpitude. It was also noticed by the tribunal that he had filed a suit for declaration that the charge sheet, enquiry proceedings and show cause notice are illegal and invalid. The respondent had also sought a restrain from taking any further action against him pursuant to show cause notice dated 31st January, 1992 and the trial court had restrained the petitioners from terminating his services.

Against the order of the trial court restraining the petitioners from terminating his services, an appeal being MCA No.58 of 1993 was filed and the appeal was disposed of by order dated 24th August, 1994.

Reliance was also placed on two office orders dated 19th December, 1973 and 16th April, 1979 stipulating and clarifying that where employees are placed under suspension as a result of serious criminal action against them, they need not be charge sheeted and that action will be considered on the basis of the result of the judicial case. In office order dated 16th April, 1979, it was clarified that if an employee desires that the departmental enquiry be stayed on the ground that he would be prejudiced in his defence in the criminal case, then the

disciplinary authority will consider the said matter and proceedings would be stayed pending decision of the criminal case, if the request would be found reasonable.

Referring to Sub Clause (l), the Tribunal held that under the said clause an employee was under no obligation to inform the department about the registration of the criminal case and an employee was required to inform about his arrest. Since the respondent was never arrested, therefore, there was no violation of Sub Clause (l) and the main charge that he did not intimate to registration of the case against him on 6th August, 1990 was therefore, not made out as there was no obligation to intimate about the registration of the case. The fact that the respondent was not arrested could not be denied, and was not denied by the petitioner as the case was registered on 6th August, 1990 and on 9th August, 1990, the respondent admitted to anticipatory bail and on 10th August, 1990, he had intimated about the registration of the case though it was not required under Sub Clause (l).

In the circumstances, it was held that the petitioners could not have invoked sub Clause (k) or (l) of the standing orders, and consequently the order removing him from service was contrary to law and the standing orders and was a outcome of a complete non application of mind. In the circumstances, it was held that the charge

based on para 19(l) could not have been invoked, nor the penalty of removal from service could be imposed on the respondent.

The Tribunal also relied on the facts that punishment orders were stereo type and pleas and contentions of the respondent and reply to show cause notice were not considered and were not dealt with.

The learned counsel for the petitioners has very emphatically contended that though the charge under Clause 19(k) has not been made out, however, the Tribunal could not interfered with the order of the removal. The learned counsel for the petitioner has also challenged the grant of consequential benefits to the respondent and has relied on 2005 VAD (S.C.) 224, Allahabad Jal Sansthan v. Daya Shanker Rai & another', and 2005 (2) SCC 363 'Kendriya Vidyalaya Sangathan & another v. S.C.Sharma', to contend that the consequential benefits could not be granted to the respondent.

Perusal of Clause 19(l) reveals that the liability of the employee was intimate about the arrest to his superior officer and not about registering of the case. Clause 19(l) is as under:-

“19 General Provisions Act:- without prejudice about the provisions of the foregoing standing orders, the following acts of commission and omission shall be treated as misconduct:-

19(l) All employees who may be arrested for any reason shall intimate the fact of arrest to their official supervisor immediately, even though they might have subsequently been released on bail. Failure on the part of any employee to do so informing his official supervisor will render him liable to be disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him.”

The charge against the respondent was that he concealed the fact of his involvement and did not intimate about the registration of the case on 6th August, 1990 though an application for earned leave was filed by him for three days from 6th August, 1990 to 8th August, 1990. A bare perusal of Clause 19(l) shows that non disclosure of the registration of the case will not be violation of Clause 19(l). This fact has not been disputed by the petitioners that the respondent was granted anticipatory bail on 9th August, 1990 and on 10th August, 1990, he had intimated the petitioners about the pendency of the case. This has also not been disputed by the petitioners that the respondent was not arrested and ultimately he was acquitted honourably in the case which was registered against him. Apparently, in the facts and circumstances, there is no violation of Clause 19(l) by the respondent so as to bear the consequences of misconduct leading to removal from services. The order of the tribunal, therefore, cannot be faulted in setting aside the order dated 9th August, 1990 and 15th December, 1998 in the circumstances.

The next point which has been very emphatically contended by the learned counsel for the petitioner is that the respondent is not entitled for any consequential benefits. In *Kendriya Vidyalaya Sangathan & another (Supra)*, relied on by the petitioner the proceedings initiated against an employee who has been absconder. The delinquent employee in that case had applied for earned leave in 1996 to go abroad. His letter dated 6th March, 1997 for grant of permission and sanction of leave was rejected and permission to go abroad was also declined, rather he was intimated that the disciplinary proceedings were contemplated against him. Despite rejection of the request of the employee to go abroad and rejection of his leave, he did not report for duty and consequently his services were terminated which was challenged. The employee had been dismissed without regular enquiry invoking Rule 19(2) and the Tribunal had quashed the order of the punishment without holding the enquiry.

While setting aside the order of termination, full back wages were granted. However, the same were challenged before the Supreme Court and it was held that he was not entitled for full back wages as before claiming full back wages the employee had to show that he was not gainfully employed during the period. In this case, in the circumstances, the full consequential benefits were not granted to the employee. The case relied on by the petitioners is apparently

distinguishable. In case of the respondent, he was not suspended from services rather by order dated 9th September, 1998 he was removed from services. The case of the petitioners is not that after his removal from services, the respondent was gainfully employed, and therefore, he is not entitled for consequential benefits.

The other case relied on by the learned counsel for the petitioner, Allahabad Jal Sansthan (Supra), is also distinguishable as the case once about an ex parte award passed by the Labour Court reinstating the employee with full back wages holding that order of termination was invalid in law as he had worked for more than 240 days in one calendar year, and provisions of Section 6-N of the Act were not complied with.

In the circumstances, the Supreme Court had directed payment of 50% of the back wages in place of full back wages. The ratio of both the case relied on by the petitioners is distinguishable and on the basis of the same, the petitioner cannot contend that the respondent is not entitled for consequential benefits on setting aside of his order of removal from services

The respondent was not arrested, he was granted anticipatory bail and later on he was also acquitted not on technical grounds but honorably and no action could be taken against him even under clause

19 (l) as it contemplated intimation of only arrest and the respondent was not arrested and in the circumstances, the decision of the Tribunal that the respondent shall be entitled to consequential benefits cannot be faulted. The rule of "No work no pay" is not applicable where the employee is though willing to work is not allowed to work for no fault of his. Where the employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited by any penalty of any type, he has to be given all the consequential benefits which he would have normally been entitled.

In the totality of facts and circumstances, therefore, there are no such illegalities or irregularities in the order of the Tribunal which would require any interference by this Court. The writ petition, in the circumstances, is without any merit and it is dismissed.

ANIL KUMAR, J.

APRIL 29, 2010
'VK'

MOOL CHAND GARG, J.