

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

+ **W.P. (C.) No.3329/2010**

% **Date of Decision: 17.05.2010**

Delhi Transport Corporation Petitioner
Through Ms. Saroj Bidawat, Advocate

Versus

Umed Singh Respondent
Through Nemo.

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 |

ANIL KUMAR, J.

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The petitioner, Delhi Transport Corporation has challenged the order dated 16th December, 2009 passed by the Central Administrative Tribunal, Principal Bench in TA 764/2009 titled as Umed Singh Vs. Delhi Transport Corporation & Ors. quashing the orders dated 31st March, 2004, 26th April, 2004 and 15th December, 2004 imposing punishment and dismissing his appeal and directed the petitioner to settle the dues of the respondent as he has already retired and held that the respondent be deemed to be free of all the allegations made against him.

Brief facts to comprehend the controversies are that the respondent had joined the services of the petitioner organization in 1981. He contended that he was on leave on 22nd January, 2004, however, he was on duty on 23rd January, 2004 and 24th January, 2004 and he had marked his attendance on 23rd January, 2004 and 24th January, 2004 which was his weekly day off.

The respondent contended that though he was on medical leave from 27th January, 2004 to 3rd February, 2004, however, he was accused of stealing the attendance register and a charge sheet dated 3rd February, 2004 was served upon him. The respondent demanded certain documents to prepare his defense, however, he was given a letter along with a report which was prepared by the Depot Manager.

Though the allegations made against the respondent were denied by him, however, an inquiry was held on 9th March, 2004 and according to the respondent, it was closed on the same day by the inquiry officer.

The respondent contended that though, he was absolved of the charges made against him, however, without giving him copy of the inquiry report and copy of disagreement note, the disciplinary authority held the respondent guilty of the charges and imposed the punishment of stoppage of two future annual increments with cumulative effect. By order dated 31st March, 2004, an appeal filed by the respondent was

dismissed. A representation was also made by the respondent on 26th May, 2004, however, according to the respondent, representation was not disposed of by the petitioner.

The respondent challenged the punishment imposed upon him and which was affirmed by the Appellate Authority by filing an original application before the Tribunal, which was allowed. The Tribunal noted that the inquiry was initiated on 9th March, 2004 and concluded on the same day holding that since the respondent stated regarding the allegations contained in charge sheet that he was in a sick condition and he did not want to say anything and did not want to ask any question from the report. Therefore, there was no justification in continuing the inquiry further and therefore, the inquiry was closed. While closing the inquiry, it was further stipulated by the Inquiry Officer that the inquiry was closed with intention that in the interest of natural justice, if it would be necessary then inquiry would commence against the respondent from any stage.

The Tribunal found the order to be strange and also held that the inquiry officer had evidently disassociated himself from discharging his duties as inquiry officer.

From the inquiry report, the Tribunal also noted the findings of the inquiry officer that no charges were made out against the respondent. The finding recorded by the inquiry officer is as under:-

“After perusal of all the papers on the file in respect of facts, no charge as made out against the charged official stands proved in the absence of any solid/clinching evidence. The whole case file is submitted for action, please.”

The Tribunal has set aside the penalty imposed upon the respondent on the ground that the Disciplinary Authority had neither issued any disagreement note nor any disagreement note was given to the respondent and the request of the respondent to provide him a copy of the inquiry report was also declined without any justification. It was also held that there is no admission or direct evidence to show that the respondent had marked attendance irregularly in advance and in any case the punishment by the Disciplinary Authority could not be sustained, as neither the disagreement note was issued nor a copy thereof was given to the respondent. In the circumstances, it was held that the punishment imposed by the Disciplinary Authority is contrary to the principle of natural justice and in absence of any evidence against him, the punishment was liable to be quashed.

The learned counsel for the petitioner has emphatically contended that the respondent had marked his attendance irregularly in advance and he had also been responsible for stealing the attendance register

and in the circumstances, the charges against the respondent were made out. The learned counsel for the petitioner is, however, unable to show any cogent evidence on the basis of which it can be inferred that the respondent had marked his attendance in advance in an irregular manner or that he had stolen the attendance register. No evidence has been produced by the petitioner on the basis of which the culpability of the respondent could be inferred. The Tribunal has also noticed that no basic documents to prove the case of the petitioner are available. It has also been noticed that there is nothing on record to indicate that the register was stolen on account of complicity of the respondent. The alleged admission on the part of the respondent also does not reflect in any manner that he was involved in the loss of register or that he had marked his presence in advance.

The learned counsel for the petitioner contended that a disagreement note was issued and the copy of the inquiry report was also supplied to the respondent. However, learned counsel for the petitioner is unable to show any document on the basis of which it can be inferred that the copy of the disagreement note was given to the respondent or that the copy of the inquiry report was given to the respondent. Rather by communication dated 24th March, 2004, the Depot Manager had held that since the findings of the inquiry officer has not been accepted by the Administrative Officers. Therefore, there is no justification in giving the respondent a copy of his findings. The

learned counsel for the petitioner is also unable to show a copy of disagreement note allegedly issued by the Disciplinary Authority and any document to show that the copy of the disagreement note was served on the respondent.

In the circumstances, this Court does not find any such illegality or irregularity or such perversity in the order of the Tribunal setting aside the punishment imposed on the respondent and directing the petitioner to pay his retiral dues without taking into consideration of the punishment of stoppage of two increments with cumulative effect awarded to the respondent. No grounds for interference has been made out by the petitioner and therefore, the writ petition is dismissed in limine. All other pending applications are also disposed of.

ANIL KUMAR, J.

May 17, 2010
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MOOL CHAND GARG, J.