

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

% *Date of Judgment: 27.05.2011*

+ **R.S.A.No. 58/2010**

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Anand Nandan and Mr.
Bishwajit Bhattacharya, Advocates.

Versus

RAVI KUMAR Respondent
Through: Mr.M. Hussain, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 23.11.2009 which has endorsed the finding of the trial Judge dated 27.01.2009 whereby the suit filed by the plaintiff Ravi Kumar seeking a declaration to the effect that the punishment order dated 05.01.1994 confirmed on 01.12.1994 be declared null and void had been decreed.

2 The plaintiff was appointed as a conductor with the

defendant corporation i.e. Delhi Transport Corporation (DTC). On 25.06.1993 while performing his duty at bus No. 9790, a fee of ₹3.50 paise was demanded by the plaintiff from the passenger; passenger created a nuisance and was adamant to pay ₹3/- only; in the meanwhile the bus arrived at Mohan Nagar; checking staff checked the bus and on a complaint, the plaintiff was apprehended; plaintiff was charge-sheeted on the ground that he had apportioned this sum of ₹3/-. Enquiry was conducted against him. He was found guilty of 29.10.1993. The order of punishment dated 01.02.1994 was passed. The statutory appeal filed against the order of the Disciplinary Authority was dismissed on 14.06.1996. He preferred a review petition on 11.05.1998 which was disposed on 18.12.1999 informing him that there was no scope for review or revision and the appeal was the last statutory remedy available to him. Thereafter, there was a lull; suit No. 1174/2006 was filed on 26.05.2006.

3 The trial Judge had framed the following three issues:-

1. Whether the suit is barred by limitation? OPD
2. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
3. Relief.

4 Issue No. 1 is relevant. It relates to the issue of limitation.

Admittedly the statutory appeal filed by the plaintiff before the

Department had been dismissed on 14.06.1996. The trial Judge had taken into account the various representations which had been made by the plaintiff in this intervening period i.e. representations dated 01.03.1996, 13.05.1998, 31.07.1996, 23.12.1998, 15.04.1999 and lastly on 20.02.2006 Ex. PW-1/11 to Ex. PW-/17 to hold that these representations had enlarged the period of limitation and the suit filed on 26.05.2006 was within limitation. This finding was endorsed by the first appellate court. This finding is clearly a perversity.

5 The Supreme Court in (1989) 4 SCC 582 S.S. Rathore Vs. State of Madhya Pradesh had examined the position qua these submissions; a suit for declaration against an order of dismissal was held to be covered by Article 58 of the Limitation Act, cause of action arose when the order was finally disposed of by a higher authority on appeal or representation made by the aggrieved employee in exhaustion of his statutory remedy and if no such final order is made on the expiry of six months from the date of appeal and this representation; the time spent on memorials and representations were not to be considered. This is the ratio of this judgment. Relevant extract herein as under:-

“20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the

higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under Sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and therefore as far as Government servants are concerned, Article 58 may not be evocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of case of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed as representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.”

6 Suit filed by the plaintiff is liable to be dismissed on this ground alone.

7 Learned counsel for the appellant has further submitted that the Enquiry Officer is not an officer who is sitting in appeal; he cannot reexamine and reappraise the facts which have already

been scrutinized by the Enquiry Officer and this has been done by the two courts below.

8 Record shows that both the courts below while disposing of issues No. 2 & 3 had apart from the oral testimony of the driver of the vehicle had been adverted to wherein it was noted that his testimony recorded before the Enquiry Officer (Ex.PW-1/2) had stated that the checking officials had caught hold of the passenger who had not paid the correct amount which was to the effect that on non-payment of 50 paise, the conductor has raised a quarrel; it would have been difficult to imagine that the conductor wanted to retain ₹3/- given by the passenger; this testimony of the driver had been relied upon by both the courts below to hold that the plaintiff was not guilty of the charges leveled against him. These fact findings by the two courts below call for an interference.

9 This is a second appeal. It has been admitted and on 12.01.2011, the following substantial question of law was formulated:-

“Whether the finding in the impugned judgment dated 23.11.2009 on the question of limitation as also on other counts are perverse? If so, its effect?”

10 Since the question on limitation is against the plaintiff, suit having been filed beyond the period of limitation, the appeal is

liable to be allowed on this ground alone. Suit being barred by limitation, it is dismissed.

11 Substantial question of law is accordingly answered in favour of the appellant and against the respondent. Appeal is allowed.

INDERMEET KAUR, J.

MAY 27, 2011

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