

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

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Date of decision: 4th May, 2011

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WP(C) NO.2929/2011

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. Manish Garg, Advocate

Versus

SURESH KUMAR

..... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 20th September, 2010 of the Industrial Adjudicator on the following reference:

“Whether removal of Sh. Suresh Kumar from service by the management is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

and granting the relief to the respondent workman of reinstatement with continuity of service and lumpsum compensation of Rs.50,000/- only in lieu of back wages etc.

2. The respondent workman was working as a Conductor with the petitioner DTC w.e.f. 9th August, 1984 as a permanent employee. He was on 17th February, 1992 charged with, having reached the depot late by one hour for duty on 31st January, 1992, having shouted and abused the ATI Mr. Sher Singh when he refused to mark the attendance of the respondent workman; having picked up quarrel with Mr. Sher Singh and having provoked other persons and having threatened Mr. Sher Singh. The said acts of the respondent workman were stated to be acts of indiscipline and misconduct as per Rule 19 (g) & (m) of the DTC Code of Conduct for the Employees. An Inquiry Officer was appointed who submitted a report finding the respondent workman guilty of the charges. The Disciplinary Authority of the petitioner DTC on 29th September, 1992 imposed the punishment of removal from service on the respondent workman.

3. The record reveals that an application under Section 33 (2)(b) of the ID Act was preferred by the petitioners DTC seeking approval of its action

of removal of respondent workman from service. In the said proceedings the inquiry held against the respondent workman was held to be valid.

4. The respondent workman also raised a dispute and on which the reference aforesaid was made. In the trial of the said reference also, a preliminary issue as to the validity and legality of the inquiry, was framed. It appears that at one stage, on the basis of order in Section 33(2)(b) proceeding holding the inquiry to be valid, the inquiry was held to be valid, in the Section 10 reference proceedings also; however the said order was recalled, the scope of reference under Section 10 being wider than that of a proceeding under Section 33(2)(b).

5. The Industrial Adjudicator vide order dated 30th October, 2009, also impugned in the present writ petition, held the *ex parte* inquiry and the findings in the inquiry report to be violative of the principles of natural justice for the reason of the petitioner DTC having not taken care to even serve the charge sheet on the respondent workman.

6. Opportunity was availed by the petitioner DTC to prove misconduct before the Industrial Adjudicator. The Industrial Adjudicator, after

consideration of the evidence so led, has held that the charges/misconduct alleged was not proved. It was also held that even if the workman had abused in filthy language, the same did not warrant the extreme punishment of dismissal/removal from service and the ends of justice would be met by restricting the claim for backwages from 29th September, 1992 when the respondent workman was removed from service and till the date of the award i.e. 20th September, 2010 i.e. for 18 long years to Rs.50,000/- only.

7. Being not satisfied the present petition has been preferred.

8. The counsel for the petitioner DTC has contended that the strict and sophisticated Rules of Evidence as have been followed by the Industrial Adjudicator are not applicable to domestic inquiries. Reliance in this regard is placed on *State of Haryana v. Rattan Singh* (1977) 2 SCC 491. Attention is invited to the cross examination of the workman before the Industrial Adjudicator where he has admitted that the registered letter through which the charge sheet was sent bore his correct address and also that he had knowledge of the inquiry conducted against him.

9. The finding as to whether the charge sheet was served on the respondent workman or not, is a finding of fact, not ordinarily interfereable in exercise of powers of judicial review under Article 226 of the Constitution, unless shown to be perverse, unreasonable or based on no evidence at all. Else even wrong conclusions on appreciation of evidence do not call for exercise of power of judicial review. See:

- (i) ***Govt. of A.P. Vs. Mohd. Narsullah Khan*** (2006) 2 SCC 373.
- (ii) ***Sub-Divisional Officer, Konch Vs. Maharaj Singh*** (2003) 9 SCC 191.
- (iii) ***Union of India Vs. M/s Mustafa and Najibai Trading Co.*** (1998) 6 SCC 79.
- (iv) ***B.C. Chaturvedi Vs. UOI*** (1996) 1 LLJ 1231 SC.
- (v) ***Poorna Singh Kain Vs. UOI*** MANU/DE/1292/2008.
- (vi) ***Suresh Kumar Vs. the Management of Monsanto Enterprise Pvt. Ltd.*** MANU/DE/8303/2007.
- (vii) ***Ram Narain Jha Vs. T.M. Apartments Pvt. Ltd.*** 2007 (99) DRJ 724.
- (viii) ***MCD Vs. Satish Kumar*** (2005) 81 DRJ 344 (DB)

laying down that repetition of re-appreciation of evidence is not permissible in exercise of power under Article 226. Also see:

(a) ***Kirloskar Brothers Ltd. Vs. The Presiding Officer, Labour Court*** ILR (1976) 1 Del 565.

(b) ***DTC Vs. Delhi Administration*** ILR (1973) 1 Del 838.

(c) ***Jawahar Singh Vs. Financial Commissioner*** MANU/DE/8396/2007.

(d) ***Kishan Chand Bhatia Vs. UOI*** MANU/DE/0265/2005

holding that a finding of fact even if erroneous would not form the basis for judicial review.

10. The Industrial Adjudicator has in the order dated 30th October, 2009 held that the petitioner DTC had the benefit of serving the charge sheet personally on the respondent workman through the depot where the workman was working but which had not been done; that there was no noting by the Inquiry Officer also in the proceeding that the charge sheet was served on the respondent workman by registered post AD; that the only evidence of the charge sheet having been served was the bare statement of witnesses of the petitioner DTC to the said effect.

11. As far as the cross examination of the respondent workman before the Industrial Adjudicator to which attention has been invited as aforesaid is concerned, the respondent workman therein has also stated that he went to the Inquiry Officer to attend the inquiry but no inquiry was conducted; the workman also clarified that he merely had the intimation and knowledge of the pendency of the inquiry. The same in my view cannot be a substitute for the requirement of service of the charge sheet and the findings of the Industrial Tribunal on which aspect are found to be plausible finding and which by no means can be said to be perverse or unreasonable.

12. As far as the proof of misconduct before the Industrial Adjudicator is concerned, the Industrial Adjudicator in the award dated 20th September, 2010 has held that though the charge against the respondent workman was of use of foul language but neither was the said language repeated in verbatim nor the details of foul language deposed by any witness; that there was conflicting evidence of the respondent workman having manhandled his colleague and immediate superior-with some witnesses saying that the respondent workman had merely threatened to manhandle his immediate superior Mr. Sher Singh; that there was no record to show that the

respondent workman had come late and no rule to the effect that the workmen coming late were not allowed to mark their attendance was shown. The Industrial Adjudicator on appreciation of said evidence held that the only thing which can be said with certainty from the evidence was of the respondent workman having argued with his immediate superior Mr. Sher Singh. It was further held that no complaint of manhandling was made at the relevant time and no medical evidence produced.

13. Attention of the counsel for the petitioner has been invited to the recent judgment of the Division Bench of this Court in ***Krishan Pal v UOI*** 178(2011) DLT 521 where also the charge was of use of abusive language. It was held that persons, in that case Jawans, do speak street language while communicating with each other and liberally spice queries with abuses in their language and notice of the same has to be taken by the Courts. Mention may also be made of ***Rama Kant Misra v State of UP*** MANU/SC/0194/1982 also holding that the punishment of dismissal was excessive where the employee was found to have uttered indecent words and used abusive language. The same view was reiterated recently in ***J.K. Synthetics Ltd. v. K.P. Agrawal*** (2007) 2 SCC 433.

14. In the circumstances, no error capable of interference can be found in the order of Industrial Adjudicator. It is felt that the award restricting the backwages / emoluments for 18 years to Rs.50,000/- only is punishment enough for the aberration on the part of the respondent workman.

The writ petition is accordingly dismissed with no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 4, 2011

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(corrected and released on 18th May, 2011)