

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

% W.P. (C) 384/2010

+ Date of Decision: 18th July, 2012

Ram Mehar Singh Petitioner

**! Through: Mr. S.K. Bansal &
Mr. Manish Garg, Advocates**

Versus

\$ Delhi Transport Corporation Respondent

Through: Mr.Ajit Nair, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

The petitioner-workman has in this writ petition questioned the correctness of the award dated 26.11.2009 passed by the Industrial Tribunal whereby the punishment of dismissal from service awarded to him by the respondent Delhi Transport Corporation, which had employed him as a conductor, has been held to be legal and justified.

2. The facts which led to the filing of this petition are that the petitioner-workman had joined the respondent as a conductor in December, 1978. On 08.10.91 while he was performing his duty as conductor in a DTC bus the bus was checked by the checking staff and they had found that some passengers were travelling without tickets. They claimed to have given the fare to the conductor, the petitioner herein, but were not issued the tickets. The respondent-management had on receipt of report from the checking staff issued a charge-sheet dated 21.10.91 to the petitioner-workman alleging that he had committed an act of misconduct by not issuing tickets to two passengers after having collected the fare from them. Those allegations were denied by the petitioner-workman in his reply dated 24.10.91 to the charge-sheet. An enquiry was then ordered to be conducted to find out the truth. The enquiry officer found the petitioner-workman guilty of the charge levelled against him and accepting that report penalty of 'stoppage next due one increment with cumulative effect' was awarded to him by the Disciplinary Authority on 21.10.92. The Chairman of DTC, however, did not accept the said minor punishment awarded by the Disciplinary Authority and so another notice dated 31.10.94

was given to the petitioner-workman to show cause as to why he should not be removed from service.

3. Feeling aggrieved by the second show cause notice issued to him the petitioner-workman filed a writ petition before this Court on 10.11.1994 (being WPC No. 4635 of 1994) instead of raising an industrial dispute. In that writ petition the petitioner-workman had challenged the validity of the departmental enquiry held against him and issuance of second show cause notice issued by the Disciplinary Authority proposing the penalty of his removal from service on various grounds. During the pendency of that writ petition the Disciplinary Authority passed the final order confirming the proposed penalty of removal of the petitioner from the services of DTC on 15.11.1994. Challenge to that order was, however, not sought to be included in the pending writ petition. At the time of hearing of that writ petition the challenge was, however, confined to the validity of the enquiry only. This Court, however, found no merit in the challenge to the validity of the enquiry as also the findings of the enquiry officer and consequently the writ petition was dismissed on 19.09.2005.

4. The petitioner-workman after sometime moved an application in his disposed of writ petition seeking liberty to raise an industrial dispute in respect of the termination of his services. This Court had disposed of that application on 08.11.2005 by observing that he could always raise an industrial dispute, if deemed appropriate, and no liberty was required to be given by the Court.

5. Then sometime in the year 2007 the petitioner-workman approached the Government which in turn referred the matter for adjudication to the Industrial Tribunal vide reference order dated 20th September, 2007. This was the term of reference:-

"Whether punishment of removal from service imposed on Sh. Ram Mehar Singh S/o Late Sh. Subey Singh, Conductor B.No.12711 vide order dated 15.11.1994 is illegal and/or unjustified and if so, to what sum of money as monetary relief alongwith other consequential benefits in terms of existing Law/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?"

6. The petitioner-workman in his statement of claim filed before the Industrial Tribunal once again challenged the validity of the enquiry conducted against him as also the extreme punishment awarded to him.

7. The respondent-management filed its written statement controverting the allegations made by the workman and submitted that the claim of the workman was false, frivolous and vexatious besides highly belated having been raised after thirteen years from the date of passing of the termination order on 15.11.94.

8. The learned presiding officer of the Industrial Tribunal rejected all the objections raised by the petitioner in the impugned award and observed that the charges against him had been proved before the enquiry officer and the enquiry report was not perverse and the punishment given also could not be interfered with. While arriving at these conclusions, the tribunal took into consideration the fact of dismissal of petitioner's earlier writ petition in which the challenge to the validity of the enquiry was rejected by this Court as also the long delay of thirteen years in the raising of the industrial dispute by the petitioner-workman.

9. Feeling aggrieved, the petitioner-workman approached this Court once again with the present writ petition.

10. The learned counsel for the petitioner-workman had mainly argued that the impugned award suffers from the vice of perversity since it had ignored the fact that the Disciplinary Authority had initially imposed the penalty of only stoppage of one increment and so there was no justification for the Chairman of DTC disagreeing with that penalty when he was approached by the workman against the penalty initially imposed by the Disciplinary Authority.

11. The learned counsel for the respondent-management, on the other hand, supported the impugned award and contended that since the same could not be said to be a perverse award this Court cannot interfere with the same in exercise of writ jurisdiction which in such like matters was quite limited and this Court would not consider the matter as an appellate court.

12. Considering all the submissions made from both sides and on a perusal of the record, I am of the view that there is no perversity in the impugned award of the learned Industrial Tribunal. The petitioner-workman had slept over the matter for thirteen years before raising the industrial dispute and that too was raised after he failed in his attempt to get the enquiry held

against him quashed from this Court. So, if this infirmity in the case of the petitioner has been made considered by the tribunal to be a circumstance against him no fault can be found in that conclusion. Similarly, if the tribunal had come to the conclusion that the enquiry held against the petitioner-workman was proper and if while arriving at this finding he had also taken into consideration the fact this Court had already in his earlier writ petition rejected his challenge to the validity of the enquiry no perversity is there in that finding. And if considering the fact that this was a case where the petitioner-workman had indulged in misappropriation of public money the tribunal has not found it to be a case where the penalty imposed on the workman was shockingly harsh, interference by this Court will not be justified. In this regard reference can be usefully made to Supreme Court's recent judgment in **"U.P.State Road Transport Corporation vs Suresh Chand Sharma", (2010) 2 Supreme Court Cases 239** , in which case also a bus conductor was dismissed from service on similar allegations, as in the case of petitioner herein, and while confirming the punishment of dismissal given to the delinquent conductor was held, after taking note of its earlier judgments in cases of this nature, that

in cases of corruption and misappropriation the only punishment is dismissal, irrespective of the amount involved.

13. This writ petition is, therefore, devoid of any merit and is accordingly dismissed.

P.K. BHASIN, J

JULY 18, 2012