

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **W.P.(C) 901/2005**

+ **Date of Decision: 8th February, 2012**

MANAGEMENT OF D.T.C. **....Petitioner**
! Through: Mr. Abhay N. Das, Advocate

Versus

\$ **BALBIR SINGH** **.....Respondent**
 Through: Mr. Anil Mittal & Mr. Amritansh
 Batheja, Advocates

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

JUDGMENT

P.K.BHASIN, J: (ORAL)

The grievance of the petitioner-DTC in this writ petition is against the Award dated 5th April, 2004 of the learned Labour Court whereby termination of the services of the respondent-workman for some act of misconduct allegedly committed by him in the year 1985 had been held to be illegal and consequently he was ordered to be reinstated in service with full back wages as well as continuity of service.

2. The relevant facts are that in the year 1985, the petitioner-Management in exercise of its powers under Clause 9(b) of the DRTA (Conditions of Appointment & Service) Regulations, 1952, which

permitted termination of services of the employees simply by giving one month's notice, terminated the services of the respondent-workman vide its order dated 9th April, 1985. That order stated that respondent's services were being terminated without recording any reasons under Clause 9(b) and along with that order, he had also been tendered sum of ₹ 3014.10P as retrenchment compensation.

3. Clause 9(b) of DRTA (Conditions of Appointment & Service) Regulations, 1952, came to be challenged as un-constitutional and Hon'ble Supreme Court held it to be so vide its judgment reported as ***JT 1990 (3) SC 725, "Delhi Transport Corporation Versus DTC Mazdoor Congress & Ors"***.

4. In view of the decision of the Hon'ble Supreme Court striking down Clause 9(b) as un-constitutional, the petitioner-management issued an order dated 7th December, 1990 reinstating the respondent-workman in service. That order is reproduced below:-

“DELHI TRANSPORT CORPORATION
(A GOVERNMENT OF INDIA UNDERTAKING)
SOUTH REGION: SCINDIA HOUSE
No. PLO-S-8(52)/Reinstatement/90/1135 dated 7.12.90
The service of Shri Balbir Singh s/o Shri Ohaja Ram
conductor D.No. 14780 T.No. 27964 were terminated w.e.f
9.4.85 under clause 9(b) of the D.R.T.A. (condition of
appointment & service) Regulations 1952 vide this office
memo No. VVC/GO/Cond/85/2846 dt. 9.4.85.

The said regulations 9(b) has been struck down by the Hon'ble Supreme Court in DTC vs. Mazdoor Congress and Ors. JT 1990(3) SC 725. As a result, the impugned order of termination referred to above, has been quashed by the High Court of Delhi vide its judgment dt. 27th Nov. 1990.

Shri Balbir Singh is hereby directed to report for

duty to the undersigned within a period of one week from the date of issue of this memo. He will be entitled to receive salary and other service benefits only from the date he resumes duty.

Should the concerned employee fail to report for duty as advised, the Management should have the reasons to believe that he is no longer interested to serve the Corporation and by his own conduct terminated his contract of service.

He is being taken back on duty in pursuance of the orders of the High Court of Delhi and in terms of the said orders of the High Court of Delhi, it is open to the Corporation to take such action as is available to it according to law. He is further advised that the Corporation reserves its rights to take further action as may be considered fit and proper in the facts and circumstances of the case.

Sd/-

Asstt.

Personnel Officer (S)

Shri Balbir Singh,
S/o Shri Ohaja Ram,
Ex-conductor B.No. 147870, T.No. 27964
Vill. & P.O. Baroda,
The. Gohana Distt, Sonapat (Haryana).
cc to : All HoDs

Depot Manager VVO
Secy. To CMD for information
Dy. C.A.O.(F)
Dy. C.A.O.(B)
Legal Advisor
L.W.D. of the Region”

5. After about two years of his reinstatement the respondent-workman was served with a charge-sheet dated 25th November, 1992 and the charges levelled against him in that charge sheet were that while he was performing his duty as a Conductor on DTC bus on 23rd March, 1985, the checking staff of DTC found one bogus ticket in the possession of one passenger who had complained to the checking official that he suspected that he had been given a sold ticket and

further allegation was that when the cash of the respondent-workman was checked, it was found to be short by ₹ 8.05 and he was also found to be in possession of 90 bogus tickets.

6. The respondent-workman had submitted his reply to the charge-sheet refuting the aforesaid allegations. Finding the reply to be not satisfactory, the disciplinary authority decided to initiate departmental inquiry. An inquiry officer was appointed. The inquiry officer after taking note of the statement made on behalf of the management by its witness Jagdish Chandra ATI came to the conclusion on 26th July, 1993 that the tickets in question were not 'bogus' but were 'used' and therefore, he ordered issuance of an amended charge-sheet to the respondent-workman. Consequently, the management issued a fresh charge sheet and the complaint, on the basis of which the earlier charge-sheet was issued, was also amended and instead of the expression 'bogus tickets' the expression 'used tickets' was substituted in the complaint. It appears that the Inquiry Officer while making the aforesaid observation that the tickets in question were not bogus had kept the inquiry proceedings alive and after service of amended charge-sheet upon the respondent-workman he resumed the enquiry proceedings on 6th August, 1993 and finally gave his report holding the respondent-workman guilty in respect of the aforesaid charges levelled against him in the amended charge sheet.

7. The disciplinary authority accepted the report of the Inquiry Officer and passed the order for the removal of the respondent from the service of the DTC on 7th October, 1994. The respondent-

workman felt aggrieved and so he raised an industrial dispute which in due course came to be referred to the Labour Court. The term of reference was as follows:-

“Whether the punishment imposed upon Shri Balbir Singh by the management vide its order dated 7.10.1994 is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

8. The respondent workman filed a statement of claim before the labour Court alleging that his services were unjustifiably terminated.

9. The petitioner-management filed its written statement justifying its action.

10. The learned labour Court gave its award dated 5th April, 2004 setting aside the decision taken by the petitioner-Management to remove the respondent-workman from service. One of the grounds on which the reference was decided in his favour was that the dismissal of the respondent-workman for an act of misconduct which had been allegedly committed by him in the year 1985 pursuant to the disciplinary proceedings initiated in the year 1992 was not justified and initiation of disciplinary proceedings itself was highly belated and the delay had remained unexplained. For arriving at this conclusion the learned presiding officer relied upon one judgment of this Court reported as ***“M.L. Tahiliani vs. Delhi Development Authority”***, 2002 LLR 981 and one of Madhya Pradesh High Court reported as ***“The State of Madhya Pradesh vs. Bani Singh & Anr.”***, 1990 (60) FLR 824. Other reasons were that enquiry officer had at one time held that the case against the workman of issuance and being in possession of

'bogus' tickets was not proved and further that subsequently after issuance of amended charge-sheet the complaint had been tampered with by inserting therein the word 'istemall' in place of the word 'bogus' and that tampering was done to support the management's case as deposed by management's witness Jagdish Chand earlier on 26th July, 1993. Further that Jagdish Chand had admitted that the cash in possession of the respondent-workman was not found in excess (as was the allegation in the charge-sheet). After taking into consideration some more faults in the management's evidence adduced in the enquiry the labour Court held that the enquiry was vitiated. Since the management had not sought an opportunity to establish the misconduct before the labour Court the punishment given to the respondent-workman was set aside.

11. Feeling aggrieved, this writ petition was filed by the petitioner-management.

12. Learned counsel for the petitioner-management had submitted that the delay in initiation of the disciplinary proceedings stood very much explained inasmuch as in the year 1985 the petitioner-management had invoked Clause 9(b) of DRTA (Conditions of Appointment & Service) Regulations, 1952 and at that time it had decided not to charge sheet the respondent-workman for the act of misconduct which he had committed in March, 1985. However, when Clause 9(b) was struck down by the Hon'ble Supreme Court the termination of the services of the respondent was set aside by this Court but liberty was given to the petitioner-management that it could

initiate disciplinary proceedings against the respondent-workman in accordance with law. Accordingly disciplinary proceedings were initiated against the respondent- workman in the year 1992 and consequently the removal of the respondent from services should not have been set aside by the learned Labour Court on the ground that initiation of the disciplinary proceedings against him was belated. It was also contended that even the findings of the labour Court on the enquiry proceedings and the enquiry officer's report cannot be sustained since the labour Court acted as an Appellate Court which is not permissible for the labour Court in the matter of such a nature.

13. On the other hand, learned counsel for the respondent-workman fully submitted the labour Court's decision given in his favour.

14. After having given my thoughtful consideration to the rival submissions and perusing the record I am of the view that there is no merit in this writ petition and the same is liable to be dismissed. As far as the charge of misconduct is concerned, it was management's own case that alleged misconduct was conducted by respondent-workman in the year 1985. At that time, it had admittedly two options with it. First was to proceed against him departmentally by initiating departmental inquiry against him and second one was to invoke Clause 9 (b) of the DRTA Regulations under which it could dispense with the services of any of its employees by giving him one month's notice or one month's salary in lieu of notice. That could be done even on the ground that the employee had committed some misconduct. The petitioner-management at that time, however, chose

not to initiate any disciplinary proceedings against the respondent-workman for his alleged act of misconduct. In fact was not even been apprised of the alleged misconduct. That shows that even if he had committed any misconduct in 1985 that stood condoned by the petitioner-management. Therefore, having failed in its attempt to sustain its decision taken under Clause 9 (b), the petitioner-Management could not have reopened the incident of March, 1985 and charge-sheeted the respondent-workman and the learned labour Court has rightly held so. Just because liberty was given to the petitioner-management by this Court as alleged by the management, that it could initiate departmental proceedings against the workman in accordance with after re-instating him (though there is nothing on record to show that such a liberty was given by this Court that would not mean that it could come out with any case in the year 1992 about which the workman was not even made aware of in 1985. So, the initiation of disciplinary proceedings against the respondent-management in the year 1992 for the alleged act of 1985 was *mala fide*. In view of this conclusion I need not go into the submission raised on behalf of the management that the labour Court had acted as an Appellate Court while considering the enquiry proceedings and enquiry officer's report. I therefore do not find any infirmity in the Labour Court's award. This writ petition is therefore dismissed with cost of ₹ 15,000/-.

P.K. BHASIN, J

February 08, 2012/pg