

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13.10.2011

Judgment delivered on: 16.01.2012

W.P.(C) 5186/2007

INDER SAIN

.....Petitioner

Through: Mr.A.K. Mishra, Adv.

Vs.

DELHI TRANSPORT CORPORATION Respondent

Through: Mr. J.S. Bhasin, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks to challenge the order dated 8.12.2005 passed by the learned Labour Court in answering the reference against the petitioner whereby the Court refused to interfere with the punishment awarded by the respondent management directing removal of the petitioner workman from his service keeping in view the

gravity of the charges and the previous record of the petitioner.

2. The brief facts relevant for deciding the present petition are that the petitioner was working as driver with the respondent DTC since 1979 with last drawn wages as Rupees 3,000/- per month. A charge sheet dated 11.12.91 was issued by the concerned Depot Manager against the petitioner concerning an incident which had occurred on 30.10.1991 wherein it was alleged that two ladies who were mother and daughter were standing at the Ashram Bus Stop to board the bus which was being driven by the petitioner and when the old lady who was accompanying her daughter tried to board the bus from the front gate while the daughter was in the process of boarding the bus from the conductor side (rear gate), the petitioner driver did not allow the old lady to enter the bus from the front gate and when she was about to board the bus from the rear gate the petitioner drove the bus despite the daughter requesting him to stop the bus. A complaint was lodged by the said ladies to Mr.

Ishwar Chand ATI and the said ATI when enquired from the petitioner about the said matter, the petitioner starting abusing the ATI and rather manhandled him at the public place, report of which was lodged by the ATI at Faridabad Kotwali vide D.D.No. 12 dated 30.10.91 and such act was construed as misconduct on the part of the petitioner within the meaning of Clause 19(a) (g) (h) and (n) of the Standing Orders governing the conduct of DTC employees. An enquiry was set up by the disciplinary authority against the petitioner and based on the enquiry report filed by the enquiry officer, Disciplinary Authority awarded the punishment of removal of the petitioner from his service in terms of Rule 15(2) of Delhi Road Transport Authority (Condition of Appointment & Service) Regulation, 1952. Feeling aggrieved with the said order of the punishment, the petitioner raised an industrial dispute under Section 10 of the Industrial Disputes Act. It is not in dispute between the parties that so far issue no.1 regarding the enquiry conducted by the respondent management was concerned,

the same was treated as a preliminary issue and vide order dated 26.8.2004, the learned Labour Court had decided the said issue in favour of the respondent management and against the petitioner. The said finding of the learned Labour Court was also upheld by this court vide order dated 6.4.2005 in W.P.(C) No. 5652/2005, preferred by the petitioner challenging the said findings on the preliminary issue. The only grievance raised by the petitioner in the present petition to be decided by this court is on the legality and validity of the quantum of punishment awarded by the Disciplinary Authority, which punishment was later upheld by the learned Labour Court vide impugned award dated 8.12.2005.

3. Arguing for the petitioner, learned counsel Mr. A.K. Mishra, very fairly submitted that so far the finding of the Labour Court on the preliminary issue regarding the enquiry had attained finality with the dismissal of the writ petition bearing W.P.(C) No. 5652/2005 preferred by the petitioner. Assailing the findings of the learned Tribunal,

whereby the award of punishment of removal was upheld, counsel submitted that the Disciplinary Authority at the time of the passing of the order of punishment did not take into consideration the past record of the petitioner while the Tribunal had referred to the past record of the petitioner where fifteen adverse entries were found against him. Learned counsel also submitted that even the Management did not refer to the said adverse entries before the Disciplinary Authority at the time of the passing of the punishment order but yet the Industrial Tribunal had referred to those fifteen adverse entries and that too in a very cavalier fashion without even having gone into the circumstances leading to registration of the said adverse entries against the petitioner. Learned counsel for the petitioner also submitted that since the petitioner has reached the age of superannuation, this Court may take a lenient view by reducing the quantum of punishment of the petitioner so that at least the petitioner can get his retirement benefits.

4. Mr. J.S. Bhasin, learned counsel for the respondent/DTC, states that there is a concurrent finding against the petitioner and, therefore, this Court, in the exercise of writ jurisdiction, may not re-appreciate the finding of facts arrived at by the Court below and the Disciplinary Authority.

5. I have heard learned counsel for the parties and given my thoughtful consideration to the arguments advanced by them.

6. The principal grievance raised by the counsel for the petitioner was that the learned Tribunal had referred to the past record of the petitioner without even examining the circumstances which led to previous adverse entries against the petitioner and has thus committed illegality in upholding the punishment awarded by the disciplinary authority. The grievance raised by the counsel for the petitioner is primarily based on hope to convince this Court to take a lenient view by reducing the said punishment of removal from service to

some lesser punishment as the petitioner has already been superannuated from his service.

7. The legal position to interfere with the quantum of punishment under Article 226 of the Constitution of India is well settled. It is only in a case where the punishment inflicted against a delinquent employee is grossly unjust and shocks the conscience of the Court, that the Court in exercise of its jurisdiction under Article 226 of the Constitution of India r/w Section 11 of the Industrial Disputes Act may interfere to reduce the quantum of punishment. The question for consideration is whether the punishment of dismissal awarded by the Disciplinary Authority was so disproportionate to the act of the workman that would convince this court to interfere with the punishment awarded. The Apex Court in various cases has discussed the importance of discipline at workplace and it would be relevant here to refer to the judgment in case of ***Hombe Gowda Educational Trust v State of***

Karnataka (2006)ILLJ1004SC wherein it was held as under:-

"This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity."

It is also a settled legal position that the quantum of punishment cannot be interfered with on compassionate grounds or on irrational or extraneous factors. Physically or verbally abusing another employee is a misconduct which does not deserve anything less than removal. Here it would be useful to refer to the judgment of the Apex Court in the case of ***Mahindra and Mahindra Ltd. vs. N.B.***

Narawade (2005)ILLJ1129SC where the Court held that:-

*"As noticed herein above atleast in two of the cases cited before us, i.e. **Orissa Cement Ltd.** (supra) and **New Shorrock Mills** (supra), this Court held: "punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once*

but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein above."

8. In the aforesaid legal background and looking into the facts of the case at hand, the question that arises is that whether the punishment awarded by the disciplinary authority directing removal of the petitioner from his service can be construed as shockingly disproportionate or in any manner unjust or harsh? As per the facts of the case, the petitioner was on his duty as a driver driving the DTC bus when an old lady wanted to board the bus from the front gate. It is a pertinent fact that prior to introduction of Metro in Delhi, commuting was defined by public transport alone and largely it was only the buses being run by the DTC. For the old, disabled and infirm especially, it was a grueling task to board a DTC bus and it was also quite routine that they were always permitted to enter the bus from the front gate. The present petitioner instead of lending a helping hand to the old lady to allow her to board the bus from the front gate instructed her to board the bus from the rear gate and

without even affording her sufficient time to reach to the rear gate suddenly started the bus. The petitioner driver did not stop the bus despite the fact that the daughter of the old lady kept requesting him. The callousness of the petitioner did not come to end there as ultimately the ATI became the victim of his tempestuous behaviour. On the intervention of the ATI, the petitioner had the audacity to physically assault him besides using foul and filthy language for the said ladies and the ATI in such circumstances had to lodge a police report against the petitioner. This riotous, inhumane and atrocious conduct of the petitioner certainly does not in any manner sway this Court to reduce his punishment from the removal of service to some other lesser punishment, as a civilized society cannot tolerate such people who even do not have the basic decency and regard for the elders and when they are advised to discipline themselves they rebound with more savagery and barbarism. So far as the plea raised by the counsel for the petitioner that his past conduct was unjustly taken into account to award the said punishment is

concerned, it would be suffice to mention that the said misconduct of the petitioner as was proved on record by the enquiry officer was sufficient enough to award the said punishment and therefore reference to his previous conduct by the Tribunal becomes inconsequential.

9. In the light of the above, there is no merit in the present petition and the same is hereby dismissed.

January 16, 2012
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KAILASH GAMBHIR, J