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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: March 18, 2013

Judgment Pronounced on: March 22, 2013

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W.P.(C) 1132/2013

ANIL KUMAR

..... Petitioner

Represented by: Mr.Sanjay Ghose, Advocate.

versus

THE CHAIRMAN-CUM-MD, DELHI TRANSPORT
CORPORATION AND ORS.

..... Respondents

Represented by: Mr.Sarfaraz Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J

1. Services of petitioner were terminated by DTC during the probation period not for the reason that as a driver he lacked proficiency/driving skills, but for the carelessness of a passenger, who left his bag at Terminal 3, IGI Airport and boarded a DTC bus for ISBT. The petitioner was driver of that Bus No.7152.
2. The irony is that the petitioner, who initiated action to find out the lost property, has been put at the receiving end perhaps for the reason that out of 'many' associated with the search operation for the lost bag, he being on probation, was the softest target, hence made a scapegoat in this episode. His desire to buy peace has contributed to his misery.
3. This writ petition is directed against the order dated 15.10.2012

passed by the Central Administrative Tribunal, Delhi whereby the O.A.No.912/2012 filed by the petitioner was dismissed by the Tribunal holding that the impugned order of termination as well as rejection of appeal preferred against the same did not call for any interference.

4. Looking into the charges against the present petitioner and to have a deep insight into the entire episode, we preferred to summon the inquiry file from the respondent/DTC to satisfy our conscience about the 'misconduct' of the petitioner behind termination of his services during probation period. Before proceeding to examine the legality of action against the petitioner, let us unfold the sequence of events as narrated in the inquiry file to find out whether the termination of services of the petitioner during probation period on the basis of inquiry into this incident, was justified or perverse.

5. The inquiry against the petitioner was initiated on the basis of a complaint dated 15.09.2010 by ATI Balwan Singh received by DTC vide endorsement dated 16.09.2010. The complaint disclosed that on 10.09.2010 ATI Balwan Singh received a telephonic call from the driver and conductor of DTC Bus bearing registration No.7152 informing that one of the passengers had lost his bag. He informed the driver and conductor that as he was on duty at Domestic Airport he would inform IGI Airport Terminal 3 about the loss of bag and thereafter inform the outcome to them (driver and conductor).

6. ATI Balwan Singh telephoned Swaraj Singh, Sweeper/Cleaner at Terminal 3 to inquire about the lost bag. Swaraj informed him that he had seen two persons lifting a bag from the trolley, he immediately informed that the bag belonged to a passenger of the DTC Bus. Thereafter, he handed over the bag to ATI Mahavir Singh, Timekeeper (Samai Palak) on duty at that

time. ATI Balwan Singh conveyed this information to the driver about the bag being found and kept with ATI Mahabir Singh.

7. The second part of the complaint by ATI Balwan Singh, appears to be what transpired between ATI Mahavir Singh and conductor & driver of DTC Bus No.7152 at Terminal 3, but not in his presence. As per the complaint when the driver and conductor reached Terminal 3 for the next trip scheduled at 10:30, ATI Mahavir Singh asked them about the passenger but they informed him that the passenger had got down at Gurudwara Shish Ganj to pay obeisance and would meet them at ISBT to collect the bag. ATI Mahavir Singh handed over the bag to the driver and conductor which was containing passport papers and Dubai currency.

8. Then ATI Balwan Singh referred the incident dated 14.09.2010 that when he reported for duty (Duty hours 0800 to 1430 hours he found one passenger sitting on a chair who informed that he lost his bag at Terminal 3 on 10.09.2010 while he boarded a DTC Bus going to ISBT and that the bag was containing his passport and 2800 Dirham (Dubai currency). ATI Balwan Singh advised the passenger to contact the Airport Manager, CISF Control Room and Police Station and in the meantime he would verify from the DTC staff. He noted down the name and address of the passenger assuring to contact him in case the bag is found. Thereafter, he questioned the staff of DTC Bus No.7152 about the bag informing that the passenger had come to the Airport. But in the meantime the bag was delivered to the passenger by the conductor Amit Kumar at ISBT posing himself to be the passenger. When Bus No.7152 again came to Airport Terminal 3 at 1:30 pm, he made enquiry but was informed that the bag had already been handed over to the passenger at ISBT. He told them that he was unable to trust them

and why the bag was kept by them for 4 days with them and hot words were exchanged with conductor Amit Kumar, who even threatened to see him. Then he again contacted the passenger, who informed that he had received the bag minus the Dubai currency. He named Amit Kumar to be the mastermind behind the incident, who projected himself as passenger of the Bus No.7152 on 10.09.2010 and again came on 14.09.2010. The complaint was submitted for action.

9. On the report submitted by ATI Balwan Singh, petitioner was served with the charge sheet and enquiry was conducted for the following misconduct:-

- “(1) During duty you have unauthorizedly found one bag of one passenger containing his passport, bank card and Dubai currency which was ` 35000/- of Indian currency and did not return to the said passenger.*
- (2) You have not deposited the said bag in the missing department of the Deport.*
- (3) You gave the above said bag to the passenger on 14.09.2010, his bankcard and Dubai currency was not in it.*
- (4) You have misled the Corporation by keeping the bag of the passenger with you unauthorized”.*

10. During the enquiry only one question was put to ATI Balwan Singh as to where the petitioner was at fault and almost identical version was given with minor variations about questioning of the staff and adding that the passenger Balwinder Singh was found sitting by him with ATI Hari Ram Token No.18995 when he (ATI Balwan Singh) reported for duty on 14.09.2010 at 6 a.m. ATI Balwan Singh was further questioned by the Enquiry Officer about the reference and role of Amit Kumar Conductor No.22125. In answer to that, he stated about the hot words exchanged

between the two as well as questioning of petitioner Anil Kumar (driver) on 14.09.2010 in the manner “*Yatri Bag Ke Bare Mein Kya Socha Hai*” and answer given by petitioner was that the passenger (conductor Amit Kumar) sitting in the Bus would answer that and then he questioned Amit Kumar that how he is claiming himself to be the passenger of the Bus followed by hot words exchanged between them.

11. Cleaner/Sweeper Swaraj Singh is the most crucial witness in this matter who made statement to the following effect:

“On 10.09.2010 I was on duty at IGI Terminal 3 from 5 a.m to 1330 hours. In the morning at 6:45 a.m at I saw a bag in the trolley of Airport. I told ATI Mahavir Singh about lying of bag in the trolley. On this, ATI Mahavir Singh asked to bring the bag and give it to him. After giving the bag to him, I went for tea. I have nothing to say further.”

12. ATI Mahavir Singh has different version to give. While deposing in the enquiry the impression gathered is as if he was trying to prove his innocence while claiming that he handed over the passenger’s bag to the driver and conductor of Bus No.7152 **in presence of Swaraj Singh, Cleaner/Sweeper after showing the contents of the bag to the driver and conductor.** He also stated that later he was informed orally by ATI Balwan Singh that the passenger had come to the Airport in search of his bag and he (ATI Balwan Singh) had prepared the report against the concerned staff.

13. Services of petitioner were terminated by the respondent/DTC on 18.10.2011. The grounds of termination as recorded in the termination order are extracted as under:-

“No.BDWDS-8/AI(T)/2011/2915

dated 18.10.11

Shri Anil Kumar S/o Sh.Rajinder Singh, Driver, B.No.22078, P.T.No.64039 has been appointed as a Driver for the two years probation

period vide PLD's letter No.PLD-III/(DSSSB)/Dr. other state/Apptt./8/3755 dated 29.12.2008. When he was performing his duty No.PC/7, with Bus No.DLIP C-7152 on 10.09.2010 he received a lost passenger bag from the time keeper at I.G.I. Airport terminal he did not inform the deport authority and did not deposit the same in the depot lost property section. He un-authorizedly kept the bag in his custody but after initiating disciplinary action he returned the bag to the passenger after five days at his residence by hand. Whichever shows that he malafidely graved the belonging of the passenger in his duty.

Hence your services from this Corporation is hereby terminated with immediate effect under clause 9(a) (i) of the DRTA (Conditions of Appointment and Services) Regulations, 1952”.

14. On perusal of the record we notice that the disciplinary authority, the appellate authority as well as the Tribunal failed to take note of the fact that there was absolutely no material against the petitioner Anil Kumar to prove the Articles of Charges leveled against him. Petitioner's act of obtaining affidavit from the passenger that he has received his bag with its contents has been understood as if Dubai currency was returned by petitioner Anil Kumar to Balwinder Singh and this circumstance was viewed against him. In fact, the version of the petitioner before the disciplinary authority was only to the effect that to recompense the passenger he had borrowed money from his relatives and paid to him. Obviously, to come out of the situation in which he was put, he preferred to get a clean chit for himself from the passenger Balwinder Singh. It is not that the petitioner Anil Kumar retained the Dubai currency with him and returned the same to the passenger Balwinder Singh.

15. On the basis of statements of three departmental witnesses, i.e., ATI Balwan Singh, ATI Mahavir Singh and Cleaner/Sweeper Swaraj Singh, the following facts emerge:-

- (i) Role of ATI Balwan Singh, who was on duty at Domestic Airport, was only limited to the extent that the driver Anil Kumar telephoned him about the loss of bag of passenger Balwinder Singh.
- (ii) He contacted Cleaner/Sweeper Swaraj Singh at Terminal 3, IGI Airport and the information of the bag being found was conveyed to the petitioner.
- (iii) The duty to deposit the bag as 'lost and found' property with the concerned Section was either of Cleaner/Sweeper Swaraj Singh or of ATI Mahavir Singh.
- (iv) There was no question of the petitioner having unauthorizedly found the bag of the passenger or his depositing the same with 'Missing Department' (perhaps reference is to the department dealing with lost & found property as department cannot be 'missing' as referred to in the Articles of Charges).
- (v) The report, if any, about lost & found property was to be prepared by the concerned ATI and it was his duty to convey the passenger directly or through the concerned driver to claim his bag from the concerned department on establishing his identity as well as contents of the bag.
- (vi) The act, if any, of handing over the bag to petitioner Anil Kumar could be termed as mis-demeanour on the part of the ATI on duty at Terminal 3.
- (vii) The passenger could have reached either Terminal 3 to find out as to whether his bag had been found or could have contacted the driver Anil Kumar. He had no occasion to visit the place of duty of ATI Balwan Singh at Domestic Airport on 14.09.2010 at 6 a.m as claimed

by him in the complaint.

- (viii) Even if it is assumed that the passenger Balwinder Singh happened to reach the place of duty of ATI Balwan Singh on 14.09.2010 at 6 a.m, why ATI Balwan Singh did not inform him that his bag has been handed over to the petitioner Anil Kumar, driver of Bus No.7152 on 10.09.2010. Rather, the passenger Balwinder Singh was made to complain to the Airport Manager, Police Station and CISF Control Room as well as the place where the lost & found property is deposited. Why he started a parallel exercise to make enquiry from petitioner Anil Kumar as to why the bag has not been handed over by him till 14.09.2010.
- (ix) The second part of the complaint in respect of incident dated 14.09.2010 pertain to the role of the Conductor Amit Kumar who was stated to be travelling as passenger in the Bus driven by the petitioner. The complaint was made on 16.09.2010 naming conductor Amit Kumar to be the mastermind behind the incident and for his alleged misbehavior with ATI Balwan Singh. It was the duty of the ATI Mahavir Singh or ATI Balwan Singh to immediately report the matter to their superior officers on 10.09.2010 highlighting the honesty of the cleaner/sweeper Swaraj Singh that he found the bag and handed over the same to ATI Mahavir Singh on duty at Terminal 3 and send the report on the same day further informing that the bag was handed over to the petitioner with direction to deliver the same to the concerned passenger. Filing of complaint on 16.09.2010 with DTC is a reflection on the functioning of the two ATIs on duty one at domestic Airport and another at Terminal 3 on the Airport at the relevant date.

(x) There is no material to establish that the petitioner un-authorizedly kept the bag in his custody but after initiating disciplinary action he returned the bag to the passenger after five days at his residence by hand, as stated in the termination order for the reason even as per the complaint itself ATI Balwan Singh confirmed from the passenger Balwinder Singh that he had received the bag, which is before initiation of departmental action or even before filing of complaint on 16.09.2010. The affidavit of Balwinder Singh attested on 24.09.2010 is only an acknowledgement obtained by the petitioner by visiting his house in District Ludhiana (Punjab) submitted by him to the DTC along with his application to the Deport Manager dated 01.10.2010 stating that the bag had been returned by him to the passenger Balwinder Singh and receipt had also been taken from him, thus praying for assignment of duty.

16. The services of the petitioner have been terminated by the respondents in terms of Regulation 9(a) (i) of D.R.T.A (Conditions of Appointment & Service) Regulations, 1952, on account of above misconduct for which there was absolutely no evidence to prove the misconduct.

17. In Dipti Prakash Banerjee vs. Satyendra Nath Bose National Center for Basic Sciences, Calcutta and others AIR 1999 SC 983, the Apex Court held that:

“18. On the basis of the above contentions, the following points arise for consideration:

(1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?

- (2) When can an order of termination of a probationer be said to contain an express stigma?
- (3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination?
- (4) To what relief?

Point 1:

19. As to in what circumstances an order ^ termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in *Madan Gopal v. (1964)ILLJ68SC* there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in *R.S. Gupta v. U.P. State Agro Industries Corporation Ltd. and Anr., (1999)ILLJ432SC* and reference was made to the development of the law from time to time starting from *Purshottam Lal Dhingra v. Union of India (1958)ILLJ544SC*, to the concept of 'purpose of inquiry' introduced by Shah, J. (as he then was) in *State of Orissa v. Ram Narayan Das (1961)ILLJ552SC* and to the seven Bench decision in *Samsher Singh v. State of Punjab (1974)ILLJ465SC* and to post *Samsher Singh* case-law. This Court had occasion to make a detailed examination of what is the 'motive' and what is the 'foundation' on which innocuous order is based.

20. This Court in that connection referred to the principles laid down by Krishna Iyer, J. in *Gujarat Steel Tube v. Gujarat Steel Tubes Mazdoor Sangh (1980)ILLJ137SC*. As to 'foundation', it was said by Krishna Iyer, J. as follows:

...a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live

nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

and as to motive:

On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge”.

18. In view of above discussion, finding of the Tribunal affirming the order of the disciplinary authority despite there being no material against the petitioner to prove the charges, warrants interference by this Court. Accordingly, the writ petition is allowed and the impugned order dated 15.10.2012 passed by the Central Administrative Tribunal is set aside. The respondent/DTC is directed to reinstate the petitioner to the post of driver with all consequential benefits except back wages.

19. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MARCH 22, 2013
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