

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.07.2013

+ LPA 639/2012

MANAGEMENT OF DELHI TRANSPORT CORPORATION

..... Appellant

versus

BALBIR SINGH

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Abhay N. Das.

For the Respondent : Mr Anil Mittal & Mr Anuj Kr. Ranjan.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. This is an appeal preferred by the Delhi Transport Corporation against the judgment dated 08.02.2012 passed by a learned Single Judge of this Court. The learned Single Judge has dismissed the writ petition being W.P.(C) 901/2005 filed by the appellant against an award dated 05.04.2004 made by the Labour Tribunal.

2. The respondent was employed as a retainer crew conductor with the appellant on 17.03.1981. Initially, the respondent was on probation for one year and was subsequently confirmed. On 23.03.1985, the checking staff of the appellant corporation conducted a check on a bus on which the

respondent was performing his duties and on a complaint of a passenger the respondent was issued a challan for issuing bogus tickets. Thereafter, on 09.04.1985, the services of the respondent was terminated by invoking clause 9(b) of the DRTA (Conditions of Appointment and Services) Regulations, 1952. The appellant issued a letter dated 09.04.1985 informing the respondent that his services were terminated with immediate effect and a sum of ₹3014 was tendered on account of retrenchment compensation and salary of one month. The respondent challenged the said termination order by filing a writ petition before this Court being W.P.(C) No. 208/2004 which was allowed. The respondent was, thereafter, reinstated in service by the appellant on 07.12.1990.

3. After about two years of being reinstated, the respondent was served with the chargesheet dated 25.11.1992 in relation to the incident which occurred on 23.03.1985. It was, *interalia*, alleged that the respondent was selling bogus tickets. Subsequently, this charge was amended and it was alleged that the respondent was selling used tickets instead of bogus tickets as charged earlier. The amended chargesheet was issued on 06.08.1993. The respondent contested the charges leveled against him. However, the Inquiry Officer found the respondent guilty of the charges and submitted his report accordingly. Pursuant to the report of the Inquiry Officer, the respondent was issued a show cause notice dated 09.03.1994 calling upon the respondent to show cause as to why he should not be removed from service. Thereafter, on 07.10.1994, the appellant passed an order imposing the punishment of dismissal from services upon the respondent. An appeal

was preferred by the respondent against the dismissal from service before the competent authority which was also rejected.

4. The respondent thereafter, raised an industrial dispute which was referred to the Labour Tribunal. The dispute referred to the Tribunal was in the following terms:-

“Whether the punishment imposed upon Sh.Balbir Singh by the management vide its order dt. 7.10.94 is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

5. The Labour Tribunal examined the evidence produced before the Inquiry Officer and on appreciation of the same found that the charges made against the respondent could not be sustained. The Tribunal further noted that there was an inordinate delay in framing of charges against the respondent inasmuch as the challan was issued to the respondent on 23.03.1985, however, the chargesheet in respect of the same was issued on 25.11.1992 and no explanation for such delay had been furnished by the appellant. The Tribunal further noted that the chargesheet had been amended and instead of the original charge that the respondent was selling bogus tickets, the charge was amended to allege that the respondent was selling used tickets. The Tribunal also noted that in addition to the amendment made to the chargesheet, the report of the reporter was also tampered with to reflect that used tickets had been sold instead of bogus ones. The testimony of the reporter indicated that the alteration of the report was not in his handwriting. In addition, the Tribunal also found that the charge was also not made out as the reporter had admitted that the cash found in possession of the respondent was not in excess, which should have

been the case in the event the respondent was selling bogus or used tickets. The Tribunal answered the reference in favour of the respondent and as the appellant did not lead any evidence to disprove the statement of the respondent that he was unemployed from the date of his termination, the Tribunal ordered the respondent to be reinstated with full back wages and continuity of service. It was further ordered that the arrears of wages be paid within one month of the publication of the award failing which the appellant would be liable to pay interest @ 9% per annum.

6. Aggrieved by the award passed in favour of the respondent, the appellant preferred the writ petition. The learned Single Judge after hearing arguments held as under:-

“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/-.”

7. It is contended before us that the learned Single Judge erred in proceeding on the basis that the delay in issuing of the chargesheet had not been explained. It is contended that the services of the respondent had been terminated in 1985 without giving any reason in terms of Clause 9(b) of DRTA (Conditions of Appointment and Services) Regulation, 1952 as it was decided at the material time not to issue a chargesheet to the respondent for his alleged act of misconduct. The appellant resorted to issuing the chargesheet in 1992, after a period of 7 years & 8 months, because the Supreme Court had struck down Clause 9(b) of DRTA (Conditions of Appointment and Services) Regulation, 1952 in the case of **Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors.**: AIR

1991 SC 101. It is also contended that this Court while allowing the earlier writ petition filed by the respondent had granted liberty to the appellant to proceed against the respondent.

8. We do not find any merit in the contentions urged on behalf of the appellant. Indisputably, there has been an inordinate delay on the part of the appellant. Even if it is assumed that the delay was caused on account of the challenge to the validity of clause 9(b) of DRTA (Conditions of Appointment and Services) Regulation, 1952 pending before the courts, the same would still not explain the delay completely. Admittedly, the said issue was put to rest by the decision of the Supreme Court in the case of *DTC Mazdoor Congress (supra)* which was delivered in 1990 and the first chargesheet was issued to the respondent on 25.11.1992 more than two years after the date of the said judgment. There is no explanation, whatsoever, in respect of this delay. Moreover, the appellant could have proceeded against the respondent for alleged misconduct in 1985 but chose not to do so. Further, the learned counsel for the appellant also could not draw attention to any document which would indicate that the appellant had been granted liberty by this Court to proceed against the respondent.

9. The Tribunal has examined the available evidence to arrive at the conclusion that the respondent could not be held guilty of the charges leveled, we do not find an perversity in this decision or in the decision making process to warrant any interference under Article 226 of the Constitution of India.

10. We find no infirmity in the judgment passed by the learned Single Judge and accordingly dismiss the present appeal.

11. The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, ACJ

JULY 26, 2013
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